

DRAFT AIA® Document A134™ – 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price

AGREEMENT made as of the « 10th » day of « September » in the year « 2018 »
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status and address)

« [Board of Education of Oak Park Elementary School District No. 97](#) »
« [970 W. Madison Street](#) »
« [Oak Park, IL 60302](#) »
« »

and the Construction Manager:
(Name, legal status and address)

« [Bulley & Andrews, LLC](#) »
« [1755 W. Armitage Ave.](#) »
« [Chicago, IL 60622](#) »
« »

for the following Project:
(Name and address or location)

« [Summer 2017 Life Safety Work](#) »
« [Lincoln Elementary School Life Safety 2019 Work](#) »
« [1111 Grove Ave](#) »
« [Oak Park, IL 60304](#) »
« »

The Architect:
(Name, legal status and address)

« [STR Architects](#) »
« [350 W. Ontario St. Ste. 200](#) »
« [Chicago, IL 60610](#) »
« »

The Owner's Designated Representative:
(Name, address and other information)

»
« »
« »
« »
« »
« »

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.

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

AIA Document A201™-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.

ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

The Construction Manager's Designated Representative:
(Name, address and other information)

<<
>>
<< >>
<< >>
<< >>
<< >>

The Architect's Designated Representative:
(Name, address and other information)

<< >>

The Owner and Construction Manager agree as follows.

TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	CONSTRUCTION MANAGER'S RESPONSIBILITIES
3	OWNER'S RESPONSIBILITIES
4	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
5	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
6	COST OF THE WORK FOR CONSTRUCTION PHASE
7	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
8	INSURANCE AND BONDS
9	DISPUTE RESOLUTION
10	TERMINATION OR SUSPENSION
11	MISCELLANEOUS PROVISIONS
12	SCOPE OF THE AGREEMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's approval of the Control Estimate, the Contract Documents will also include the documents described in Section 2.2.4 and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.5. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required-requested by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.2.1 The Construction Manager has been engaged to provide professional construction management services because of its character, expertise, experience, education, depth of experienced personnel, and qualifications in dealing with projects of similar scope, complexity, and magnitude.

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, as amended, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in the amended A201-2007, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager. Any reference in this Agreement to the AIA Document A201™-2007, General Conditions of the Contract for Construction, shall mean the A201-2007 in the amended form attached hereto and incorporated herein.

§ 1.4 Contract Sum, Contract Time and Changes in the Work

The Contract Sum is the actual Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee as defined in Section 5.1. The Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work as certified by the Architect in accordance with Section 9.8 of AIA Document A201–2007. The Contract Time shall be measured from the date of commencement of the Construction Phase as established pursuant to Section 2.3.1.2 of this Agreement. Changes in the Work shall be governed by Section 5.2 of this Agreement and not by Article 7 of A201–2007. If, however, the Contract Time has been established in accordance with Section 2.2.4.5, Article 7 of A201–2007 shall control adjustments to the Contract Time.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.0.2 The Construction Manager shall designate an authorized representative who hereby has express authority to bind the Construction Manager with respect to all matters requiring the Construction Manager's approval or authorization. Construction Manager's representative shall have the authority to make representations and decisions on behalf of the Construction Manager concerning estimates and schedules, construction budgets, coordination of the Work, prosecution of the Work, changes in the Work, and all other matters related to this Agreement.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, if such program exists, as well as the schedule and construction budget requirements, each in terms of the other.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Control Estimate; the components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner. All project schedules (including updates) shall be formatted using Critical Path Method (CPM). If an update indicates that the previously approved Project schedule may not be met, the Construction Manager shall recommend corrective action to the Owner and Architect, which shall include the reasons the Project is behind schedule, identify any Contractors responsible for such delay and provide recovery schedules to get the Project back to the approved schedule. Further, during the early phases of the Project, and as may be needed as construction progresses, the Construction Manager shall schedule and conduct MEP meetings to discuss issues unique to the MEP trades specifically including, but not limited to, coordination issues.

§ 2.1.3.1 The Construction Manager shall assist the Owner and Architect in preparing Construction Contracts and advising the Owner on the acceptability of sub-tier subcontractors and material suppliers proposed by Subcontractors. The Construction Manager shall submit for review and approval to Owner, or its attorneys if

designated by Owner, all instructions, terms, conditions, and information prepared for submission to bidders prior to release of the bid package.

