

# AIA<sup>®</sup> Document A133<sup>™</sup> – 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

Minnesota State Colleges and Universities 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, as currently amended by the Owner (hereinafter referred to as "AIA Document A133-2009")

**AGREEMENT** effective date and end date:  
See A133-2009 Project Attachment

**BETWEEN** the Owner:  
State of Minnesota, acting through its Board of Trustees of the Minnesota State Colleges and Universities  
See A133-2009 Project Attachment

and the Construction Manager:  
See A133-2009 Project Attachment

for the following Project:  
See A133-2009 Project Attachment

The Architect:  
See A133-2009 Project Attachment

The Owner's Designated Representative:  
See A133-2009 Project Attachment

The Construction Manager's Designated Representative:

*(Paragraphs deleted)*  
See A133-2009 Project Attachment

The Architect's Designated Representative:

*(Paragraphs deleted)*  
See A133-2009 Project Attachment

The Owner and Construction Manager agree as follows.

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

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

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

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### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 The Contract Documents

The Contract Documents consist of:

- .1 This Agreement;
- .2 A133-2009 Project Attachment to this Agreement (hereinafter called "A133-2009 Project Attachment);
- .3 AIA Document A201-2017 General Conditions of the Contract for Construction, as amended by the Owner (hereinafter called "AIA Document A201-2017"); and
- .4 Project solicitation and response documents include:  
See Section 1.1.4 of the A133-2009 Project Attachment

Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price (GMP) proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment 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 control and 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 information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

*(Paragraphs deleted)*

### ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the services described in this Article 2. The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction

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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, within 14 days of the execution date of this agreement.

### § 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 and consult with 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. Any recommended deviation from the Owner's Facilities Design Standards by the Construction Manager must be approved, in writing, by the Owner.

### § 2.1.3 Project Schedule

§ 2.1.3.1 The Owner's design and construction milestone dates:

See Section 2.1.3.1 of the A133-2009 Project Attachment

The actual milestone date occurs upon Owner's approval. The milestone dates shall not be exceeded, except for reasonable cause and as modified by Change Order.

§ 2.1.3.2. Construction Manager shall review schedule prepared by Architect during pre-construction phase and shall make appropriate recommendations to Owner and Architect prior to submission of the Guaranteed Maximum Price proposal date;

§ 2.1.3.3. Prior to commencement of construction, the Construction Manager shall prepare and update the Project critical path schedule as required for the Architect's review and the Owner's acceptance of milestones, format, and level of detail. 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. If schedule updates indicate that previously approved critical path schedule may not be met, the Construction Manager shall make appropriate recommendations to meet the Owner's milestone dates.

The Project schedule shall include the following:

- .1 Commencement and completion dates required of each Subcontractor;
- .2 Preparation and processing of submittals;
- .3 Work activity sequence;
- .4 Utility interruptions necessary for construction;
- .5 Critical campus event schedules;
- .6 Ordering and delivery of long lead item materials and equipment;
- .7 Owner's testing and observation;
- .8 Inspections by Authority Having Jurisdictions;
- .9 Owner's occupancy requirements for portions of the Project indicating date(s) of Substantial Completion(s);
- .10 Final completion; and
- .11 Other milestone dates for reference.

### § 2.1.4 Construction Schedule

The Construction Manager shall plan and organize construction schedule that includes site staging, phasing, access controls, material handling, storage, and equipment requirements of the Project. The Construction Manager acknowledges and agrees that construction schedule will be staged and managed to provide Substantial Completion(s) and final completion of the Project by the date(s) agreed to by the Owner and the Construction Manager at the time the Guaranteed Maximum Price is submitted to the Owner.

§ 2.1.4.1 The Construction Manager may 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, time of performance, availability of labor and materials, provisions for temporary facilities and procurement, and construction scheduling issues.

