

Exhibit B

DRAFT AIA® Document A133™ - 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 with a Guaranteed Maximum Price

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

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

« Lafayette Airport Commission »« »
« 222 Jet Ranger X Drive, Lafayette, LA 70508 »

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

« »« »
« »

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

«Lafayette Regional Airport New Terminal Programtest»
« »

The Architect:
(Name, legal status and address)

«RS&H»« »
« »

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

« Heery International, Inc »
« »
« »
« »
« »
« »

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

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

The Owner and Construction Manager agree as follows.

Exhibit B

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

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

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 acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.23 and identified in the Guaranteed Maximum Price Amendment Change Order and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. 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 by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.3 General Conditions

For the Preconstruction Phase, the modified AIA Document A201™-2007, General Conditions of the Contract for Construction, 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 modified A201-2007, which document is incorporated herein by reference. The term "Contractor" as used in the modified A201-2007 shall mean the Construction Manager.

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.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, 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 Guaranteed Maximum Price proposal; 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. The schedule shall be updated periodically, but no less than (1) within fifteen (15) days from Notice to Proceed of the Preconstruction effort, (2) within fifteen (15) days after the receipt of the Owner-approved Design Development (60% design completion) drawings, (3) within fifteen (15) days after the receipt of the Owner-approved Construction Development (90% design completion) drawings, and (4) as otherwise required by the Contract Documents.

§ 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. The Owner may require construction to begin on the first phase of the project prior to the establishment of a Guaranteed Maximum Price (GMP). Due to the anticipated phasing of the Project, an Early Component Change Order may be requested. While the GMP will not have been established at the beginning of construction of the first phase, the Owner will have established a limit to the overall cost of the Project. The Construction Manager, in consultation with the Architect, will prepare and submit an Early Component Change Order for the Owner's review and acceptance. The Early Component Change Order shall be submitted and approved in the same manner as the GMP Change Order, described in Section 2.2.4 and 2.2.5 below. Further, the Construction Manager will participate in value engineering and otherwise ensure that overall pricing limitations are met. The Owner will not sign the Early Component Change Order unless it is satisfied, at its sole discretion, that the GMP will be within the Owner's stated cost limitation for the Project.

§ 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 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 Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be updated periodically, but no less than (1) within twenty-one (21) days from Notice to Proceed of the Preconstruction effort, (2) within twenty-one (21) days after the receipt of the Owner-approved Design Development (60% design completion) drawings, (3) within twenty-one (21) days after the receipt of the Owner-approved Construction Development (90% design completion) drawings, and (4) as otherwise required by the Contract Documents. 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.

Formatted: Normal

§ 2.1.5.3 Any or all estimates submitted in accordance with Section 2.1.5.2 might become the basis for the GMP should the Owner desire. The Construction Manager shall specify within each estimate its Proposed Fee for overhead and profit. In addition to the Construction Manager's fee, the estimate shall include a detailed estimate of all general conditions.

Formatted: Normal

§ 2.1.5.4 Concurrent with the submittal of each estimate, the Construction Manager shall submit a detailed list of value analysis options and the associated estimated costs. The Construction Manager shall meet and work with the Project Delivery Team in the evaluation of the various options and incorporate selected options into the estimates.

§ 2.1.5.5 The Construction Manager shall assist the Owner and Program Manager in reviewing the Owner Furnished Equipment and Furnishings, material and installation costs, and other exposures that could potentially affect the Project Budget.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

§ 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 establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, 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 except as may be included as part of the Guaranteed Maximum Price. 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 Document Design Review

Formatted: AIA Agreement Body Text

§ 2.1.10.1 The Construction Manager shall review all Schematic Design, Design Development and Construction Documents as they are prepared and are made available by the Architect for the purpose of recommending alternative solutions whenever such matters affect cost construction feasibility or schedules without, however, assuming any of the Architect's responsibilities for design. The Construction Manager shall meet and work with the Project Delivery Team to evaluate options and incorporate selected options into the estimates of the Cost of Work.

§ 2.1.10.2 The Construction Manager shall provide continual input to the Project Delivery Team addressing constructability, availability of materials, and qualified trades for specialized systems. The Construction Manager shall also provide comparative cost/benefit analyses for various building systems, budget/schedule impact as specific phases of the overall design are developed in order to ensure the development and completion of Construction Documents within the budget and schedule limitation.