2.1.3.2 The Construction Manager shall expeditiously review design documents during their development and advise the Owner and Architect on proposed site use and improvements, selection of materials, and building systems and equipment and methods of Project delivery. The Construction Manager shall also provide recommendations to the Owner and Architect on constructability, availability of materials and labor, sequencing for phased construction, time requirements for procurement, installation and construction, and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. Further, during the entirety of the Project, the Construction Manager shall provide constructability reviews of the Drawings and Specifications and provide value engineering reviews and provide comments to the Owner and the Architect relating thereto.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager ~~suggests~~ suggest alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Construction Manager submits a Control Estimate for the Work, pursuant to Section 2.2. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the ~~Project.~~ Project, subject to the requirements of Section 10-20.21 of the School Code, 105 ILCS 5/10-20.21. The Construction Manager acknowledges and understands that the Owner, as a public body, is subject to the bidding requirements of the Illinois School Code and that all trade contracts shall be publicly bid in accordance with such law and awarded by the Owner.

§ 2.1.6.1 The Construction Manager shall establish bidding schedules subject to the requirements of Section 10-20.21 of the School Code (105 ILCS 5/10-20.21). The Construction Manager, with the assistance of the Architect, shall issue bidding documents, including assisting in the preparation of the General Conditions of the Contract for, Construction, to bidders and conduct pre-bid conferences with prospective bidders. The Construction Manager shall issue the current Project schedule with each set of bidding documents. The Construction Manager shall assist the Architect with regard to questions from bidders and with the issuance of addenda.

§ 2.1.6.2 The Construction Manager shall prepare bid analyses and make recommendations to the Owner for the Owner's award of Contracts or rejection of bids subject to the requirements of Section 10-20.21 of the School Code. (105 ILCS 5/10-20.21).

§ 2.1.6.3 Once the Owner has awarded a bid to a trade contractor, the Construction Manager shall accept the assignment of the trade contractor agreement from the Owner to the Construction Manager on the form attached hereto as Exhibit A.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager

shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the Owner's approval of the Control Estimate, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the Owner's approval of the Control Estimate, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules, including the Control Estimate and the estimated date of Substantial Completion, except as provided in Section 2.2.4.5. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

§ 2.1.10 Permits

The Construction Manager shall assist the Owner in obtaining building permits and special permits necessary to carry out and complete the Work, except for permits required to be obtained directly by the various Subcontractors. The Construction Manager shall verify that the Owner has paid all applicable fees. The Construction Manager shall assist the Owner and Architect in connection with the Owner's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the Project.

§ 2.2 Control Estimate

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Control Estimate for the Owner's review and acceptance. The Control Estimate shall be the sum of the Construction Manager's estimate of the Cost of the Work and the Construction Manager's Fee and shall include those items set forth in Section 2.2.4 below. When the Control Estimate is acceptable to the Owner, the Owner ~~shall~~ shall, upon request by the Construction Manager, acknowledge it in writing.

§ 2.2.2 The Construction Manager shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Construction Manager's first Application for Payment and shall be revised and submitted with each Application for Payment.

§ 2.2.3 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Control Estimate for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated in a revised Control Estimate by mutual agreement of the parties.

§ 2.2.4 The Control Estimate shall include

- .1 a list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 a list of the clarifications and assumptions made by the Construction Manager in the preparation of the Control Estimate, including assumptions under Section 2.2.3, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, and the Construction Manager's Fee;

- .4 the anticipated date of Substantial Completion upon which the Control Estimate is based, and a schedule for the issuance dates of the Construction Documents upon which the anticipated Substantial Completion date relies; and
- .5 a statement as to whether or not the duration from the stated date of commencement of the Construction Phase to the estimated date of Substantial Completion shall become the Contract Time and be subject to the provisions of Article 8 of A201–2007.

§ 2.2.5 The Owner shall authorize the Architect to incorporate the agreed-upon assumptions and clarifications contained in the Control Estimate. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Control Estimate and the revised Drawings and Specifications.

