

AIA[®] Document A133[™] – 2019

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

[Revised September 2021]

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

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

Case Western Reserve University
10900 Euclid Avenue
Cleveland, Ohio 44106-7228

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

for the following Project:
(Name, location, and detailed description)

The Architect:
(Name, legal status, address, and other information)

The Owner and Construction Manager agree as follows.

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

AIA Document A201[™]-2017, 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 INITIAL INFORMATION
ARTICLE 1 INITIAL PROJECT INFORMATION

§ 1.1 This Agreement is based on the following Initial Project Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

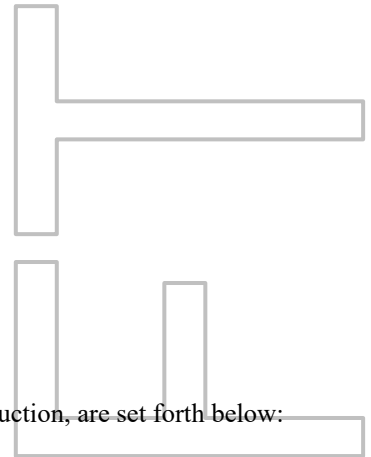
§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

§ 1.1.2 The Project's physical characteristics:
(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:
(Provide total and, if known, a line item breakdown.)

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

- .1 Design phase milestone dates, if any:
- .2 Construction commencement date:
- .3 Substantial Completion date or dates:
- .4 Other milestone dates:



§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

Construction Manager acknowledges that the Work is to proceed on the basis of sequential bidding and that bids for some portions of the Work will be obtained before design of the overall Project is complete. Construction Manager represents that it has all requisite expertise in the "fast-track" method of construction and related "fast-tracking" practices and understands that said representation has served as a material inducement in Owner's selection of Construction Manager. Construction Manager expressly recognizes that the "fast-track" method may require Construction Manager to prepare, issue and analyze bid packages in excess of the number ordinarily required under standard construction practices and hereby agrees to prepare, issue and analyze the same, if and as needed, in a timely manner.

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

Construction Manager shall comply with the Project's sustainability requirements established by Owner.

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™ – 2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234 – 2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234 – 2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.Omitted.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)



§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

Case Western Reserve University
10900 Euclid Avenue, Room []
Cleveland, Ohio 44106
Attn: []
Telephone Number: 216-368 – [] Mobile Number: 216 – [] - []
Email Address: []@case.edu

§ 1.1.9 The persons or entities, in addition to the Owner’s representative, who are required to review the Construction Manager’s submittals to the Owner are as follows:
(List name, address and other contact information.)

§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

.2 Civil Engineer:

.3 Other, if any:
(List any other consultants retained by the Owner, such as a Project or Program Manager.)

§ 1.1.11 The Architect’s representative:
(List name, address, and other contact information.)

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

§ 1.1.13 The Owner’s requirements for the Construction Manager’s staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

§ 1.1.14 The Owner’s requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

§ 1.1.15 Other Initial Project Information on which this Agreement is based:

§ 1.2 The Owner and Construction Manager may rely on the Initial Project Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Project Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 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 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 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the fiduciary 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 best skill and judgment in furthering the interests of the Owner to furnish efficient construction, construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 All references in this document to AIA Document A201™-2017, General Conditions of the Contract for Construction shall mean the attached version of said document, as modified by Owner. For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2017, which document is incorporated herein by reference. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. 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.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.1.3 Consultation

§ 3.1.3.1 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.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; 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. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.4 Preliminary Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and ~~periodically update a update periodically,~~ as well as at Owner's request and promptly follow any material change with respect thereto, a preliminary Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's ~~and the Owner's~~ approval for the portion of the preliminary Project schedule relating to the performance of the Architect's services. The preliminary 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 affect the Project's timely completion. The updated preliminary Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ~~review and approval of submittals;~~ ordering and delivery of products, including those that must be ordered in advance of construction; ~~and the occupancy requirements of the Owner;~~ the occupancy requirements of the Owner; the Owner's milestone dates; and significant Owner's activities and events (e.g., campus breaks, commencement exercises, special events, reading days, exam schedule).

§ 3.1.5 Phased Construction

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

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or

Construction Manager ~~suggests~~suggest alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 ~~If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™ 2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.~~Omitted.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project, subcontractor interest in the Project and shall furnish to the Architect for its information and to the Owner for its approval, a list of possible, pre-qualified subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design of the Architect, from whom proposals will be requested for each principal portion of the Work. The Owner may designate specific persons or entities from whom the Construction Manager shall obtain bids. The Architect or the Owner will promptly reply in writing to the Construction Manager if the Architect or the Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or the Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or the Architect later to object to or reject any proposed subcontractor or supplier.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions reasonably acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

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

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, When the Drawings and Specifications are sufficiently complete to enable a detailed Guaranteed Maximum Price (GMP) to be prepared for the entire project clearly itemizing the costs of each component (such as site work, demolition, concrete, masonry, metals, thermal moisture protection, roofing, doors & windows, finished with detail, plumbing, HVAC, electrical and the like) the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

GMP and submit it to the Owner for approval. The GMP shall be the sum of the direct cost of the Work, the general requirements, Construction Manager's Fee for services, plus the guaranteed not-to-exceed general condition items, the Construction Manager's estimated cost of all work within the scope defined in this Agreement, plus, the Construction Manager's contingency, and the Owner Allowances. The GMP shall not include any other project expenses not directly involved in the scope of construction included in this Agreement, such as site acquisition, professional design fees, site survey, financing costs, or other contract costs for contracts directly with the Owner.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order. The proposed GMP will include a project design contingency which may be used by the Construction Manager with prior written approval of the Owner to cover:

- (i) the amount of any excess of the amount bid by the successful Subcontractor for any Construction Work over the respective amount for that Construction Work in the Guaranteed Maximum Price Amendment, but not Construction Work to be performed by the Construction Manager, if the Construction Manager is permitted to self-perform some of the Construction Work; and
- (ii) the amount of any other Actual Cost of the Construction Work to be performed by a Subcontractor (but not Construction Work to be performed by the Construction Manager, if the Construction Manager is permitted to self-perform some of the Construction Work).

