



HISTORIC  
**JONESBOROUGH**  
TENNESSEE

**PROJECT SPECIFIC DOCUMENTS  
REQUEST FOR PROPOSALS  
FOR  
Construction Manager/General Contractor**

**Jonesborough School  
Jonesborough, Tennessee**

**Release Date: June 1, 2021**

**Town of Jonesborough, Tennessee**

**RFP Identification No. 1-2021**

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# **1 INTRODUCTION**

## **1.1 Statement of Purpose**

The Town of Jonesborough, Tennessee, hereinafter referred to as the Owner, has issued this Request for Proposals (RFP) to define the Owner's minimum service requirements; solicit proposals; detail proposal requirements; and, outline the Owner's process for evaluating proposals and selecting the Construction Manager/General Contractor (CM/GC).

Through this RFP, the Owner seeks to buy the best services at the most favorable, competitive prices and to give all qualified businesses, including those that are owned by minorities, women, and persons with a disability, and small business enterprises, opportunity to do business with the Owner.

The Owner intends to secure a contract for CM/GC services. The CM/GC shall provide consulting, scheduling and estimating/cost control services during the design phase of the Project, and shall be the general contractor during construction, holding the trade contracts and providing the management and construction services during the construction phase. The CM/GC shall competitively procure and contract with the trade contractors and assume the responsibility and the risk of construction delivery within the specified cost and schedule terms, after providing a Guaranteed Maximum Price (GMP) for the scope(s) of work for the project identified on the RFP cover page of the Project Specific Documents.

## **1.2 Scope of Service, Contract Period, and Required Terms and Conditions**

The RFP Attachment 5.3, AIA Document A133 – 2009 details the Owner's contract and general conditions for project:

The AIA Document A133 - 2009 contract substantially represents the contract document that the proposer selected by the Owner must agree to and sign.

## **1.5 RFP Communications**

1.5.1 Unauthorized contact regarding this RFP with employees or officials of the Town of Jonesborough, Tennessee other than the RFP Coordinator detailed below may result in disqualification from this procurement process.

1.5.1.1 Interested Parties must direct all communications regarding this RFP to the following RFP Coordinator, who is the Town of Jonesborough, Tennessee's only official point of contact for this RFP as identified on the RFP cover page.

Thomas J. Burleson  
RFP Coordinator  
3216 South Roan Street,  
Suite 100  
Johnson City, TN 37601  
Telephone # (423) 791-1117  
[email tommy@burlesonconstruction.com](mailto:tommy@burlesonconstruction.com)

1.5.2 The Owner has assigned an RFP identification number that must be referenced in all communications regarding the RFP as identified on the RFP cover page. **(RFP Identification No. 1-2021)**



## 1.6 Notice of Intent to Propose

Each potential proposer should submit a Notice of Intent to Propose (e.g. written, or electronic mail) to the RFP Coordinator by the deadline detailed in the RFP Section 2, Schedule of Events. The notice should include:

- Proposer's name
- name and title of a contact person
- address, telephone number, e-mail address, and facsimile number of the contact person
- contractor license number, classification, expiration date, and license limit

A Notice of Intent to Propose creates no obligation and is not a prerequisite for making a proposal, however, it is necessary to ensure receipt of RFP amendments and other communications regarding the RFP (refer to RFP Sections 1.5, et seq., above).

## 1.7 Proposal Deadline

Proposals must be submitted no later than the Proposal Deadline time and date detailed in the RFP Section 2, Schedule of Events. A proposal must respond to the written RFP and any RFP exhibits, attachments, or addenda. A late proposal shall not be accepted, and a Proposer's failure to submit a proposal before the deadline shall cause the proposal to be disqualified.

## 1.8 Pre-Proposal Conference

A Pre-Proposal Conference will be held at the time and date detailed in the RFP Section 2, Schedule of Events. The purpose of the conference is to discuss the RFP scope of services. While questions will be entertained, the response to any question at the Pre-Proposal Conference shall be considered tentative and non-binding with regard to this RFP. Questions concerning the RFP shall be submitted in writing prior to the Written Comments Deadline date detailed in the RFP Section 2, Schedule of Events. To ensure accurate, consistent responses to all known potential Proposers, the official response to questions will be issued by the Owner as described in RFP Sections 1.5, et seq., above and on the date detailed in the RFP Section 2, Schedule of Events.

Pre-Proposal Conference attendance is mandatory.

Due to COVID-19 concerns accommodations will be made available via zoom conference if needed.

Please contact Tommy Burleson at [tommy@burlesonconstruction.com](mailto:tommy@burlesonconstruction.com) by June 7, 2021 if you want to participate via zoom and the information will be provided to you.

**\*Pre-proposal Conference will be held June 15, 2021 at 2 p.m. EDT  
Jonesborough Visitor Center Auditorium  
117 Boones Street  
Jonesborough, Tennessee 37659**

## 1.9 Introduction and Scope of Services

Scope of Services

General Expectations - Construction Manager

The intent of the Owner in involving a Construction Manager (CM) prior to the Construction Phase of the project is to benefit from the Contractors' expertise with regard to regional market knowledge of

## 1.9 Introduction and Scope of Services continued

construction materials, placement methods and skilled trade considerations. The CM will also provide Construction Document review and working estimate necessary to support the design and construction effort. The CM will play an important role in providing information that will maximize the ability of the Project Delivery Team to meet the Owner's functional, aesthetic, and budgetary needs in the least amount of construction time possible.

- A. Over the duration of the project, the Construction Manager [CM], Architect; and consulting engineers [civil, structural, mechanical] will be expected to attend Monthly Project Delivery Meetings. Additional meetings may be held for pricing review and value engineering as required. During the design and construction phases, the Architect will be responsible for taking minutes during these meetings. During construction, the CM will be responsible for minutes and action items. Minutes are to be distributed within 10 days of the meeting.
- B. Schedule Development and Maintenance
  - 1. Upon being selected, the CM shall develop and maintain a Pre-construction Schedule for the project. Other team members along with the CM shall provide data to be incorporated into the schedule.
  - 2. The Pre-Construction Schedule will identify the responsibilities of the various members of the Project Delivery Team. Key milestones such as budget delivery dates, financing timelines, state submission and review dates, and release of documents for bidding and tentative bid dates will need to be identified. Additionally, the schedule should identify long-lead items that may require special procurement procedures.
- B. Meetings, Information Management, Document Review
  - 1. Pre-Construction Services pricing review meetings will be held monthly during the design phase of the project. The CM shall attend and participate in all meetings.
  - 2. The CM shall develop and maintain a Request For Information (RFI) Log and/or an Action Item Agenda Log to aid in the prompt transfer of information between all members of the Project Delivery Team. The log will be monitored and updated on an ongoing basis and addressed at the review meetings. Unresolved issues should be identified in each review meeting with follow-up responsibilities and response dates being assigned to the appropriate team members, including the CM.
  - 3. The CM shall provide the architect/engineer input addressing cost, constructability, availability of materials, and qualified trades for specialized systems and budget/schedule impact as the contract document phase of the design is completed in order to avoid the issuance of contract documents that exceed budget and schedule limitations.
- C. Construction Budget/Estimate

Based on interim/check set drawings provided by the design team, the CM shall provide budget/estimate information as designated below:

- 1. Construction Document Estimate: The CM shall submit budget for construction based on the intent of provided drawings and specifications. In preparing this estimate the construction manager shall address scope gaps. This estimate shall be submitted with a complete price breakdown and detailed listing of qualifications and assumptions. The budget submission shall

C, Construction Budget/Estimate continued

2. also include a comparison to the Owner's working budget, including a summary listing of problem areas, potential budget overruns, etc. as well as proposed steps & value engineering items to address these issues for consideration by the balance of the Project Delivery Team.

**1.9 Introduction and Scope of Services continued**

D. Subcontractor/Vendor Solicitation and Pre-qualification

1. Through advertisement and other necessary means, CM shall generate interest of the local and regional bidders and develop a master list of vendors and subcontractors interested in being pre-qualified for the work under consideration and which have shown interest in submitting bids for the Project. The resulting list shall include vendors and subcontractors for all major categories of work included in the total Project. Subcontractors for all major trades should be prepared to submit a Contractor's Qualification Statements for approval and placement on the pre-qualified sub-contractor bidders list.
2. CM shall develop proposed qualifications for each bid package to determine that bidders for the project are only pre-qualified companies that are professionally capable of managing and performing the Work. These pre-qualifications should include (a) experience on projects of this size and complexity, (b) Owner/Architect/ Contractor references, (c) financial stability, (d) quality of work, (e) qualified project and field management personnel and (f) projected workload during the occurrence of this Project. CM shall provide proposed qualifications for Owner/Architect approval. CM shall finalize the master list of pre-qualified subcontractors and vendors on the basis of the approved qualifications.
3. When developing the master list of vendors and subcontractors, the CM shall implement procedures to ensure that for open and free competition are met in the prequalification of subcontractors and the subsequent advertisement for bids. CM shall coordinate such procedures with the Owner & Architect.
4. If the CM should receive inquiries during the bid period from subcontractors that have not been pre-qualified, the CM shall verify the qualifications of the interested sub-contractors prior to receipt of their bids.

E. Guaranteed Maximum Price: Upon completion of the Contract Documents for Construction, the CM shall take final bids from subcontractors and submit a complete final construction cost to the Owner in the form of GMP.

1. The CM shall prepare instructions to bidders, bid packages for the various trades, and coordinate advertisement, solicitation, and administration of the prequalification and bidding processes to ensure publicly solicited, pre-qualified bids have been received for the complete project scope.
2. The GMP is to be submitted with a complete cost breakdown, construction schedule, and site management plan.
3. General Conditions and related items shall be included in the GMP in the amounts submitted in this proposal. The General Conditions and fee contained in the Construction Contract shall not exceed the cost proposed in response to this RFP without significant increase/decrease in project scope from that described in this RFP, and any increase shall require approval by both Owner and Agency.

## Guaranteed Maximum Price: continued

4. If the submitted GMP and associated schedule, complete with any incorporated VE items, are within project parameters, they will be utilized as the basis for the final Contract for Construction Services.

### 1.10 Introduction and Scope of Services continued

The GMP and Project Schedule contained in the Construction Contract shall not exceed the maximum cost and schedule duration outlined in this RFP without approval by both Owner and Agency.

#### F. Equipment Review and Coordination of Direct Owner Contracts

1. The CM shall assist the Owner in reviewing and budgeting for installation charges for Owner Furnished Equipment and Furnishings potentially affecting the Construction contract and shall include these budgets or allowances in the GMP to ensure that all project costs are accounted for.

#### G. Cash Flow Analysis

1. Concurrent with the submission of the final GMP and the Construction Phase Schedule, the CM shall work with the Owner to establish and maintain a cash flow analysis for the overall construction duration of the Project.

#### H. Construction Staging and Site Management Planning

1. As a part of the initial budgeting process, the CM shall develop a proposed Site Management Plan for the purpose of staging construction operations. This plan will include such particulars as primary access to and from the construction site, construction parking, on-site entrances, construction personnel entrances and traffic patterns within the existing facility, location of temporary facilities, location of hoist, cranes and other stationary equipment, locations of barricades and construction fences, locations of pedestrian tunnels and/or bridges, etc. This Site Management Plan shall be updated as necessary and included with the submission of the GMP outlined in Section E above.
2. As project conditions demand, the CM shall prepare written instructions to construction forces involving the work in and around occupied facilities. These instructions will include such particulars as special time schedules for working in and around occupied residences, public streets, and adjacent properties. (See Project Description for additional information.)

## 2.0 Construction Services to be Provided

Following submission of the Guaranteed Maximum Price by the CM, Jonesborough Board of Mayor and Aldermen will review the project scope, schedule, and final construction cost and determine if the project will proceed with Construction.

Upon determination that the project will move forward with construction, Jonesborough Board of Mayor and Aldermen and the CM will finalize the Construction Services Contract based on the submitted GMP. All contract requirements have been attached for proposer's review in RFP Attachments 5.3, 5.4, 5.5, and 5.5A. See RFP Attachment 6.0 for specific construction expectations and schedule..

## 2 RFP SCHEDULE OF EVENTS

The following Schedule of Events represents the Owner's best estimate of the schedule that will be followed. Unless otherwise specified, the time of day for the following events will be between 8:00 a.m. and 4:30 p.m., Eastern Time.

<b>RFP 1-2021 SCHEDULE OF EVENTS</b>		
The Owner reserves the right, at its sole discretion, to adjust this schedule as it deems necessary. The Owner will communicate any adjustment to the Schedule of Events to the potential proposers from whom the Owner has received a Notice of Intent to Propose.		
<b>EVENT</b>	<b>TIME</b>	<b>DATE</b> (all dates are Owner business days)
1. Owner Issues RFP		June 1, 2021
2. Disability Accommodation Request Deadline		June 8, 2021
3. Pre-proposal Conference	<b>2:00 PM EDT</b>	June 15, 2021
4. Notice of Intent to Propose Deadline	<b>4:00 PM EDT</b>	June 16, 2021
5. Written Comments Deadline		June 18, 2021
6. Owner Responds to Written Comments		June 29, 2021
7. Proposal Deadline	<b>4:00 PM EDT</b>	July 7, 2021
8. Owner Completes Technical Proposal Evaluations		July 8, 2021
9. Owner Opens Cost Proposals and Calculates Scores		July 9, 2021
10. Owner Issues the Intent to Award Notice and Procurement File Opened for Public Inspection		July 12, 2021
11. Jonesborough Board of Mayor and Aldermen Approval		July 14, 2021
12. Contract Signing (Preconstruction)		July 16, 2021
13. Contract Start Date (Preconstruction)		July 19, 2021

### **3 PROPOSAL REQUIREMENTS**

Each Proposer must submit a proposal in response to this RFP with the most favorable terms that the Proposer can offer. There will be no best and final offer procedure. The Proposal shall be brief and to the point in a direct response to the information requested for each item.

#### **3.1 Proposal Form and Delivery**

3.1.1 Each response to this RFP must consist of a Technical Proposal and a Cost Proposal (as described below).

3.1.2 Each Proposer must submit five (5) copies of the Technical Proposal, and a flash drive (flash drive may NOT be password protected) with complete electronic documents of the technical response to the Owner in a sealed package that is clearly marked:

“Technical Proposal in Response to RFP No. (as identified on the RFP cover page) – Do Not Open”

3.1.3 Each Proposer must submit one (1) Cost Proposal to the Owner in a separate, sealed package that is clearly marked:

“Cost Proposal in Response to RFP No. (as identified on the RFP cover page) - Do Not Open”

3.1.4 The Proposer shall enclose the separately sealed proposals (as detailed above) in a larger package and the Proposer must clearly mark the outermost package:

“Contains Separately Sealed Technical and Cost Proposals for RFP No. (as identified on the RFP cover page) and list the Proposer’s name, address, contractor license number, classification, expiration date and license limit.

3.1.5 The Owner must receive all proposals in response to this RFP, at the following address, no later than the Proposal Deadline time and date detailed in the RFP Section 2, Schedule of Events.

Glenn Rosenoff  
Town Administrator  
123 Boone Street  
Jonesborough, TN 37659  
Telephone # (423) 753-1030  
[email GRosenoff@jonesboroughtn.org](mailto:GRosenoff@jonesboroughtn.org)

3.1.6 A Proposer may not deliver a proposal orally or by any means of electronic transmission.

#### **3.2 Technical Proposal**

3.2.1 The RFP Attachment 5.7, Technical Proposal and Evaluation Guide details specific requirements for making a Technical Proposal in response to this RFP. This guide includes mandatory and general requirements as well as technical queries requiring a written response.

No pricing information (except for what is specifically requested) shall be included in the Technical Proposal. Inclusion of Cost Proposal amounts (RFP Attachment 5.8) in the Technical Proposal shall make the proposal non-responsive and the Owner shall reject it.

3.2.2 Each Proposer must use the Technical Proposal and Evaluation Guide to organize, reference, and draft the Technical Proposal. Each Proposer should duplicate the Technical Proposal and Evaluation Guide and use it as a table of contents covering the Technical Proposal (adding proposal page numbers as appropriate).

- 3.2.3 Each proposal should be economically prepared, with emphasis on completeness and clarity of content. A proposal must be written on standard 8 1/2" x 11" paper in a spiral bound format that lays flat on a desktop. All proposal pages must be numbered. Maximum number of pages shall not exceed 60 pages including pages with photos, dividers, charts, spreadsheets, and appendices. Pages with print on both sides of the page count as two pages.
- 3.2.4 All information included in a Technical Proposal should be relevant to a specific requirement detailed in the Technical Proposal and Evaluation Guide. All information must be incorporated into a response to a specific requirement and clearly referenced. Any information not meeting these criteria will be deemed extraneous and will in no way contribute to the evaluation process.
- 3.2.5 The Owner may determine a proposal to be non-responsive and reject it if the Proposer fails to organize and properly reference the Technical Proposal as required by this RFP and the Technical Proposal and Evaluation Guide.
- 3.2.6 The Owner may determine a proposal to be non-responsive and reject it if the Technical Proposal document fails to appropriately address/meet all of the requirements detailed in the Technical Proposal and Evaluation Guide. Specifically, failure to provide any of the RFP Attachment 5.7 Section A pass/fail items will result in a non-responsive proposal which will not be evaluated further. In addition, if any of the RFP Attachment 5.7 Section B or C items are not fully addressed, then scoring for that sub-item will be 0.