§ 2.2.6 Any portion of the Control Estimate shall be deemed to materially vary from the corresponding portion of the lowest responsive and responsible bid if it is at least 3% greater or 3% less than that portion of the bid. In the event of such material variance, the Construction Manager shall:

- a) If the Owner chooses to accept the bid, compensate the Owner for additional design costs to modify the scope of Work to bring the cost within 3% of the Control Estimate; and
- b) Negotiate respective change orders with the respective Subcontractors to incorporate the aforesaid design changes, at no additional charge to the Owner; or
- c) If the Owner chooses to reject all bids and re-bid, compensate the Owner for additional design costs to modify the scope of work for re-bidding; and

Administrate re-bid of the affected portions of Work at no additional cost to the Owner.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's approval of the Control Estimate or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.1.3 Prior to commencement of the Construction Phase, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

All trade Work shall be performed by Subcontractors which have been assigned by the Owner to the Construction Manager as provided in this Agreement. If the Construction Manager has a reasonable objection to any Subcontractor identified as the lowest responsive bidder, it shall be the burden of the Construction Manager to present demonstrative evidence to the Owner that the bidder is not responsible, and to present such evidence in a timely manner such that Owner suffers no detriment in procuring another Subcontractor if necessary. The Construction Manager shall not perform any Work with its own forces. The Construction Manager shall not perform any Work with its own forces.

§ 2.3.2.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.3 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2. Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee.

§ 2.3.2.4 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect. If the Construction Manager identifies or recommends a specific bidder that is a "related party" under Section 6.10, the Construction Manager shall promptly notify the Owner as provided in Section 6.10.2.

§ 2.3.2.5 Upon the Owner's approval of the Control Estimate, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2007. The Construction Manager shall prepare and regularly update no less than once per month a Construction Schedule utilizing a Critical Path Method (CPM), or another Owner pre-approved scheduling method, which incorporates the activities of the Subcontractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of shop drawings, Product Data and Samples and delivery of products requiring long lead time and procurement. Additionally, the schedule shall be in accordance with applicable Sections of A201™-2007, as amended, including the Owner's occupancy requirements.

§ 2.3.2.6 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the Work, accidents, injuries, and other information required by the Owner. develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.10.

§ 2.3.2.7 In collaboration with the Architect, the Construction Manager shall establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals. The Construction Manager shall review all Shop Drawings, Product Data, Samples and other submittals from the Subcontractors for apparent compliance with Subcontract requirements. The Construction Manager shall transmit to the Architect those submittals which have been reviewed by the Construction Manager. The Construction Manager's actions shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner or Subcontractors. The Construction Manager shall receive and process all other submittals required by the Construction Documents, including certified payrolls, work plans, safety plans, periodic schedule updates, and the like.

§ 2.3.2.8 The Construction Manager shall create and maintain a log of all submittals showing, at a minimum, the dates of submittal, review, and return, disposition, and description.

§ 2.3.2.9 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.3.2.10 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the Work, accidents, injuries, and other information required by the Owner.

§ 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases. Construction Manager shall provide immediate written notice to the Owner and Architect if the Construction Manager discovers the existence of any and all hazardous material, including, but not limited to any lead or lead based material and asbestos, asbestos-related products including the extent and location of same. Construction Manager shall not be responsible for the removal, encapsulation, transportation or disposal of any hazardous material.

§ 2.6 Staffing

Construction Manager shall adequately staff the Project. At all times during the Construction Phase, Construction Manager shall maintain one competent, full-time superintendent at the Project site to supervise the Work and coordinate the progress of the Subcontractors. If any such individual is no longer employed on the Project pursuant to this paragraph, Construction Manager shall propose to Owner the names of other individuals as substitutes. No person shall be employed on the Project if Owner has a reasonable objection. If Owner notifies Construction Manager that it has reasonable objection to any such individual, Construction Manager shall remove such person from the Project and propose substitutes to Owner for Owner's approval.

§ 2.7 Subcontractors' Insurance and Bonds

Construction Manager shall procure Certificates of Insurance, as well as any required Performance and Payment Bonds, for each of the Subcontractors immediately upon award of the Contract and verify conformance of same with the Contract Documents prior to allowing the Subcontractors onto the Site. Insurance of Subcontractors shall name Owner, Construction Manager, and Architect as "Additional Insureds". Copies of same shall be transmitted to the Owner and Architect before Subcontractors may commence Work on the Project.

§ 2.8 Schedule

§2.8.1 Time is of the essence of this Agreement. Construction Manager shall, with the Owner's approval, establish the Construction Schedule. Construction Manager shall schedule, sequence and coordinate the performance of the Subcontractors on the Project so that completion shall be in accordance with the Construction Schedule.