The Construction Manager acknowledges that the drawings and specifications will be subject to further development that is consistent with the Guaranteed Maximum Price Amendment drawings, specifications, assumptions and clarifications. The Construction Manager understands and agrees that if the Construction Manager and the Owner agree on a GMP, the Construction Manager will be obligated to perform the Work in accordance with the Construction Documents thereafter approved by the Owner (regardless of whether approved by the Construction Manager) in return for payment by the Owner of an amount equal to the Actual Cost of the Work up to but not exceeding the Guaranteed Maximum Price except to the extent that the Construction Documents contain items or details that are not consistent with the GMP Drawings, Specifications, Assumptions and Clarifications and are not reasonably inferable therefrom. Therefore, in determining the proposed GMP, the Construction Manager will take into account such further development of the Design Submission Documents. The Owner and the Architect may review and discuss the GMP Drawings, Specifications, Assumptions and Clarifications with the Construction Manager in evaluating the proposed GMP. Any such review or discussion and any failure to review or comment on or to advise of any errors or omission in the GMP Drawings, Specifications, Assumptions and Clarifications by the Owner or the Architect shall not be a basis for the Construction Manager to place any responsibility on the Owner or the Architect for any deficiency in the accuracy or completeness of the GMP Drawings, Specifications, Assumptions or Clarifications or any error by the Construction Manager in preparing the proposed GMP.

Construction Manager shall have responsibility to assure that the Guaranteed Maximum Price Amendment GMP Drawings, Specifications, Assumptions and Clarifications are an accurate and complete statement of the Construction Manager's intent.

The only budget line items within Guaranteed Maximum Price Amendment that may be adjusted are:

1. Contingency; and
2. Amounts in the line items covering Construction Work to be performed by the Subcontractors (but not Construction Work to be performed by the Construction Manager if the Construction Manager is permitted to self-perform any Construction Work).

Regardless of any movement of amounts within the GMP, the Construction Manager shall have sole responsibility for completing the entire Construction Work within the Contract Time for the Work and for an amount not-to-exceed the Guaranteed Maximum Price.

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

- .1 A complete list of all the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 3.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications; All clarifications and assumptions should identify an associated value, if applicable;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; 3.2.4, general conditions, and the Construction Manager's Fee;
- .4 ~~The anticipated date~~ A detailed critical-path-method schedule in accordance with Paragraph 3.1.4 of AIA Document A201-2017, including the Owner's occupancy requirements, the Date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based;
- .5 A date by which the Owner must accept the Guaranteed Maximum Price; and
- .6 A list of allowances and a statement of their basis.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a construction contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. The Construction Manager's contingency shall only be available for use to cover the Construction Manager's costs, expenses, overhead and profit attributable to (a) refinement of design details within the Scope of Work and standards of quality and quantity on which the GMP is based, (b) cost due to general area wide labor disputes, (c) increases in bid or purchase order agreements, (d) corrective work, and (e) labor disputes within manufacturing or transportation industries causing delays in receipt of materials or equipment not the fault of the Construction Manager. The Construction Manager's contingency account is not available for overruns in general conditions, self-performed work, Owner increases in Allowances, or changes in the Scope of Work, including material or design changes.

§ 3.2.4.1 Construction Manager shall be required to obtain two written quotes for procurements over \$5,000 but below \$24,999.99 and formally bid (three bids minimum) all of the Work \$25,000 and above including work related to general conditions cost, which shall not be included as part of the Direct Cost of the Work. The management fee for general conditions will be included in the Construction Manger's base fee. If the Construction Manager is capable and desires to perform a portion of the Direct Work, the Construction Manager will be considered on the basis of a subcontract with a guaranteed maximum price competitively bid for that portion of the Work.

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

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

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

§ 3.2.10 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made of the date to be fixed in a Notice to Proceed issued by the Owner.
(Insert date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a Notice to Proceed.)

Date of Commencement is: _____.

§ 3.2.11 The Contract Time shall be measured from the date of commencement.

§ 3.2.12 The Construction Manager shall achieve Substantial Completion of the entire Work not later than the date established in the Guaranteed Maximum Price Amendment (the "Contract Time"), subject to adjustment as provided in the Contract Documents.

Substantial Completion is defined in accordance with Paragraph 9.8.1 of the AIA Document A201-2017 as the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use, which shall include receipt of all applicable permits and approvals necessary to designated portion thereof to be deemed substantially complete, also defined as the date that the Owner can operate the Project with a minimum of interference from the Contractor and only minor punch list items should remain to be completed, and Contractor shall have already provided all Project Record documents including, but not limited to, Operations and Maintenance Manuals and As-Built drawings to the Owner.

Final Completion is defined as the date when all the Work under the Contract Documents has been fully performed and is acceptable to the Architect/Engineer and the Owner, as defined in further detail in Section 9.10 of the General Conditions.

§ 3.3 Construction Phase

§ 3.3.1 General

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

§ 3.3.1.2 The Construction Phase shall commence upon the ~~Owner's mutual~~ execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. Amendment. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration

§ 3.3.2.1 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 of the meetings to the Owner and Architect, not later than one week after the meeting, for review and written approval of the Owner and Architect.

§ 3.3.2.2 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 a submittal schedule in accordance with Section 3.10 of A201-2017~~ project schedule for the Work.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall 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~~, Work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

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 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

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

§ 4.1.2 ~~Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.~~ Intentionally Omitted.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. ~~The~~ Except to the extent Construction Manager knows, or in the exercise of reasonable care and diligence should know, of any inaccuracy, the Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 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.

§ 4.1.4.2 The Owner shall ~~furnish~~ furnish, if in the Owner's possession, surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written 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 other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are reasonably requested, shall furnish services of geotechnical engineers, which may include 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.

§ 4.1.5 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.