#### § 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall provide estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques, in format and level of detail approved by the Owner, for comparison with the Architect's cost estimate. If the Owner, Architect, or Construction Manager suggest alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, estimates of the Cost of the Work of increasing detail and refinement in format and level of detail approved by the Owner, 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. Such estimates shall be provided for the Architect's review and the Owner's approval, in order to achieve the milestones dates per Section 2.1.5.2 of A133-2009 Project Attachment. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved construction budget and make recommendations for corrective action. If discrepancies exist between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager shall work cooperatively with the Architect to resolve discrepancies.

#### § 2.1.6 Prequalification of Subcontractors and Suppliers

§ 2.1.6.1 The Construction Manager shall publically solicit requests for qualifications based on criteria per Minnesota Statutes §16C.34, subdivision 3(e) and other criteria agreed upon by the Owner. The Construction Manager and Owner may invite interested parties to respond after the public solicitation is issued.

§ 2.1.6.2 The Construction Manager shall evaluate responses to requests for qualifications and compile a list of prequalified subcontractors and suppliers for review by the Owner and the Architect.

§ 2.1.6.3 If the Construction Manager prequalifies a subcontractor that may be considered a "related party" according to Section 6.10, 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. The Owner may, for cause or without cause, object to any subcontractor that may be considered such a "related party" without any monetary consequence to the Construction Manager or any other entity, and the Construction Manager may not use such objection as a basis for increasing the Guaranteed Maximum Price or Contract time.

§ 2.1.6.4 The receipt of prequalified subcontractors and suppliers list shall not require the Owner or the Architect to investigate the qualifications of said entities. If the Owner or the Architect have an objection to any of the prequalified subcontractors or suppliers, they will promptly inform the Construction Manager in writing.

#### § 2.1.7 Early Procurement

The Construction Manager shall prepare, for the Owner's and Architect's review and the Owner's acceptance for items that must be ordered in advance of construction to meet milestone dates. After acceptance to the Guaranteed Maximum Price, the Construction Manager shall expedite and coordinate the ordering and delivery of any materials that must be ordered in advance of construction as identified in GMP proposal per Article 2.2.3.2. The cost of any such items that are ordered for the Project shall be included in the Construction Manager's Guaranteed Maximum Price proposal.

#### § 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. Nevertheless, the Construction Manager represents that it is experienced in providing estimates and scheduling for construction projects similar in scope and size to the Project and shall use its best efforts to provide accurate estimating and scheduling services for the Project. 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.

#### **§ 2.1.9 Notices and Compliance with Laws**

The Construction Manager shall comply with, and give notices required by 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.

#### **§ 2.2 Guaranteed Maximum Price Proposal and Contract Time**

**§ 2.2.1** The Guaranteed Maximum Price shall be the sum of:

- .1 Construction Manager's proposal for the Cost of the Work as described in Section 6.1;
- .2 Construction Manager's contingencies described in Section 2.2.4; and
- .3 Construction Manager's Fee not included in the Cost of the Work.

**§ 2.2.2** The Owner's Budgeted Guaranteed Maximum Price shall be:

See Section 2.2.2 of the A133-2009 Project Attachment

**§ 2.2.3** 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 proposal for the Owner's review and acceptance.

**§ 2.2.3.1** To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide design contingency 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. In submitting the Guaranteed Maximum Price proposal, the Construction Manager represents that it will provide every item, system or element of the Work that is identified, shown or specified in the Guaranteed Maximum Price proposal, along with all necessary or ancillary materials and equipment to install each of them completely and make fully operational, unless specifically excluded. Upon Owner's acceptance of the Guaranteed Maximum Price, the Construction Manager shall not be entitled to any increase in the Guaranteed Maximum Price due to the continued refinement of the Drawings and Specifications or the absence or addition of any detail or specification that may be required in order to complete the construction of the Project as described in and reasonably inferable from the Guaranteed Maximum Price proposal.

**§ 2.2.3.2** The Guaranteed Maximum Price written proposal by the Construction Manager shall be formatted in four sections and include the following information:

##### **Section 1: Guaranteed Maximum price:**

- .1 **Cost of the Work** as identified in Section 6 for Construction Services organized in a format acceptable to the Owner to include:
  - a. Material and labor estimates of each proposed bid package detailed by system units, cost/system, cost /GSF and total cost;
  - b. Allowance(s) included in the Cost of the Work and a statement
  - c. Building Permit(s);
  - d. Escalation;
  - e. Builder's risk insurance;
  - f. Performance and payment bonds; and
  - g. Other costs necessary for the Cost of the Work.
- .2 **Contingency Amount** as identified in Section 2.2.4.
- .3 **Construction Manager's Fee** as identified in Section 5.1.1.