§2.8.2 The Construction Schedule shall commence with the notice to proceed, and shall schedule the Subcontractors' Work using a Critical Path Method or other scheduling methodology approved by Owner. Construction Manager shall update the Project Construction Schedule on a monthly basis to show current and forecasted progress and completion. A copy of each schedule and schedule update shall be transmitted to the Owner, Architect and each Subcontractor. Additionally, Construction Manager shall develop a look-ahead schedule for discussion at each weekly construction coordination meeting. The weekly look-ahead shall, at a minimum, show the schedule for the past week and upcoming two weeks.

§2.8.3 If a monthly Project Schedule update indicates that the previously-approved Project construction schedule may not be met, the Construction Manager shall recommend corrective action to the Owner.

§ 2.9 Cost Records Construction Manager shall verify and maintain in accordance with generally accepted accounting principles detailed cost accounting records for Work performed on the basis of unit costs, and on the basis of actual costs for labor and materials and other bases showing all costs, and shall maintain and transmit to Owner all receipts, invoices, purchase orders, canceled checks, bills of lading and other documents and evidence of payment or indebtedness to support such records as Owner may request. Construction Manager shall audit, verify and recommend approval or rejection or modification of all Change Orders submitted by Subcontractors. Construction Manager shall afford the Owner access to these records and preserve them for a period of three (3) years after final payment.

§2.10 Requests for Information

§ 2.10.1 The Construction Manager shall transmit to the Architect requests for interpretations, information, or clarification of the meaning and intent of the Drawings and Specifications, and shall timely assist in the resolution of such requests.

§ 2.10.2 The Construction Manager shall create and maintain a log of all requests from all Subcontractors, showing, at a minimum, a description of the request, date of submission, a description of the response, and date of response.

§ 2.11 Subcontractor Change Orders

§2.11.1 Without invalidating this Agreement or any Subcontract, and without notice to any respective surety, Owner may make changes to the Subcontractor contracts. The Construction Manager shall review requests for changes, assist in negotiating Subcontractors' proposals, submit recommendations to the Architect and Owner, and, if they are accepted, prepare Change Orders and Construction Change Directives which incorporate the modifications to the Construction Documents. For each change anticipated to be paid by lump sum, Construction Manager shall prepare a detailed estimate for the respective Change Order or Construction Change Directive. Construction Manager shall compare the detailed value estimate with the submittal of the Subcontractor. Construction Manager shall require that each Subcontractor submit such invoices, purchase orders, labor and material records, and schedule analyses as is necessary to verify the accuracy of the Change Order or Construction Change Directive price and/or schedule adjustment. Construction Manager shall submit a detailed recommendation for the Owner's review and approval for each Change Order or Construction Change Directive. Construction Manager shall systematically maintain all documentation supporting each change and upon completion of the Project turn over such documentation to the Owner.

§2.11.2 The Construction Manager shall create and maintain a log of all requests for changes showing, at a minimum, date of submission, description of request, requested change in contract price, requested change in contract time, and disposition.

§ 2.11.3 The Construction Manager shall create and maintain a log of all approved change orders showing, at a minimum, dates of approval, description, reason for change, agreed price of change, and agreed change of contract time.

§ 2.12 Claims

§ 2.12.1 The Construction Manager shall assist the Owner and Architect in the review, evaluation and documentation of Claims. The Owner shall provide a written recommendation to the Owner suggesting the proper disposition of each Claim. Construction Manager shall require that each Subcontractor submit such invoices, purchase orders, labor and material records, and schedule analyses as is necessary to verify the accuracy of the Claim's cost and schedule impact. Construction Manager shall submit a detailed recommendation that reasonably facilitates the Owner's review and consideration of each Claim.

§ 2.12.2 The Construction Manager shall create and maintain a log of all Claims showing, at a minimum, date of submission, description of Claim, demanded change in contract price, demanded change in contract time, and disposition.

§ 2.13 Equitable Extension of Time and No Damages for Delay. To the extent that Construction Manager's services under this Agreement are delayed by the Owner or causes not under control of Construction Manager, the Contract Time shall be equitably extended. Such extension of the Contract Time shall be Construction Manager's sole and exclusive remedy, and Construction Manager shall under no circumstance be entitled to delay damages.

§ 2.14 Site Safety

§ 2.14.1 Construction Manager shall hold regular safety meetings at the site at least weekly with all Subcontractors. Construction Manager shall maintain all required safety records and logs. The Construction Manager shall review, approve and coordinate the safety programs developed by each of the Subcontractors. Neither the Owner, Construction Manager, nor the Architect are responsible for site safety. The individual Subcontracts shall provide that the Subcontractors are solely responsible for the means and methods of prosecuting their respective Work. The foregoing shall not relieve Subcontractors of their responsibility for site safety for their Work and the Work performed by their personnel.