### **3.3 Cost Proposal**

- 3.3.1 The Cost Proposal must be submitted to the Owner in a sealed package separate from the Technical proposal.
- 3.3.2 Each Cost Proposal must be recorded on an exact duplicate of the RFP Attachment 5.8, Cost Proposal and Scoring Guide.
- 3.3.3 Each Proposer shall only record the proposed cost exactly as required or allowed by the Cost Proposal and Scoring Guide and shall not record any other rates, amounts, or information.
- 3.3.4 The Proposer shall submit the Pre-Construction Phase Services Fee (Attachment 5.8-Section A), CM/GC Construction Services Fixed Fee (Attachment 5.8-Section B), CM/GC Construction Services General Conditions Budget Guide (Attachment 5.8-Section C), and the Summary and Scoring Guide (Attachment 5.8-Section D).
- 3.3.5 The Proposer must sign and date the Cost Proposal.
- 3.3.6 If a Proposer fails to submit a Cost Proposal as required, the Owner shall determine the proposal to be non-responsive and reject it.

## **4 PROPOSAL EVALUATION & CONTRACT AWARD**

### **4.1 Evaluation Categories and Maximum Points**

The Owner will consider qualifications and experience, technical approach, and cost in the evaluation of proposals. The maximum points that shall be awarded for each of these categories are detailed below.

<b>CATEGORY</b>	<b>MAXIMUM POINTS POSSIBLE</b>
Qualifications and Experience	<b>45</b>
Technical Approach	<b>25</b>
Cost Proposal	<b>30</b>

### **4.2 Evaluation Process**

The proposal evaluation process is designed to award the contract not necessarily to the Proposer of least cost, but rather to the Proposer with the best combination of attributes based upon the evaluation criteria.

- 4.2.1 The RFP Coordinator will use the RFP Attachment 5.7, Technical Proposal and Evaluation Guide to manage the Technical Proposal Evaluation and maintain evaluation records.
  - 4.2.1.1 The RFP Coordinator will review each Technical Proposal to determine compliance with mandatory requirements (refer to RFP Attachment 5.7, Technical Proposal and Evaluation Guide, Technical Proposal Section A). If the RFP Coordinator determines that a proposal may have failed to meet one or more of the mandatory requirements, the Proposal Evaluation Team will review the proposal and document its determination of whether: (1) the proposal meets requirements for further evaluation; (2) the Owner will request clarifications or corrections; or, (3) the Owner will determine the proposal non-responsive to the RFP and reject it.
  - 4.2.1.2 A Proposal Evaluation Team, made up of three or more employees of the Town of Jonesborough, Tennessee, Design Team, Owners Representative, and Industry Representative will evaluate each Technical Proposal that appears responsive to the RFP.
  - 4.2.1.3 Each Proposal Evaluation Team member will independently, evaluate each proposal against the evaluation criteria in this RFP, rather than against other proposals, and will score each in accordance with the RFP Attachment 5.7, Technical Proposal and Evaluation Guide.
  - 4.2.1.4 The Owner reserves the right, at its sole discretion, to request Proposer clarification of a Technical Proposal or to conduct clarification discussions with any or all Proposers. Any such clarification or discussion shall be limited to specific sections of the proposal identified by the Owner. The subject Proposer shall put any resulting clarification in writing as may be required by the Owner.
  - 4.2.1.5 The Owner reserves the right to receive an oral presentation from firms scoring high on the Technical Proposal. Oral presentations and the number of firms interviewed are at the sole discretion of the Owner.
- 4.2.2 After Technical Proposal evaluations are completed, the RFP Coordinator will open the Cost Proposals and use the RFP Attachment 5.8D, Cost Proposal - Summary and Scoring Guide to calculate and document the Cost Proposal scores.
- 4.2.3 For each responsive proposal, the RFP Coordinator will add the Proposer's Technical Proposal score to the Cost Proposal score (refer to RFP Attachment 5.9, Proposal Score Summary Matrix).



### **4.3 Contract Award Process**

- 4.3.1 The RFP Coordinator will forward the results of the proposal evaluation process to the Jonesborough Board of Mayor and Aldermen who will consider the proposal evaluation process results and all pertinent information available to make a determination about the contract award. The Owner reserves the right to make an award recommendation without further discussion of any proposal.
- 4.3.2 After the approval of the Jonesborough Board of Mayor and Aldermen, the Owner will issue an Intent to Award Notice to identify the apparent best-evaluated proposal on the Intent to Award Notice date detailed in the RFP Section 2, Schedule of Events. The Intent to Award Notice shall not create rights, interests, or claims of entitlement in either the Proposer with apparent best-evaluated proposal or any other Proposer.
- 4.3.3 The Owner will also make the RFP files available for public inspection on the Intent to Award Notice date detailed in the RFP Section 2, Schedule of Events.
- 4.3.4 The Proposer with the apparent best-evaluated proposal must agree to and sign a contract with the Owner which shall be substantially the same as the RFP Attachment 5.3, AIA Document A133 - 2009. However, the Owner reserves the right, at its sole discretion, to add terms and conditions or to revise pro forma contract requirements in the Owner's best interests subsequent to this RFP process. No such terms and conditions or revision of contract requirements shall materially affect the basis of proposal evaluations or negatively impact the competitive nature of the RFP process.
- 4.3.5 The Proposer with the apparent best-evaluated proposal must sign and return the contract drawn by the Owner pursuant to this RFP no later than the Contract Signature Deadline date detailed in the RFP Section 2, Schedule of Events. If the Proposer fails to provide the signed contract by the deadline, the Owner may determine that the Proposer is non-responsive to the terms of this RFP and reject the proposal.
- 4.3.6 If the Owner determines that the apparent best-evaluated proposal is non-responsive and rejects the proposal after opening Cost Proposals, the RFP Coordinator will re-calculate scores for each responsive Cost Proposal to determine the new, apparent best-evaluated proposal.

### **4.4 Licensure**

Before a contract pursuant to this RFP is signed, the apparent successful Proposer must hold all necessary, applicable business, contractors and professional licenses. The Owner may require any or all Proposers to submit evidence of proper licensure.

### **4.5 Insurance**

The Owner will require the apparent successful Proposer to provide proof of insurance coverage before entering into a contract. Failure to provide evidence of such insurance coverage is a material breach and grounds for termination of the contract negotiations. Any insurance required by the Owner shall be in form and substance acceptable to the Owner.

At the option of the CM/GC the trade contract(s) for hazardous materials abatement may be held by the CM/GC or the Owner if a part of the work scope. Under either option the CM/GC shall coordinate the bidding process and implementation of the Work. The Owner shall be named insured under either option.

### **4.6 Contract Approval**

The RFP and the CM/GC selection processes do not obligate the Owner and do not create rights, interests, or claims of entitlement in either the Proposer with the apparent best-evaluated proposal or any other Proposer. Contract award and Owner obligations pursuant thereto shall commence only after the contract is signed by the CM/GC and the Mayor of Jonesborough, Tennessee.

#### **4.7 Bonding**

The Owner shall require bonding in accordance with the Owner's Designers Manual and the General Conditions of the Contract.

#### **4.8 Contract Payments**

All contract payments shall be made in accordance with the contract's Payment Terms and Conditions provisions (refer to RFP Attachment 5.3 AIA Document A133-2009). No payment shall be made until the contract is signed by General Contractor and Owner. Under no conditions shall the Owner be liable for payment of any type associated with the contract or responsible for any work done by the CM/GC, even work done in good faith and even if the CM/GC is orally directed to proceed with the delivery of services, if it occurs before contract approval by Owner, or before the contract start date or after the contract end date specified by the contract.

#### **4.9 CM/GC Performance**

The CM/GC shall be responsible for the completion of all work set out in the contract. All work is subject to inspection, evaluation, and acceptance by the Owner. The Owner may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the contract.

#### **4.10 Additional Work**

The Owner may request the CM/GC to perform additional work during the pre-construction phase services for which the CM/GC would be compensated in accordance with the Contract. That work shall be within the general scope of this RFP. In such instances, the Owner shall provide the CM/GC a written description of the additional work, and the CM/GC shall submit a time schedule for accomplishing the additional work and a price for the additional work. If the Owner and the CM/GC reach an agreement regarding the work and associated compensation, such agreement shall be affected by means of a written letter of authorization. Any such letter requiring additional work must be mutually agreed upon by the parties. The CM/GC shall not commence additional work until the Owner has issued a written letter of authorization and secured all required approvals.

# RFP Attachment 5.1A

## RFP GENERAL REQUIREMENTS

### NONDISCRIMINATION

**1.1** No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the Town of Jonesborough, Tennessee's contracted programs or activities on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the Town of Jonesborough, Tennessee or in the employment practices of the State's contractors. Accordingly, all vendors entering into contracts with the Town of Jonesborough, Tennessee shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

### ASSISTANCE TO PROPOSERS WITH A DISABILITY

**2.1** A Proposer with a disability may receive accommodation regarding the means of communicating this RFP and participating in this RFP process. A Proposer with a disability should contact the RFP Coordinator to request reasonable accommodation no later than the Disability Accommodation Request Deadline detailed in the RFP Schedule of Events.

### RFP COMMUNICATIONS

**3.1** Any oral communications shall be considered unofficial and non-binding with regard to this RFP.

**3.2** Each Proposer shall assume the risk of the method of dispatching any communication or proposal to the Owner. The Owner assumes no responsibility for delays or delivery failures resulting from the method of dispatch. Actual or electronic "postmarking" of a communication or proposal to the Owner by a deadline date shall not substitute for actual receipt of a communication or proposal by the Owner.

**3.3** The RFP Coordinator must receive all written comments, including questions and requests for clarification, no later than the Written Comments Deadline detailed in the RFP section 2, Schedule of Events.

**3.4** The Owner reserves the right to determine, at its sole discretion, the appropriate and adequate responses to written comments, questions, and requests for clarification. The Owner's official responses and other official communications pursuant to this RFP shall constitute an addendum of this RFP.

**3.5** The Owner will convey all official responses and communications pursuant to this RFP to the potential Proposers from whom the Owner has received a Notice of Intent to Propose.

**3.6** Only the Owner's official, written responses and communications shall be considered binding with regard to this RFP.

**3.7** The Owner reserves the right to determine, at its sole discretion, the method of conveying official responses and communications pursuant to this RFP (e.g., written, facsimile, electronic mail, or Internet posting).

**3.8** Any data or factual information provided by the Owner, in this RFP or an official response or communication, shall be deemed for informational purposes only, and if a Proposer relies on such data or factual information, the Proposer shall either: (1) independently verify the information; or, (2) obtain the Owner's written consent to rely thereon.

### GENERAL RFP CONDITIONS AND CONTRACTING INFORMATION

**4.1 Waiver of Objections.** Each Proposer shall carefully review this RFP and all Attachments, including but not limited to the *pro forma* contract, for comments, questions, defects, objections, or any other matter requiring clarification or correction (collectively called "comments"). Comments concerning RFP objections must be made in writing and received by the Owner no later than the Written Comments Deadline detailed in the RFP section 2, Schedule of Events. This will allow issuance of any necessary addenda and help prevent the opening of defective proposals upon which contract award could not be made. Protests based on any objection shall be considered waived and invalid if these comments/objections have not been brought to the attention of the Owner, in writing, by the Written Comments Deadline.

**4.2 RFP Addenda and Cancellation.** The Owner reserves the unilateral right to issue addenda to this RFP in writing at any time. If an RFP addenda is issued, the Owner will convey such addenda to the potential Proposers who submitted a Notice of Intent to Propose. Each proposal must respond to the final written RFP and any exhibits, Attachments, and addenda. The Owner reserves the right, at its sole discretion, to cancel and reissue this RFP or to cancel this RFP in its entirety in accordance with applicable laws and regulations.

#### **4.3 Proposal Prohibitions and Right of Rejection.**

**4.3.1** The Owner reserves the right, at its sole discretion, to reject any and all proposals in accordance with applicable laws and regulations.

**4.3.2** Each proposal must comply with all of the terms of this RFP and all applicable State laws and regulations. The Owner may reject any proposal that does not comply with all of the terms, conditions, and performance requirements of this RFP. The Owner may consider any proposal that does not meet the requirements of this RFP to be non-responsive, and the Owner may reject such a proposal.

**4.3.3** A proposal of alternate services (i.e., a proposal that offers services different from those requested by this RFP) shall be considered non-responsive and rejected.

**4.3.4** A Proposer shall not restrict the rights of the Owner or otherwise qualify a proposal. The Owner may determine such a proposal to be a non-responsive counteroffer, and the proposal may be rejected.

**4.3.5** A Proposer shall not submit the Proposer's own contract terms and conditions in a response to this RFP. If a proposal contains such terms and conditions, the Owner may determine, at its sole discretion, the proposal to be a non-responsive counteroffer, and the proposal may be rejected.

**4.3.6** A Proposer shall not submit more than one proposal. Submitting more than one proposal shall result in the disqualification of the Proposer.

**4.3.7** A Proposer shall not submit multiple proposals in different forms. This prohibited action shall be defined as a Proposer submitting one proposal as a prime contractor and permitting a second Proposer to submit another proposal with the first Proposer offered as a subcontractor. This restriction does not prohibit different Proposers from offering the same subcontractor as a part of their proposals, provided that the subcontractor does not also submit a proposal as a prime contractor. Submitting multiple proposals in different forms may result in the disqualification of all Proposers knowingly involved.

**4.3.8** The Owner will reject a proposal if the Cost Proposal was not arrived at independently without collusion, consultation, communication, or agreement as to any matter relating to such prices with any other Proposer. Regardless of the time of detection, the Owner will consider any of the foregoing prohibited actions to be grounds for proposal rejection or contract termination.

**4.4 Waiver of Variances.** The Owner reserves the right, at its sole discretion, to waive a proposal's variances from full compliance with this RFP. If the Owner waives minor variances in a proposal, such waiver shall not modify the RFP requirements or excuse the Proposer from full compliance with such. Notwithstanding any minor variance, the Owner may hold any Proposer to strict compliance with this RFP.

**4.5 Incorrect Proposal Information.** If the Owner determines that a Proposer has provided, for consideration in this RFP process or subsequent contract negotiations, incorrect information that the Proposer knew or should have known was materially incorrect, that proposal shall be determined non-responsive and shall be rejected.

#### **4.6 Proposal of Additional Services**

**4.6.1** If a proposal offers services in addition to those required by and described in this RFP, the additional services may be added to the contract before contract signing at the sole discretion of the Owner. Notwithstanding the foregoing, a Proposer shall not propose any additional cost amount(s) or rate(s) for additional services.

**4.6.2** The Proposer's Cost Proposal shall record only the proposed cost as required in this RFP and shall not record any other rates, amounts, or information except for the additional items allowed for in the CM/GC Construction Services General Conditions Budget Guide – RFP Attachment 5.8 – Section C.

**4.6.3** If a Proposer fails to submit a Cost Proposal as required, the Owner will determine the proposal to be non-responsive and shall reject the proposal.

#### **4.7 Assignment and Subcontracting**

**4.7.1** The Proposer awarded a contract pursuant to this RFP shall not transfer, or assign any portion of the contract without the Owner's prior, written approval.

**4.7.2** A subcontractor may only be substituted for a proposed subcontractor at the discretion of the Owner and with the Owner's prior, written approval.

**4.7.3** At its sole discretion, the Owner reserves the right to refuse approval of any subcontract, transfer, or assignment.

**4.7.4** The Proposer, if awarded a contract pursuant to this RFP, shall be the prime CM/GC and shall be responsible for all pre-construction and construction services work performed.

**4.8 Joint Ventures** If a Proposer intends to submit a Proposal as a joint venture, then the following requirements shall apply:

**4.8.1** For the purposes of this RFP, the Owner recognizes a joint venture as separate organizations or business entities that intend to combine professional or technical expertise and business experience, and to share contractual and project responsibilities in performance of a contract pursuant to this RFP.

**4.8.2** Each joint venture participant shall meet the licensure requirements stated in the RFP.

**4.8.3** Each joint venture participant shall meet the insurance requirements stated in the RFP.

**4.8.4** Each joint venture participant shall individually provide all documentation required for review of financial responsibility and stability. The Owner will not recognize nor accept as a singular qualification, any combination of financial assets and resources from separate organizations or business entities submitting a Proposal in response to this RFP.

**4.8.5** A subcontractor to a Proposer is not a joint venture participant.

**4.9 Right to Refuse Personnel** At its sole discretion, the Owner reserves the right to refuse any personnel, of the CM/GC or a subcontractor, for use in the performance of a contract pursuant to this RFP.