##### **Section 2: Contingency Considerations in Bidding Documents for Guaranteed Maximum Price:**

1. List of add alternates including cost estimates; and
2. List of unit prices items including cost estimates that may be used in Owner Change Orders.

##### **Section 3: Scope of Work for basis of Guaranteed Maximum Price:**

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1. A list of the Drawings and Specifications, prepared by the Architect and provided to the Construction Manager for preparing the GMP proposal;
2. A list of the clarifications and assumptions in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;

*(Paragraphs deleted)*

3. Construction schedule for the Work in accordance with Section 3.10 of the AIA Document A201–2017, to achieve the Owner’s milestone dates as set forth in Section 2.1.3.1 herein; and
4. Early procurement schedule for item(s) and that must be ordered in advance of construction to meet milestone dates per Section 2.1.7.

**Section 4: Conditions of the Guaranteed Maximum Price Acceptance:**

1. Guaranteed Maximum Price amount is within Owner’s approved budget amount;
2. Identification of those portions of the Work that the Construction Manager has been approved to self-perform by competitively bidding; and
3. The Construction Manager’s certification that the pricing and costs contained in the Guaranteed Maximum Price proposal are accurate, complete and current as of the date of the proposal.
4. Provide a Performance Bond per AIA Document A201 section 11.4.

**§ 2.2.4 Contingencies**

**§ 2.2.4.1 Design Contingency**

In preparing the Construction Manager’s Guaranteed Maximum Price proposal, the Construction Manager shall provide in the Guaranteed Maximum Price, a contingency (the "Design Contingency") sufficient to cover costs associated with further development of the Drawings and Specifications by the Architect that are considered reimbursable as the Cost of the Work but not included in a Change Order. The Design Contingency shall be reflective of the risk inherent in the state of completion of the Drawings and Specifications at the time of Guaranteed Maximum Price proposal submission. It is intended to be used for design refinement, and not scope change. Any request for expenditure against the Design Contingency shall be submitted in accordance with Section 2.3.3.7.

**§ 2.2.4.2 Construction Contingency**

In preparing the Construction Manager’s Guaranteed Maximum Price proposal, the Construction Manager shall provide in the Guaranteed Maximum Price, a contingency (the "Construction Contingency") sufficient to cover unforeseen costs during construction. Any request for expenditure against the Construction Contingency shall be submitted in accordance with Section 2.3.3.7. Examples of such unforeseen conditions and events include, but are not limited to, the following:

- .1 Unanticipated cost overruns or gaps in the procurement of Subcontracts or other purchases of materials,
- .2 Expediting or acceleration costs required to meet the construction schedule for the Work per the Guaranteed Maximum Price Amendment,
- .3 Coordination errors a Construction Management professional should have detected in the design drawings,
- .4 Higher than expected wage settlements,
- .5 Unforeseen items in existing conditions,
- .6 Subcontractor defaults or deficiencies,
- .7 Estimating errors.

**§ 2.2.5** 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, within three business days of receipt of such notification, make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

*(Paragraph deleted)*

**§ 2.2.6** Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Change Order amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Change Order shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

**§ 2.2.7** 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, unless a Change Order is executed for such costs.



§ 2.2.8 The Owner shall authorize the Architect to revise Drawings and Specifications for completion of Construction Documents by incorporating agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Change Order. The Architect shall furnish Construction Documents to the Construction Manager and Owner review and approval. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Change Order and the Construction Documents.

§ 2.2.9 The Construction Manager shall receive written approval from the Owner to commence with Procurement Phase.

### § 2.3 Procurement and Bidding Phase

#### § 2.3.1 General

§ 2.3.1.1 The Construction Manager, in coordination with the Architect, shall prepare Bidding Documents in bid packages as directed by Construction Manager based on approved Construction Documents. Bid packages may combine related trade work, but shall not adversely limit subcontractor participation.