§ 2.15 Quality Control

§ 2.15.1 Construction Manager shall inspect the Work of Subcontractors for defects and deficiencies in the Work in order to assure compliance with the requirements of the Contract Documents. As appropriate, the Construction Manager shall have authority, upon written authorization from the Owner, to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated,

installed or completed. The Construction Manager, in consultation with the Architect and Owner, may reject Work which does not conform to the requirements of the Contract Documents.

§ 2.15.2 The Construction Manager shall assist the Owner in obtaining from the responsible Subcontractor correction of all portions of the Work which do not comply with the Contract Documents or do not meet good workmanlike standards.

§ 2.16 As-Built Documents. Construction Manager shall obtain data from Subcontractors and maintain a current set of accurate As Built Drawings and Specifications clearly marked to show reported actual changes during construction. Construction Manager shall transmit a copy of all As Built Drawings and Specifications to Architect for the preparation of final As Built Documents. Construction Manager shall periodically (not less than monthly) review Subcontractors' data to verify that they are recording information sufficient to allow preparation of the As Built Documents.

§ 2.17 Submission of Record Documents. Prior to final payment at the completion of the Project, the Construction Manager shall inventory and turn over to the Owner one copy of the following: Record/As Built Drawings and Specifications prepared by the Architect, the daily log, progress reports, project manual, field orders, change orders, requests for changes, requests for information, claims, Subcontractor pay applications, communications, submittals, and all other Construction Documents.

§ 2.18 Operations and Maintenance Training Manuals. Construction Manager shall arrange and schedule operating and maintenance training on mechanical, electrical and other systems for Owner's personnel by factory authorized representatives commencing upon start-up and the commissioning of each system prior to substantial completion. Construction Manager shall receive all operating and maintenance manuals from Subcontractors, and, along with the Architect, shall review for completeness, clarity, and conformance with the respective Contract Documents. After all operations and maintenance manuals are received and approved, but no later than turnover of operations to Owner's personnel, Construction Manager shall transmit all approved operations and maintenance manuals to the Owner.

§ 2.19 Performance and Payment Bonds. Construction Manager as principal shall obtain payment and performance bonds in accordance with Article 11 of the A201 General Conditions, as amended; provided, however, that Contractor may cause each Subcontractor to furnish its own payment and performance bond covering its scope of Work, if Owner gives written pre-approval for multiple bonds furnished at the Subcontractor level.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The When requested by the Construction Manager, the Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements Project.

§ 3.1.2 Prior to the Owner's approval of the Control Estimate, or within seven days of receiving the Owner's written acknowledgment required by Section 2.2.1, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, when requested by the Construction Manager, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, or, at Owner's option, Owner may require Construction Manager or Architect to subcontract directly for geotechnical engineering services, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties, and responsibilities as described in AIA Document B133™ 2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement. services as necessary to design and complete the Project.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2: (Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

~~«\$18,781»~~ \$5,000

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within ~~«5»~~ (~~« »~~) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid ~~«~~ (~~«30»~~) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager. (Insert rate of monthly or annual interest agreed upon.)

~~« n/a »~~ % ~~« »~~

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

~~« \$407,915 »~~

General Conditions - \$38,904

Fee (OH&P, GL, SDI, Bond) – 5.20% times cost of work

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

~~«10%»~~

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

~~«10%»~~

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed ~~«90»~~ percent (~~«90»~~ %) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
<u>To Follow upon bid package openings and formal subcontractor awards</u>		

§ 5.2 Changes in the Work

§ 5.2.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General

Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work. The Construction Manager shall incorporate all changes in the Work and Contract Time as separate entries in the Control Estimate.

~~§ 5.2.2 Increased costs for the items set forth in Sections 6.1 through 6.7 that result from changes in the Work shall become part of the Cost of the Work, and the Construction Manager's Fee shall be adjusted as provided in Section 5.1.2.~~

§ 5.2.3 If the Construction Manager receives any Drawings, Specifications, interpretations or instructions from the Owner or Architect which are inconsistent with the Contract Documents, or encounters unanticipated conditions, any of which will result in a significant change in the Cost of the Work or estimated date of Substantial Completion in comparison with the Control Estimate, the Construction Manager shall promptly notify the Owner and Architect in writing and shall not proceed with the affected Work until the Construction Manager receives further written instructions from the Owner and Architect.