**4.10 Proposal Withdrawal.** A submitted proposal may be withdrawn at any time up to the Proposal Deadline time and date detailed in the RFP section 2, Schedule of Events. To do so, a Proposer shall submit a written request, signed by a Proposer's authorized representative to withdraw a proposal. After withdrawing a previously submitted proposal, a Proposer is eligible to submit another proposal at any time up to the Proposal Deadline.

**4.11 Proposal Errors and Amendments.** Each Proposer is liable for all proposal errors or omissions. A Proposer shall not be allowed to alter or amend proposal documents after the Proposal Deadline time and date detailed in the RFP section 2, Schedule of Events unless such is formally requested, in writing, by the Owner.

**4.12 Proposal Preparation Costs.** The Owner will not pay any costs associated with the preparation, submittal, presentation or contracting of any proposal.

#### **4.13 Disclosure of Proposal Contents.**

**4.13.1** Each proposal and all materials submitted to the Owner in response to this RFP shall become the property of the Town of Jonesborough, Tennessee.

**4.13.2** Selection or rejection of a proposal does not affect this right. All proposal information, including detailed price and cost information, shall be held in confidence during the evaluation process. Notwithstanding, a list of actual Proposers submitting timely proposals may be available to the public, upon request, directly after technical proposals are opened by the Owner.

**4.13.3** Upon the completion of the evaluation of proposals,

indicated by public release of an intent to Award Notice, the proposals and associated materials shall be open for review by the public in accordance with Tennessee Code Annotated, Section 10-7-504(a)(7).

**4.13.4** By submitting a proposal, the Proposer acknowledges and accepts that the full proposal contents and associated documents shall become open to public inspection.

**4.14 Severability.** If any provision of this RFP is declared by a court to be illegal or in conflict with any law, said decision shall not affect the validity of the remaining RFP terms and provisions, and the rights and obligations of the Owner and Proposers shall be construed and enforced as if the RFP did not contain the particular provision held to be invalid.

## **RFP Attachment 5.1B**

### **RFP GENERAL REQUIREMENTS**

#### **USDA Procedural Requirements**

This project has been funded through the USDA's Rural Development program, and the Construction Manager will be required to comply with USDA requirements in the completion of preconstruction and construction activities, as well as assisting the Owner as required in the USDA financing process. Proposers should review the contract, including attachments, as outlined in the RFP Attachments 5.3, 5.4, 5.5, & 5.5A. In general, major requirements affecting the project include the following:

1. Project requirements will be governed by USDA's RD Instruction 1942A. For additional information, the complete guide can be found at the following link:  
<https://www.rd.usda.gov/files/1942a.pdf>
2. Project construction contract will be based on the AIA A133-2009, and will include modifications as included in Guide 27, Attachment #5, of the RD Instruction 1942A (in addition to other modifications.) All modifications have been included within proposed contract attached to this RFP
3. Contractor will be required to assist the Owner in the preparation of materials for review by the Agency. Contractor's responsibilities will include providing budgets with breakouts per USDA requirements, certifying compliance with Agency's Equal Opportunity policies, providing required disclosures of interests amongst the parties, information about previous participation in USDA programs, and other procedural forms and information as required by USDA and the program leader(s).
4. The project will be required to comply with the accessibility requirements of the 2015 Architectural Barriers Act Accessibility Standard (ABAAS).
5. This project is not governed by federal wage rates as established in the Davis-Bacon Act.
6. American Iron and steel as well as buy American requirements do not apply to this project.

(The "Agency" listed above is the United States Department of Agriculture Rural Development)

## **5.2A Advertisement for Proposals**

### **ADVERTISEMENT FOR PROPOSAL**

#### **REQUEST FOR PROPOSAL**

#### **PROJECT NOTICE**

#### **CONSTRUCTION MANAGER/GENERAL CONTRACTOR FOR**

#### **JONESBOROUGH SCHOOL, JONESBOROUGH, TENNESSEE**

Sealed RFP's for Construction Manager/General Contractor for Jonesborough School, Jonesborough, Tennessee (RFP No.1-2021) will be received by the Town of Jonesborough, Town Administrator, Glenn Rosenoff, at Address 123 Boone Street Jonesborough, TN 37659 until 4:00 PM EDT on July 7, 2021. RFP's received after that time will not be considered. A Mandatory Pre-proposal conference is scheduled for 2:00 p.m., June 15, 2021 at the Jonesborough Visitor Center, 117 Boones Street. Jonesborough, Tennessee 37659.

Due to COVID-19 concerns accommodations will be made available via zoom conference if needed.

Please contact Tommy Burleson at [tommy@burlesonconstruction.com](mailto:tommy@burlesonconstruction.com) by June 7, 2021 if you want to participate via zoom and the information will be provided to you.

A non-mandatory Notice of Intent to Propose deadline is June 16, 2021 at 4 p.m. Proposer must be a state licensed contractor as required by Contractor's Licensing Act 1994 (TCA Title 62, Chapter 6).

The RFP is posted on the Town's website at: <https://www.jonesboroughtn.org> Or call 423-753-1030 to request a proposal package.

The Town of Jonesborough reserves the right to reject any and all RFP's, to waive informalities, and to accept the response that is judged to be in the best interest of the Town. The Town of Jonesborough is an Equal Opportunity Employer.

## **5.2B Bidders Instructions**

### **BIDDERS INSTRUCTIONS**

#### **INSURANCE**

The attached Insurance Checklist (which includes a section for the Insurance agent to fill-out) must be completed and returned with the bid package. Successful vendor shall provide certificate of insurance, as specified, prior to contract release by Town of Jonesborough Purchasing Department.

#### **DRUG FREE WORKPLACE**

All bidders must execute the enclosed Drug Free Workplace Affidavit to verify compliance with TCA 50-9-113 and return same with bid response. Failure to comply with this requirement will declare that bid non-responsive.

#### **SECTION I – PURPOSE OF THE DRUG & ALCOHOL TESTING PROGRAM**

The Town of Jonesborough, Tennessee recognizes its responsibility to provide safe and efficient operations for our employees, our citizens and the general public. Our commitment to provide safe and efficient operations is shown by the implementation of programs and procedures which ensure compliance with appropriate safety measures, as well as the letter and intent of all applicable laws and regulations. There is sufficient evidence to conclude that the use of illegal drug/alcohol; drug/alcohol dependence and drug/alcohol abuse seriously impairs an employee's performance and general physical and mental health. The illegal possession and use of drugs, alcohol and/or narcotics by employees of the Town is a crime in this jurisdiction and is clearly unacceptable. Therefore, the Town of Jonesborough, Tennessee has adopted this written policy to ensure an employee's fitness for duty as a condition of employment; to ensure the drug tests and alcohol tests are conducted on safety-sensitive positions in the categories of: pre-employment, random testing, suspicion testing, and return-to-duty testing.

To comply with TCA Title 50 Chapter 9 Part 1, all bidders and/or those proposing to do service with the Town must have a testing program of the same or better than the requirements of the Town of Jonesborough, Tennessee.

#### **BIDDER'S ELIGIBILITY**

**Bidder must include a copy of STATE CONTRACTOR'S LICENSE** with bid submittal.

#### **MANDATORY PRE-BID**

**If a mandatory pre-bid is a bid requirement then only the company name's listed on the sign-in register will be considered responsive.**

#### **RIGHTS AND OPTIONS OF THE TOWN OF JONESBOROUGH, TENNESSEE:**

- Determine those proposers who are most qualified.
- Reject any or all proposals for any reason, at its sole discretion.
- Supplement, amend, or otherwise modify this RFP.
- Cancel this RFP with or without the submission of another RFP.
- Issue additional solicitations for information and proposals, and conduct investigations with respect to the qualifications of each respondent.



## **ATTACHMENT 5.3**

# AIA® Document A133™ – 2009

## **Standard Form of Agreement Between Owner and Construction Manager as Constructor** where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

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

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

Town of Jonesborough  
123 Boone Street  
Jonesborough, TN 37659

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

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

Construction of school (K-8) for use by the Washington County School Board and athletic complex for use by the Washington County School Board and the Town of Jonesborough (commonly referred to collectively as "Jonesborough K-8 School")

The Architect:  
(Name, legal status and address)

Clark Nexsen Architects  
210 East Watauga Avenue  
Johnson City, TN 37601

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

Bob Browning  
123 Boone Street  
Jonesborough, TN 37659

The Owner's Construction Advisor:  
Burleson Construction Company  
3216 S. Roan Street, Suite 100  
Johnson City, TN 37601

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

### **ADDITIONS AND DELETIONS:**

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

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

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

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

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

Ken Ross  
Phone: (423) 929-2191  
Cell: (423) 773-9420  
Email: Ken.Ross@ClarkNexsen.com

The Construction Advisor's Designated Representative  
Thomas J. Burleson  
Phone: (423) 232-7378  
Cell: (423) 791-1117  
Email: Tommy@BurlesonConstruction.com

The Owner and Construction Manager agree as follows.

NOTE: In addition to the following, the Construction Manager shall provide its services hereunder in conjunction with the services of the Construction Advisor to the Owner. The Construction Manager shall not be responsible for the actions taken by the Construction Advisor. The Owner's approvals or required submittals or information under this Agreement shall be made following opportunity for consultation with the Construction Advisor. The Construction Manager's required submittals to the Owner or the Architect shall be made simultaneously to the Construction Advisor. Communications and reports of the Construction Manager to the Owner or Architect shall include the Construction Advisor. The Construction Advisor shall be notified in advance of meetings between the Construction Manager and Owner or Architect and may be present at the Construction Advisor's election. Consultations among the Construction Manager and the Owner or the Architect shall include the Construction Advisor. In each instance, the Construction Manager will give due consideration to the comments, information, estimates, and input of the Construction Advisor as a representative of the Owner.

NOTE: This Agreement is modified and supplemented by the provisions of the Rural Development Guide 27 (the "RD Guide"), attached hereto as EXHIBIT C.



## TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 3 OWNER'S RESPONSIBILITIES
- 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 6 COST OF THE WORK FOR CONSTRUCTION PHASE
- 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
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- 9 DISPUTE RESOLUTION
- 10 TERMINATION OR SUSPENSION
- 11 MISCELLANEOUS PROVISIONS
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## EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

#### § 1.2 Relationship of the Parties

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

#### § 1.3 General Conditions

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

§ 1.3.1 It is intended that the time for performance of construction services to be provided under this Contract shall be in accordance with the dates specified in the applicable GMP Amendment (sometimes referred to herein as the "Guaranteed Maximum Price Amendment"). Provision of preconstruction services shall be in such a manner as to not delay the performance of Work by the Project Architect.

§ 1.3.2 Completion of the Design Phase shall mean the completion of the Drawings and Specifications sufficient to submit to the applicable governmental agencies for permitting and for submission and acceptance of the GMP Amendment. The Owner, Construction Advisor and Construction Manager shall establish a fixed date of Substantial Completion ("Contract Time") at the time that the Guaranteed Maximum Price (sometimes referred to herein as the "GMP") is established as provided in Article 2.2. The Contract Substantial Completion Date shall mean the Contract Date for completion of the applicable phase subject to the GMP Amendment.

§ 1.3.3 The Date of Substantial Completion of a designated portion thereof is the date when construction is sufficiently complete in accordance with the Drawings and Specifications so the Owner can obtain a Certificate of Occupancy to occupy or utilize the designated portion of the Project which is the subject to the applicable GMP Amendment. Warranties called for by this Agreement or by the Drawings and Specifications shall commence on the Date of Substantial Completion of the Work subject to the GMP Amendment.

§ 1.3.4 The Construction Manager expressly agrees to complete the Work within the time specified in the GMP Amendment. The Owner will grant an extension of the allowable Contract Time when Work on the critical path is delayed by factors determined to be beyond the Construction Manager's control which would not be reasonably anticipated or contemplated at the time the Guaranteed Maximum Price and Date of Substantial Completion were established. Extensions of Contract Time will not be granted for delays due to fault or negligence of the Construction Manager and the Owner resulting from delays caused, in whole or in part, by the Construction Manager.

§ 1.3.5 If the Construction Manager is delayed in the critical path of the Work for any of the reasons specified below, it shall give written notice as specified in Article 5.4 below. Upon proper notice, Construction Manager shall be entitled to compensation as provided in Article 5.4 below and to an extension of the Contract Time for a delay in the progress of the critical path of the Project caused by any of the following:

1. Any delay caused by an act or neglect of the Owner, the Architect/Engineer or by any employee of either, or by any separate contractor employed by the Owner,
2. Any delay caused by changes ordered or written directives in the Project by Owner,
3. Any delay caused by fire or other material casualty event not caused in whole or in part by the Construction Manager.
4. Any delay caused by, materially adverse weather conditions not reasonably anticipatable, or
5. By delay authorized by the Owner;

§ 1.3.6 If Construction Manager has complied with the notice provisions of Article 5.4 and the parties can agree on the impact on the Construction Completion Date, the Contract Time shall be extended by Change Order to the applicable GMP Amendment for a reasonable length of time. If the parties cannot agree on the resolution of a claim for delay and Construction Manager has complied with the notice provisions of Article 5.4, then the dispute shall be resolved as provided in Article 9.



§ 1.3.7 The parties agree and the Construction Manager acknowledges that hindrances and delays are ordinarily encountered on projects of this type. The parties specifically anticipate and contemplate such hindrances and delays, including, but not limited to, labor disputes; schedule adjustments; the action of suppliers, Trade Contractors, and other contractors (including labor disputes); . The Construction Manager agrees that such delays of type as set forth above are included in the Guaranteed Maximum Price and the Contract Time and that they shall not constitute the basis for a time extension or claim for additional compensation of any type.

## ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

### § 2.1 Preconstruction Phase

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

### § 2.1.2 Consultation

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

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect and Construction Advisor's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner. Such schedules shall include realistic activity sequences and durations, allocation of labor and materials, processing of shop drawings and samples, and delivery of products. Include the Owner's occupancy requirements showing portions of the Project having occupancy priority.

§ 2.1.3.3 Coordination of Contract Documents: Construction Manager shall review the Construction Drawings and Specifications ("Drawings and Specifications") as they are being prepared, recommending alternative solutions whenever design details affect construction feasibility or schedules without, however, assuming any of the Architect's responsibilities for design. By such review, Construction Manager does not assume any responsibility for design conditions. It is the intent of such review, however, for Construction Manager to identify material conditions which are evident from a reasonable review of such documents that would impact the ability of Construction Manager to properly perform its Work or which would impact the Price of the Work. Construction Manager shall further review the Drawings and Specifications with the Architect to eliminate areas of conflict and overlapping in the Work to be performed by the various Trade Contractors and prepare prequalification criteria for bidders.



§ 2.1.3.4 Construction Manager shall make recommendations to the Owner and the Architect regarding the division of Work in the Drawings and Specifications to facilitate the bidding and awarding of Trade Contracts, allowing for phased construction taking into consideration such factors as time of performance, availability of labor, overlapping trade jurisdictions, and provisions for temporary facilities.

§ 2.1.3.5 The Construction Manager acknowledges that it has visited the site of the proposed work, that as part of its Design Phase services it has familiarized itself with existing conditions and the character of the operations to be carried on the project, that as part of its Pre-construction services it has reviewed the Drawings and Specifications as they were being prepared to assure their constructability and that its GMP Amendment will be premised upon such knowledge.

#### § 2.1.4 Phased Construction

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

#### § 2.1.5 Project Construction Budget and Preliminary Cost Estimates

§ 2.1.5.1 The Owner's budget for construction for the Project is \$28,850,000 ("Construction Budget"). Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect and Construction Advisor's review and Owner's approval. If the Architect, Construction Advisor, or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems. Such evaluation shall be in consideration of the Construction Budget. The Cost Estimates should be updated periodically and if such estimates exceed the Construction Budget, obtain Owner's approval for an increase or recommend changes which may reduce estimated costs.

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

#### § 2.1.6 Subcontractors and Suppliers

The Construction Manager, in consultation with the Construction Advisor, shall develop bidders' interest in the Project.

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

#### § 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and



Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, beyond what is reasonably ascertainable by the Construction Manager in its performance of its constructability review and consistent with its obligation to comply with codes applicable to the performance of its Work. The Construction Manager shall promptly report to the Architect, Construction Advisor, and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

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

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

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

**§ 2.2.1** At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, and the Construction Advisor, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee. Upon execution of the GMP Amendment for such phase, the Guaranteed Maximum Price will be subject to modification for Changes in the Project as provided in Article 5.3.

**§ 2.2.2** The GMP will be established by a GMP Amendment as follows. When the Drawings and Specifications have been approved by applicable parties, the Owner will request in writing that Construction Manager provide a GMP proposal. The Construction Manager will provide to Owner a GMP Price and copies of the Trade Contractor proposals for all Work to be performed by the Trade and Contractor any other items in Article 6 including contingencies. The Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order subject to written approval by Owner. The GMP Price shall be based on the Prices of the selected Trade Contractor prices, and other specified costs including contingencies and the Construction Manager's Fee. Upon the acceptance of the Trade Contracts sums and other applicable costs, the total of such sums shall be added to the Construction Manager's Fee for a GMP Price. This GMP will be acknowledged by a GMP Amendment.