§ 2.1.11 Construction Services Prior to Entry of the GMP Change Order

§ 2.1.11.1 If, prior to the execution of the Early Component Change Order or the GMP Change Order, the Owner approves Construction Documents for any phase of the Work or elects to procure any long-lead items for which it has approved Construction Documents, the Owner shall authorize the Construction Manager to obtain bids for the proposed Work or materials and to submit a proposed Change Order. The Change Order shall state a Change Order Sum for the Work or material, shall state a proposed Date for Substantial Completion of such Work or date for the delivery of materials, and shall be in a form acceptable to the Owner.

§ 2.1.11.2 The Owner shall have thirty (30) days following its receipt of the Construction Manager's proposed Change Order under Section 2.1.11.1 to accept or reject same.

§ 2.1.11.3 If the Owner rejects the Construction Manager's proposed Change Order submitted under Section 2.1.11.1 the Construction Manager may, but shall not be obligated to, revise and resubmit same. In the event no such Change Order can be agreed upon, Construction Manager shall continue its performance under any other Change Orders then outstanding, and with the performance of its other services under this Agreement.

§ 2.1.11.4 If the Owner accepts the Construction Manager's proposed Change Order submitted under Section 2.1.11.1 it shall return the Change Order to the Construction Manager with its signature thereon. At that time, the Change Order shall become an amendment to and part of this Agreement, and the Change Order and the Work performed thereunder or materials procured shall be governed by this agreement.

§ 2.1.11.5 If and when the Construction Manager submits a proposed GMP Change Order under Section 2.2 below, Construction Manager shall incorporate into same the sum of all Changes Orders approved under Section 2.1.11.4 in effect as of the date of the proposed GMP Change Order. In the event that the GMP Change Order is accepted by the Owner, payments by the Owner on any previously approved Change Orders prior to the date of the GMP Change Order shall be credited as payments against the GMP Amount.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.4.1 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 Guaranteed Maximum Price Change Order (GMP Change Order) proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4.3, and the Construction Manager's Fee.

§ 2.2.1.2 The Construction Manager acknowledges that the Owner is required to publicly bid for the performance of the Work if the Parties are unable to agree upon a GMP Change Order. Nothing contained in this Agreement shall entitle Construction Manager to perform the Work or require the Owner to award the Work to the Construction Manager.

§ 2.2.1.3 The proposed GMP Change Order shall include the Cost of Work and Construction Manager's Fee, all amounts due for Pre-Construction phase services, contingency, and other reimbursable costs allowable under this Agreement.

Formatted: AIA Agreement Body Text

Formatted: AIA Paragraph Number

Formatted: AIA Paragraph Number

§ 2.2.1.42 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

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

- .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 Guaranteed Maximum Price proposal, including assumptions under Section 2.2.1.42, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 All allowances and unit prices used in creating the GMP;
- .43 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .54 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .65 A date by which the Owner must accept the Guaranteed Maximum Price.

Formatted: AIA Body Text Indented

§ 2.2.4 While preparing the GMP Change Order the Construction Manager shall confer with the Architect, Program Manager and Owner as may be required, and shall obtain, prior to the submission of the proposed GMP Change Order, the Architect's concurrence with the Construction Documents schedule referenced therein.

§ 2.2.4 **Submittal of the GMP Change Order**

Formatted: Font: (Default) Arial Narrow, Bold

§ 2.2.4.1 The Construction Manager's proposed GMP Change Order shall be submitted to the Owner as an offer in a form acceptable to the Owner.

§ 2.2.4.2 Following the Construction Manager's submission of the proposed GMP Change Order, the Owner, Program Manager, and Architect shall meet with the Construction Manager to review the proposed GMP Change Order and its supporting information. The Owner, Program Manager and Architect shall advise the Construction Manager of any errors or omissions they discover in the presented information during their review of same. Construction Manager shall be entitled to make any necessary adjustments to the proposed GMP Change Order as a result of any errors discovered by the Construction Manager, the Owner, Program Manager or Architect prior to its acceptance by the Owner. The Architect, Program Manager, and the Owner shall have no duty to Construction Manager to examine the proposed GMP Change Order to discover any bidding or estimating errors and no such errors discovered after acceptance by the Owner of the GMP Change Order shall constitute a basis for a change therein or modification to this agreement. The Owner shall have thirty (30) days from the receipt of the Construction Manager's proposed GMP Change Order to accept or reject same.