§ 2.3.1.2 Bidding Documents shall consist of bidding requirements and proposed Contract Documents, and other documents as the Owner may designate which include:

- .1 Information that describes the time, place, and procedure for bidding
- .2 Bidding forms and instructions
- .3 Pre-bid conference notification if applicable
- .4 Description of work scopes

§ 2.3.1.3 The Construction Manager shall submit to the Owner and the Architect, copies of the Bidding Documents for review and approval. Approval is contingent upon receipt of Construction Manager's Payment Bond as required by AIA Document A201 section 11.4.

#### § 2.3.2 Bidding

§ 2.3.2.1 The Construction Manager shall solicit competitive sealed bids from prequalified subcontractors for trade work and suppliers. The Construction Manager shall determine lowest responsible bidder; and review bids results with the Owner and Architect.

§ 2.3.2.2 If the Construction Manager desires to self-perform any portions of the trade work with its own forces, they will only be allowed to bid on such portions of the trade work with the written prior approval by the Owner. The Construction Manager shall be considered to be a "qualified firm" for bidding the trade work in accordance with Minnesota Statutes §16C.34, subdivision 3(e).

§ 2.3.2.3 If the Construction Manager is approved to bid trade work, the Owner will solicit competitive sealed bids from at least two other pre-qualified subcontractors. The Owner shall determine the lowest responsible bidder for the award of the trade work by the Construction Manager. The cost of any self-performed trade work by the Construction Manager shall be included in the Guaranteed Maximum Price.

*(Paragraphs deleted)*

§ 2.3.2.4 Subcontracts or other agreements shall conform to the applicable payment provisions of Article 7 of this Agreement, and shall not be awarded on the basis of cost plus a fee.

#### § 2.3.3 Construction Phase

§ 2.3.3.1 For purposes of Section 8.1.2 of AIA Document A201-2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.3.2 The Construction Phase shall commence upon the acceptance of bids by the Construction Manager after the Owner's and Architect's review.

§ 2.3.3.3 The Construction Manager shall, in cooperation with the Owner and Architect, prepare agenda, schedule and conduct regular, periodic meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes, including a description of any decisions made, to the Owner and Architect.

§ 2.3.3.4 The Construction Manager shall record the progress of the Project and shall submit written monthly progress reports to the Owner and Architect including:

- .1 Percentages of completion of the Work,
- .2 Percentage of the budget for the completion of the Project that has been expended,
- .3 Changes to the budget and schedule for the Project, and
- .4 Other information required by the Owner or Architect.

§ 2.3.3.5 The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.3.6 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.

#### § 2.3.3.7 Use of Contingency

Construction Manager may permit funds to be expended from the Design Contingency for refinement of design and Construction Contingency for completion of the Work; provided, however, the Owner approves of such use of the contingency and approval of the contingency shall not be unreasonably withheld. Any expenditures of the Construction Contingency shall be detailed on the Construction Manager's monthly report prior to requesting payment of the Work in question. Owner approval is required for all Construction Contingency expenditures.

- .1 The Construction Contingency shall be adjusted to reflect net savings or net losses resulting from the award of subcontracts. The amount of the adjustment to the Construction Contingency shall be determined by subtracting the face amount of each subcontract at the time the subcontract is entered into from the amount allocated in the estimated Cost of the Work (attached to the Guaranteed Maximum Price proposal) to be performed under such subcontract.
- .2 After subcontracts comprising 50% of the value of the estimated Cost of the Work are awarded, 50% of the Construction Contingency may be used by the Owner for Owner-initiated Change Orders, provided the use of the Construction Contingency is mutually agreed upon by the Owner and the Construction Manager. Should the Construction Manager not agree to the release of contingency funds to the Owner, the Construction Manager shall provide a risk analysis to the Owner which provides justification for the Construction Manager's need for the contingency fund.
- .3 After Construction of the Work is 75% complete based upon Applications for Payment, 90% of the Construction Contingency may be used by the Owner for Owner Initiated Change Orders provided the use of the Construction Contingency is mutually agreed upon by the Owner and the Construction Manager. Should the Construction Manager not agree to the release of contingency funds to the Owner, the Construction Manager shall provide a risk analysis to the Owner which provides justification for the Construction Manager's need for the contingency fund.
- .4 Construction Manager may permit funds to be expended from the Construction Contingency incurred for completion of the Work; provided, however, the Owner approves of such use of the contingency and approval of the contingency shall not be unreasonably withheld. Any expenditures of the Construction Contingency shall be detailed on the Construction Manager's monthly report prior to requesting payment of the Work completed.