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .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, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

**§ 2.2.4** The GMP Amendment subject to adjustments in accordance with the Agreement, shall be the maximum sum paid by Owner to Construction Manager for the applicable phase of the Project.

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

**§ 2.2.6** If the Owner and Construction Manager are unable to agree on a GMP Amendment within 20 days of the date of the Owner's request for a GMP Proposal, then the Owner may terminate the Agreement for convenience by written notice to Construction Manager in accordance with Article 10.1 of this Agreement. The Guaranteed



Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner, Construction Advisor, and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

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

### § 2.3 Construction Phase

#### § 2.3.1 General

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

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's execution of the GMP Amendment.

§ 2.3.1.2.1 Project Control and Performance of Work: The Construction Manager through its own forces or through subcontractors (also referenced as Trade Contractors) shall perform all the Work described in the Agreement. This includes but is not limited to: 1) the provision of all labor, material, equipment, services and any other items necessary to fully complete the Work contained in the Contract Documents of the Project; 2) securing all licenses for the Work; 3) furnishing all labor, material, equipment, machinery, scaffolding, and providing all other things and personnel necessary for the full and diligent prosecution of the Work, all in compliance with applicable statutes, ordinances, and regulations and in workmanlike manner in strict accordance with the requirements of the Project and to the satisfaction of the Owner; 4) supervision and coordination of the Work of the Trade Contractors; 5) coordination of the Work with the activities and responsibilities of the Owner, Architect and Construction Manager to complete the Project in accordance with the Owner's objectives of cost, time and quality; and 6) all actions reasonably required to complete the Work even if not specifically shown in the plans and specifications but that can be reasonably inferred.

#### § 2.3.2 Administration

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

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

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is



awarded on a cost plus fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

**§ 2.3.2.4** If the Construction Manager recommends a specific bidder that may be considered a “related party” according to Section 6.10, then the Construction Manager shall promptly notify the Owner and Construction Advisor in writing of such relationship and notify the Owner and Construction Advisor of the specific nature of the contemplated transaction, according to Section 6.10.2.

**§ 2.3.2.5** The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner, Construction Advisor, and Architect. *[NOTE: RD Guide adds a sentence here.]*

**§ 2.3.2.6** Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner, Construction Advisor, and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007 Which is consistent with the Contract Time established in the GMP Amendment. The Construction Manager shall prepare and maintain the construction schedule in time-scaled precedence format, the critical path clearly so indicated, with activities of not greater than fourteen (14) calendar days in duration. The Construction Manager shall provide regular monitoring of the schedule as construction progresses and identify potential variances between scheduled and probable completion dates. It shall review schedules for Work not started or incomplete and recommend to the Owner and Trade Contractors adjustments in the schedule to meet the completion date. It shall provide monthly updates of the schedule and document all changes in schedule.

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

**§ 2.3.2.8** The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner, Construction Advisor, and Architect and shall provide this information in its monthly reports to the Owner, Construction Advisor, and Architect, in accordance with Section 2.3.2.7 above. Such cost control system shall monitor the initially approved Guaranteed Maximum Price, incorporate approved changes as they occur, and develop cash flow reports and forecasts as needed. Construction Manager shall identify variances between actual and budgeted or estimated costs and advise the Owner, the Construction Advisor and the Architect whenever projected cost exceeds budgets or estimates. Nothing within this paragraph is intended to relieve the Construction Manager of responsibility for completion of the Work within the GMP. Construction Manager shall also maintain cost accounting records on authorized Work performed under unit costs, actual costs for labor and material, or other bases requiring accounting records and afford the Owner access to these records and preserve them for a period of four (4) years after final payment.

**§ 2.3.2.9** To the extent not otherwise addressed in this Section 2.3.2, the Construction Manager shall also

**.1** Maintain a competent full-time staff at the Project site to coordinate and provide direction of the Work and progress of the Trade Contractors on the Project;

**.2** Establish on-site organization and lines of authority in order to carry out the overall plans of the Construction Team;

**.3** Establish procedures for coordination among the Owner, the Construction Advisor Architect/Engineer, Trade Contractors and Construction Manager with respect to all aspects of the construction of the Project and implement such procedures;

**.4** Determine the adequacy of the Trade Contractors' personnel and equipment and the availability of materials and supplies to meet the schedule. Take courses of action when requirements of a Trade Contract are not being met;

**.5** Develop and implement a system for the preparation, review and processing of Change Orders. Recommend necessary or desirable change to the Owner and the Architect/Engineer, review requests for changes, submit



recommendations to the Owner and the Architect/Engineer, and assist in negotiating Change Orders. All Change Orders must comply with the provisions of Article 9 as a condition precedent to entitlement to additional time and/or compensation.

.6 Develop and implement a procedure, reviewable by the Owner, for the review, processing and payment of application by Trade Contractors for progress and final payments.

.7 Obtain all building permits and special permits for permanent improvements, excluding permits for inspection or temporary facilities required to be obtained directly by the various Trade Contractors. Assist in obtaining approvals from all the authorities having jurisdiction.

.8 If required, assist the Owner in selecting and retaining professional services of a surveyor, testing laboratories and special consultants, and coordinate these services, without assuming any responsibility or liability of or for these consultants.

.9 Inspect the Work of itself and its Trade Contractors for defects and deficiencies in the Work without assuming any of the Architect responsibilities for inspection.

.10 Develop and implement a safety program for the project which complies with all federal, state and local statutes, rules, regulations and orders applicable to the conduct of the Work.

.11 Refer all questions for interpretation of the documents prepared by the Architect to the Architect/Engineer.

.12 In collaboration with the Architect and Construction Advisor, establish and implement procedures for expediting the processing and approval of submittals, shop drawings and samples. This collaboration shall be facilitated by the creation of a submittal schedule as provided in Section 3.10.2 of the A201 General Conditions.

.13 Record the progress of the Project. Submit written progress reports on a monthly basis to the Owner and the Architect/Engineer including information on the Trade Contractors' work, and the percentage of completion. Keep a daily log available to the Owner, Construction Advisor and the Architect.

.14 Maintain at the Project site on a current basis for the benefit of the Owner, Construction Advisor and Architect records of all necessary Contracts, Drawings, samples, purchases, materials, equipment, maintenance and operating manuals and instructions, and other construction related documents, including all revisions. Obtain data from Trade Contractors and maintain a current set of record Drawings, Specifications and operating manuals. At the completion of the Project, deliver all such records to the Owner.

.15 Determine when the work is ready for inspection with Architect and Construction Advisor for Substantial Completion of the Work or designated portions thereof and prepare for the Architect and Construction Advisor a list of Incomplete or unsatisfactory items and a schedule for their completion.

.16 With the Owner's maintenance personnel and Construction Advisor direct the checkout of utility operations systems and equipment for readiness and assist in their initial start-up and testing.

.17 Determine when the work is ready for inspection with Architect and Construction Advisor for final completion and provide written notice to the Owner, Construction Advisor and Architect that the Work is ready for final inspection. Secure and transmit to the Architect with copies to Construction Advisor required guarantees, affidavits, releases, bonds and waivers. Turn over to the Owner all keys, manuals, record drawings and maintenance stocks.

.18 Where any Work is performed by the Construction Manager's own forces or by Trade Contractors under contract with the Construction Manager, the Construction Manager shall warrant that all materials and equipment included in such Work will be new, unless otherwise specified, and that such Work will be of good quality, free from improper workmanship and defective materials and in conformance with the Drawings and Specifications. With respect to the same Work, the Construction Manager further agrees to correct all Work defective in material and workmanship for a period of one year from the Date of Substantial Completion or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the Specifications. The Construction Manager shall collect and deliver to the Owner any specific written warranties given by others.

#### § 2.4 Professional Services

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

#### § 2.5 Hazardous Materials

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

#### § 2.6 Trade Contracts and Subcontracts

§ 2.6.1 All portions of the Project that the Construction Manager does not perform with his own force shall be performed under written Trade Contracts or Subcontracts between Construction Manager and Trade Contractors or subcontractors. The Construction Manager shall request and receive proposals from Trade Contractors. Trade Contracts will be awarded after the proposals are reviewed by the Architect/Engineer, Construction Manager, Owner



and Construction Advisor. No Trade Contract will be executed with any Trade Contractor with whom Owner has a reasonable objection.

§ 2.6.2 If the Owner refuses to accept a Trade Contractor recommended by the Construction Manager, the Construction Manager shall recommend an acceptable substitute. To the extent the Owner rejects a proposed Trade Contractor after the execution of the GMP Amendment and the selection of an alternate Trade Contractor results in an increase in the line item value in the Schedule of Values for the applicable Work and the Owner had not previously accepted a proposed Trade Contractor for the applicable work, the Guaranteed Maximum Price shall be increased or decreased by the difference in cost occasioned by such substitution.

§ 2.6.3 Trade Contracts will be between the Construction Manager and the Trade Contractors. The form of the Trade Contracts including the General and Supplementary Conditions shall be satisfactory to the Owner, and shall incorporate by reference all the provisions of this Agreement. The Owner shall be an intended third party beneficiary of all Trade Contracts.

§ 2.6.4 The Construction Manager shall be responsible to the Owner for the acts, fault and omissions of its agents and employees, Trade Contractors performing Work under a contract with the Construction Manager, and such Trade Contractors' agents and employees or anyone performing work required by this Agreement.

### ARTICLE 3 OWNER'S RESPONSIBILITIES

#### § 3.1 Information and Services Required of the Owner

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

§ 3.1.2 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. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

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

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

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

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands;



adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 [Intentionally Omitted.]

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

§ 3.2 Owner's Designated Representative

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

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

§ 3.3 Architect

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

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

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

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

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within twelve ( 12 ) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

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

§ 4.2 Payments

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

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

Prime Rate APR

## ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

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

§ 5.1.1 The Construction Manager's Fee:

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

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

AIA Document A201-2007, Article 7 in conjunction with Supplementary Conditions 00 72 16, Paragraph 7.1.4.

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

As defined in Supplementary Conditions 00 72 16, Paragraph 7.1.4.

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

§ 5.1.5 Unit prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
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§ 5.1.6 Included in the Construction Manager's Fee is the following:

§ 5.1.6.1 Salaries or other compensation of the Construction Manager's employees at the principal office and branch offices.

§ 5.1.6.2 General operating expenses of the Construction Manager's principal and branch offices other than the field office.

§ 5.1.6.3 Any part of the Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the project.

§ 5.1.6.4 Overhead and general expenses of any kind, except as may be expressly included in Article 6.

§ 5.1.6.5 Construction Manager's overhead and profit.

§ 5.1.6.6 Costs in excess of the Guaranteed Maximum Price.

## § 5.2 Guaranteed Maximum Price

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

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



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

### **§ 5.3 Changes in the Work**

**§ 5.3.1** The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work. All such Changes in the Project shall be authorized by Change Order.

**§ 5.3.1.2** A Change Order is a written order to the Construction Manager signed by the Owner or its authorized agent issued after the execution of this Agreement, authorizing a Change in the Project or the method of manner of performance and/or an adjustment in the Guaranteed Maximum Price, the Construction Manager's Fee, or the Construction Completion Date. Each adjustment in the Guaranteed Maximum Price resulting from a Change Order shall clearly separate the amount attributable to the Cost of the Project and the Construction Manager's Fee.

**§ 5.3.2** Adjustments to the Guaranteed Maximum Price on account of changes in the Work pursuant to an Architect's Construction Change Directive as provided in Article 7.3 of the AIA A201-2007, General Conditions of the Contract for Construction subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-2007, General Conditions of the Contract for Construction.

**§ 5.3.3** If none of the methods set forth in Section 5.3.2 is agreed upon, the Construction Manager, providing he receives a written order signed by the Owner shall promptly proceed with the Work involved. The cost of such Work shall then be determined on the basis of the reasonable expenditures and savings of those performing the Work attributed to the change, including, in the case of an increase in the Guaranteed Maximum Price, the applied Construction Manager's Fee. In such case, and also under Section 5.3.2 above, the Construction Manager shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data of the increase in the Cost of the Work of the Project as outlined in Article 6. The amount of decrease in the Guaranteed Maximum Price to be allowed by the Construction Manager to the Owner for any deletion or change which results in a net decrease in cost will be in the amount of the actual net decrease. When both additions and credits are involved in any one change, the increase in Fee shall be figured on the basis of net increase, if any. If a Fee is added to a Change Order, then the Construction Manager's Fee should not also be applied to the total change order value.

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

### **§ 5.4 Claims for Additional Costs or Time**

**§ 5.4.1** Should concealed conditions encountered in the performance of the Work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated or reasonably inferable by the Drawings, Specifications, or Owner-furnished information or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, be encountered, the Guaranteed Maximum Price and the Date of Substantial Completion shall be equitably adjusted by Change Order upon notice of a claim by either party made within ten (10) days after the first observance of the conditions.

**§ 5.4.2** If the Construction Manager wishes to make a claim for an increase in the Guaranteed Maximum Price, an increase in its Fee, or an extension in the Date of Substantial Completion, it shall give the Owner, Architect and Construction Advisor written notice thereof within ten (10) days after the occurrence of the event giving rise to such claim. This notice shall be given by the Construction Manager before proceeding to execute any Work, except in an emergency endangering life or property in which case the Construction Manager shall act to prevent threatened



damage, injury or loss. Claims arising from delay shall be made within a reasonable time after the delay but in no event giving rise to such claim. This notice shall be given by the Construction Manager before proceeding to execute any Work, except in an emergency endangering life or property in which case the Construction Manager shall act to prevent threatened damage, injury or loss. Claims arising from delay shall be made within a reasonable time after the delay but in no event more than ten (10) days after the commencement of the delay event. Should the Owner or Architect direct the Construction Manager to perform work that the Construction Manager does not believe to be part of the Contract Documents, the Construction Manager is obligated to identify that directive as an item in dispute within seventy-two (72) hours of receipt of such directive for any work. The timely notice required by this paragraph is a condition precedent to any entitlement to an increase of the GMP. In the absence of a written Change Order, except as provided in this paragraph above, Construction Manager shall not be entitled to an increase in the GMP. If the Owner and the Construction Manager cannot agree on the amount of the adjustment in the Guaranteed Maximum Price, Construction Manager's Fee or Date of Substantial Completion where all conditions to entitlement have been met, it shall be determined pursuant to the provisions of Article 9. Any change in the Guaranteed Maximum Price, Construction Manager's Fee or Date of Substantial Completion resulting from such claim shall be authorized by Change Order. Notwithstanding any provision to the contrary, in no instance will the Construction Manager be entitled to time-related or delay damages, as described above, unless such delay was caused solely by the Owner.

§ 5.4.3 The Architect with Construction Advisor's consent will have authority to order minor Changes in the Project not involving an adjustment in the Guaranteed Maximum Price or an extension of the Date of Substantial Completion and not inconsistent with the intent of the Drawings and Specifications. Such Changes may be affected by written order and shall be binding on the Owner and the Construction Manager.

§ 5.4.4 In any emergency affecting the safety of persons or property, the Construction Manager shall act to prevent threatened damage, injury or loss. Any increase in the Guaranteed Maximum Price or extension of time claimed by the Construction Manager on account of emergency Work shall be determined as provided in this Article.

## ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

### § 6.2 Labor Costs

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

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

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

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

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.



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

### **§ 6.3 Subcontract Costs**

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

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

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

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

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

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

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

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

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

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

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

### **§ 6.6 Miscellaneous Costs**

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

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

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

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



§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

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

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

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld. This shall not include such costs related to disputes between Construction Manager and Subcontractor or any party in the chain of Construction Managers contracts or with Architect.

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

#### § 6.7 Other Costs and Emergencies

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

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

§ 6.7.3 [Intentionally Omitted.]

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

#### § 6.8 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

#### § 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received



payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

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

#### § 6.10 Related Party Transactions

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

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

#### § 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner and the Construction Advisor. The Owner, the Construction Advisor, and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

### ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

#### § 7.1 Progress Payments

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

§ 7.1.1.2 Upon the execution of the GMP Amendment, the Construction Manager shall prepare in a form acceptable to Owner, a Schedule of Values for the Project which Schedule of Values shall be used for the processing of Applications for payment.

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

§ 7.1.3 Provided that an Application for Payment shall be delivered to the Architect, with a copy to the Construction Advisor; and within ten(10) days following certification by the Architect and USDA Rural Development to the Owner of the amount payable thereon, the Owner shall make payment of such certified amount to the Construction Manager.



(Paragraph Deleted)

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

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment. The Owner will withhold an amount equal to five percent (5%) retainage of each Line Item within the Schedule of Values of each monthly Application for Payment.

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

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

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

§ 7.1.8 [NOTE: RD Guide deletes and replaces this section.] The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.



