

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 xx day of Month in the year Two Thousand and Twenty xxxxx

BETWEEN the Owner:

Regents of the University of Minnesota
400 Donhowe Building
319 15th Avenue Southeast
Minneapolis, Minnesota 55455

Project Manager

Name
University of Minnesota
400 Donhowe Building
319 15th Avenue Southeast
Minneapolis, Minnesota 55455
Phone: (xxx) xxx-xxxx
E-mail: xxx@umn.edu

and the Construction Manager:

Name
Address
City, State Zip

Contact

Name
Phone:
Email:

for the following Project:

University of Minnesota Project Name:

University of Minnesota Project No.:

Project Description:

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The Architect:

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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.

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Name
Address
City, State Zip

Contact

Name
Phone:
Email:

The Owner's Designated Representative:

The Owner's Designated Representative is listed on Page 1 of this Agreement.

The Construction Manager's Designated Representative:

The Construction Manager's Designated Representative is listed on Page 1 of this Agreement.

The Owner and Construction Manager agree as follows.

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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 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.9. 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; to perform the Work in an expeditious and economical manner consistent with the Owner's interests; and to furnish the Construction Manager's services and perform the Work with the skill and care of a sophisticated Construction Manager and general contractor with experience in projects similar to the Project.

§ 1.3 General Conditions

For the Preconstruction Phase, A201-2007 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 A201-2007, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager. The term "A201-2007" shall mean

AIA Document A201-2007, General Conditions of the Contract for Construction, as modified by the Owner and attached to and incorporated in this Agreement.

§ 1.4 Request for Proposals

For the Preconstruction Phase, the Request for Proposal issued by the Owner for the Project is attached to and incorporated in this Agreement. For the Construction Phase, the Request for Proposal shall apply to this Agreement except to the extent expressly excluded in the final Guaranteed Maximum Price proposal that is accepted by the Owner and incorporated in this Agreement by execution of the Guaranteed Maximum Price Amendment.

§ 1.5 Electronic Data File Sharing Agreement

Upon execution of this Agreement, the Construction Manager shall simultaneously sign AIA Document E201™, as modified by the Owner, which is attached to and incorporated in this Agreement.

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 and throughout the Preconstruction Phase, the Construction Manager shall refine and develop its preliminary evaluation, as follows:

- .1 The Construction Manager shall provide in writing, form and content acceptable to the Owner, (1) a detailed evaluation of the Owner's program, Project budget, Project schedule, and preliminary design, if any, including an assessment of the Owner's estimates of probable construction costs, (2) a review of information provided by the Owner and the Architect and information obtained by the Construction Manager from field observations and other sources, (3) a pre-bid cost estimate to determine if probable construction cost estimates will meet or exceed the Project budget, (4) an evaluation of the Owner's current Design Standards as published on the Owner's website (www.cppm.umn.edu) (the "Owner's Standards"), as applied to the Project, including recommended variances from the Owner's Standards if the Construction Manager believes such variances will reduce costs, provide a higher quality Project without exceeding the Project budget, or otherwise benefit the Owner, and (5) recommended changes to the Owner's program or preliminary design for the Project that the Construction Manager reasonably expects will reconcile the program, Project budget and Project schedule, or reduce costs, provide a higher quality Project without exceeding the Project budget, or otherwise benefit the Owner.
- .2 If the Construction Manager recommends changes to the Owner's program or preliminary design, such recommendations shall either (1) comply with the Owner's Standards, or (2) disclose specific variances from the Owner's Standards, and describe how such variances, if accepted by the Owner, will reduce costs, provide a higher quality Project without exceeding the Project budget, or otherwise benefit the Owner.
- .3 The evaluation shall also include a report of any apparent errors, omissions, or inconsistencies in the information obtained by the Construction Manager from any source, including the Owner or the Architect, or the Construction Manager's observations, together with the Construction Manager's recommendations for resolving any apparent errors, omissions, or inconsistencies.