~~§ 5.2.4 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work.~~

ARTICLE 6 — COST OF THE WORK FOR CONSTRUCTION PHASE

~~§ 6.1 Costs to Be Reimbursed~~

ARTICLE 6 DIRECT COST OF THE WORK FOR CONSTRUCTION PHASE

~~§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7. terms "Direct Cost of Work" or "Cost of the Work" shall mean the Construction Manager's compensation for the proper performance of trade Subcontracts assigned to Construction Manager after public bid.~~

The Construction Manager shall not utilize any of the Construction Contingency without the prior written approval of the Owner, which shall not be unreasonably withheld. The Owner & Design Contingency shall not be utilized by the Construction Manager without the prior written consent of the Owner, which it may withhold in its sole discretion. Any unused contingency, regardless of category shall be retained by the Owner.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost, while approval shall not be unreasonably withheld.

~~§ 6.2 Labor Costs~~

~~§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.~~

~~§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.~~

~~(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)~~

~~§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.~~

~~§ 6.2.4 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, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.~~

~~§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.~~

~~§ 6.3 Subcontract Costs~~

~~Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.~~

~~§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction~~

~~§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.~~

~~§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.~~

~~§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items~~

~~§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.~~

~~§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager owned equipment and quantities of equipment shall be subject to the Owner's prior approval.~~

~~§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.~~

~~§ 6.5.4 Costs of document reproductions, facsimile transmissions and long distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.~~

~~§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.~~

~~§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.~~

§ 6.6 Miscellaneous Costs

~~§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.~~

~~§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.~~

~~§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.~~

~~§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.~~

~~§ 6.6.5 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 of the Contract Documents; and 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. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.~~

~~§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.~~

~~§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.~~

~~§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.~~

~~§ 6.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.~~

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance by written Change Order executed by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7 Other Costs and Emergencies

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

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

~~§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work notwithstanding any provision of AIA Document A201-2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.~~

§ 6.8 Costs Not to Be Reimbursed

~~§ 6.8.1 The Cost of the Work shall not include the items listed below:~~

- ~~.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 specifically provided in Section 6.2, or as may be provided in Article 11;~~
- ~~.2 Expenses of the Construction Manager's principal office and offices other than the site office;~~
- ~~.3 Overhead and general expenses, except as may be expressly included in Sections 6.1 through 6.7;~~
- ~~.4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;~~
- ~~.5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;~~
- ~~.6 Any cost not specifically and expressly described in Sections 6.1 through 6.7; and~~
- ~~.7 Costs for services incurred during the Preconstruction Phase.~~

§ 6.9 Discounts, Rebates and Refunds

~~§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.~~

~~§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.~~

§ 6.10 Related Party Transactions

~~§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.~~

~~§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.~~

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation

supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

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

<< >>

§ 7.1.3 ~~Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than () days after the Architect receives the Application for Payment. (Federal, state or local laws may require payment within a certain period of time.) Upon receipt of a properly submitted Application for Payment, payment shall be made as provided in the Local Government Prompt Payment Act.~~

~~§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.~~

§ 7.1.5 ~~Applications for Payment shall show the Cost of the Work actually incurred by the Construction Manager through~~ Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate each item of Work comprising the entire Direct Cost of the Work, except that the Construction Manager's Fee and Reimbursable Costs shall be shown as single separate items. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule of values, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment. Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment and for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment. Payment. The percentage of completion shall be the percentage of that portion of the Work which has actually been completed.

§ 7.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take the ~~Cost of the Work as described in Section 6.1.1;~~ Direct Cost of the Work completed during the period covering the Application for Payment as adjusted by Change Orders applicable to that period, if any, less retention of ten percent (10%);
- .2 Add the Construction Manager's Fee, less retainage of percent (Construction Fee and Insurance Fee for the period covering the Application for Payment, less retainage of «ten» percent («10» %). The Construction Manager's Fee shall be computed upon the Cost of the Work described in the preceding Section 7.1.6.1 at the rate stated in Section 5.1.1; or if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed sum Fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion; computed;
- .3 ~~Subtract retainage of percent (%) from that portion of the Work that the Construction Manager self-performs;~~ Add the Reimbursable Expenses incurred during the period covering the Application for Payment;

- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Subtract amounts, if any, for which the Architect has withheld or withdrawn a Certificate for Payment as provided in the Contract Documents.