**§ 7.1.8.1** Notwithstanding any other provisions of this Agreement to the contrary, payments to Subcontractors shall be subject to retention of five percent (5%), which retention is hereby approved by Owner.

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

**§ 7.1.10** [Intentionally Omitted.]

## **§ 7.2 Final Payment**

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

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

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

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

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

**§ 7.2.4** If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

[NOTE: RD Guide adds § 7.2.5 here.]

**§ 7.2.6** The Construction Manager shall promptly pay all the amounts due Trade Contractors or other persons with whom it has a contract upon receipt of any payment from the Owner, the application for which includes amounts due



such Trade Contractors or other persons. Before issuance of final payment, the Construction Manager shall submit a satisfactory evidence that all payrolls, materials bills and other indebtedness connected with the Project have been paid or otherwise satisfied.

### 7.3 CONDITIONS OF PAYMENT

§ 7.3.1 As a condition of Payment, the Construction Manager must provide with each month's invoice: (1) a waiver of liens from all Subcontractor's, Trade Contractors and suppliers associated with the Work as Invoiced during the previous month and for which the Construction Manager has been compensated by the Owner, and (2) verification to the satisfaction of the Owner that costs contained on any Application for Payment had been incurred by the Construction Manager. In the absence of such waivers and verification, the Owner, at its sole option, may withhold all or any portion of funds otherwise due the Construction Manager to protect the Owner from loss. An amount not to exceed: (1) two hundred percent (200%) of the Owner's damage or liability associated with defective or damaged work not remedied by the Construction Manager, and (2) one hundred and fifty percent (150%) for claims filed by laborers, material men, and/or subcontractors under this Agreement will not be payable or due at the option of the Owner until such time as the Construction Manager has rectified the condition to the full satisfaction of the Owner., To the extent that Construction Manager has provided a Payment and Performance Bond that ensures satisfaction of the foregoing issues, such Bond shall satisfy the foregoing provisions regarding Owner's withholding of sums.

§ 7.3.2 Partial or final payment will not be payable or due at the option of the Owner in the event that any of the following conditions exists:

§ 7.3.2.1 The Construction Manager fails to make the proper application for payment.

§ 7.3.2.2 The Construction Manager is in material breach of the terms of this Agreement, including, without limitation, any GMP Amendment or Change Order.

§ 7.3.2.3 Any insurance required of the Construction Manager ceases to be effective and in force.

§ 7.3.2.4 The Construction Manager fails to comply with Tennessee Law regarding payments to downstream parties.

§ 7.3.2.5 The Construction Manager fails to provide satisfactory evidence of As-Built, Material Status, and/or prescribed Submittal Data.

### ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007. *(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)*

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
AIA Document A312-2020 Payment Bond	
AIA Document A312-2010 Performance Bond	

### ARTICLE 9 DISPUTE RESOLUTION

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

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



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

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

☒ Litigation in a court of competent jurisdiction

☐ Other: *(Specify)*

### § 9.3 Initial Decision Maker

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

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

## ARTICLE 10 TERMINATION OR SUSPENSION

### § 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

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

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

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



agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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

## **§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price**

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

### **§ 10.2.1 Owner's Right to Perform Construction Manager's Obligations and Termination by the Owner for Cause**

**§ 10.2.1.1** If the Construction Manager fails to perform any of its obligations under this Agreement including any obligation it assumes to perform Work with its own forces, the Owner may, after seven (7) days' written notice during which period the Construction Manager fails to perform such obligation, make good such deficiencies. The Guaranteed Maximum Price shall be reduced by the cost to the Owner of making good such deficiencies. If the unpaid price is insufficient to cover the damage incurred by the Owner, the Construction Manager or its surety shall be responsible for the difference.

**§ 10.2.1.2** If the Construction Manager is adjudged as bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if it persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if it fails to make proper payment to Trade Contractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Agreement, then the Owner may, without prejudice to any right or remedy and after giving the Construction Manager and its surety, if any, seven (7) days' written notice, during which period the Construction Manager fails to cure the violation, terminate the employment of the Construction Manager and take possession of the site and all of the materials, equipment, tools, construction equipment and machinery thereon owned by the Construction Manager and may finish the Project by whatever reasonable method it may deem expedient. In such case, the Construction Manager shall not be entitled to receive any further payment except as required by terms of the surety bonds nor shall it be relieved from its obligations assumed under Article 6.

### **§ 10.2.2 Termination by Owner Without Cause**

**§ 10.2.2.1** If the Owner terminates this Agreement following execution of the Guaranteed Maximum Price Amendment other than pursuant to Section 10.2.1.1 or Section 10.2.1.2, the Owner shall reimburse the Construction Manager for any unpaid Cost of the Project due the Construction Manager under Article 7, plus such an amount as will increase the payment on account of the Construction Manager's Fee to a sum which bears the same ratio to the said fixed sum as the Cost of the Project at the time of termination bears to the adjusted Guaranteed Maximum Price otherwise to a reasonable estimated Cost of the Project when completed. The Owner shall also pay to the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment retained. In case of such termination of the Agreement, the Owner shall further assume and become liable for obligations, commitments and unsettled claims that the Construction Manager has previously undertaken or incurred in good faith in connection with said Project. The Construction Manager shall, as a condition of receiving the payments referred to in this Section 10.2.2.1 execute and deliver all such papers and take all such steps, including the legal assignment of its contractual rights, as the Owner may require for the purpose of fully vesting in the Owner, the rights and benefits of the Construction Manager under such obligations or commitments.

### **§ 10.2.3 Termination by the Construction Manager**

**§ 10.2.3.1** If the Project, in whole or substantial part, is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Construction Manager, or if the Project



should be stopped for a period of thirty (30) days by the Construction Manager for the Owner's failure to make payment thereon, then the Construction Manager may, upon seven (7) days' written notice to the Owner and the Architect/Engineer, terminate this Agreement and recover from the Owner payment for all Work executed, the Construction Manager's Fee earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, cancellation charges on existing obligations of the Construction Manager.

### § 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term “profit” shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

## ARTICLE 11 MISCELLANEOUS PROVISIONS

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

### § 11.2 Ownership and Use of Documents

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

### § 11.3 Governing Law

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

### § 11.4 Assignment

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

### § 11.5 Other provisions:

[NOTE: RD Guide inserts new § 11.5 and adds § 11.6 and § 11.7 here.]

### § 11.8 Other provisions:

§ 11.8.1 This Agreement may not be cancelled, waived, or modified by the Construction Manager except as an instrument in writing signed by one of its officers and the Owner's Designated Representative. No waiver by the Owner, or the Construction Manager of any provision of the Agreement or breach thereof shall operate or be construed as a waiver of any other subsequent breach or provisions.

§ 11.8.2 The Construction Manager verifies that it is properly licensed to perform the work under this Agreement and acknowledges that it must use only properly licensed subcontractors to perform any portions of the Work.

§ 11.8.3 Construction Manager is responsible to comply and to assure compliance by its subcontractors and suppliers with all local, state and federal statutes, ordinances, regulations or requirements relating to its Work, including but not limited to: Tennessee Building Code requirements, American with Disabilities Act (ADA), OSHA, health and safety requirements; labor, environmental, worker's compensation, and unemployment requirements; equal opportunity requirements; tax and withholding requirements; noise, hazardous substance and waste requirements.

§ 11.8.4 The Project is the total construction to be performed in phases under this Agreement. The Work is the total scope of obligations that are required to be performed in this Agreement including all work reasonably inferable from the Drawings and Specifications that are to be identified in each GMP

(Paragraph Deleted)

Amendment.

## ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 [NOTE: RD Guide modifies this section.] This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction attached (as amended by RD Instruction 1942-A, Guide 27, Attachment 4).
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

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

- .5 Other documents:  
(List other documents, if any, forming part of the Agreement.)

EXHIBIT A – Form of GMP Amendment which will include:

GMP Price Exhibit 1

Drawing List Exhibit 2

Project Manual Exhibit 3

Contract Clarifications Exhibit 4

Schedules of Values Exhibit 5

General Conditions Breakdown Exhibit 6

Exhibit B – Projected Schedule of Phases of Work

Exhibit C – RD Instruction 1942-A, Guide 27, Attachment 5

§ 12.3 It is the intent of the Contract Documents to be complementary as provided in Section 1.2 of A201. In the event of any inconsistency between the Agreement and any other Contract Document, the GMP Amendment will control. This Agreement will control over any other provision of a Contract Document except for the GMP Amendment. In the event of any inconsistency between any other Contract Documents, the following order of interpretation shall control: Specifications, Drawings, A201.

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

(Table Deleted)

[NOTE RD Guide replaces this signature block. For signatures, see RD Guide.]



## Additions and Deletions Report for AIA® Document A133™ – 2009

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:02:41 ET on 05/12/2021.

### PAGE 1

Town of Jonesborough  
123 Boone Street  
Jonesborough, TN 37659

...

Construction of school (K-8) for use by the Washington County School Board and athletic complex for use by the Washington County School Board and the Town of Jonesborough (commonly referred to collectively as "Jonesborough K-8 School")

...

Clark Nexsen Architects  
210 East Watauga Avenue  
Johnson City, TN 37601

...

Bob Browning  
123 Boone Street  
Jonesborough, TN 37659

The Owner's Construction Advisor:  
Burleson Construction Company  
3216 S. Roan Street, Suite 100  
Johnson City, TN 37601

### PAGE 2

Ken Ross  
Phone: (423) 929-2191  
Cell: (423) 773-9420  
Email: Ken.Ross@ClarkNexsen.com

The Construction Advisor's Designated Representative  
Thomas J. Burleson  
Phone: (423) 232-7378  
Cell: (423) 791-1117

...

NOTE: In addition to the following, the Construction Manager shall provide its services hereunder in conjunction with the services of the Construction Advisor to the Owner. The Construction Manager shall not be responsible for the actions taken by the Construction Advisor. The Owner's approvals or required submittals or information under this Agreement shall be made following opportunity for consultation with the Construction Advisor. The Construction Manager's required submittals to the Owner or the Architect shall be made simultaneously to the Construction Advisor. Communications and reports of the Construction Manager to the Owner or Architect shall include the Construction Advisor. The Construction Advisor shall be notified in advance of meetings between the Construction Manager and Owner or Architect and may be present at the Construction Advisor's election. Consultations among the Construction Manager and the Owner or the Architect shall include the Construction Advisor. In each instance, the Construction Manager will give due consideration to the comments, information, estimates, and input of the Construction Advisor as a representative of the Owner.

...

NOTE: This Agreement is modified and supplemented by the provisions of the Rural Development Guide 27 (the "RD Guide"), attached hereto as EXHIBIT C.

### PAGE 3

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

### PAGE 4

§ 1.3.1 It is intended that the time for performance of construction services to be provided under this Contract shall be in accordance with the dates specified in the applicable GMP Amendment (sometimes referred to herein as the "Guaranteed Maximum Price Amendment"). Provision of preconstruction services shall be in such a manner as to not delay the performance of Work by the Project Architect.

...

§ 1.3.2 Completion of the Design Phase shall mean the completion of the Drawings and Specifications sufficient to submit to the applicable governmental agencies for permitting and for submission and acceptance of the GMP Amendment. The Owner, Construction Advisor and Construction Manager shall establish a fixed date of Substantial Completion ("Contract Time") at the time that the Guaranteed Maximum Price (sometimes referred to herein as the "GMP") is established as provided in Article 2.2. The Contract Substantial Completion Date shall mean the Contract Date for completion of the applicable phase subject to the GMP Amendment.

...



§ 1.3.3 The Date of Substantial Completion of a designated portion thereof is the date when construction is sufficiently complete in accordance with the Drawings and Specifications so the Owner can obtain a Certificate of Occupancy to occupy or utilize the designated portion of the Project which is the subject to the applicable GMP Amendment. Warranties called for by this Agreement or by the Drawings and Specifications shall commence on the Date of Substantial Completion of the Work subject to the GMP Amendment.

...

§ 1.3.4 The Construction Manager expressly agrees to complete the Work within the time specified in the GMP Amendment. The Owner will grant an extension of the allowable Contract Time when Work on the critical path is delayed by factors determined to be beyond the Construction Manager's control which would not be reasonably anticipated or contemplated at the time the Guaranteed Maximum Price and Date of Substantial Completion were established. Extensions of Contract Time will not be granted for delays due to fault or negligence of the Construction Manager and the Owner resulting from delays caused, in whole or in part, by the Construction Manager.

...

§ 1.3.5 If the Construction Manager is delayed in the critical path of the Work for any of the reasons specified below, it shall give written notice as specified in Article 5.4 below. Upon proper notice, Construction Manager shall be entitled to compensation as provided in Article 5.4 below and to an extension of the Contract Time for a delay in the progress of the critical path of the Project caused by any of the following:

1. Any delay caused by an act or neglect of the Owner, the Architect/Engineer or by any employee of either, or by any separate contractor employed by the Owner,
2. Any delay caused by changes ordered or written directives in the Project by Owner,
3. Any delay caused by fire or other material casualty event not caused in whole or in part by the Construction Manager,
4. Any delay caused by, materially adverse weather conditions not reasonably anticipatable, or
5. By delay authorized by the Owner;

...

§ 1.3.6 If Construction Manager has complied with the notice provisions of Article 5.4 and the parties can agree on the impact on the Construction Completion Date, the Contract Time shall be extended by Change Order to the applicable GMP Amendment for a reasonable length of time. If the parties cannot agree on the resolution of a claim for delay and Construction Manager has complied with the notice provisions of Article 5.4, then the dispute shall be resolved as provided in Article 9.

PAGE 5

§ 1.3.7 The parties agree and the Construction Manager acknowledges that hindrances and delays are ordinarily encountered on projects of this type. The parties specifically anticipate and contemplate such hindrances and delays, including, but not limited to, labor disputes; schedule adjustments; the action of suppliers, Trade Contractors, and other contractors (including labor disputes); . The Construction Manager agrees that such delays of type as set forth above are included in the Guaranteed Maximum Price and the Contract Time and that they shall not constitute the basis for a time extension or claim for additional compensation of any type.



...

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the ~~Architect~~Architect and the Construction Advisor, 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.

...

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

...

**§ 2.1.3** When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the ~~Architect's~~Architect and Construction Advisor's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner. Such schedules shall include realistic activity sequences and durations, allocation of labor and materials, processing of shop drawings and samples, and delivery of products. Include the Owner's occupancy requirements showing portions of the Project having occupancy priority.

...

**§ 2.1.3.3 Coordination of Contract Documents:** Construction Manager shall review the Construction Drawings and Specifications ("Drawings and Specifications") as they are being prepared, recommending alternative solutions whenever design details affect construction feasibility or schedules without, however, assuming any of the Architect's responsibilities for design. By such review, Construction Manager does not assume any responsibility for design conditions. It is the intent of such review, however, for Construction Manager to identify material conditions which are evident from a reasonable review of such documents that would impact the ability of Construction Manager to properly perform its Work or which would impact the Price of the Work. Construction Manager shall further review the Drawings and Specifications with the Architect to eliminate areas of conflict and overlapping in the Work to be performed by the various Trade Contractors and prepare prequalification criteria for bidders.

PAGE 6

**§ 2.1.3.4** Construction Manager shall make recommendations to the Owner and the Architect regarding the division of Work in the Drawings and Specifications to facilitate the bidding and awarding of Trade Contracts, allowing for phased construction taking into consideration such factors as time of performance, availability of labor, overlapping trade jurisdictions, and provisions for temporary facilities.

...

§ 2.1.3.5 The Construction Manager acknowledges that it has visited the site of the proposed work, that as part of its Design Phase services it has familiarized itself with existing conditions and the character of the operations to be carried on the project, that as part of its Pre-construction services it has reviewed the Drawings and Specifications as they were being prepared to assure their constructability and that its GMP Amendment will be premised upon such knowledge.

...

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

...

#### § 2.1.5 Project Construction Budget and Preliminary Cost Estimates

...

§ 2.1.5.1 Based-The Owner's budget for construction for the Project is \$28,850,000 ("Construction Budget"). Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the ~~Architect's~~ Architect and Construction Advisor's review and Owner's approval. If the ~~Architect~~ Architect, Construction Advisor, or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

...

Such evaluation shall be in consideration of the Construction Budget. The Cost Estimates should be updated periodically and if such estimates exceed the Construction Budget, obtain Owner's approval for an increase or recommend changes which may reduce estimated costs.

...

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

...

The Construction Manager, in consultation with the Construction Advisor, shall develop bidders' interest in the Project.

...



~~§ 2.1.7~~ The Construction Manager shall prepare, for the ~~Architect's~~ Architect and Construction Advisor's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of ~~construction~~ construction to ensure their delivery by the required dates. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

#### PAGE 7

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, ~~but the beyond what is reasonably ascertainable by the Construction Manager in its performance of its constructability review and consistent with its obligation to comply with codes applicable to the performance of its Work~~. The Construction Manager shall promptly report to the ~~Architect~~ Architect, Construction Advisor, and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

...