- .4 The Construction Manager shall update its evaluation to include an evaluation of the Schematic Design, Design Development, and 90% Construction Documents as they are prepared.

§ 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; efficient use of resources during construction and environmentally responsible alternatives; 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 The Construction Manager shall perform its services in accordance with the Project schedule incorporated in the Construction Manager's proposal as modified by Owner and Construction Manager and as updated in accordance with this Section 2.1.3 and Section 3.10 of A201-2007. The Construction Manager shall update the Project schedule at least monthly 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. Each updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; submission of the evaluations under Section 2.1.1 and cost estimates under Section 2.1.5; 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 including any portions of the Project having occupancy priority. Each updated Project Schedule shall indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, preparation and processing of shop drawings and samples, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

§ 2.1.4 Phased Construction

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

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager 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, 90% Construction Documents and final Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect (but not less frequently than the four major intervals described in this Section), 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. 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 to reconcile the Owner's program, the Project budget and the Project design pursuant to Section 2.1.1.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project. The Construction Manager shall furnish to the Owner and Architect for their information a list of at least three possible subcontractors per trade, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals or bids will be requested for each portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner objects to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor or supplier. The Owner may designate specific persons or entities from whom the Construction Manager shall obtain bids or proposals; however, the Owner will not prohibit the Construction Manager from obtaining bids or proposals from other qualified bidders. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection, provided such objections are presented in writing to the Owner prior to accepting bids from the objectionable subcontractor or supplier. The Construction Manager shall select subcontractors, or obtain the Owner's consent to perform Work with the Construction Manager's own forces, pursuant to Section 2.3 of this Agreement.

§ 2.1.7 Long-Lead-Time Items

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for long-lead-time items, if any, that must be ordered well in advance of construction to meet the approved Project Schedule. The Owner may require the Construction Manager to order and procure long-lead-time items before the Owner accepts the Construction Manager's Guaranteed Maximum Price proposal, pursuant to Drawings and Specifications prepared by the Architect and A201-2007. The Construction Manager shall provide the Owner with a proposal for such procurement, which shall be for no more than the actual cost of the long-lead-time-item, and shall identify the restocking charge or charge of a similar nature, if any, payable to the supplier of the long-lead-time item if the Owner cancels the order. The Construction Manager shall incorporate all long-lead-time-items (if any) in the Guaranteed Maximum Price proposal. If the Owner accepts the Guaranteed Maximum Price proposal, all long-lead-time items (if any) shall be included in the Cost of the Work and the Construction Manager shall accept compensation under Section 5.1 of this Agreement as compensation for all long-lead-time items. The Owner shall provide funds for payment of any amounts that become due for long-lead-time items before commencement of the Construction Phase, subject to a credit against the Guaranteed Maximum Price. If the Owner cancels the order for the long-lead-time item for any reason other than default by the Construction Manager or the supplier, the Owner shall be responsible for the restocking charge or charge of a similar nature, if any, but only to the extent the Construction Manager disclosed the charge in its proposal. The Construction Manager shall expedite the delivery of long-lead-time items.

§ 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, lawful orders of public authorities or the Owner's Standards, 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 Article 16 of A201-2007.

§ 2.2 Guaranteed Maximum Price Proposal, Contingency and Contract Time

§ 2.2.1 Within 21 days after receipt of the Design Development Documents from the Architect (including Drawings and Specifications that are sufficiently complete as determined by the Owner to provide the basis for a Guaranteed Maximum Price proposal), the Construction Manager shall prepare a Guaranteed Maximum Price 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 2.2.2, and the Construction Manager's Fee. During the 21-day period after receipt of the Design Development Documents from the Architect, (1) the Construction Manager, Owner and Architect shall meet to review the Design Development Drawings, and reconcile any apparent inconsistencies or inaccuracies in the Design Development Documents or between the Design Development Drawings and information from other sources, (2) the Construction Manager shall update its evaluation pursuant to Section 2.1.1, and (3) the Architect will update the Design Development Documents to the extent the Owner deems necessary to document such reconciliation and provide the Construction Manager with Drawings and Specifications on which the Construction Manager will base its Guaranteed Maximum Price proposal.