§ 2.2.4.3 In preparing the Construction Manager's Guaranteed Maximum Price proposal, The GMP Change Order shall contain a Contingency Fund that shall be identified in the Schedule of Values. The Contingency Fund is the Construction Manager shall include its contingency for the Construction Manager's sole and exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. Prior to applying contingency funds, the Construction Manager shall consult with the Owner, the Program Manager, and the Architect. Each Application for Payment shall contain a report aggregating Construction Manager's use of the Contingency.

§ 2.2.5 **Acceptance or Rejection of the GMP Change Order**

Formatted: Font: (Default) Arial Narrow, Bold

§ 2.2.5.1 If the Owner accepts the Construction Manager's proposed GMP Change Order, the Owner shall sign and return the proposed GMP Change Order to the Construction Manager. The GMP Change Order, once accepted by the Owner, shall constitute an amendment to the Agreement.

§ 2.2.5.2 If the Owner rejects the Construction Manager's proposed GMP Change Order, Construction Manager shall revise and resubmit same.

The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6-5.3 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal, GMP Change Order, the Construction Manager shall within a reasonable time thereafter begin or continue performance of the Work if the Construction Documents for such Work have been prepared by the Architect and approved by the Owner and have or are thereafter added to this Agreement by Change Order. Notwithstanding the Owner's acceptance of the GMP Change Order, the performance of Work hereunder shall not be initiated by the Construction Manager for any portion of the Work unless Construction Documents for that portion of the Work have been issued by the Architect, approved by the Owner, and added to this Agreement by Change Order, in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.6 Preparation of Construction Documents Following the Acceptance of the GMP Change Order

§ 2.2.6.1 If the Construction Documents are not completed at the time the GMP is established, the Construction Manager shall provide in its GMP for the further development of the Construction Documents by the Architect consistent with the Schematic and Design Development documents.

§ 2.2.6.2 The Architect shall prepare the Construction Documents consistent with the Schematic and Design Development Documents and the assumptions and other information set forth in the GMP Change Order. The Construction Manager shall provide advice to the Architect during the development of the Construction Documents so they reflect further developments of the Schematic and Design Development Documents and so they are prepared in accordance with the assumptions of the Construction manager as set forth in the GMP Change Order. Construction Manager shall also recommend alternative solutions to the Architect that may benefit the Owner by reducing construction time, saving construction costs, or enhancing the quality of the Project.

§ 2.2.6.3 Upon the Owner's approval of the Construction Documents as issued by the Architect, the Owner shall have the Architect submit them to the Construction Manager along with a proposed Change Order for acceptance by Construction Manager to add the approved Construction Documents as Contract Documents to this Agreement. Construction Manager shall accept or reject any such proposed Change Order within fifteen (15) days of its receipt. If Construction Manager accepts the proposed Change Order, then the Owner shall likewise accept it within thirty (30) days of Construction Manager's acceptance. If Construction Manager shall fail to reject a proposed Change Order tendered for purposes of adding Construction Documents as Contract Documents to this Agreement within the time limitations stated in this Section 2.2.6.3, the referenced Construction Documents shall be deemed accepted by the Construction Manager without any objection.

(a) Prior to its acceptance of any Change Order tendered under this Section 2.2.6.3 Construction Manager shall review the Construction Documents referenced therein and shall give notice to the Owner, Program Manager, and to the Architect of any errors, inconsistencies or omissions it may discover in the Construction Documents. The Construction manager shall not be liable for damages resulting from said errors, inconsistencies or omissions unless it recognizes same and performs a construction activity knowing it involves a recognized error, inconsistency or omission without providing notice of same. Construction Manager shall also give notice to Owner, Architect and Program Manager of any variances between the Construction Documents and the Schematic Design and Design Development Documents, and other information relied upon or assumptions made by Construction Manager when issuing the GMP Change Order.