~~§ 2.2.1~~ At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, ~~and the Construction Advisor~~, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee. ~~Upon execution of the GMP Amendment for such phase, the Guaranteed Maximum Price will be subject to modification for Changes in the Project as provided in Article 5.3.~~

...

~~§ 2.2.2~~ To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order. ~~The GMP will be established by a GMP Amendment as follows. When the Drawings and Specifications have been approved by applicable parties, the Owner will request in writing that Construction Manager provide a GMP proposal. The Construction Manager will provide to Owner a GMP Price and copies of the Trade Contractor proposals for all Work to be performed by the Trade and Contractor any other items in Article 6 including contingencies. The Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order subject to written approval by Owner. The GMP Price shall be based on the Prices of the selected Trade Contractor prices, and other specified costs including contingencies and the Construction Manager's Fee. Upon the acceptance of the Trade Contracts sums and other applicable costs, the total of such sums shall be added to the Construction Manager's Fee for a GMP Price. This GMP will be acknowledged by a GMP Amendment.~~

...

~~§ 2.2.4~~ In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. ~~The GMP Amendment subject to adjustments in accordance with the Agreement, shall be the maximum sum paid by Owner to Construction Manager for the applicable phase of the Project.~~



...

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

PAGE 8

§ 2.2.6 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, and Construction Manager are unable to agree on a GMP Amendment within 20 days of the date of the Owner's request for a GMP Proposal, then the Owner may terminate the Agreement for convenience by written notice to Construction Manager in accordance with Article 10.1 of this Agreement. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

...

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the ~~Owner~~ Owner, Construction Advisor, and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

...

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's ~~acceptance of the execution of the GMP Amendment.~~

...

~~Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.~~ § 2.3.1.2.1 Project Control and Performance of Work: The Construction Manager through its own forces or through subcontractors (also referenced as Trade Contractors) shall perform all the Work described in the Agreement. This includes but is not limited to: 1) the provision of all labor, material, equipment, services and any other items necessary to fully complete the Work contained in the Contract Documents of the Project; 2) securing all licenses for the Work; 3) furnishing all labor, material, equipment, machinery, scaffolding, and providing all other things and personnel necessary for the full and diligent prosecution of the Work, all in compliance with applicable statutes, ordinances, and regulations and in workmanlike manner in strict accordance with the requirements of the Project and to the satisfaction of the Owner; 4) supervision and coordination of the Work of the Trade Contractors; 5) coordination of the Work with the activities and responsibilities of the Owner, Architect and Construction Manager to complete the Project in accordance with the Owner's objectives of cost, time and quality; and 6) all actions reasonably required to complete the Work even if not specifically shown in the plans and specifications but that can be reasonably inferred.

...

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the



Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction ~~Manager-Manager, the Construction Advisor~~ and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

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§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner ~~and Construction Advisor~~ in writing of such relationship and notify the Owner ~~and Construction Advisor~~ of the specific nature of the contemplated transaction, according to Section 6.10.2.

...

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the ~~Owner and Architect-Owner, Construction Advisor, and Architect.~~ *[NOTE: RD Guide adds a sentence here.]*

...

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the ~~Owner-Owner, Construction Advisor, and Architect~~ a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of ~~A201-2007-A201-2007~~ Which is consistent with the Contract Time established in the GMP Amendment. The Construction Manager shall prepare and maintain the construction schedule in time-scaled precedence format, the critical path clearly so indicated, with activities of not greater than fourteen (14) calendar days in duration. The Construction Manager shall provide regular monitoring of the schedule as construction progresses and identify potential variances between scheduled and probable completion dates. It shall review schedules for Work not started or incomplete and recommend to the Owner and Trade Contractors adjustments in the schedule to meet the completion date. It shall provide monthly updates of the schedule and document all changes in schedule.

...

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

...

~~§ 2.3.2.8~~ § 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner-Owner, Construction Advisor, and Architect and shall provide this information in its monthly reports to the Owner-Owner, Construction Advisor, and Architect, in accordance with Section 2.3.2.7 above. Such cost control system shall monitor the initially approved Guaranteed Maximum Price, incorporate approved changes as they occur, and develop cash flow reports and forecasts as needed. Construction Manager shall identify variances between actual and budgeted or estimated costs and advise the Owner, the Construction Advisor and the Architect whenever projected cost exceeds budgets or estimates. Nothing within this paragraph is intended to relieve the Construction Manager of responsibility for completion of the Work within the GMP. Construction Manager shall also maintain cost accounting records on authorized Work performed under unit costs, actual costs for

labor and material, or other bases requiring accounting records and afford the Owner access to these records and preserve them for a period of four (4) years after final payment.

...

§ 2.3.2.9 To the extent not otherwise addressed in this Section 2.3.2, the Construction Manager shall also

...

.1 Maintain a competent full-time staff at the Project site to coordinate and provide direction of the Work and progress of the Trade Contractors on the Project;

...

.2 Establish on-site organization and lines of authority in order to carry out the overall plans of the Construction Team;

...

.3 Establish procedures for coordination among the Owner, the Construction Advisor Architect/Engineer, Trade Contractors and Construction Manager with respect to all aspects of the construction of the Project and implement such procedures;

...

.4 Determine the adequacy of the Trade Contractors' personnel and equipment and the availability of materials and supplies to meet the schedule. Take courses of action when requirements of a Trade Contract are not being met;

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.5 Develop and implement a system for the preparation, review and processing of Change Orders. Recommend necessary or desirable change to the Owner and the Architect/Engineer, review requests for changes, submit recommendations to the Owner and the Architect/Engineer, and assist in negotiating Change Orders. All Change Orders must comply with the provisions of Article 9 as a condition precedent to entitlement to additional time and/or compensation.

...

.6 Develop and implement a procedure, reviewable by the Owner, for the review, processing and payment of application by Trade Contractors for progress and final payments.

...

.7 Obtain all building permits and special permits for permanent improvements, excluding permits for inspection or temporary facilities required to be obtained directly by the various Trade Contractors. Assist in obtaining approvals from all the authorities having jurisdiction.

...

.8 If required, assist the Owner in selecting and retaining professional services of a surveyor, testing laboratories and special consultants, and coordinate these services, without assuming any responsibility or liability of or for these consultants.

...

.9 Inspect the Work of itself and its Trade Contractors for defects and deficiencies in the Work without assuming any of the Architect responsibilities for inspection.



...

.10 Develop and implement a safety program for the project which complies with all federal, state and local statutes, rules, regulations and orders applicable to the conduct of the Work.

...

.11 Refer all questions for interpretation of the documents prepared by the Architect to the Architect/Engineer.

...

.12 In collaboration with the Architect and Construction Advisor, establish and implement procedures for expediting the processing and approval of submittals, shop drawings and samples. This collaboration shall be facilitated by the creation of a submittal schedule as provided in Section 3.10.2 of the A201 General Conditions.

...

.13 Record the progress of the Project. Submit written progress reports on a monthly basis to the Owner and the Architect/Engineer including information on the Trade Contractors' work, and the percentage of completion. Keep a daily log available to the Owner, Construction Advisor and the Architect.

...

.14 Maintain at the Project site on a current basis for the benefit of the Owner, Construction Advisor and Architect records of all necessary Contracts, Drawings, samples, purchases, materials, equipment, maintenance and operating manuals and instructions, and other construction related documents, including all revisions. Obtain data from Trade Contractors and maintain a current set of record Drawings, Specifications and operating manuals. At the completion of the Project, deliver all such records to the Owner.

...

.15 Determine when the work is ready for inspection with Architect and Construction Advisor for Substantial Completion of the Work or designated portions thereof and prepare for the Architect and Construction Advisor a list of Incomplete or unsatisfactory items and a schedule for their completion.

...

.16 With the Owner's maintenance personnel and Construction Advisor direct the checkout of utility operations systems and equipment for readiness and assist in their initial start-up and testing.

...

.17 Determine when the work is ready for inspection with Architect and Construction Advisor for final completion and provide written notice to the Owner, Construction Advisor and Architect that the Work is ready for final inspection. Secure and transmit to the Architect with copies to Construction Advisor required guarantees, affidavits, releases, bonds and waivers. Turn over to the Owner all keys, manuals, record drawings and maintenance stocks.

...

.18 Where any Work is performed by the Construction Manager's own forces or by Trade Contractors under contract with the Construction Manager, the Construction Manager shall warrant that all materials and equipment included in such Work will be new, unless otherwise specified, and that such Work will be of good quality, free from improper workmanship and defective materials and in conformance with the Drawings and Specifications. With respect to the same Work, the Construction Manager further agrees to correct all Work defective in material and workmanship for a period of one year from the Date of Substantial Completion or for such longer periods of time as may be set forth

with respect to specific warranties contained in the trade sections of the Specifications. The Construction Manager shall collect and deliver to the Owner any specific written warranties given by others.

...

## § 2.6 Trade Contracts and Subcontracts

PAGE 11

§ 2.6.1 All portions of the Project that the Construction Manager does not perform with his own force shall be performed under written Trade Contracts or Subcontracts between Construction Manager and Trade Contractors or subcontractors. The Construction Manager shall request and receive proposals from Trade Contractors. Trade Contracts will be awarded after the proposals are reviewed by the Architect/Engineer, Construction Manager, Owner and Construction Advisor. No Trade Contract will be executed with any Trade Contractor with whom Owner has a reasonable objection.

...

§ 2.6.2 If the Owner refuses to accept a Trade Contractor recommended by the Construction Manager, the Construction Manager shall recommend an acceptable substitute. To the extent the Owner rejects a proposed Trade Contractor after the execution of the GMP Amendment and the selection of an alternate Trade Contractor results in an increase in the line item value in the Schedule of Values for the applicable Work and the Owner had not previously accepted a proposed Trade Contractor for the applicable work, the Guaranteed Maximum Price shall be increased or decreased by the difference in cost occasioned by such substitution.

...

§ 2.6.3 Trade Contracts will be between the Construction Manager and the Trade Contractors. The form of the Trade Contracts including the General and Supplementary Conditions shall be satisfactory to the Owner, and shall incorporate by reference all the provisions of this Agreement. The Owner shall be an intended third party beneficiary of all Trade Contracts.

...

§ 2.6.4 The Construction Manager shall be responsible to the Owner for the acts, fault and omissions of its agents and employees, Trade Contractors performing Work under a contract with the Construction Manager, and such Trade Contractors' agents and employees or anyone performing work required by this Agreement.

...

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

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§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including



necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. [Intentionally Omitted.]

...

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within twelve ( 12 ) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

...

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

...

Prime Rate APR %-

PAGE 13

AIA Document A201-2007, Article 7 in conjunction with Supplementary Conditions 00 72 16, Paragraph 7.1.4.

...

As defined in Supplementary Conditions 00 72 16, Paragraph 7.1.4.

...

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

...

§ 5.1.6 Included in the Construction Manager's Fee is the following:

...

§ 5.1.6.1 Salaries or other compensation of the Construction Manager's employees at the principal office and branch offices.

...

§ 5.1.6.2 General operating expenses of the Construction Manager's principal and branch offices other than the field office.

...

§ 5.1.6.3 Any part of the Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the project.

...

§ 5.1.6.4 Overhead and general expenses of any kind, except as may be expressly included in Article 6.

...

§ 5.1.6.5 Construction Manager's overhead and profit.

...

§ 5.1.6.6 Costs in excess of the Guaranteed Maximum Price.

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§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work. All such Changes in the Project shall be authorized by Change Order.

...

§ 5.3.1.2 A Change Order is a written order to the Construction Manager signed by the Owner or its authorized agent issued after the execution of this Agreement, authorizing a Change in the Project or the method of manner of performance and/or an adjustment in the Guaranteed Maximum Price, the Construction Manager's Fee, or the Construction Completion Date. Each adjustment in the Guaranteed Maximum Price resulting from a Change Order shall clearly separate the amount attributable to the Cost of the Project and the Construction Manager's Fee.

...

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work pursuant to an Architect's Construction Change Directive as provided in Article 7.3 of the AIA A201-2007, General Conditions of the Contract for Construction subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-2007, General Conditions of the Contract for Construction.

...

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007 shall have the meanings assigned to them in AIA Document A201-2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts. If none of the methods set forth in Section 5.3.2 is agreed upon, the Construction Manager, providing he receives a written order signed by the Owner shall promptly proceed with the Work involved. The cost of such Work shall then be determined on the basis of the reasonable expenditures and savings of those performing the Work attributed to the change, including, in the case of an increase in the Guaranteed Maximum Price, the applied Construction Manager's Fee. In such case, and also under Section 5.3.2 above, the Construction Manager shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data of the increase in the Cost of the Work of the Project as outlined in Article 6. The amount of decrease in the Guaranteed Maximum Price to be allowed by the Construction Manager to the Owner for any deletion or change which results in a net decrease in cost will be in the amount of the actual net decrease. When both additions and credits are involved in any one change, the increase



in Fee shall be figured on the basis of net increase, if any. If a Fee is added to a Change Order, then the Construction Manager's Fee should not also be applied to the total change order value.

...

**§ 5.3.5 If no specific provision is made-5.4 Claims for Additional Costs or Time**

...

in Section 5.1.2 for adjustment of § 5.4.1 Should concealed conditions encountered in the performance of the Work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated or reasonably inferable by the Drawings, Specifications, or Owner-furnished information or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, be encountered, the Guaranteed Maximum Price and the Date of Substantial Completion shall be equitably adjusted by Change Order upon notice of a claim by either party made within ten (10) days after the first observance of the conditions.

**PAGE 15**

the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used § 5.4.2 If the Construction Manager wishes to make a claim for an increase in the Guaranteed Maximum Price, an increase in its Fee, or an extension in the Date of Substantial Completion, it shall give the Owner, Architect and Construction Advisor written notice thereof within ten (10) days after the occurrence of the event giving rise to such claim. This notice shall be given by the Construction Manager before proceeding to execute any Work, except in an emergency endangering life or property in which case the Construction Manager shall act to prevent threatened damage, injury or loss. Claims arising from delay shall be made within a reasonable time after the delay but in no event giving rise to such claim. This notice shall be given by the Construction Manager before proceeding to execute any Work, except in an emergency endangering life or property in which case the Construction Manager shall act to prevent threatened damage, injury or loss. Claims arising from delay shall be made within a reasonable time after the delay but in no event more than ten (10) days after the commencement of the delay event. Should the Owner or Architect direct the Construction Manager to perform work that the Construction Manager does not believe to be part of the Contract Documents, the Construction Manager is obligated to identify that directive as an item in dispute within seventy-two (72) hours of receipt of such directive for any work. The timely notice required by this paragraph is a condition precedent to any entitlement to an increase of the GMP. In the absence of a written Change Order, except as provided in this paragraph above, Construction Manager shall not be entitled to an increase to an increase in the GMP. If the Owner and the Construction Manager cannot agree on the amount of the adjustment in the Guaranteed Maximum Price, Construction Manager's Fee or Date of Substantial Completion where all conditions to entitlement have been met, it shall be determined pursuant to the provisions of Article 9. Any change in the Guaranteed Maximum Price, Construction Manager's Fee or Date of Substantial Completion resulting from such claim shall be authorized by Change Order. Notwithstanding any provision to the contrary, in no instance will the Construction Manager be entitled to time-related or delay damages, as described above, unless such delay was caused solely by the Owner.

...

to establish the Fee for the original Work, and § 5.4.3 The Architect with Construction Advisor's consent will have authority to order minor Changes in the Project not involving an adjustment in the Guaranteed Maximum Price or an extension of the Date of Substantial Completion and not inconsistent with the intent of the Drawings and Specifications. Such Changes may be affected by written order and shall be binding on the Owner and the Construction Manager.



...

§ 5.4.4 In any emergency affecting the safety of persons or property, the Construction Manager shall act to prevent threatened damage, injury or loss. Any increase in the Guaranteed Maximum Price shall be adjusted accordingly or extension of time claimed by the Construction Manager on account of emergency Work shall be determined as provided in this Article.

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§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld. This shall not include such costs related to disputes between Construction Manager and Subcontractor or any party in the chain of Construction Managers contracts or with Architect.

...

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

...

- 5 Except as provided in Section 6.7.3 of this Agreement, costs Costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

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

...

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the ~~Owner. The Owner~~ Owner and the Construction Advisor. The Owner, the Construction Advisor, and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

...



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

...

§ 7.1.1.2 Upon the execution of the GMP Amendment, the Construction Manager shall prepare in a form acceptable to Owner, a Schedule of Values for the Project which Schedule of Values shall be used for the processing of Applications for payment.

...

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the day of a month, shall be delivered to the Architect, with a copy to the Construction Advisor; and within ten(10) days following certification by the Architect and USDA Rural Development to the Owner of the amount payable thereon, the Owner shall make payment of the certified amount to the Construction Manager not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than ( ) days after the Architect receives the Application for Payment such certified amount to the Construction Manager.

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

...

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

...

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment. The Owner will withhold an amount equal to five percent (5%) retainage of each Line Item within the Schedule of Values of each monthly Application for Payment.