§ 2.2.2. Construction Contingency

§ 2.2.2.1 As the Drawings and Specifications may not be finished at the time the Construction Manager prepares the Guaranteed Maximum Price proposal, the Construction Manager shall include in the Guaranteed Maximum Price a contingency (the "Construction Contingency") sufficient to cover costs associated with further development of the Drawings and Specifications by the Architect that is consistent with the Contract Documents and reasonably inferable therefrom and other costs which are properly reimbursable as a Cost of the Work. Such further development and other costs do 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. The estimated Cost of the Work shall include the Construction Contingency.

§ 2.2.2.2 The Construction Contingency (but not the Guaranteed Maximum Price) shall be adjusted, as the case may be, 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 schedule of values applicable to the work (attached to the Guaranteed Maximum Price proposal) to be performed under such subcontract.

§ 2.2.2.3 Construction Manager may permit funds to be expended from the Construction Contingency for Cost of the Work incurred for completion of the Work; provided, however, the Owner approves of such use of contingency and approval of contingency shall not be unreasonably withheld. Any expenditures of the Construction Contingency shall be evidenced on the pay application requesting payment of the Work in question.

§ 2.2.2.4 After subcontracts comprising 80% of the value of the estimated Cost of the Work are awarded, the Construction Contingency may be used by the Owner for Owner-initiated Change Orders, provided that there remains in the Construction Contingency an amount equal to the amount included on the schedule of values as part of the Guaranteed Maximum Price Amendment. Before construction commences, Owner and Construction Manager will mutually agree upon a schedule of construction contingency.

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, consistent in form and content with Exhibit A which shall include the following:

- .1 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work in a form acceptable to the Owner organized by Construction Specifications Institute ("CSI") trade categories or systems, allowances, the Construction Contingency, and the Construction Manager's Fee; the Cost of the Work and the Guaranteed Maximum Price shall include separate line items for General Requirements, as defined in the Request for Proposal, to the extent reimbursable under Section 6.1; the proposed Guaranteed Maximum Price shall be consistent with the approved Project budget, shall be based on rates for labor, materials and equipment prescribed by the Owner in this Agreement or proposed by the Construction Manager and accepted by the Owner, and shall be the maximum amount the Owner shall be required to pay the Construction Manager for the Cost of the Work plus the Construction Manager's Fee (which shall include all compensation and expenses payable to the Construction Manager under the Contract);
- .2 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based and an updated critical path Project schedule, consistent with the Proposal, including a schedule for decisions or other actions by the Owner and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based;
- .3 Description of the Scope of Work and Design Intent;
- .4 A description of the energy conservation measures and techniques to be incorporated into the Project.
- .5 A schedule of proposed variances to the Owner's Standards, if any, including a statement of the benefits of or justifications for the proposed variances and the impact of the proposed variances on the cost, schedule or quality of the Project;
- .6 A statement indicating which portions of the Project are to be commissioned, if any, and a description of the commissioning process for each;
- .7 A Project directory including all Subcontractors the Construction Manager proposes to use;
- .8 A list of wage rates for management, engineers, laborers, trades, and all others performing the Work;
- .9 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .10 A list of allowances (if any) and a statement of their basis;
- .11 Construction Contingency, if any;
- .12 A list of the clarifications and assumptions. Including exclusions, made by the Construction Manager 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;
- .13 Alternates approved by the Owner, including proposed adjustments in the Guaranteed Maximum Price and Project schedule if the Owner elects to accept the alternate;
- .14 A list of Unit Prices and assumptions about anticipated unit quantities;
- .15 A list of long lead-time items; and
- .16 A list of those portions of the Work the Construction Manager proposes to perform with its own forces and Work the Construction Manager proposes to perform with Subcontractors hired by the Construction Manager.
- .17 Constructability Log, showing review of construction documents with responses from design clarifications, inclusions and exclusions.