(b) If the Construction Manager shall accept any proposed Change Order without notice

← - - - Formatted: Indent: Left: 0"

as required by Section 2.2.6.3(a) above, then Construction Manager shall waive any claim that the Construction Documents identified therein are inconsistent with the Schematic Design or Design Development Documents or inconsistent with the assumptions or other documents relied upon by Construction Manager when issuing the GMP Change Order.

§ 2.2.7 Unless the Owner issues a Change Order to the Construction Manager under Section 2.1.11, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction phase, commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment GMP Change Order. 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 Guaranteed Maximum Price Amendment GMP Change Order and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment GMP Change Order is executed.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of the modified 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 acceptance of the Construction Manager's Guaranteed Maximum Price GMP Change Order proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.1.3 The Construction Manager shall perform all Work in accordance with the requirements of the Contract Documents as necessary to produce the results intended by them, in accordance with the highest construction industry standards and practices. Construction Manager shall also comply with all laws, rules, regulations, orders, ordinances, charters, statutes, codes executive orders of all governmental bodies having jurisdiction over the Project ("Applicable Law").

Formatted: AIA Paragraph Number

§ 2.3.1.4 The Construction Manager shall achieve Substantial Completion of the entire Work not later than the date stated for Substantial Completion in the GMP Change Order, as it may be adjusted under the Contract Documents, and shall achieve final completion of the entire Work not later than thirty (30) days after Substantial Completion as outlined as part of the GMP Change Order.

Formatted: AIA Paragraph Number

§ 2.3.1.5 Construction Manager acknowledges that the Owner is entitled to compensation in the form of liquidated damages attributable to delays in obtaining Substantial Completion for which the Construction Manager is responsible.

Formatted: AIA Paragraph Number

Formatted: AIA Paragraph Number, Font: Not Bold

Formatted: Font: Not Bold

§ 2.3.1.6 The parties acknowledge that it is difficult to ascertain with accuracy at the time of execution of this Agreement the extent or amount of actual damages that the Owner could suffer as a result of a delay in obtaining Substantial Completion of the Project by the date stated in the Construction GMP Change Order, as adjusted by the terms of this Agreement. Accordingly they agree that if Substantial Completion is not achieved by the stated Substantial Completion Date due to the fault of the Construction Manager or a party for whom the Construction Manager is responsible, then for each calendar day that Substantial Completion is delayed, the Owner shall be entitled to recover from the Construction Manager, as liquidated damages and not as a penalty, the amount of _____ per calendar day as the Owner's sole and exclusive remedy for all damages that the Owner incurs as a result of the delay.

§ 2.3.1.7 In the event the Owner determines that the Construction Manager cannot meet the required Substantial Completion Date without additional labor or effort, Owner shall be entitled to direct the Construction Manager to accelerate the performance of the Work so as to meet the Substantial Completion Date. Construction Manager agrees to accelerate the Work, and waives any claim against Owner for the cost of any such acceleration unless the Construction Manager's inability to meet the Substantial Completion Date was caused solely by the Owner.

§ 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.~~ Construction Manager shall work with the Owner in developing a list of prequalified persons or entities, or the Owner may designate in a pre-approved list, specific persons or entities, from whom 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.

The Construction Manager is required to use reasonable efforts to increase interest in the Subcontractors regarding the Project. If the Construction Manager self performs Work, the Construction Manager may be reimbursed only for its actual Cost of Work, not on a lump sum basis, and the Construction Manager may not be reimbursed for any amount in excess of the lump sum amount provided by the lowest competitive bid for that Work. If the Construction Manager self performs Work, all costs for such Work shall be subject to a guaranteed maximum price within the Guaranteed Maximum Price established by the GMP Change Order.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 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.

§ 2.3.2.4 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.

§ 2.3.2.5 The Construction Manager shall schedule and conduct weekly 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.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment Change Order, 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 the modified A201-2007.

§ 2.3.2.7 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 designating whether they are employed by the Construction Manager or the name of the Subcontractor they are employed by, DBE Subcontractors, identification

of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall 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 2.3.2.7 above.

§ 2.4 Professional Services

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

§ 2.5 Hazardous Materials

Section 10.3 of the modified A201–2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 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.~~ with reasonably necessary for the Construction Manager's providing of its services and the execution of the Work in a timely manner, including information regarding the requirements for and the limitations on the Project.