#### § 2.4 Professional Services

Section 3.12.10.1 of AIA Document A201-2017 shall apply to both the Preconstruction and Construction Phases.

#### § 2.5 Hazardous Materials

Section 10.3 of AIA Document A201-2017 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 as may be reasonably requested from time to time by the Construction Manager, 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.

§ 3.1.2 Intentionally not used

§ 3.1.3 Intentionally not used

### § 3.1.4 Inspection, Tests, Surveys and Reports

The Owner shall secure services with reasonable promptness to provide inspections, tests, surveys and written reports as necessary and relevant to the Construction Manager's performance of the Work that include, but not limited to:

- .1 Site 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, but only to the extent that it has possession or knowledge of such information. All the information on the survey shall be referenced to a Project benchmark;
- .2 Geotechnical investigations with reports and appropriate recommendations for 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;
- .3 Tests, surveys and reports for any suspected hazardous materials or other environmental concerns; and
- .4 Inspections, tests, surveys and reports as required by law or identified in the construction documents

§ 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. The Construction Manager may request the Owner to provide additional inspections, tests, surveys and reports that are necessary for construction.

§ 3.1.4.2 Except to the extent that the Construction Manager is aware of any inaccuracy or error, the Construction Manager shall be entitled to rely on the accuracy of information furnished by the Owner and shall exercise proper precautions relating to the safe performance of the Work. The Construction Manager shall promptly notify the Owner and the Architect of any inaccuracy they discover.

§ 3.1.4.3 Intentionally not used

§ 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 AIA Document A201-2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative identified in the A133-2009 Project Attachment.

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

**§ 3.3 Architect**

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133-2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, as currently amended by the Owner, including any additional services requested by the Construction Manager and approved by the Owner that are necessary for the Preconstruction and Construction Phase services under this Agreement.

**ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**

**§ 4.1 Compensation**

**§ 4.1.1** Compensation by the Owner for the Construction Manager’s Preconstruction Phase services described in Sections 2.1 and 2.2 shall be:

See Section 4.1.1 of the A133-2009 Project Attachment

**§ 4.1.2** Compensation by the Owner for the Construction Manager’s reimbursable expenses for Preconstruction Phase Services shall be:

See Section 4.1.2 of the A133-2009 Project Attachment

**§ 4.1.3** Total Compensation by the Owner for the Construction Manager’s Preconstruction Phase services and reimbursable expenses shall be:

See Section 4.1.3 of the A133-2009 Project Attachment

**4.1.4** Records of expenses and of services performed in the Preconstruction Phase shall be maintained and submitted in support of applications for payment.

*(Paragraphs deleted)*

**§ 4.2 Payments**

**§ 4.2.1** Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall take action as identified in Section 9.6 of the AIA Document A201-2017.

**§ 4.2.2**

*(Paragraphs deleted)*

Upon final completion of Preconstruction Services, Construction Manager shall submit to the Architect an itemized Application for Payment, constituting the release of the retainage for the Preconstruction Phase services.

**ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

**§ 5.1** For the Construction Manager’s compensation for construction phase services as described in Section 2.3, the Owner shall compensate the Construction Manager per the accepted Guaranteed Maximum Price as defined in Section 2.2.1.

Cost of the Work as defined in Section 6.1.1 plus the Construction Manager’s Fee.