...

3. Add the Construction Manager's Fee, less retainage of five percent ( 5 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

...

- .4 Subtract retainage of five percent ( 5 %) from that portion of the Work that the Construction Manager self-performs;

...

§ 7.1.8 [NOTE: RD Guide deletes and replaces this section.] The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

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§ 7.1.8.1 Notwithstanding any other provisions of this Agreement to the contrary, payments to Subcontractors shall be subject to retention of five percent (5%), which retention is hereby approved by Owner.

...

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

...

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

...

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

...



~~§ 7.2.4~~ § 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

...

[NOTE: RD Guide adds § 7.2.5 here.]

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§ 7.2.6 The Construction Manager shall promptly pay all the amounts due Trade Contractors or other persons with whom it has a contract upon receipt of any payment from the Owner, the application for which includes amounts due such Trade Contractors or other persons. Before issuance of final payment, the Construction Manager shall submit a satisfactory evidence that all payrolls, materials bills and other indebtedness connected with the Project have been paid or otherwise satisfied.

...

### 7.3. CONDITIONS OF PAYMENT

...

§ 7.3.1 As a condition of Payment, the Construction Manager must provide with each month's invoice: (1) a waiver of liens from all Subcontractor's, Trade Contractors and suppliers associated with the Work as Invoiced during the previous month and for which the Construction Manager has been compensated by the Owner, and (2) verification to the satisfaction of the Owner that costs contained on any Application for Payment had been incurred by the Construction Manager. In the absence of such waivers and verification, the Owner, at its sole option, may withhold all or any portion of funds otherwise due the Construction Manager to protect the Owner from loss. An amount not to exceed: (1) two hundred percent (200%) of the Owner's damage or liability associated with defective or damaged work not remedied by the Construction Manager, and (2) one hundred and fifty percent (150%) for claims filed by laborers, material men, and/or subcontractors under this Agreement will not be payable or due at the option of the Owner until such time as the Construction Manager has rectified the condition to the full satisfaction of the Owner. To the extent that Construction Manager has provided a Payment and Performance Bond that ensures satisfaction of the foregoing issues, such Bond shall satisfy the foregoing provisions regarding Owner's withholding of sums.

...

§ 7.3.2 Partial or final payment will not be payable or due at the option of the Owner in the event that any of the following conditions exists:

...

§ 7.3.2.1 The Construction Manager fails to make the proper application for payment.

...

§ 7.3.2.2 The Construction Manager is in material breach of the terms of this Agreement, including, without limitation, any GMP Amendment or Change Order.

...

§ 7.3.2.3 Any insurance required of the Construction Manager ceases to be effective and in force.

...

§ 7.3.2.4 The Construction Manager fails to comply with Tennessee Law regarding payments to downstream parties.

...

§ 7.3.2.5 The Construction Manager fails to provide satisfactory evidence of As-Built, Material Status, and/or prescribed Submittal Data.

...

Type of Insurance or Bond

AIA Document A312-2020 Payment  
Bond

AIA Document A312-2010 Performance  
Bond

Limit of Liability or Bond Amount (\$0.00)

Type of Insurance or Bond

Limit of Liability or Bond Amount (\$0.00)

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[ ☒ ] Litigation in a court of competent jurisdiction

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§ 10.2.1 Owner's Right to Perform Construction Manager's Obligations and Termination by the Owner for Cause

...

If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, § 10.2.1.1 If the Construction Manager fails to perform any of its obligations under this Agreement including any obligation it assumes to perform Work with its own forces, the Owner may, after seven (7) days' written notice during which period the Construction Manager fails to perform such obligation, make good such deficiencies. The Guaranteed Maximum Price shall be reduced by the cost to the Owner of making good such deficiencies. If the unpaid price is insufficient to cover the damage incurred by the Owner, the Construction Manager or its surety shall be responsible for the difference.

...



the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement. § 10.2.1.2 If the Construction Manager is adjudged as bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if its persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if it fails to make proper payment to Trade Contractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Agreement, then the Owner may, without prejudice to any right or remedy and after giving the Construction Manager and its surety, if any, seven (7) days' written notice, during which period the Construction Manager fails to cure the violation, terminate the employment of the Construction Manager and take possession of the site and all of the materials, equipment, tools, construction equipment and machinery thereon owned by the Construction Manager and may finish the Project by whatever reasonable method it may deem expedient. In such case, the Construction Manager shall not be entitled to receive any further payment except as required by terms of the surety bonds nor shall it be relieved from its obligations assumed under Article 6.

...

#### § 10.2.2 Termination by Owner Without Cause

...

If the Construction Manager terminates the Contract after § 10.2.2.1 If the Owner terminates this Agreement following execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed. Amendment other than pursuant to Section 10.2.1.1 or Section 10.2.1.2, the Owner shall reimburse the Construction Manager for any unpaid Cost of the Project due the Construction Manager under Article 7, plus such an amount as will increase the payment on account of the Construction Manager's Fee to a sum which bears the same ratio to the said fixed sum as the Cost of the Project at the time of termination bears to the adjusted Guaranteed Maximum Price otherwise to a reasonable estimated Cost of the Project when completed. The Owner shall also pay to the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment retained. In case of such termination of the Agreement, the Owner shall further assume and become liable for obligations, commitments and unsettled claims that the Construction Manager has previously undertaken or incurred in good faith in connection with said Project. The Construction Manager shall, as a condition of receiving the payments referred to in this Section 10.2.2.1 execute and deliver all such papers and take all such steps, including the legal assignment of its contractual rights, as the Owner may require for the purpose of fully vesting in the Owner, the rights and benefits of the Construction Manager under such obligations or commitments.

...

by the Construction Manager, utilizing § 10.2.3 Termination by the Construction Manager

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~~as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.~~ § 10.2.3.1 If the Project, in whole or substantial part, is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Construction Manager, or if the Project should be stopped for a period of thirty (30) days by the Construction Manager for the Owner's failure to make payment thereon, then the Construction Manager may, upon seven (7) days' written notice to the Owner and the Architect/Engineer, terminate this Agreement and recover from the Owner payment for all Work executed, the Construction Manager's Fee earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, cancellation charges on existing obligations of the Construction Manager.

...

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

...

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

...

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

...

[NOTE: RD Guide inserts new § 11.5 and adds § 11.6 and § 11.7 here.]

...

#### § 11.8 Other provisions:

...

§ 11.8.1 This Agreement may not be cancelled, waived, or modified by the Construction Manager except as an instrument in writing signed by one of its officers and the Owner's Designated Representative. No waiver by the Owner, or the Construction Manager of any provision of the Agreement or breach thereof shall operate or be construed as a waiver of any other subsequent breach or provisions.

...

§ 11.8.2 The Construction Manager verifies that it is properly licensed to perform the work under this Agreement and acknowledges that it must use only properly licensed subcontractors to perform any portions of the Work.

...

§ 11.8.3 Construction Manager is responsible to comply and to assure compliance by its subcontractors and suppliers with all local, state and federal statutes, ordinances, regulations or requirements relating to its Work, including but not limited to: Tennessee Building Code requirements, American with Disabilities Act (ADA), OSHA, health and safety requirements; labor, environmental, worker's compensation, and unemployment requirements; equal opportunity requirements; tax and withholding requirements; noise, hazardous substance and waste requirements.

...

§ 11.8.4 The Project is the total construction to be performed in phases under this Agreement. The Work is the total scope of obligations that are required to be performed in this Agreement including all work reasonably inferable from the Drawings and Specifications that are to be identified in each GMP



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ARTICLE

...

Amendment.

...

ARTICLE 12 SCOPE OF THE AGREEMENT

...

§ 12.1 [NOTE: RD Guide modifies this section.] 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.

...

- .2 AIA Document A201–2007, General Conditions of the Contract for Construction attached (as amended by RD Instruction 1942-A, Guide 27, Attachment 4).

...

EXHIBIT A – Form of GMP Amendment which will include:

...

GMP Price Exhibit 1

...

Drawing List Exhibit 2

...

Project Manual Exhibit 3

...

Contract Clarifications Exhibit 4

...

Schedules of Values Exhibit 5

...

General Conditions Breakdown Exhibit 6

...

Exhibit B – Projected Schedule of Phases of Work

...

Exhibit C – RD Instruction 1942-A, Guide 27, Attachment 5

...

§ 12.3 It is the intent of the Contract Documents to be complementary as provided in Section 1.2 of A201. In the event of any inconsistency between the Agreement and any other Contract Document, the GMP Amendment will control. This Agreement will control over any other provision of a Contract Document except for the GMP Amendment. In the event of any inconsistency between any other Contract Documents, the following order of interpretation shall control: Specifications, Drawings, A201.

OWNER (Signature)

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

(Printed name and title)

...

[NOTE RD Guide replaces this signature block. For signatures, see RD Guide.]



# EXHIBIT C

RD Instruction 1942-A  
Guide 27  
Attachment 5  
Page 1 of 4

**ATTACHMENT TO AIA DOCUMENT A133-2009, *Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.***

The provisions of this Attachment shall delete, modify, and supplement the provisions contained in the "***Standard Form of Agreement Between Owner and Construction Manager as Constructor***", AIA Document A133-2009 Edition. The provisions contained in these Modifications shall supersede any conflicting provisions of the AIA Document. The term "Agency," as used in these Modifications, shall mean the United States of America, acting through the United States Department of Agriculture.

## **ARTICLE 2, CONSTRUCTION MANAGER'S RESPONSIBILITIES**

**2.3.2.5** Add a sentence to the end of subparagraph 2.3.2.5 reading "The Construction Manager shall attend on-site progress meetings no less than once a month during the periods of active construction."

## **ARTICLE 7, PAYMENTS FOR CONSTRUCTION PHASE SERVICES**

**7.1.8** Delete existing paragraph and replace with the following:

The Owner and Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors. ~~Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than ten percent (10%).~~ The Construction Manager shall execute subcontracts in accordance with those agreements.

**7.1.11** ~~Insert the following subparagraph:~~

~~7.1.11 The amount retained shall be 10% of the value of Work until 50% of the Work has been completed. At 50% completion, further partial payments shall be made in full to the Construction Manager and no additional amounts may be retained unless the Architect certifies that the Work is not proceeding satisfactorily but amounts previously retained shall not be paid to the Construction Manager. At 50% completion or any time thereafter when the progress of the Work is not satisfactory, additional amounts may be retained but in no event shall the total retainage be more than 10% of the value of Work completed.~~

**7.2.2** Replace the word "seven" with the word "ten (10)" in the second sentence; and add the words, "using AIA Document G702, 'Application and Certificate for Payment,' or Form RD 1924-18, 'Partial Payment Estimate,'" after "Certificate for Payment" in that sentence.

**7.2.3** Delete the first two sentences of section 7.2.3 and replace them with the following sentences:

## EXHIBIT C

RD Instruction 1942-A  
Guide 27  
Attachment 5  
Page 2 of 4

If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall not be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007 unless the Owner specifically authorizes such action in writing. If such action has been authorized by the Owner, the Construction Manager may make a request for mediation within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment.

**7.2.5** Insert the following subparagraph:

7.2.5 Amounts withheld from the final payment to cover any incomplete Work are not considered retainage and shall not be paid to the Construction Manager until the work is actually completed and accepted by the Owner. Such withholdings shall not be less than 150% of the estimated cost to complete the Work.

### **ARTICLE 11, MISCELLANEOUS PROVISIONS**

**11.5** Delete "Other Provisions:" and insert the following paragraph:

11.5 The date of Substantial Completion established by this contract is:

**11.6** Insert the following paragraph:

11.6 If the Work is not substantially complete on or before the date of Substantial Completion established in paragraph 11.5, or extension thereof granted by the Owner, the Construction Manager shall pay to the Owner liquidated damages in the sum of \$100.00 for each calendar day of delay. Any sums that may be due by the Construction Manager to the Owner as liquidated damages may be deducted from any monies due or to become due to the Construction Manager under the Contract or may be collected from the Construction Manager's surety.

**11.7** Insert the following paragraph:

11.7 This Agreement shall not become effective until concurred with in writing by the Agency. Such concurrence shall be evidenced by the signature of a duly authorized representative of the Agency in the space provided at the end of the Agency Attachment to this Agreement.

### **ARTICLE 12, SCOPE OF THE AGREEMENT**

**12.1** Delete the last sentence of section 12.1 and replace it with the following sentence:



## EXHIBIT C

RD Instruction  
1942-A  
Guide 27  
Attachment 5  
Page 3 of 4

“This Agreement may be amended only by written instrument signed by Agency, the Owner, and the Construction Manager.”

**12.2.5** The following Documents should be referenced, if applicable:

Attachment to the ***Standard Form of Agreement Between Owner and Construction Manager as Constructor*** (this Attachment)  
*General Conditions of the Contract for Construction*, AIA A201- 2007  
Attachment to the *General Conditions of the Contract for Construction* (RD Instruction 1942-A, Guide 27, Attachment 4)  
Invitation for Bids  
*Instructions to Bidders* (AIA Document A701-1997)  
Attachment to *Instructions to Bidders* (RD Instruction 1942-A, Guide 27, Attachment 2)  
Bid Form  
Bid Bond  
  
Compliance Statement (Form RD 400-6) Payment Bond  
Performance Bond  
  
Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions (Form AD 1048)  
Disclosure of Lobbying Activities (Form SF-LLL)  
Certification for Contracts, Grants and Loans (RD Instruction 1940-Q, Exhibit A-1)

SIGNATURE BLOCK:

The following signature block shall replace the signature block following paragraph 12.2:

## EXHIBIT C

RD Instruction 1942-A  
Guide 27  
Attachment 5  
Page 4 of 4

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in duplicate on the respective dates indicated below:

ATTEST: \_\_\_\_\_

Type Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**OWNER:**

By \_\_\_\_\_

Type Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**CONSTRUCTION MANAGER:**

By \_\_\_\_\_

Type Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

ATTEST: \_\_\_\_\_

Type Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**AGENCY CONCURRENCE:**

By \_\_\_\_\_

Type Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

The concurrence so evidenced by the Agency shall in no way commit the Agency to render financial assistance to the Owner and is without liability to the Agency for any payment hereunder, but in the event such assistance is provided, the concurrence shall signify that the provisions of this Agreement are consistent with Agency requirements.



## **ATTACHMENT 5.4**

# **AIA® Document A201® – 2007**

## **General Conditions of the Contract for Construction**

for the following PROJECT:

*(Name and location or address)*

Jonesborough K-8 School

Jonesborough, TN 37659

**THE OWNER:**

*(Name, legal status and address)*

Town of Jonesborough

123 Boone Street

Jonesborough, TN 37659

**THE ARCHITECT:**

*(Name, legal status and address)*

Clark Nexsen

210 East Watauga Avenue

Johnson City, TN 37601

This document has important legal consequences.

Consultation with an attorney is encouraged with respect to its completion or modification.

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 BASIC DEFINITIONS

#### § 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, ~~Conditions of the Contract (General, Supplementary and other Conditions), these General Conditions of the Construction Contract,~~ Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

#### § 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### § 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### § 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

#### § 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

#### § 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### § 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials. The Owner has all ownership rights of the Instruments of Service as provided in B133

#### § 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

#### § 1.1.9 CONTRACTOR AS CONSTRUCTION MANAGER

To the extent the term "Contractor" is used in this A201 document, it means Construction Manager as used in the applicable B133 Architect Agreement and the A133 CM



## § Agreement.

### **§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. To the extent there is any conflict in terms of the Contract Documents after application of the foregoing, the following order of priority shall be applied.

1. US. Department of Agriculture Rural Development attachments;
2. B133
3. A133
4. Plans
5. Specifications

This A201 General Conditions

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

### **§ 1.3 CAPITALIZATION**

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

### **§ 1.4 INTERPRETATION**

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### **§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE**

§ 1.5.1 ~~The Architect and the Architect's consultants~~ To the extent provided in B133, the Owner shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and ~~will retain~~ will ~~has~~ all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's, Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

### **§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM**

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.



## ARTICLE 2 OWNER

### § 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

~~§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.~~

### § 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

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

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 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 Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

### § 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

### § 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect



or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

## **§ 2.5 CONSTRUCTION ADVISOR**

**§ 2.5.1** The Owner has engaged a Construction Advisor identified in the applicable Contract Documents. The duties of the Construction Advisor include but are not limited to:

**§ 2.5.1.1** Participation in meetings, reviewing reports, making recommendations and providing general assistance in the Owner's evaluation of submittals from perspective contractors, recommendation on selection of a contractor, negotiation of the contracts for design and construction of the Project;

**§ 2.5.1.2** Review of the Owner's budget and assistance in maintenance of that budget from contract negotiation through construction.

**§ 2.5.1.3** Review and advise to the Owner on the appropriateness of proposed contract terms and prices with the selected Contractor and any subsequent Change Orders.