§ 7.1.7 The Owner and Construction Manager shall agree upon ~~(1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements. Subcontractors. Construction Manager shall ensure that each Subcontract provides that retention of ten percent (10%) shall be withheld from each Subcontractor Application for Payment and paid as a part of Final Payment.~~

§ 7.1.8 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.9 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made ~~no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:~~ in accordance with the Local Government.

<< >>

~~§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.~~

~~§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the~~

Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

~~§ 7.2.4~~ If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager 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.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in this Agreement and in Article 11 of AIA Document A201-2007.

~~(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)~~

Type of Insurance or Bond

Limit of Liability or Bond Amount (\$0.00)

ARTICLE 9 DISPUTE RESOLUTION

~~§ 9.1~~ Any Claim between the Owner and Construction Manager shall be resolved ~~in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply as follows:~~

~~(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)~~

☒ Arbitration pursuant to Section 15.4 of AIA Document A201-2007

☐ Litigation in the Circuit Court of Lake County, Illinois

☒ Other: (Specify)

~~««As provided in the A201 General Conditions, as amended. »»»~~

~~« »
« »
« »
« »~~

~~§ 9.2~~ For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

~~(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)~~

☐ Arbitration pursuant to Section 15.4 of AIA Document A201-2007

☐ Litigation in a court of competent jurisdiction

☐ Other: (Specify)

~~§ 9.3 Initial Decision Maker~~

~~The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.~~

~~(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)~~

ARTICLE 10 TERMINATION OR SUSPENSION

~~§ 10.1 Termination Prior to Owner's Approval of the Control Estimate~~Termination For Convenience

~~§ 10.1.1 Prior to the Owner's approval of the Control Estimate, the~~ The Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of ~~A201-2007~~A201-2007, as amended.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 In the event of termination of this Agreement pursuant to Section 10.1.1, after the commencement of the Construction ~~Phase but prior to the Owner's approval of the Control Estimate, the Phase,~~ the Owner shall pay to the Construction Manager under Section 10.1.2 an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- ~~.1~~ Take the Direct Cost of the Work actually incurred by the Construction Manager to the date of termination;
- ~~.2~~ Add ~~the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; a~~ monthly installment of the Construction Fee and Insurance payable up to the date of termination, as prorated up to the date of termination, plus the amount of the Construction Fee previously paid under Article 4;
- ~~.3~~ Add the Reimbursable Costs actually incurred by the Construction Manager up to the date of termination; and
- ~~.4~~ Subtract the aggregate of previous payments made by the Owner for Construction Phase services-services, including all payments for the Direct Cost of the Work, the Construction Fee, the Insurance Fee, and the Reimbursable Expenses.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. Owner may in its sole discretion, elect to require Construction Manager to assign all Subcontracts back to Owner. To the extent that the Owner elects to take legal assignment of ~~subcontracts~~Subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such ~~subcontracts~~Subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such ~~subcontracts~~Subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of ~~subcontracts~~Subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the ~~subcontract~~Subcontract, purchase order or rental agreement if those costs would have been reimbursable as Cost of the Work if

the contract had not been terminated. If the Owner chooses not to accept assignment of any ~~subcontract~~, Subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the ~~subcontract~~, Subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 10.2 ~~Termination Subsequent to the Owner's Approval of the Control Estimate~~Termination

§ 10.2.1 ~~Subsequent to the Owner's approval of the Control Estimate, the Contract may be terminated as provided in Sections 14.1.1, 14.1.2 and 14.2.1 of A201-2007. The provisions of Article 14 of A201-2007 do not otherwise apply to this Section 10.2.~~The Owner may terminate this Agreement at any time, for convenience or for cause, in accordance with Article 14 of the A201 General Conditions.

§ 10.2.2 ~~In the event of such termination by the Owner, the amount payable to the Construction Manager shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.2 and 10.1.3 of this Agreement, less any compensation that may be awarded to the Owner pursuant to Article 9.~~

§ 10.2.3 ~~In the event of such termination by the Construction Manager, the amount payable to the Construction Manager shall be in accordance with Sections 10.1.2 and 10.1.3 of this Agreement, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, including a reasonable estimate of the Cost of the Work for Work not actually completed.~~

§ 10.2.4 ~~In addition to the Owner's right to terminate this Agreement for cause as provided in Section 14.2.1 of A201-2007, the Owner may terminate this Agreement for convenience as provided in Section 14.4; however, the Owner shall then only pay the Construction Manager an amount calculated as follows:~~

- ~~1. Take the Cost of the Work incurred by the Construction Manager to the date of termination;~~
- ~~2. Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
~~and~~
- ~~3. Subtract the aggregate of previous payments made by the Owner.~~

§ 10.3 Suspension

The Work may be suspended for a period of thirty (30) days by the Owner as provided in Article 14 of AIA Document A201-2007. In such case, the Control Estimate and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.2.4 of this Agreement, A201™-2007, without any equitable adjustment to the Construction Manager's Fee. If such suspension exceeds thirty (30) days, the Construction Manager's Fee shall be equitably adjusted.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201-2007.