§ 3.1.2 ~~N/A Prior to the execution of the Guaranteed Maximum Price Amendment, 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 Project's scope and quality.~~

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services. ~~Any information furnished by the Owner and the Owner's consultants, will be furnished for informational purposes only. In no event shall the Owner's furnishing of such information excuse the Construction Manager from exercising proper precautions relating to the safe performance of the Work.~~ Any information furnished by the Owner and the Owner's consultants, will be furnished for informational purposes only. In no event shall the Owner's furnishing of such information excuse the Construction Manager from exercising proper precautions relating to the safe performance of the Work.
~~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, 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 the modified A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.3 Program Manager's Representative

Heery International, the Program Manager, shall have the authority on behalf of the Owner concerning schedules and quality of work, so long as such decisions do not increase the Cost of the Work or the Substantial Completion or the Final Completion Dates. The Program Manager shall not have the authority to make decisions affecting the cost or budgets and shall not approve or sign Change Orders.

~~§ 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 ~~has~~ shall retained RS&H as the 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.

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.)

«→Construction Manager's compensation for the Preconstruction Phase shall not exceed one hundred and eighty thousand dollars (\$180,000) which sum includes all reimbursable cost items and Construction Manager's Fee. If Construction Manager's actual Preconstruction Phase services expenses exceed the amount stipulated above, Construction Manager shall have the ability to be reimbursed for actual expenses as long as such costs are reimbursable within the overall GMP amount. For the Construction Manager's Preconstruction services, Owner shall pay Construction Manager its fee, including substantiated reimbursable expenses. For purposes of this Section, reimbursable expenses shall include those items set forth in Section 6.1-6.3 below

~~§ 4.1.3 N/A If the Preconstruction Phase services covered by this Agreement have not been completed within $\langle \rangle$ ($\langle \rangle$) 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 on the Project 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 $\langle \rangle$ ($\langle \rangle$) 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) from the date the Construction Manager's invoice is presented and approved by the Architect and the Owner.~~

~~$\langle \rangle$ % $\langle \rangle$~~

Formatted: AIA Agreement Body Text

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. 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.)

~~$\langle \rangle$ The Construction Manager's fee is to be calculated (as a fixed percentage of $\langle \rangle$ % added to the Cost of the Work) and included as a separately-identified component of the Guaranteed Maximum Price.~~

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

~~$\langle \rangle$ Construction Manager's fee shall be adjusted up or down by the percentage in Section 5.1.1 on the basis of increase and decreases in the Cost of Work.~~

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

~~$\langle \rangle$ For subcontractors, the maximum markup allowed for overhead, profit, and fee shall be 5%.~~

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed $\langle \rangle$ percent ($\langle \rangle$ %) 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)
------	-----------------------	-------------------------

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the ~~Guaranteed Maximum Price Amendment~~ GMP Change Order, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

~~«→All project savings shall inure to Owner.~~

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work

§ 5.3.1 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 the modified AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager ~~shall may~~ be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work, provided, however, that Construction Manager fully complied with Article 7 of the modified AIA Document A201 -2007.-

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the ~~Guaranteed Maximum Price Amendment~~ GMP Change Order may be determined by any of the methods listed in Section 7.3.3 of the modified AIA Document A201–2007, General Conditions of the Contract for Construction.

~~§ 5.3.3 N/A In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.~~

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of the modified AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 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, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 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.

§ 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. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 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 Construction Manager's home office, but only for that portion of their time required for the Work included within the GMP Change Order. Construction Manager shall provide Owner with a list of such personnel prior to execution of the GMP Change Order, 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 ~~N/A 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.~~

§ 6.2.6 All amounts submitted for reimbursement under this Section 6.2 are subject to review and audit by the Owner or the Owner's representative, and the Owner and Owner's representative shall agree not to disclose information related to the Construction Manager's employees' salaries, wages, or benefits to any third parties (other than accountants and attorneys) unless required to do so by law or unless deemed reasonably necessary in the event of dispute between parties.

§ 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.

§ 6.4.3 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance in writing by the Owner, and if the Construction Manager provides the Owner the following as part of its Payment Application: a bill of sale transferring title to the Owner; photographs of the the materials; and proof of insurance coverage against loss, however caused, naming Owner as an additional or named insured.