**§ 5.1.1** The Construction Manager’s

*(Paragraphs deleted)*

Fee shall be based on a Percentage of the Cost of the Work As follows:

See Section 5.1.1 of the A133-2009 Project Attachment

**§ 5.1.2** The method of adjustment of the Construction Manager’s Fee for changes in the Work shall be according to AIA Document A201-2017 and shall be based on the same percentage amount in Section 5.1.1. The Construction Manager will not be permitted to charge or assess the Construction Manager’s fee on Change Orders or Construction Change directives until such Change Orders or Construction Change Directives, in the aggregate, exceed the Guaranteed Maximum Price for the Project.

**§ 5.1.3** Limitations, if any, on a Subcontractor’s overhead and profit for increases in the cost of its portion of the Work shall be according to AIA Document A201-2017.

*(Paragraph deleted)*

**§ 5.1.5** Unit prices, if any:

Init.



*(Paragraphs deleted)*

shall be established in the Guaranteed Maximum Price Change Order.

*(Table deleted)*

#### **§ 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, as it may be amended from time to time in accordance with the provisions hereof. 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.

*(Paragraph deleted)*

In the event that upon full completion of the Work, the Cost of the Work and the Construction Manager's Fee thereon, is less than the Guaranteed Maximum Price as may be adjusted by future change orders (the "Cost Savings"), then 100% of the Costs Savings will be credited to the Owner. Any unexpended allowance amounts and remaining contingency amounts shall be 100% credited to the 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 AIA Document A201-2017, but may not authorize any increase in the Guaranteed Maximum Price. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work, in accordance with Article 7 of AIA Document A201-2017.

**§ 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 Change Order may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-2017.

**§ 5.3.3** 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 A201-2017 and the term "costs" as used in Section 7.3.7 of AIA Document A201-2017 shall have the meanings assigned to them in AIA Document A201-2017 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. (except Section 5.1.3 relating to limitations on subcontractors' profit and overhead)

**§ 5.3.4** In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-2017 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** Intentionally not used

### **ARTICLE 6 COST OF THE WORK FOR THE CONSTRUCTION PHASE**

#### **§ 6.1 Cost of the Work Definition**

**§ 6.1.1** The term Cost of the Work for the Construction Phase shall mean costs necessarily incurred by the Construction Manager for the proper performance of the Work. 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 at off-site workshops with the Owner's prior written approval.

§ 6.2.2 Wages or salaries of the Construction Manager’s supervisory and administrative personnel when stationed at the Project site.

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

§ 6.2.4 Labor-related 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 Section 6.2.1.

§ 6.2.5 Intentionally not used

### § 6.3 Subcontract Costs

Labor-related costs incurred by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

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

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

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

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

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

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed 75% of the rates for such rentals listed in the most current edition of the Rental Rate Blue Book for construction equipment. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner’s prior written approval.

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

§ 6.5.4 Intentionally not used

§ 6.5.5 Intentionally not used

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

### § 6.6 Miscellaneous Costs

#### § 6.6.1 Insurance and Bonds

- .1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

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- 2 Cost of self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. The Construction Manager must specify the basis for the reimbursement of such self-insurance costs.

§ 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 required by the Contract Documents to pay.

§ 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 13.4.3 of AIA Document A201-2017 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.

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

§ 6.6.7 With the Owner's prior written approval, deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

*(Paragraphs deleted)*

**§ 6.7 Other Costs and Emergencies**

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

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201-2017.

§ 6.7.3 Intentionally not used

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2017 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 Items excluded in the Cost of the Work**

§ 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 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 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .7 Costs for services incurred during the Preconstruction Phase; and
- .8 Costs resulting from theft or vandalism of items that are not part of the Work or which are not directly related to the Project;
- .9 Subsistence expenses including travel, parking, lodging, and meals;
- .10 Costs of document reproductions, data and communication services; and
- .11 Any cost not specifically and expressly described in Sections 6.1 to 6.7.

### § 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner. 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 to be obtained. The Construction Manager shall use reasonable efforts to apprise the Owner of the availability of such discounts, rebates and refunds.

§ 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 (10%) 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 in writing, 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 in writing, 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

See AIA Document A201-2017.

## 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 take action as identified in Section 9.6 of the AIA Document A201-2017.