§ 2.2.4 By submitting the Guaranteed Maximum Price proposal to the Owner, the Construction Manager shall be deemed to represent that (1) the Construction Manager has reviewed the Drawings and Specifications and other information provided by the Owner, and obtained such additional information from the Owner, direct observation of the site, and other sources that the Construction Manager deemed necessary and sufficient to prepare the Guaranteed Maximum Price proposal, (2) the Guaranteed Maximum Price proposal is consistent with the

Drawings and Specifications, and (3) the Drawings and Specifications as of the date of the Guaranteed Maximum Price proposal provide sufficient information to commit to a Guaranteed Maximum Price to complete the Work within the Contract Time.

§ 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 apparent inconsistencies or inaccuracies in the information included in the Guaranteed Maximum Price proposal or between that information and the Plans and Specifications, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both, to the extent necessary to reconcile such apparent inconsistencies or inaccuracies to the satisfaction of the Owner.

§ 2.2.6 The Owner shall review the Guaranteed Maximum Price proposal and accept, reject, or request modification of the Guaranteed Maximum Price proposal by written notice to the Construction Manager. If the Owner requests modification of the Guaranteed Maximum Price proposal, the Owner and the Construction Manager shall cooperate with each other to arrive at and agree upon such modification as expeditiously as possible, provided, however, that the Owner may at anytime elect to reject the Guaranteed Maximum Price proposal, as presented or later modified, and terminate this Agreement for convenience pursuant to A201-2007.

§ 2.2.7 Upon acceptance of a Guaranteed Maximum Price by the Owner, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall be substantially in the form attached to this Agreement and set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.8 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 the Owner provides prior written authorization for such costs.

§ 2.2.9 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. 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 and the revised Drawings and Specifications.

§ 2.2.10 The Construction Manager shall include in the Guaranteed Maximum Price all sales, and applicable 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 is executed.

§ 2.3 Construction Phase

§ 2.3.1 General

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

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Construction Manager's Guaranteed Maximum Price proposal.

§ 2.3.2 Administration

§ 2.3.2.1 The Construction Manager shall perform all Work through Subcontractors or through its own personnel selected in accordance Section 2.3.2.9. The Construction Manager shall obtain at least three sealed competitive bids or proposals from Subcontractors (one of which may be the Construction Manager, as provided in Section 2.3.2.9) and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously

reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect. The Owner will then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Architect, which bids or proposals will be accepted. Except as specifically provided in this Section 2.3.2.1, for all other portions of the Work, including without limitation labor, services, materials, supplies, equipment, temporary facilities and related items, whether or not such portion of the Work may be characterized as overhead, general conditions, or general requirements, Construction Manager shall obtain at least three competitive bids or proposals if the Cost of the Work for the portion of the Work is fifty thousand dollars (\$50,000) or more. The Construction Manager shall not issue any request for bids or enter in to any subcontract or supplier agreement of \$100,000 or more without the Owner's prior written consent. All bid scopes shall be submitted to the Owner for review and approval prior to bidding.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder or proposer (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, (3) has submitted a bid or proposal that conforms to the requirements of the Contract Documents without reservations or exceptions, and (4) the Owner and Architect have not objected to the bidder or proposer pursuant to Section 2.1.6 of this Agreement or Article 8 of A201-2007, but the Owner requires that another bid or proposal 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 or proposal 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 Article 23 of A201-2007.

§ 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 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, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2007, which construction and submittal schedules shall be consistent with the Guaranteed Maximum Price proposal accepted by the Owner.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. The Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner in accordance with Section 3.19.1 of A201-2007. 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.

§ 2.3.2.8 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 reports to the Owner and Architect, in accordance with Section 2.3.2.7 above, but not less than monthly.