§ 4.1.6 ~~If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.~~Omitted.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™-2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services reasonably requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. ~~The~~ Upon request of the Construction Manager, ~~the~~ the Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the ~~agreement.~~ agreement, from which compensation provisions may be deleted.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Individual or Position

Rate

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions,

assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

~~§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within () months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.~~ Intentionally Omitted.

§ 5.2 Payments

~~§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments shall be made following the presentation of the Construction Manager's invoice, including back-up documentation required by the Owner, as further described in Section 5.2.2~~

~~§ 5.2.2 Payments are due and payable upon presentation for approved amounts are due and payable forty-five (45) days after the Owner's approval of the Construction Manager's invoice. Amounts unpaid () days after the invoice due date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager below. (Insert rate of monthly or annual interest agreed upon.)~~

~~% Key Bank, NA's prime rate, Cleveland, Ohio~~

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

~~§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.~~

§ 6.1.2 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.)~~

~~For the Construction Manager's performance of the Work as described in Section 3.3, the Owner shall pay the Construction Manager, in current funds, the Contract Sum consisting of the Cost of the Work as defined in Article 7 and the Construction Manager's Fee determined as follows:~~

~~Shall be % Fee on the Actual Direct Cost~~

~~Shall be % Fee on the Actual Cost for Self-Performed Work~~

~~"Direct Cost" is defined as the actual cost of the subcontract amounts and materials purchased orders that are incorporated into the Work. Direct Cost does not include any subsequent change order amounts, contingency, general conditions, fees, or any other costs which are not incorporated into the Work or any amounts that would cause the Guaranteed Maximum Price to be exceeded. The Fee and contingency are calculated as a percentage of the actual Direct Cost before adding general conditions.~~

~~General Conditions shall mean the cost of facilities and services necessary for the proper execution and completion of the Work which do not become a permanent part of the Work.~~

~~§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:~~

~~Pursuant to Article 7 of AIA Document A201-2017~~

~~§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:~~

~~Pursuant to Article 7 of AIA Document A201-2017~~

~~§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed percent (%) of the standard rental rate paid at the place of the Project; the rates set forth in Section 7.5.2.~~

§ 6.1.6 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

N/A

§ 6.1.7 Other:
(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

N/A

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

To the extent the Cost of the Work is less than the Guaranteed Maximum Price, the Construction Manager shall not be entitled to the difference or any portion thereof.

§ 6.3 Changes in the Work

§ 6.3.1 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 Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 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 by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, ~~or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager,~~ the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior written approval of the Owner.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops. the site. Cost to be reimbursed will be the actual wages paid to individuals performing the Work.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior written approval. No Construction Manager personnel stationed at the Construction Manager's home or branch offices shall be charged to the Cost of the Work. Non-field office-based Construction Manager management and support personnel are expected to provide service and advise from time to time throughout the job and their time devoted to project matters is considered to be covered by and included in the Construction Manager's Fee.

Classification (Dollar amounts are all inclusive)	Name
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§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:
(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, 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. Employee bonuses will not be considered reimbursable labor or labor burden costs. Bonuses paid to the Construction Manager employees will be considered a non-reimbursable cost considered to be included in the Construction Manager's Fee.

§ 7.2.4 ~~Costs~~ Net costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for payroll taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits benefits agreed to in advance in writing by the Owner such as sick leave, medical and health benefits, plans, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3. "Net costs" means actual costs incurred, after applying for the benefit of the Owner all related credits and adjustments available, including but not limited to experience modifiers for workers' compensation insurance or program coverage, annual limitations on payroll taxes, effective rates, premium discounts, dividends, rebates, expense constants, and assigned risk-pool costs on taxes and insurance and any other credits and adjustments to these costs regardless of when such items first become available. Bonuses and training will not be reimbursed unless they are approved in advance in writing by the Owner. The Owner, in its sole discretion, may elect to permit the Construction Manager to charge and be paid during the course of the Project for such personnel taxes, insurance and benefits by using an agreed fixed provisional rate, which charges will be subject to audit by the Owner at any time including after the conclusion of the Project. In the event that any such audit reveals a difference between the agreed provisional rate and the actual net cost relating to the Project, an appropriate credit or payment will be made promptly by the appropriate party.

§ 7.2.4.1 When computing actual costs chargeable to the Cost of the Work for payroll taxes, the Construction Manager shall give proper consideration to the annual limitations of the wages subject to applicable payroll taxes. The Construction Manager may accomplish this through the use of an accounting system which computes actual costs for payroll taxes when incurred up to the wage limit cut-off and allocates same to all jobs by individual based on the time worked on each job by the individual. Alternatively, the Construction Manager may use an estimated net payroll tax percentage to allocate payroll tax costs during the year and make appropriate adjustments at the end of the year or at the end of the project (whichever is more appropriate) to adjust the costs to actual net payroll tax cost. Using the latter approach, if 50% of the wages paid to an individual during the year were chargeable to the Cost of the Work, then only 50% of the actual annual costs of payroll taxes would be allocable to the Cost of the Work.

§ 7.2.4.2 Cost of the Work shall include the actual net cost of the Construction Manager for workers' compensation insurance attributable to the wages chargeable to the Cost of the Work per this Agreement. The actual net cost of workers' compensation shall take into consideration all cost adjustments due to experience modifiers, premium discounts, policy dividends, retrospective rating plan premium adjustments, assigned risk pool rebates, any applicable weekly maximums and any other cost adjustments not identified herein but applicable. The Construction Manager may charge an estimated

amount for workers' compensation insurance costs, but will make appropriate cost adjustments to actual costs within 45 days of receipt of actual cost adjustments from the insurance carrier.

§ 7.2.4.3 Overtime wages paid to salaried personnel (only if approved in advance in writing by the Owner) will be reimbursed at the actual rate of overtime pay paid to the individual. No time charges for overtime hours worked on the project will be allowed if the individual is not paid for the overtime worked.

§ 7.2.4.4 Any overtime premium or shift differential expense to be incurred by the 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 not be reimbursable.