§ 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. For small tools and equipment valued over \$500 and purchased during the performance of the Work included as part of the GMP Change Order, it is agreed that the Construction Manager will track all purchased tools and equipment on a Purchased Equipment Tracking Log to be reviewed with the Owner on a monthly basis. At the completion of the Project these purchased tools and equipment will either be turned over to the Owner or an assessment made of their depreciated value and a credit adjustment to the GMP Change Order will be made.

§ 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. Owner shall be informed in writing as to the rental rates and the estimated duration of rentals. The equipment rate multiplied by the expected rental period shall not exceed 80% of the purchase value. Reimbursement for repairs shall be limited to \$500.00 per piece of equipment.

§ 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.~~ N/A

§ 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 the modified 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 or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of the modified 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, as set forth in the GMP Change Order, so long as such equipment and software are directly related to the Work, 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 actual costs incurred in the performance of the Work if, and to the extent and to the extent identified in writing as an actual cost under this Section 6.7. 1, and if; 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 the modified AIA Document A201-2007, except to the extent that such costs are covered by insurance.~~

~~§ 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 the modified 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 to 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 to 6.7;~~
- ~~.7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and~~
- ~~.8 Except as provided in Section 4.1.2 of this Agreement, 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 and shall be in accordance with GAAP. 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:~~

~~«-»~~

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the ~~«-10th»~~ day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than thirty days after the Owner approves the certified Application for Payment, 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 ~~«-thirty»~~ (~~«-30»~~) days after the Architect receives and certifies the Application for Payment. *(Federal, state or local laws may require payment within a certain period of time.)*

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit manifest billing records reflecting actual Cost incurred, including payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, subcontractors pay applications 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. With each Application for Payment, Construction Manager shall submit to the Owner interim lien waivers and releases of all claims and claims of lien from the Construction Manager and from all Subcontractors, Suppliers and others whose Work or materials from a portion of the amount claimed in the Construction Manager's Application for Payment.

§ 7.1.5 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 the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect, Program Manager, and Owner may require. This schedule,

Formatted: AIA Agreement Body Text

unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 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. ~~The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.~~

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values: ~~Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007, less five percent (5%) retainage;~~
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing: ~~less five percent (5%) retainage;~~
- .3 Add the Construction Manager's Fee, less retainage of ~~five~~ percent (~~5~~ %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 ~~or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be 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;~~
- .4 Subtract retainage of ~~five~~ percent (~~5~~ %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the modified AIA Document A201-2007.

§ 7.1.8 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 ~~shall be five percent (5%), and t~~he Construction Manager shall execute subcontracts in accordance with those agreements.

§ 7.1.9 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.

§ 7.1.10 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, Program Manager or Owner has ~~ve~~ 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 Program Manager or Owner has ~~ve~~ made exhaustive or continuous on-site inspections; or that the Architect Program Manager or Owner has ~~ve~~ 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 the modified 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 the Owner has reviewed the final accounting; and
- .3 a final Certificate for Payment has been issued by the Architect;
- .4 all Certificates of Occupancy have been provided to the Architect;
- .5 all corrective, defective, or "punch-list" Work has been satisfactorily corrected and completed;
- .6 all guarantees, warranties, as-built drawings, submittals, operating instructions and maintenance manuals have been received by the Owner;
- .7 Construction Manager submits to the Owner unconditional and final lien waivers and releases of all claims and claims of liens from the Construction Manager and from all Subcontractors, Suppliers, and other parties entitled to make any claims or assert any claims of lien.

Formatted: AIA Paragraph Number

Formatted: AIA Paragraph Number

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:~~

«→»

Formatted: AIA Agreement Body Text

§ 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 of all costs and accounting documents. 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 modified AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the modified 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 the modified 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 that is undisputed by the Owner.

§ 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, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

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 Article 11 of the modified 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 the modified 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.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of the modified 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 the modified 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 the modified 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.)*

« »
« »
« »
« »

§ 9.4 Venue

The Owner and the Construction Manager hereby agree that jurisdiction and venue shall be mandatory in the Parish of Lafayette, State of Louisiana.