§ 2.3.2.9 The Construction Manager may perform portions of the Work with its own personnel under the following circumstances:

- .1 The Construction Manager shall have the right to submit one of the three sealed competitive bids or proposals on its own behalf for any portion of the Work that the Construction Manager wants to perform with its own personnel, provided the Construction Manager shall obtain at least two competitive, sealed proposals or bids from other potential Subcontractors for those portions of the Work and the Construction Manager shall comply with the submittal and selection requirements applicable to all potential Subcontractors. The Construction Manager shall deliver the sealed bids to Owner for opening; the Construction Manager shall deliver to Owner its sealed bid at least 24 hours prior to bid opening. The Owner shall determine which bids or proposals to accept for the Work.
- .2 The Owner may allow the Construction Manager to perform portions of the Work with its own forces without obtaining competitive bids or proposals, if for those portions of the Work (1) the Construction Manager specifically identified the Work as "Self-Performed Work" in the Proposal, (2) the Construction Manager disclosed its hourly wage rates in the Proposal, (3) the Construction Manager included the portion of the Work as a separate line item in the Final Guaranteed Maximum Price proposal, and (4) the Construction Manager obtains competitive bids or proposals for materials, supplies and equipment included in the portion of the Work.
- .3 If the Construction Manager submits to the Owner a specific proposal to self-perform Work in accordance with the Contract Documents, such proposal shall include the following (1) a Guaranteed Maximum Price for such Work based upon the cost of the Work plus overhead and profit separately identified in the proposal, (2) a breakdown of the subcontracted portions of such Self-Performed Work categories and materials or equipment to be purchased from third parties, which shall be based on competitive bids or proposals, and (3) a detailed breakdown of the labor component of such Work to be performed by the Construction Manager's own work force (listing estimated hours and rate). Construction Manager shall not be permitted to use any Construction Contingency for such Self-Performed Work in the event that the GMP for such Self-Performed Work is exceeded, however, Construction Manager is permitted to include an appropriate contingency within the GMP for such Self-Performed Work.
- .4 The Owner may, in the Owner's sole discretion, allow the Construction Manager to self-perform portions of the Work with its own forces without obtaining competitive bids or proposals, if the Owner determines that circumstances warrant an exception to the Owner's policy favoring a competitive selection process.

§ 2.4 Professional Services

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

§ 2.5 Hazardous Materials

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

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide the Construction Manager with timely notice of any changes in the Owner's requirements for the Project.

§ 3.1.2 Intentionally Deleted

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User Notes:

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§ 3.1.3 Intentionally Deleted

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. To the extent the Owner deems necessary for the performance of the Construction Manager's Services, during the Preconstruction Phase, the Owner shall furnish the following project-specific information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's reasonable written request for such information or services. The Construction Manager shall be entitled to reasonably rely on the accuracy of information and services furnished by the Owner to the extent described in Section 2.2.1 of A201-2007.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports concerning the site.

§ 3.1.4.2 The Owner shall furnish surveys pursuant to Section 2.2.3 of A201-2007.

§ 3.1.4.3 The Owner 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 The Owner may, in its discretion, provide the Construction Manager access to the Owner's records, which may contain information about the Project site and adjacent land and improvements, which information was not collected specifically for the Project. The Owner makes no representations as to the relevance, accuracy or completeness of information in the Owner's records made available to the Construction Manager.

§ 3.2 Owner's Designated Representative

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

§ 3.3 Architect

The Owner has retained the Architect identified on the first page of this Agreement to provide services, duties and responsibilities as described in AIA Document B101™-2007, Standard Form of Agreement Between Owner and Architect, as modified by the Owner, including normal civil, structural, mechanical and electrical engineering services and landscape architectural services. The Owner shall cause the Architect to provide any additional services requested by the Construction Manager 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 Intentionally Deleted.

§ 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.)

The Owner shall pay the Construction Manager a stipulated lump sum of (xxxxxxx) and 00/100 Dollars (\$_____.00) for Preconstruction Phase Services described in Sections 2.1 and 2.2, plus the following Reimbursable Expenses:

- .1 Owner-requested or Owner-required photocopying, reproduction of drawings, specifications and other documents for bidding purposes;
- .2 Owner-authorized out-of-town travel and subsistence costs (if travel time is not also billed as professional services time), payable in accordance with the Owner's Travel Services Policy available at <https://policy.umn.edu/>;
- .3 Owner-requested or Owner-authorized express, messenger or overnight deliveries;
- .4 Owner-authorized special reports required by any unique characteristic of the Project;
- .5 Owner-authorized special computer studies and video or digital images; and
- .6 Reasonable postage and long-distance telephone calls.