§ 7.2.4.5 Reimbursable labor burden costs will be limited to payroll taxes, workers' compensation insurance, the employer's portion of union benefit costs for union employees working on the project, and the actual verifiable fringe benefit costs incurred by the Construction Manager for non-union individuals working on the project subject to the following maximums (as a percentage of reimbursable actual wages of the individual, excluding labor burden costs) shall apply for each of the following types of fringe benefit costs specifically attributable to each of the non-union personnel working on the project:

<u>(1) Medical Insurance</u>	<u>10.00%</u>
<u>(2) Dental Insurance</u>	<u>1.00%</u>
<u>(3) AD&D Insurance, Life Insurance</u>	<u>1.00%</u>
<u>(4) Holiday, vacation and other "off" paid time (not worked) does not include training</u>	<u>10.00%</u>
<u>(5) Pension Plan Contributions to Vested Employee Account</u>	<u>10.00%</u>

For non-union personnel, no other fringe benefit costs (other than the five (5) specific categories listed immediately above shall be considered reimbursable Cost of the Work). Any labor burden costs that are in excess of the amounts considered reimbursable or are otherwise not considered reimbursable under the terms of this Agreement are intended to be included in and covered by the Construction Manager's Fee.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement. The Construction Manager shall not, directly or indirectly, enter into any contract, purchase order or other agreement ("Arrangement") in connection with the Work with (a) any individual related by affinity or consanguinity within the third degree to any individual who is an owner or employee of the Construction Manager; or (b) a related party (as defined in Section 7.8.1 of this Agreement), unless such Arrangement has been approved in writing by the Owner, after full disclosure in writing by the Construction Manager to the Owner of such affiliation or relationship and all details relating to the proposed Arrangement. The term "control", as used in the immediately preceding sentence, means, with respect to a corporation or a limited liability company, the right to exercise, directly or indirectly, fifty percent (50%) or more of the voting rights attributable to that corporation or limited liability company and, with respect to any individual, partnership, trust, association or other entity, the power, directly or indirectly, to direct or cause the direction of the management or policies of the controlled person or entity, through voting rights, contractual rights or otherwise. The terms of any such Arrangement must conform to the requirements of the Contract Documents. If any related party undertakes any portion of the Work pursuant to an Arrangement with the Construction Manager, such Arrangement shall provide for the right to audit all of the books and records pertaining to the Work undertaken by such related party, which audit may be undertaken by the Owner or its representative at any time. All savings under any Arrangement shall be applied to reduce the Cost of the Work under this Agreement, and no profit or fee shall be payable to any such related party except as approved in advance in writing by the Owner.

§ 7.3.1 Construction Manager shall invite bids from, and enter into contracts and material orders with, only subcontractors and suppliers who have first been approved by the Owner. After receiving such bids, the Construction Manager shall always analyze them and make recommendations for awards, accompanying its recommendations with all pertinent data

required for decision upon the award, and certifying that, to the best of its knowledge, the bid of the recommended subcontractor or supplier is bona fide, fair and reasonable.

§ 7.3.2 When the Owner has approved the award of any such subcontract or purchase order, the Construction Manager shall contract in its own name and behalf, and not in the name or on behalf of the Owner, with the specified subcontractor or supplier. The Construction Manager's subcontract and purchase order forms shall provide that Subcontractor shall perform its portion of the Work and all applicable provisions of this Agreement and the Contract Documents.

§ 7.3.3 The Construction Manager shall add specific Owner directed contract clauses to the standard subcontract and purchase order forms to be used for the Project. The Construction Manager shall submit its subcontract and purchase order forms to the Owner for written approval prior to use in connection with the Project, and shall promptly deliver to the Owner a copy of all executed subcontracts and purchase orders entered into in connection with the Project.

§ 7.3.4 If the net effect of the Owner's designation as the selected subcontractors and suppliers (taking into account both subcontractors and suppliers whose bids exceed those of bidders recommended by the Construction Manager and those whose bids are less than bidders recommended by the Construction Manager) is the selection of subcontractors and suppliers whose bids, in the aggregate, exceed those of the bidders recommended by the Construction Manager, the Estimated Construction Manager's Cost and the GMP Cost shall be increased by the lesser of (i) the amount by which the bids of the designated subcontractors and suppliers exceed the bids of the bidders recommended by the Construction Manager or (ii) the amount by which the bids of the designated subcontractors and suppliers exceed the amount utilized by the Construction Manager in calculating the GMP Cost. The Construction Manager's Fee shall not be increased on account of Owner's designation of subcontractors or suppliers, regardless of the number of such designations or the resulting increase in the GMP Cost, if any.

§ 7.3.5 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 prior written approval of the Owner.

§ 7.3.6 For scope of work bid packages typically performed by subcontractors, the Construction Manager may "self-perform" such work on a cost plus fee (Not-To-Exceed 10%) basis subject to an agreed upon guaranteed maximum price for the "self-performed work". The Construction Manager may bid its proposed GMP for the Work to be "self-performed" against at least three other interested trade contractors. Any subcontract for "self-performed work" will provide for payment in an amount equal to the cost of the Work (as defined by this Agreement) and will not exceed the agreed upon subcontract guaranteed maximum price. All terms and provisions of any subcontract for "self-performed work" shall be applied to reduce the Cost of the Work under this Agreement and the GMP. For purposes of defining "self-performed work" subject to this Agreement provision, any division of the Construction Manager or any separate Contractor or subcontractor that is partially owned or wholly owned by the Construction Manager or any of their employees or employee's relatives will be considered a related party entity and will be subject to this provision regarding "self-performed work". No "self-performed work" will be allowed to be performed on a lump sum basis.

§ 7.3.7 The Construction Manager (with respect to its suppliers, subcontractors and all lower tier subcontractors) shall provide the Owner advance written notice and shall obtain the Owner's written approval for any proposed subcontract change order, material purchase order, or other financial commitment in an amount in excess of \$5,000 prior to placing such order or entering into such agreement (regardless of whether or not any such commitment will affect the prime contract GMP). It is agreed that sums applicable to any subcontract change order, purchase order or other financial commitment entered into in violation of the above notice and approval requirement shall not be included in the amounts owing to the Construction Manager, Subcontractor or Suppliers whether as a Cost of the Work or as reasonable termination costs in the event of termination.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

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

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 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.