§ 11.2 ~~Ownership and Use of Documents~~

~~Section 1.5 of A201-2007 shall apply to both the Preconstruction and Construction Phases.~~Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party against either the Owner or the Construction Manager. Owner and Construction Manager acknowledge and agree that the obligations of the Construction Manager are solely for the benefit of the Owner and not intended in any respect to benefit the Architect, Subcontractors, or any other third parties.

§ 11.3 ~~Governing Law~~

~~Section 13.1 of A201-2007 shall apply to both the Preconstruction and Construction Phases.~~In case of conflict between this Agreement and any other document incorporated or referenced herein, this Agreement shall prevail, followed by the A201 General Conditions as amended, the supplementary conditions, Owner's request for qualifications or proposal, the drawings and specifications, and the Construction Manager's proposal, if such proposal is a part of the Contract Documents.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201-2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§11.4 The Construction Manager shall endeavor to keep the Project free from mechanic's liens. If the Owner is required to withhold money pursuant to a notice of lien or lien against public funds, the Construction Manager shall indemnify, defend and hold harmless the Owner for all costs incurred in connection with such lien and any resulting litigation, including attorneys' fees. The Construction Manager shall ensure that a similar provision is incorporated into the Subcontracts.

§ 11.5 Other provisions: Construction Manager acknowledges that this is a public works project governed by the Illinois Prevailing Wage Act. Construction Manager shall pay its laborers, if any, and ensure that all Subcontractors pay their laborers not less than the established prevailing rate of wages. 820 ILCS 130/1 et seq. Construction Manager shall comply with all reporting requirements of the Illinois Prevailing Wage Act. Similarly, the Construction Manager shall assure that all Subcontractors and sub-tier subcontractors comply with the reporting requirements of the Illinois Prevailing Wage Act.

§ 11.6 Construction Manager represents that it has in place a Sexual Harassment Policy in accordance with the Illinois Human Rights Act and shall ensure that all Subcontractors have in place a Sexual Harassment Policy prior to commencement of Work on the Project. 775 ILCS 5/1-105.

§ 11.7 Construction Manager represents that it does not discriminate in its hiring practices based upon race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service. Construction Manager shall ensure that no Subcontractor discriminates as set forth in this Section.

§ 11.8 Construction Manager represents that it is in conformance with the Drug Free Workplace Act. 30 ILCS 580/1 et seq.

§ 11.9 Construction Manager certifies that it is not barred from contracting as a result of bid rigging or bid rotation. 720 ILCS 5/33 E-11.

§ 11.9.1 Construction Manager acknowledges that if funds of the State of Illinois are used to finance this Project, in whole or in part, the Construction Manager will be obligated to comply with, and cause Subcontractors to comply with, and assist the Owner in complying with, established MBE and FBE goals and all other requirements of the Business Enterprise for Minorities, Females, and Persons with Disabilities Act, 30 ILCS 575/0.01, et seq. The cost of any such compliance, if necessary, shall be included in Construction Manager's Construction Fee and shall not be an additional charge to the Owner.

§ 11.10 Ownership and Use of Documents

Section 1.5 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.11 Governing Law

Section 13.1 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.12 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Except for the assignment of Subcontracts to the Construction Manager as provided herein, neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 11.13 Other provisions: None.

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

.1 AIA Document A134–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum ~~Price~~Price, as amended;

.2 AIA Document A201–2007, General Conditions of the Contract for Construction

~~.3 AIA Document E201™ 2007, Digital Data Protocol Exhibit, if completed, or the following:~~

~~.4 AIA Document E202™ 2008, Building Information Modeling Protocol Exhibit, if completed, or the following:~~

Construction, as amended and attached.

~~.5 Other documents: N/A
(List other documents, if any, forming part of the Agreement.)~~

This Agreement is entered into as of the day and year first written above.

OWNER (Signature)

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

(Printed name and title)