The Construction Manager shall include the stipulated lump sum for Preconstruction Phase Services and an estimate of Reimbursable Expenses to be incurred in the Preconstruction Phase in the guaranteed Maximum Price proposal. For Reimbursable Expenses, the compensation shall be the actual expenses incurred by the Construction Manager, without mark-up.»

§ 4.1.3 The Construction Manager shall accept compensation under Section 4.1.2 as payment for all services rendered and Reimbursable Expenses incurred during the Preconstruction Phase, except as specifically agreed by the Owner in writing.

§ 4.1.4 Intentionally Deleted.

§ 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 **thirty (30)** days after Owner's receipt of the invoice.

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 Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee provided the sum of the stipulated lump sum for Preconstruction Services payable under Article 4 plus the Cost of the Work plus the Construction Manager's Fee, which sum is the "Contract Sum," shall not exceed the Guaranteed Maximum Price.

§ 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.)

x.xx% of Cost of Work for Construction

§ 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 is amended from time to time. To the extent the sum of the Preconstruction Services stipulated lump sum, plus the Cost of the Work plus the Construction Manager's Fee 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.

In the event that upon final completion of the Work the total Cost of the Work, plus the Construction Manager's Fee, plus the Preconstruction Services stipulated lump sum amount, is less than the GMP, the Construction Manager shall not be entitled to, and the Owner shall not

pay, more than the total Cost of the Work plus the Construction Manager's Fee, plus the Preconstruction Services stipulated lump sum amount.

§ 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 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 may be determined in accordance with Section 7.3 of A201-2007.

§ 5.3.3 Adjustments to subcontracts shall be calculated in accordance with Section 7.3.7 of A201-2007.

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 those stated in the Guaranteed Maximum Price Proposal or, if not stated, the fair market value at the place of the Project except with prior written consent of the Owner, which the Owner may grant or deny in the Owner's sole discretion. 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.

§ 6.1.3 Except as specified herein, all costs identified in Article 6 and 7 shall be passed through by the Construction Manager at actual costs with no additional charges for mark-ups, handling or any other charges or fees.

§ 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 written 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 written agreement or when incorporated into the final GMP Proposal and approved by the Owner, as defined and calculated pursuant to Exhibit B.

§ 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 as defined and calculated pursuant to Exhibit B, but only if approved in advance in writing by the Owner or incorporated in the final GMP Proposal, and only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for labor burden on Self-Performed Work, as defined and calculated pursuant to Exhibit C.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the Contract Documents.

§ 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, 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 (including fuel consumed on site by vehicles and equipment). 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. Equipment delivery and yard costs will be based on equipment delivered from the yard to the site and back. Construction Manager shall provide to Owner hourly rate for equipment delivery for prior approval by Owner.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment (including items such as traffic barriers, scaffolding, formwork, concrete blankets, snow tarps, and temporary electrical service, whether or not Construction Manager considers such items as "systems") and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, 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. Total rental shall be charged at 70% of the region modified listed rates in the current (as of Contract date) AED Green Book listed equipment rental rates and in no event exceed 85% of the current Fair Market Value (FMV) of any item. If the AED Green Book does not contain information related to the type of equipment rented, the Construction Manager will be allowed to use a maximum equipment rental rate equal to 70% of the Construction Manager's scheduled and agreed upon rental rates.

Equipment rental rates must be based on monthly rental rates (not daily or weekly), prorated for the period of actual use. Monthly rental calculation is based on 22 working days in a month. The FMV amounts/monthly equipment charge rates cannot be adjusted without the prior approval of the Owner.