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

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, 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.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Major repairs, overhauls and/or replacements are to be covered by the rental rates, and are not reimbursable. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item. written approval.

§ 7.5.2.1 All costs incurred for minor maintenance and repairs of rented tools or equipment shall be reimbursed at actual cost. Such costs include routine and preventative maintenance, minor repairs, and other incidental costs.

§ 7.5.2.2 Proposed rental rates and related fair market values for equipment owned by the Construction Manager or a related party shall be submitted to and approved by the Owner in writing prior to being used in connection with the Work. The projected usage for each piece of equipment proposed to be rented, and estimated total rentals, shall be submitted for approval in writing in advance in a form satisfactory to the Owner, so that an appropriate lease versus buy decision can be made. The projected usage for each piece of equipment to be rented for use on the project and the estimated total rentals shall be considered by the Construction Manager before the piece of equipment is rented so that an appropriate rent versus buy decision can be made. Purchased equipment shall be considered "job owned". At the completion of the project, the Construction Manager may keep any such equipment for an appropriate fair market value credit to job cost, which will be mutually agreed to by the Owner and the Construction Manager.

§ 7.5.2.3 Each piece of equipment to be rented shall have hourly, daily, weekly, and monthly rates and the most economical rate available shall be reimbursed based on the circumstances of actual need and usage of the piece of equipment while it is stationed at the jobsite. When the piece of equipment is no longer needed for the Work, no rental charges will be reimbursed if the piece of equipment remains at the jobsite for the convenience of the Construction Manager.

§ 7.5.2.4 The reimbursable equipment rental rates for Construction Manager owned tools and equipment shall not exceed 75% of the published rates based on the latest edition of "Rental Rates and Specifications" published by the Associated Equipment Distributors (AED). If the AED publication 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 75% of the current competitive rental rates from local third party equipment rental companies.

§ 7.5.2.5 The aggregate rentals chargeable for each piece of Construction Manager owned tools or equipment shall not exceed 50% of the fair market value of such equipment at the time of its commitment to the Work. The original purchase price and date of purchase of the equipment will be documented with a copy of the purchase invoice for the piece of equipment. Such aggregate limitations will apply, and no further rentals shall be charged even if a piece of equipment is taken off the job and is later replaced by a similar piece of equipment. For purpose of computing the aggregate rentals applicable to aggregate rental limitations, rental charges for similar pieces of equipment will be combined if the pieces of equipment were not used at the same time.

§ 7.5.2.6 Fair market value for used material and equipment as referred to in this Agreement shall mean the estimated price a reasonable purchaser would pay to purchase the used material or equipment at the time it was initially needed for the job. Note: This is usually lower than the price a reasonable purchaser would pay for similar new construction material or construction equipment.

§ 7.5.2.7 Rental charges for equipment which is not owned by the Construction Manager or any of its affiliates, subsidiaries, or other related parties and is rented from third parties for use in proper completion of the Work shall be considered reimbursable and will be reimbursed at actual costs, as long as rental rates are consistent with those prevailing in the locality. **Any lease/purchase rental arrangements must be disclosed to the Owner in advance.** For any lease/purchase arrangements where any of the lease/purchase rental charges were charged to the Owner as reimbursable

job costs, appropriate credit adjustments to job cost will be made for an appropriate pro rata share of the fair market value of the equipment at the time it was last used on the job.

§ 7.5.2.8 All losses resulting from lost, damaged, or stolen tools and equipment shall be the sole responsibility of the Construction Manager, and not the Owner, and the cost of such losses shall not be reimbursable under this Contract.

§ 7.5.2.9 The Construction Manager shall be required to maintain a detailed equipment inventory of all job-owned equipment (either purchased and charged to job cost or job-owned through aggregate rentals) and such inventory shall be submitted to the Owner each month. For each piece of equipment, such inventory must include a minimum (1) original purchase documents including price or acquisition cost (2) acquisition date (3) approved Fair Market Value (FMV) at the time the piece of equipment was first used on the job and (4) final disposition.

§ 7.5.2.10 All costs incurred for minor maintenance and repairs shall be reimbursed at actual cost. Such costs include routine and preventive maintenance, minor repairs and other incidental costs. Repairs and/or replacements of a capital nature are considered to be covered by rental rates. Major repairs and overhauls are not considered routine and ordinary consequently such costs are not reimbursable and are intended to be covered by rental rates.

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

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval-written approval and proof of insurance of the stored materials and equipment. Construction Manager will provide to the Owner any and all supporting documentation reasonably requested and access to stored materials and equipment.

§ 7.6 Miscellaneous Costs

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

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior written approval.

- .1 The Construction Manager's actual cost for insurance coverages shall be considered to be included within the maximum limit for General Condition costs. All premiums for any insurance and bonds required for the Project shall reflect the net actual costs to the Construction Manager after taking into consideration cost adjustments due to experience modifiers, premium discounts, policy dividends, retrospective rating plan premium adjustments, assigned risk pool rebates, refunds or any other reduction not noted.
- .2 In the event that the Construction Manager elects to utilize workers' compensation insurance programs that involve either self-insurance and/or large deductibles, the maximum amount to be considered reimbursable costs under this contract will not exceed an amount equal to 40% of the standard state workers' compensation rates applicable to Construction Manager straight time wages. Any Construction Manager costs incurred in connection with the contractor's elected workers' compensation insurance program that exceed the amount reimbursed by the Owner under the formula in this paragraph will be considered included in and covered by the Construction Manager's Fee.
- .3 In the event that the Construction Manager elects to utilize a subcontractor default insurance program (sometimes referred to as SUBGUARD), the maximum amount to be considered reimbursable costs under this contract will not exceed .6% of the total amount of subcontracts covered by such an insurance program. Any Construction Manager costs incurred in connection with the Construction Manager's elected subcontractor default insurance program that exceeds the amount reimbursable by the Owner under the formula in this paragraph will be considered to be included in and covered by the Construction Manager's Fee.
- .4 In the event that the Construction Manager elects to utilize a Contractor Controlled Insurance Program (CCIP), the maximum to be considered reimbursable costs under this contract will be 2% of the final agreed upon GMP of this contract. This 2% cost factor will cover all insurance required to be carried by