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the ~~Guaranteed Maximum Price Amendment~~GMP Change Order, 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 the modified A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated~~paid~~ 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 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the ~~Guaranteed Maximum Price Amendment~~GMP Change Order, the Owner shall pay to the Construction Manager 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 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 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 for Construction Phase services.

If the Owner terminates for convenience, ~~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. To the extent that the Owner elects to take legal assignment of 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 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 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, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the 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, 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, 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 Establishing Guaranteed Maximum Price

Following execution of the ~~Guaranteed Maximum Price Amendment~~GMP Change Order and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of the modified AIA Document A201–2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the ~~Guaranteed Maximum Price Amendment~~GMP Change Order, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of the modified A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the ~~Guaranteed Maximum Price Amendment~~GMP Change Order, the amount payable to the Construction Manager under Section 14.1.3 of the modified A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, ~~except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.~~

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of the modified AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of the modified 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 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

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

§ 11.2 Ownership and Use of Documents

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

§ 11.3 Governing Law

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

§ 11.4 Assignment

Owner has entered into this Agreement in reliance upon the Construction Manager's representation as to its expertise in providing Preconstruction and Construction services required hereunder, and, as a result, the Construction Manager may not assign this Contract or its rights, delegate its duties, or assign any amounts due or to become due hereunder without the prior written consent of the Owner. Such consent shall be at the sole discretion of Owner.

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.

§ 11.5 Other provisions:

§ 11.5.1 Upon final completion of the Work, the Construction Manager shall transfer and assign to the Owner all guarantees, warranties, and agreements from all Subcontractors and Suppliers regarding their performances, quality of workmanship or quality of materials supplied in conjunction with the Work; provided, however, that during the period of warranty provided by the Construction Manager, the Construction Manager shall be a joint beneficiary of all guarantees, warranties and agreements, and shall have the right, independent of the Owner, to enforce for its own account such guarantees, warranties and agreements against the Subcontractor or Supplier providing the guarantee or warranty. The Construction Manager represents and warrants that all such guarantees, warrants, and agreements will be freely assignable to the Owner, and that upon Final Completion of the Work, all such guarantees, warranties, and agreements shall be in place and enforceable by the Owner in accordance with their terms.

§ 11.5.2 Any waiver of any term or condition of this Agreement must be in writing and signed by both parties hereto. No delay or failure to exercise any right or remedy it may have under the Contract Documents shall operate as a continuing waiver of such right or remedy, or prejudice such party's right to insist upon full compliance by any other party with the terms of the Agreement. A waiver by either party of any term, provision, or condition of the Agreement in one instance shall not constitute a waiver of any succeeding breach or the same of any other term, provision, or condition of the Contract Documents. «→

§ 11.6 Attorney Fees and Expenses

Should any party to this Agreement institute legal proceedings to enforce the terms or conditions of this Agreement, the prevailing party shall be entitled to recover all of its reasonable attorney's fees, costs, and other expenses reasonably and necessarily incurred. Notwithstanding the foregoing, the Owner and the Construction Manager understand and agree that each party shall bear all costs and expenses incurred by it under or in connection with this Agreement.

§ 11.7 Severability

The Owner and the Construction Manager intend all provisions of this Agreement to be enforced to the fullest extent permitted by law. Accordingly, should a court of competent jurisdiction find any provision to be unenforceable as written, the Owner and the Construction Manager intend and desire that the court should reform the provision so that it is enforceable to the maximum extent permitted by law. If, however, the court should find such provision to be illegal, invalid or unenforceable and not subject to reformation, the court shall sever such provision. In such event, this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision was never a part hereof, and the remaining provisions of this Agreement shall remain in full force and effect.

§ 11.8 Survivability

The provisions of this Agreement that by their nature and content are intended to survive the performance hereof, shall so survive the completion and termination of this Agreement.

§ 11.9 Joint Drafting

This Agreement shall be deemed for all purposes prepared through the joint efforts of the Owner and the Construction Manager, and shall not be construed against one party or the other as a result of the preparation.

drafting, submittal or other event of negotiation, drafting or execution of this Agreement.

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 The modified AIA Document A133–2009, 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 with a Guaranteed Maximum Price
- .2 The modified 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:~~
~~« »~~
- .5 Other documents:
(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)

CONSTRUCTION MANAGER (Signature)

« »

(Printed name and title)

« »

(Printed name and title)