Charges for furnishing and equipping the site office, including without limitation, tables, chairs, plan racks, desks, computers, printers, copiers, scanners, fax, and all other office equipment of any kind, will be included in the Guaranteed Maximum Price proposal, as a one-time charge based on fair rental value or other measure reasonably acceptable to the Owner and the Construction Manager.

Small Tools will be defined as any tool or piece of equipment with a value of \$1,000.00 or less, including without limitation hardhats, safety glasses, safety vests, and other personal protective equipment, cellular phones and radios, including airtime and data charges. Small Tools costs will be billed at 3% of Construction Manager's field labor costs. Small Tools percentage cannot be assessed on any supervisory or administrative labor and any subcontractor labor.

§ 6.5.2.1 All consumables are considered consumed at the time they are first used on the Project, and any items remaining at the completion of the Project will become the property of the Owner. If any consumables items (new or used) are returned to or retained by the Construction Manager, the Construction Manager shall credit back the Owner a prorated portion of the amount charged for the item or items reflecting the fair market value of the retained item. The Construction Manager will be required to reuse any of the consumable items left behind if they need to return to the Project to complete additional/new Work at the Project. All consumable costs will be billed at the actual cost of each item with no additional markups or costs added.

§ 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, long-distance telephone calls, postage and parcel delivery charges, land line 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 outside the seven-county Minneapolis/St. Paul metropolitan area with the advance written consent of the Owner, and in accordance with the Owner's Travel Services Policy available at <https://policy.umn.edu/>.

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

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior written approval. Costs paid or incurred by the Construction Manager for insuring the All Risks Policy \$500,000 deductible.

§ 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 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.

§ 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 Periodic on-site safety recognition if part of Construction Manager's standard safety program.

§ 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 A201-2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, except to the extent that such damaged or nonconforming Work was 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.

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 Notwithstanding anything to the contrary in Section 6.1, the Cost of the Work shall not include:

- .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 approved by the Owner in writing and 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, except as specifically provided in Section 6.1 and specifically approved by the Owner in writing;
- .3 Overhead and general expenses, including without limitation, accounting and data processing fees and computer charges for on location, including the site office and principal office, 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;
- .8 Costs for services incurred during the Preconstruction Phase.
- .9 Rental or lease payments, expenses or allowances related to vehicles for individuals, including the foremen, superintendent and project managers, other than mileage reimbursement for travel in furtherance of the Work pursuant to Section 6.5.5.
- .10 Legal, mediation or arbitration costs, however incurred.
- .11 Amounts the Contract Documents specifically require the Construction Manager to pay, including deductible amounts payable by the Construction Manager under any policy of insurance the Construction Manager is required to provide.
- .12 Costs resulting from theft or vandalism of items that are not part of the Work.
- .13 Drug testing for new hires or current employees, incentive or bonus programs (including safety), accounting and EEO and targeted business compliance staff, safety training or seminars.
- .14 Equipment repair, maintenance or re-calibration costs.
- .15 Off-site file storage.
- .16 Management of warranty work.
- .17 Costs of premiums for subcontractor payment and performance bonds shall be reimbursable as mutually agreed to by the Owner and Construction Manager at the time of RFP submittal and approval. This will be based on the Construction Manager's risk assessment of the scope of work for each subcontractor.
- .18 Except as provided in Section 6.1.1, any cost not specifically and expressly described in Section 6.1.
- .19 Any overtime premium or shift differential expense to be incurred by Construction Manager for hourly workers shall require Owner's advance written approval before

the incremental cost of the overtime premium or shift differential will be considered a reimbursable cost. If the Construction Manager is required to work overtime as a result of an inexcusable delay or other coordination problems caused by the Construction Manager or anyone they are responsible for, the overtime premium and/or shift differential expense portion of the payroll expense and related labor burden costs will be considered as cost not to be reimbursed.