the prime contractor and all applicable Subcontractors covered by this Agreement (specifically workers' compensation insurance, general liability insurance, excess liability insurance, umbrella liability insurance). Any Construction Manager costs incurred in connection with the Construction Manager's elected CCIP program that exceeds the amount reimbursed by the Owner under the formula in this paragraph will be considered to be included in and covered by the Construction Manager's Fee.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior written approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable, but does not include commercial activity tax or gross receipts tax. The Owner, a tax exempt entity, shall provide the Construction Manager with a tax exemption certificate for any taxes for which the Construction Manager may claim an exemption.

§ 7.6.3 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, shall be reimbursed at actual cost imposed by the issuing authority.

§ 7.6.4 Fees—Upon prior written approval of the Owner, fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price. Permit fees, licenses, tests, royalties, damages for infringement on patents and costs of defending suits thereof, and deposits lost for causes other than the Construction Manager's negligence. If royalties or losses and damages, including the cost of defense, are incurred which arise from a particular design, process or the product of a particular manufacturer or manufacturers specified by the Owner or Architect, and the Construction Manager has no reason to believe there will be an infringement of patent rights, such royalties, losses and damages shall be paid by the Owner and not considered as within the GMP.

Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 Intentionally Omitted.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior written approval.

§ 7.6.7 Costs of document reproductions and delivery charges. Reproduction costs will be the actual costs of reproduction subject to a maximum of seven cents (\$.07) per square foot for prints and a maximum of five cents per 8 ½ x 11 inch page for offset print or photo copied contract documents, specifications, etc.

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

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

§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval, for temporary living allowance buy only with the Owner's prior written approval and a Not-To-Exceed basis for the cost of personnel required for the Work, in case it is necessary to temporarily relocate such personnel from distant locations.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties directly connected with the Work. Project related travel expenses shall be reimbursed at actual cost and mileage shall only be reimbursed when traveling on project related business, in a personal vehicle. Reimbursable mileage shall be reimbursed in accordance with the current IRS Standard Business Mileage Rate. Mileage shall not be reimbursed for travel in a company vehicle to or from an employee's home, to or from the main office, for training or other company related business. Any travel involving airfare will require advance written approval by the Owner.

Reimbursables meals shall not include alcoholic beverages.

Reimbursement for meals shall be expensed in accordance with the current USGSA per diem rate for Cleveland, Cuyahoga County, Ohio. Expenses shall be for employees of the Contractor only when engaged in work directly associated with the Work. CWRU does not pay for mark-ups on reimbursable expenses.

Charges listed on the invoice should match precisely with supporting itemized documentation. Supporting itemized documentation for all reimbursable costs is required for reimbursement.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior written approval.

§ 7.7.2 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 Article 10 of AIA Document A201-2017. Intentionally Omitted.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, 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. Intentionally Omitted.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 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 7.9.

~~§ 7.8~~ **§ 7.8 Related Party Transactions**

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 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, in its sole discretion, 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 Article 9. If the Owner, in its sole discretion, 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 Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 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 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 ~~7.7. Costs of the Construction Manager's home office computer services or other outside computer processing services shall be considered overhead and general expense. Accordingly, the Construction Manager should not plan to perform any such computer related services or alternatives at the field office when such services or functions can be performed at the Construction Manager's home or branch offices, or other outside service locations;~~ 5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 ~~Except as provided in Section 7.7.3 of this Agreement, costs~~ Costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, 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;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

- .1 Cost of the Work will be credited with all insurance policy discounts, performance and payment bond rebates or refunds, refunds or return premiums from any Subcontractor default insurance, refunds or rebates from any Construction Manager controlled insurance programs applicable to the project, merchandise rebates of any nature, refunds of any nature, insurance dividends; and a portion of any volume rebates or free material credits earned with purchase of material or other goods and services charged to the job.
- .2 "Cash" discounts which may accrue to the Construction Manager will be limited to a maximum of 1% of indirect cost. All "Cash" discounts greater than 1% shall automatically accrue to the Owner if the Construction Manager is eligible to take advantage of the discounts.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall ~~obtain bids from~~ obtain, in accordance with Section 3.2.4.1, bids from prequalified Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are from a list previously approved by the Owner and are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to Owner. The Construction Manager will be responsible for analyzing then reviewing all bids with the

Architect and the Owner, and reviewing the complete scope, after which time a recommendation will be made for approval by the Owner. The Owner has the right to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection. The Construction Manager will be the licensed builder on this Project, coordinate the Work, and be responsible for delivery of the building on schedule and of the specified quality. The Construction Manager will sign and hold the contracts with the various Subcontractors and suppliers and be responsible to the Owner for resultant work.

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

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, 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 10.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed books, records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. ~~The Owner and the Owner's auditors~~ Owner's accountants and project management and internal auditor staff shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this ~~Contract.~~ Contract, for any proper purpose, including verification of the Construction Manager's compliance with Contract requirements and provisions for pricing change orders and evaluating invoices or claims. The Construction Manager shall preserve these records for a period of ~~three-five~~ (5) years after final payment, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment ~~submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, reviewed by the Architect and signed to evidence review, but not approval by the Construction Manager and approved in writing by the Owner and Certificates for Payment reviewed by the Architect, and approved by the Owner,~~ 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.