§ 7.1.2 The period covered by each Application for Payment shall be no more than one calendar month.

§ 7.1.3 Intentionally not used

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

§ 7.1.5 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 Owner may require. This schedule, unless objected to by the Owner, 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

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Construction Manager has made actual 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 provisions of Article 9 of AIA Document A201-2017, the amount of each progress payment shall be *(Paragraphs deleted)* submitted on Owner's forms.

*(Paragraphs deleted)*

§ 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 has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

## § 7.2 Final Payment

§ 7.2.1 Final payment, constituting the retainage balance of the Contract Sum, shall be made by the Owner to the Construction Manager *(Paragraphs deleted)* per Article 9.10 of the AIA Document A201-2017.

§ 7.2.2 The Owner's auditors may review and report in writing on the Construction Manager's final accounting after delivery of the final Certificate of Payment to the Owner by the Architect per Article 19 of the AIA Document A201-2017. The Owner and the Architect are not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 Intentionally not used

§ 7.2.4 Intentionally not used

## 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 AIA Document

*(Paragraphs deleted)*  
A201-2017.

*(Table deleted)*

## 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 AIA Document A201-2017.

§ 9.2

*(Paragraphs deleted)*  
Intentionally not used

## § 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2017 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.

*(Paragraphs deleted)*

## 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 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 AIA Document A201–2017.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. The Construction Manager's compensation under this Section shall be based on the value and quality of the preconstruction services performed. Such compensation shall be negotiated in good faith by the Owner and Construction Manager; provided, however, that the Construction Manager's compensation under this Section shall not 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, the Owner shall pay to the Construction Manager an amount based on the following minus the amount previously paid:

- .1 The Cost of the Work incurred by the Construction Manager to the date of termination and
- .2 The Construction Manager's Fee computed upon the Cost of the Work to the date of termination.

§ 10.1.4 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.

§ 10.1.5 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described in Section 10.1.4, the Owner will reimburse 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, which shall not in any event exceed the amount payable to such subcontractor pursuant to its written agreement with the Construction Manager.

## § 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price 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 AIA Document A201–2017.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Change Order, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2017 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 Change Order, the amount payable to the Construction Manager under Section 14.1.3 of A201-2017 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3, both as to the amounts of the Costs of the Work and the Construction Manager's fee.

## § 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2017. In such case, the Guaranteed Maximum Price and Contract Time may be increased as provided in Section 14.3.2 of AIA Document A201-2017, 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 AIA Document A201-2017.

### § 11.2 Ownership and Use of Documents

Section 1.5 of AIA Document A201-2017 shall apply to both the Preconstruction and Construction Phases.

### § 11.3 Governing Law

Section 13.1 of AIA Document A201-2017 shall apply to both the Preconstruction and Construction Phases.

### § 11.4 Assignment

The Construction Manager shall not assign the Contract as a whole or in part without written consent of the Owner and if the Construction Manager attempts to make such an assignment without such consent, it shall nevertheless remain legally responsible for all obligations under the Contract.

### § 11.5 JOBS REPORTING

See Section 13.11 of the AIA Document AIA A201-2017

### § 11.6 Other provisions:

(See A133-2009 Project Attachment)

## 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 This Agreement is comprised of documents identified in Article 1.

*(Paragraphs deleted)*

This Agreement shall be effective upon the date identified on page one of the A133-2009 Project Attachment.

<b>CONSTRUCTION MANAGER</b>
Signature and date are executed on last page of the A133-2009 Project Attachment
Printed name and title are identified on the last page of the A133-2009 Project Attachment

<b>VERIFIED AS TO ENCUMBRANCE</b>
When this agreement with A133-2009 Project Attachment are processed in e-Builder, the encumbrance is incorporated into the workflow.

<b>OWNER</b>
Signature and date are executed on last page of the A133-2009 Project Attachment
Printed name and title are identified on the last page of the A133-2009 Project Attachment

<b>FORM AND EXECUTION</b>
Signature and date are executed on last page of the A133-2009 Project Attachment
Printed name and title are identified on the last page of the A133-2009 Project Attachment

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