- .20 Employee bonuses and/or costs associated with Employee Stock Ownership Plans (ESOP) will be non-reimbursable costs deemed to be covered by the Construction Manager's Fee.
- .21 Charges for mobile telephone including air time and data charges will be not reimbursed.
- .22 Costs for vacation, holiday, sick, and training time for Construction Manager's supervisory staff.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 The Construction Manager shall make reasonable efforts to notify the Owner of the availability of cash discounts in time to allow the Owner to provide the Construction Manager with cash to qualify for the discount. Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner unless the Owner fails to provide the cash after timely notice. 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 Work by a related party shall be deemed to be Self-Performed Work.

§ 6.11 Accounting Records

The Construction Manager shall comply with Article 23 of A201-2007.

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.

§ 7.1.3 Provided that an Application for Payment is certified for payment by the Architect, the Owner shall make payment of the certified amount to the Construction Manager not later than **thirty-seven (37)** days after the Architect receives the Application for Payment.

§ 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 Architect may require. This schedule, 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 A201-2007;
- .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;
- .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 A201-2007.

§ 7.1.8 The Owner and Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments, including retention, to Subcontractors and Suppliers. The percentage of retainage held on Subcontracts (including Suppliers) shall be five (5) percent unless otherwise approved in writing by the Owner. Construction Manager shall pay retainage to Subcontractors, Suppliers, and vendor within 7 days of receiving retainage payment from the Owner. If retainage is not paid within 7 days, the Construction Manager must notify the Owner in writing within the 7 day period of the reason for such nonpayment. The retainage release

schedule agreed upon by Owner and Construction Manager shall address the release of retainage for contractors whose work is 100% complete prior to overall project construction.

- .1 Retainage payments may be withheld from Subcontractors, suppliers, vendors, if there is a documented quality of work issue, subcontract issue, or other reason that warrants the withholding of retainage.
- .2 Retainage payments cannot be made until the Owner has received satisfactory final releases from Construction Manager and all of Construction Manager's Subcontractors and Suppliers.

§ 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 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 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 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;
- .3 a final Certificate for Payment has been issued by the Architect; and
- .4 Construction Manager has satisfied all conditions of final payment; including without limitation, fulfillment of all requirements of Section 9.10 of A201-2007.

§ 7.2.2 The Owner will review the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner determines 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 authorization from the Owner 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 A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

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

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

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price.

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 A201-2007.

ARTICLE 9 DISPUTE RESOLUTION

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

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

- Litigation in a court of competent jurisdiction

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of A201-2007 for Claims arising from or relating to the Construction Manager's Construction Phase Services.

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, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201-2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1 and compensation shall not include anticipated profits.

§ 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, 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.

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 the Construction Manager for or assume responsibility for payment of 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, up to the amount payable to the Subcontractor under the Subcontract.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment 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 A201-2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of 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, the amount payable to the Construction Manager under Section 14.1.3 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of 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 A201-2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1.1 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 A201-2007.

§ 11.2 Ownership and Use of Documents

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

§ 11.3 Governing Law

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

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. The Owner may withhold its consent to any assignment in the Owner's sole discretion. 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.

ARTICLE 12 SCOPE OF THE AGREEMENT

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

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document 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 modified by the Owner.
- .2 AIA Document A201-2007 General Conditions, as modified by the Owner.
- .3 AIA Document E201™-2007, Digital Data Protocol Exhibit, as modified by the Owner.
- .4 Other documents:

Exhibit A – GMP Proposal form, including the following Exhibits:

Attachment A – Schedule of Values (Breakdown of Price), including

Attachment A-1 General Conditions List

Attachment B – Updated Critical Path Project Schedule

Attachment C – Description of the Scope of Work and Design Intent

- Other documents required to fix and describe the size, quality and character of the Project, its architectural, structural, mechanical and electrical systems and the materials and such other elements of the Project as may be appropriate.

Exhibit B – supervisory and administrative personnel labor burden

Exhibit C – field personnel labor burden

Exhibit D – Owner's Request for Proposal for Construction Manager Services, dated

Exhibit E – Construction Manager's Proposal, dated

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

OWNER (Signature)

[Redacted Signature]

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

[Redacted Signature]

(Printed name and title)

BRAD