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

§ 11.1.3 Provided that an Application for Payment is received by the ~~Architect-Owner~~ not later than the first day of a month, and provided such Application for Payment is reviewed by the Architect and approved by the Owner in accordance with the terms of the Contract Documents, the Owner shall make payment of the amount certified to the Construction Manager not later than the first day of the following month. If an Application for Payment is received by the ~~Architect-Owner~~ after the application date fixed above, and provided such Application for Payment is reviewed by the Architect and approved by the Owner in accordance with the terms of the Contract Documents, payment of the amount certified shall be made by the Owner not later than forty-five (45) days after the ~~Architect-Owner~~ receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices with sufficient detail including Company Name, Address, Phone Number and with a detailed description including labor, equipment and materials identifying the number of hours and rates included, or detailed invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less (2) that portion of the progress payments attributable to the Construction Manager's Fee, plus (3) payrolls for the period covered by the present Application for Payment.

§ 11.1.5 Each Application for Payment shall be based on the ~~most recent schedule of values~~ Owner approved detailed schedule of values which at a minimum shall identify each subcontractor and all components of the Guaranteed Maximum Price (General Conditions, Direct Cost, Contingency, Allowances, Fee and a distribution of Change Orders) submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the ~~Architect~~ Owner may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 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 and for which the Construction Manager has made payment or intends to make 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.

§ 11.1.7 In accordance with AIA Document A201-2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 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 most recent Owner-approved schedule of values;
- .2 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 completed construction or, if approved in writing in advance by ~~the Owner~~, the Owner in writing, (and provided that the Construction Manager, shall provide the Owner with a certificate of insurance for full replacement and naming Owner as an additional insured, provide a bill of sale, and provide for on-site inspection by the Owner), suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 ~~The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 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 included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion as a percentage of the Direct Cost of the Work.~~

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;

- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the ~~Architect~~ Owner may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner’s auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

The Owner and Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, subject to the terms of this Agreement, including but not limited to Section 11.1.8 of this Agreement.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Notwithstanding anything to the contrary in this Agreement and to the fullest extent permitted under Ohio law, the Owner shall be entitled to withhold ten percent (10%) of the Cost of the Work, Construction Manager’s Fee, and General Conditions, as statutory retainage, to be held until thirty (30) days following final completion of the Work. Further, Construction Manager shall be required to contract with Subcontractors to withhold ten percent (10%) of the contract amount of each of Contractor’s subcontracts. Amounts retained may be released to Construction Manager’s Subcontractors only upon Owner’s prior written approval.

§ 11.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

N/A

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

N/A

§ 11.1.8.3 ~~Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:~~Intentionally Omitted.

(Insert any other conditions for release of retainage, such as upon completion of the Owner’s audit and reconciliation, upon Substantial Completion.)

§ 11.1.8.4 Notwithstanding anything contained in the Contract Documents to the contrary, the Construction Manager shall not be entitled to any progress payment for any Work performed unless the Owner shall have received when due, and approved the following: (i) Insurance Certificates; (ii) Payment & Performance Bonds, if required; and (iii) appropriate waiver of liens from the Construction Manager and all tier-subcontractors and suppliers.

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

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

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 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 such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) 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.

§ 11.2 Final Payment

§ 11.2.1 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 Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which necessarily 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; Payment and both have been approved by the Owner; and
- .3 a final Certificate for Payment has been approved by the Owner and issued by the Architect in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will 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 Article 9 of AIA Document A201-2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201-2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 ~~If the Owner's auditors' report concludes 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 Article 15 of AIA Document A201-2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.~~

§ 11.2.3 ~~The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows: Intentionally Omitted.~~

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than forty-five (45) days after the issuance and Owner's approval of the Architect's final Certificate for Payment. Without limiting the generality of the above the Owner's approval shall be subject to the following non-exclusive requirements:

- a. Achievement of Final Completion, including, but not limited to, receipt of a Certificate of Occupancy and a Certificate of Substantial Completion.

- b. Owner's receipt and approval of a final Change Order establishing the final Contract Sum, and such Change Order shall include a detailed final accounting of all contingencies, allowance, savings, and costs.
- c. Owner's receipt of written assignment by all Subcontractors and suppliers of material and equipment of all warranties and guarantees in the form provided by the Owner.
- d. Owner's receipt of three (3) copies of any Maintenance Manual issued by any manufacturer and/or supplier.
- e. Owner's receipt of the Project Record reproducible drawing redlined showing all changes.
- f. Owner's receipt of conditional written releases of all liens and/or requests to file Mechanics', material-men's and like liens against the Project, signed by each Subcontractor and material-man that performed labor or furnished materials in connection with the Work. If any Subcontractor or material or equipment supplier refuses to furnish a release or waiver, the Construction Manager shall furnish a bond satisfactory to the Owner to indemnify him against any such possible lien.
- g. Owner's receipt of all deliverables as specified in the Project Specifications and Contract Documents.
- h. If required by the Owner, Owner's receipt of other data establishing payment or satisfaction of all such obligations.
- i. Owner receipt of all keys issued to Construction Manager and subcontractors.

The amount of the final payment shall be calculated as follows:

- a. Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the Guaranteed Maximum Price.
- b. Subtract amounts, if any, for which the Owner withholds, in whole or in part, a final Certificate for Payment as provided in Section 9.5.1 of A201-2017, or other provisions of the Contract Documents.
- c. Subtract the aggregate of previous payments made by the Owner.

If the aggregate of previous payments is made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner immediately upon demand by the Owner.

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date ~~payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~
(Insert rate of interest agreed upon, if any.)

~~___~~% and at the rate as set forth in Section 5.2.2 of this Agreement.

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201-2017. ~~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 12.1.2 of this Agreement shall not apply.~~

§ 12.1.2 ~~The Architect will serve as the Initial Decision Maker pursuant to Article 15 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.~~

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

Intentionally Omitted.

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

— Arbitration pursuant to Article 15 of AIA Document A201–2017

— Litigation in a court of competent jurisdiction

— Other: *(Specify)*

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction. Intentionally Omitted.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 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 Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work 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 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 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 13.1.4:

- .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 6.1 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.

§ 13.1.6 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 that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. 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 13, 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.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 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;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 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 that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. 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 13, 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.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

Zero Dollars (\$0)

§ 13.3 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 shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 ~~Terms~~ Unless otherwise noted, terms in this Agreement shall have the same meaning as those in A201–2017.

Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.1.1 This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument. Signatures sent by electronic means (facsimile, scanned and sent via e-mail, or signed by electronic signature service where legally permitted) shall be deemed original signatures. Each party agrees to promptly deliver an executed original of this Agreement with its actual signature to the other party, but a failure to do so shall not affect the enforceability of this Agreement, it being expressly agreed that each party to this Agreement shall be bound by its own facsimile signature and shall accept the facsimile signature of the other party to this Agreement.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner’s rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost insurance of the types and limits, containing the endorsements and bonds (if any) as set forth in Article 11 of the General Conditions, for the duration of the entire Project performed under this Agreement, or for such longer durations (if any) stated elsewhere in the Contract Documents.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than \blacksquare (\$ \blacksquare) for each occurrence and \blacksquare (\$ \blacksquare) in the aggregate for bodily injury and property damage. Intentionally Omitted.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than \blacksquare (\$ \blacksquare) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage. Intentionally Omitted.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Intentionally Omitted.

§ 14.3.1.4 Workers’ Compensation at statutory limits and Employers Liability with policy limits not less than \blacksquare (\$ \blacksquare) each accident, \blacksquare (\$ \blacksquare) each employee, and \blacksquare (\$ \blacksquare) policy limit. Intentionally Omitted.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than \blacksquare (\$ \blacksquare) per claim and \blacksquare (\$ \blacksquare) in the aggregate. Intentionally Omitted.

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)
Intentionally Omitted.

Coverage	Limits
\blacksquare	\blacksquare

§ 14.3.1.7 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations. Intentionally Omitted.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance (attached hereto as Exhibit D) to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™ 2019, 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, Exhibit B, Insurance and Bonds, the General Conditions, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™ 2019 Exhibit B, the General Conditions, and elsewhere in the Contract Documents.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

Intentionally Omitted.

§ 14.5 Other provisions: Intentionally Omitted.

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 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.

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™ 2019, Exhibit B, Insurance and Bonds Certificate of Insurance (sample attached as Exhibit D)
- .4 AIA Document A201™–2017, General Conditions of the Contract for Construction Construction, attached as Exhibit B
- .5 AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203–2013 incorporated into this Agreement.)

Intentionally Omitted.

- .6 Other Exhibits:
(Check all boxes that apply.)

AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
(Insert the date of the E234–2019 incorporated into this Agreement.)

[] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

.7 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

- Exhibit C – Construction Contract Change Order Requirements dated 3/11, pages 1 thru 5
- Exhibit D – Sample Certificate of Liability Insurance dated 11/14/13, pages 1 of 1
- Exhibit E – Lien Waivers dated N/A, pages 1 thru 18
- Exhibit F – Standard AutoCAD Documentation, pages 1 thru 9
- Exhibit G – Campus Community Fire and Life Safety Policy dated 7/1/09, pages 1 thru 5
- Exhibit H – Procedures Regarding Impairments to Fire Protection Systems & Procedures for Establishment of a Fire Watch dated 8/14/09, pages 1 thru 5
- Exhibit I – Smoke-Free Workplace dated N/A, pages 1 of 1

§ 15.3 Project Record Documents

The Construction Manager shall maintain at the jobsite one copy of drawings, specifications, addenda, submittals, approved shop drawings, change orders, field orders, testing and inspection records, and any other modifications to the Contract Documents. The Construction Manager shall label all documents "Project Record Documents – THIS SET OF DRAWINGS SHALL BE USED ONLY FOR RECORDING ADDITIONS AND CHANGES", "KEEP CURRENT", and "UPON COMPLETION OF THIS PROJECT DELIVERY PROJECT RECORD DOCUMENTS DRAWINGS TO THE OWNER".

The Construction Manager shall, (1) keep Project Record Documents clean and dry and in good order; (2) file according to Specifications Sections; (3) keep current at all times; (4) shall be maintained in the site-office and not used in the field or on-site; and (5) legibly mark with red permanent pen field changes and referenced to permanent and accessible features of the site or building as applicable, for example:

1. Drawings
 - a. Locations of underground work
 - b. Locations of concealed utilities
 - c. Field changes of dimension and detail
 - d. Changes resulting from Change Order or field order
 - e. Details on the original drawings
2. Specifications
 - a. Manufacturer, model number of equipment actually installed
 - b. Revised construction procedures
3. Shop Drawings
 - a. Changes made after the Architect’s/Engineer’s approval

At Substantial Completion, Construction Manager shall deliver completed Project Record Documents marked with field changes to the Owner. At the completion of the project, the Construction Manager shall submit as-built prints to the Owner and each sheet shall be marked "RECORD DRAWING", with date, Construction Manager name, phone number, and printed name of the person preparing the as-built and deliver on full set of reproducible drawings.

§ 15.4 Other Conditions and Services

The following Additional Services shall be performed upon authorization in writing from the Owner, and shall be paid for as provided in this Agreement.

§ 15.4.1 Services related to investigations, appraisals or evaluations of existing conditions, facilities or equipment, or verification of the accuracy of existing drawings or other information by the Owner.

§ 15.4.2 Services related to the Owner-furnished furniture, furnishings and equipment which are not part of the Project.

§ 15.4.3 Services for tenant or rental spaces.

§ 15.4.4 Consultation on replacement of Work damaged by fire or other cause not attributable to the negligence of the Construction Manager or failure of the Construction Manager to fulfill a specific responsibility, and furnishing services in conjunction with the replacement of such Work.

§ 15.4.5 Preparing to serve, or serving as a witness in connection with any public hearing, arbitration proceeding or legal proceeding.

§ 15.4.6 Recruiting or training maintenance personnel.

§ 15.4.7 Inspection of, and services related to, the Project after the end of the Construction Phase.

§ 15.4.8 Providing any other services not otherwise included in this Agreement.

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

OWNER (Signature)

Peter M. Poulos, Vice President & General Counsel
Office of General Counsel

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

(Printed name and title)

And

By: _____

John F. Sideras, Executive Vice President & CFO
Office of Finance