**§ 2.5.1.4** Review and approval of Contractor recommended subcontractors.

**§ 2.5.1.5** Review of Application for Payment of Contractor to determine if the Contractor's proposed draw request is appropriate and make recommendations to the Owner as to whether draws should be completely accepted, partially accepted or rejected.

**§ 2.5.1.6** Review and advise the Owner on the status of the Contractor's performance or of the Work in accordance with the schedule and make recommendations regarding any schedule problems.

**§ 2.5.1.7** Participate in periodic inspections of Contractor's Work and assist in the determination of the punch lists.

**§ 2.5.1.8** The performance of any other task requested by the Owner that is consistent with the scope of the Work identified by the foregoing.

**§ 2.5.2** The Construction Advisor, with the concurrence of the Architect, will have authority to reject work, which does not conform to the Contract Documents. Whenever, in its opinion, it considers it necessary or advisable for the implementation of the intent of the Contract Documents, it will have authority to require special inspection or testing of the Work in accordance with Paragraph 13.5 whether or not such Work be then fabricated, installed, or completed.

**§ 2.5.3** The Construction Advisor and the Architect will conduct inspections to determine the dates of Substantial Completion and Final Completion, will receive written warranties and related documents required by the Contract and assembled by the Contractor and will approve the Contractor's final Application for Payment upon compliance with the requirements of Paragraph 9.8

**§ 2.5.4** The Construction Advisor has authority to direct the Architect to timely provide documents to Contractor and to coordinate with Architect all zoning and permitting documentation to be submitted to applicable

**ARTICLE**  
**agencies.**

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 GENERAL**

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.



§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

### § 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. Prior to contract execution, the Contractor and each Subcontractor, at the time of their individually signed subcontracts, will have evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the locations, condition, layout, and nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, and (iv) availability and cost of materials, tools, and equipment. Except as set forth in Paragraph 10.3, the Contractor shall be responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connections with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Subparagraph 3.2.1.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; Documents subject to the duties specified in Article 2.1 of A133; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### § 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques,

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sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

#### § 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.4.4 Materials shall conform to manufacturer's standards in effect as of the date they are submitted and shall be installed in strict accordance with manufacturer's directions.

§ 3.4.5 Rejection of Defective Materials: The Architect or Owner may reject materials if the Architect or Owner determines that such materials do not conform to the Contract Documents. No rejected materials, the defects of which have been subsequently corrected, shall be used in the Work except with the permission of the Architect. No extra time shall be allowed for completion of the Work due to the rejection of nonconforming materials. There needs to be an objective standard of defectiveness before they can just reject materials. Or at least a reasonableness standard.

§ 3.4.6 Rejection of Defective Work. The Owner or Architect's inspection of the Work shall not relieve the Contractor of its responsibilities to perform the Work in accordance with the Contract Documents and all defective work shall be corrected. Unsuitable work may be rejected by the Architect or Owner, whether or not such work and materials have been previously overlooked or misjudged by the Architect or Owner and accepted for payment. If the Work or any part of the Work shall be found defective any time before the final completion of the Work, the Contractor shall immediately correct such defect satisfactory to the Architect or Owner. If any material brought on the site for use in the Work, or selected for use in the Work, shall be rejected by the Architect or Owner as unsuitable or nonconforming with the Contract Documents, the Contractor shall immediately remove such materials from the vicinity of the Work. Nothing contained herein shall operate in any manner as a waiver of any claim Contractor may have against the Owner or the Architect relating to the inspection of the Work.

#### § 3.4.7 Debris.

§3.4.7.1 The Contractor shall not permit the accumulation of debris, both exterior and interior. The Work area shall always be kept satisfactorily clean. The Contractor shall remove debris from the Work site and dispose of it at any private or public dump the Contractor may choose. The Contractor shall arrange for and obtain any approvals necessary from the owners or officials in charge of such dumps and shall bear all costs, including fees resulting from such disposal, in the Contract Price, as applicable.

§3.4.7.2 Garbage shall be removed as frequently as necessary in order to satisfy the requirements of this section.

§3.4.7.3 No open fire shall be permitted on site.



§3.4.7.4 Chemical waste shall be stored in corrosion-resistant containers, removed from the Project site, and disposed of not less frequently than monthly unless directed otherwise. Disposal of chemical waste shall be according to requirements of the Environmental Protection Agency (EPA) and the applicable state and local agencies.

§3.4.7.5 Fueling and lubricating of vehicles and equipment shall be conducted to afford the maximum protection against spills and evaporation. Lubricants to be discarded or burned shall be disposed of according to approved procedures meeting all applicable federal, state and local regulations. In case of an oil or hazardous materials spill large enough to violate federal, state or applicable local regulations, the Architect or Owner shall be notified immediately. The Contractor shall be responsible for immediately cleaning up any such oil or hazardous waste spills resulting from its operations. Any costs incurred in cleaning up any such spills shall not increase the GMP or Price, as applicable.

§3.4.8 Site and Weather Protection: The Contractor shall take necessary precautions during the execution of the Work involving demolition not to disturb or damage any existing known structure, landscaping, walks, roads or other items scheduled to remain. Subject to the other terms of the Contract Documents, the Contractor shall restore any damaged items to original condition as directed by the Architect or Owner. The Contractor shall provide and erect acceptable barricades, fences, signs and other traffic devices to protect the Work from traffic and the public necessary and as required by applicable laws, ordinances, codes, rules and regulations.

§3.4.9 Archaeological and Historical Resources: All items having any apparent historical or archaeological interest discovered during any construction activities shall be carefully preserved and reported immediately to the Owner for determination of appropriate actions to be taken. Any increases to Contractor's time or cost of performance due to historical or archaeological items discovered on the site shall entitle Contractor to a Change Order equitably adjusting the Contract Time and the Contract Price accordingly.

§3.4.10 Safety Requirements:

3.4.10.1 The Contractor must comply with all federal, state and local safety laws and regulations of the applicable authority in connection with the Work performed under this Contract.

§3.4.10.2 This Project is subject to compliance with Public Law 92-596 "Occupational Safety and Health Act of 1970" (OSHA) with respect to all rules and regulations concerning construction, U.S. Code Title 29, Section 651 et seq., including Volume 36 numbers 75 and 105, of the Federal Register as amended, and as published by the U.S. Department of Labor.

§3.4.10.3 As between Owner and Contractor, Contractor will maintain a Safety Program that requires compliance by everyone on the Project Site.

**§ 3.5 WARRANTY**

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not exclusive but is in addition to any additional contract remedies available to Owner.

**§ 3.6 TAXES**

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.



### § 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. Contractor is responsible to comply and to require compliance by its subcontractors and suppliers with all local, state and federal statutes, ordinances, regulations or requirements relating to the performance of the Work, including but not limited to: OSHA and health and safety requirements; labor requirements; worker's compensation and unemployment requirements; insurance requirements; equal opportunity requirements, tax and withholding requirements; noise requirements; hazardous substance requirements; and waste disposal requirements. Contractor or its Subcontractors are further responsible for giving all notices required by all of the foregoing law. Contractor shall indemnify and hold harmless the Owner and their respective employees, officers and agents from any claims, damages, fines, penalties and attorney fees incurred by Owner or its employees, officers or agents as a result of Contractor's failure to comply with the foregoing obligations, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than ~~24~~10 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### § 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;



- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### § 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.10.4 To the extent that the Date for Substantial Completion is impacted by any concealed condition or other event for which Contractor is entitled to a time extension, Contractor shall provide Owner with a proposal to accelerate the performance of the Work including estimated costs to be incurred to mitigate the time impact such event shall have on Substantial Completion of the Work. If accepted by Owner, a Change Order will be executed to reflect the change in the Contract Price and the Contract Time if any.

§ 3.10.5 The Contractor shall have weekly progress meetings at the Job Site. Progress of the Work shall be reported in detail with reference to the Construction Schedule. Each interested Subcontractor shall have a competent representative present to report the condition of its portion of the Work and to receive information.

§ 3.10.6 The Contractor will provide or notify Owner or Owner's representative if applicable of needed approvals of submittals, requests for information and requests for change. Owner selections or Owner information or services more than fourteen (14) days prior to the time such approvals or information will be needed so as not to delay the Work. Contractor will further advise Owner and Owner's representative of the date by which such selections must be made. Contractor may not seek to extend the Contract Completion Date for delays in Owner selections or Owner



information if Contractor fails to give Owner notice of the need for selections.

### § 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### § 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.



**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

### **§ 3.13 USE OF SITE**

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### **§ 3.14 CUTTING AND PATCHING**

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

### **§ 3.15 CLEANING UP**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

### **§ 3.16 ACCESS TO WORK**

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

### **§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a



patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

### § 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, the Washington County School Board (the "School Board"), Washington County (the "County") and their respective elected officials, officers, consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the ~~negligent~~ acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

## ARTICLE 4 ARCHITECT

### § 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

~~§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.~~

### § 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the ~~date the Architect issues the final Certificate for Payment.~~ The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents. expiration of the period of correction of the Work described in the Contract Documents.

§ 4.2.2 The Architect will visit the site ~~at intervals as necessary~~ appropriate to the stage of construction, or as otherwise agreed with the Owner, to become ~~generally~~ familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. ~~However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.~~

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. ~~The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or~~

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charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work. ~~the Work.~~

#### § 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. ~~Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents.~~ The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4. All Change Orders, Construction Change Directives and field directives shall require the approval of the Owner in writing to be binding on the Owner and before Contractor is required to commence the changed Work. Any claim for additional compensation or an adjustment of the Price must be in compliance with the provisions of Article 15 of this A201.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.



§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## **ARTICLE 5 SUBCONTRACTORS**

### **§ 5.1 DEFINITIONS**

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### **§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

### **§ 5.3 SUBCONTRACTUAL RELATIONS**

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically



provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

#### **§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

**§ 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

**§ 5.4.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 5.4.3** Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

#### **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

##### **§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

**§ 6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

**§ 6.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

**§ 6.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

**§ 6.1.4** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

##### **§ 6.2 MUTUAL RESPONSIBILITY**

**§ 6.2.1** The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.



§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

#### § 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

### ARTICLE 7 CHANGES IN THE WORK

#### § 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. If Contractor shall be entitled to a claim for an increase in the Price or an equitable adjustment in the Price, it shall be in compliance with the A133-2009 Agreement and Article 15 of these General Conditions.

7.1.1.2 When submitting its Change Order proposal, the Contractor shall include and set forth in clear and reasonable detail breakdowns of labor and materials for all trades involved and the estimated impact on the construction schedule to the extent then reasonably known by Contractor. The Contractor shall furnish spread sheets from which the breakdowns were prepared, plus spread sheets if requested of any Subcontractors.

§ 7.1.2 A-Subject to the limitations stated in the Contract Documents : a Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. All changes must be in writing. No verbal direction or course of conduct may serve as a substitute for the requirement of a written approval or change order.

§ 7.1.4 The cost or credit to the Owner resulting from a change in the Work shall be determined in one or more of the following ways:

- (1) by unit prices stated in the Contract Documents;
- (2) by mutual acceptance of a sum properly itemized and supported by sufficient substantiating data to permit evaluation subject to the provisions of 7.1.5 below;
- (3) by cost to be determined in a manner agreed upon by the parties; or
- (4) by the method provided in Subparagraph 7.1.5.



§ 7.1.5 If the methods set forth in Clauses 7.1.4 to 7.1.5 are not applicable, the Contractor, provided he receives a written order signed by the Owner, shall promptly proceed with the Work involved. The cost of such Work shall then be subject to a recommendation by the Architect on the basis of the reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Contract Sum, for overhead and profit. The Architect recommendation shall be advisory and admissible in any proceeding but it shall not be binding on Contractor or Owner in the absence of a mutual agreement. If the Owner and Contractor cannot reach a mutual agreement, any Claim shall be subject to the provisions of Article 15.

## **§ 7.2 CHANGE ORDERS**

**§ 7.2.1** A-Subject to the limitations stated in the Contract Documents : a Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

**§ 7.2.2** Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

**§ 7.2.3** Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and construction schedule.

## **§ 7.3 CONSTRUCTION CHANGE DIRECTIVES**

**§ 7.3.1** A-Subject to the limitations stated in the Contract Documents : a Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

**§ 7.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**§ 7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

**§ 7.3.4** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

**§ 7.3.5** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

**§ 7.3.6** A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.



§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

#### § 7.4 MINOR CHANGES IN THE WORK

The Subject to the limitations stated in the Contract Documents : the Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such Subject to the limitations stated in the Contract Documents , such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

#### ARTICLE 8 TIME

##### § 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

##### § 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.



§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

### § 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 Claims relating to time shall be made in accordance with applicable provisions of Article 15 and as follows. If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may ~~determine~~ determine ; and to the extent there is an entitlement to an adjustment of the Contract Sum shall be adjusted to compensate Contractor for any actual direct costs incurred by Contractor and its Subcontractors resulting from the delay. Such adjustment shall include Contractor's added costs for general conditions, insurances, overhead and profit.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

### § 9.2 SCHEDULE OF VALUES

~~Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values. An initial schedule of values shall be attached to the GMP Amendment allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.~~

### § 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location



agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### **§ 9.4 CERTIFICATES FOR PAYMENT**

**§ 9.4.1** The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. ~~However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.~~

#### **§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION**

**§ 9.5.1** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

**§ 9.5.2** When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.



§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

#### § 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney fees and litigation expenses, arising out of any claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a claim for payment, the Owner shall notify the Contractor.

#### § 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within ~~seven~~<sup>thirty</sup> (30) days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.



## **§ 9.8 SUBSTANTIAL COMPLETION**

**§ 9.8.1** Substantial Completion is 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.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**§ 9.8.3** Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

## **§ 9.9 PARTIAL OCCUPANCY OR USE**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

## **§ 9.10 FINAL COMPLETION AND FINAL PAYMENT**

**§ 9.10.1** Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the



Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**§ 9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS**

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

### **§ 10.2 SAFETY OF PERSONS AND PROPERTY**

**§ 10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

**§ 10.2.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

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§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

#### § 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

#### § 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance ~~not addressed in the Contract Documents present on the site prior to commencement of the Work not addressed in the Contract Documents, or migrating to the site through no act or omission of Contractor or any of its Subcontractors,~~ and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by applicable law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and



against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor or any of its Subcontractors brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's Contractor or Subcontractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify and hold harmless the Owner and its elected officials, consultants, agents and employees for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor or any of its Subcontractors brings to the site and negligently handles, handles or willfully mishandles, including, without limitation, attorney, engineer and consultant fees, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence or misconduct on the part of the Contractor, Contractor or any of its Subcontractors, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner to the fullest extent permitted by applicable law, shall indemnify the Contractor for all cost and expense thereby incurred.

#### § 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the



Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

## § 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

## § 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.



§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

#### § 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

#### § 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

#### § 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.



**§ 11.3.9** If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

**§ 11.3.10** The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

#### **§ 11.4 PERFORMANCE BOND AND PAYMENT BOND**

**§ 11.4.1** The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

**§ 11.4.2** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

### **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

#### **§ 12.1 UNCOVERING OF WORK**

**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

#### **§ 12.2 CORRECTION OF WORK**

##### **§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION**

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

##### **§ 12.2.2 AFTER SUBSTANTIAL COMPLETION**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct



nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located ~~except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4, located.~~

### § 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor 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 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, 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 Contractor shall execute all consents reasonably required to facilitate such assignment.

### § 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

### § 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.



§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

### § 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

### § 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

### § 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;



- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

#### § 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.



### § 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

### § 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 CLAIMS

#### § 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

#### § 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is ~~later~~.

#### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

#### § 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### § 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.



§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction. Adverse weather conditions are defined as days above and beyond normal weather conditions. The "30 year" history report as prepared by the National Oceanic and Atmospheric Administration, (NOAA) would state what is expected as normal weather conditions. Impact of adverse weather conditions would be defined as days the Contractor cannot perform any work on critical path of the Construction Schedule. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

#### §15.1.5.4

Any time extension shall be based upon consideration of the mitigation alternatives proposed by Contractor in accordance with § 3.10.1.3 above. It is the intent of the parties to take every reasonable action including acceleration with an appropriate adjustment in the Contract Sum to achieve the date of Substantial Completion set out in this Agreement rather than extend the Contract Time. If the Contract Time must be extended notwithstanding this section, the parties will attempt to agree by Change Order to a phased turnover of units and floors to allow Owner to commence furnishing of units.

#### **§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

The Contractor and Owner waive Claims against each other waives Claims against Owner for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- ~~1—damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~
- ~~2—damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.~~

This ~~mutual~~ waiver is applicable, without limitation, to all consequential damages due to either party's party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated ~~damages, dxamages,~~ when applicable, in accordance with the requirements of the Contract Documents.

#### **§ 15.2 INITIAL DECISION**

**§ 15.2.1** Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the



Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### § 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.



## § 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

## § 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

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## ***Certification of Document's Authenticity***

***AIA® Document D401™ – 2003***

I, Ken Ross, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification 17:47:00 ET on 04/22/2021 under Order No. 5496599019 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ - 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

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*(Signed)*

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*(Title)*

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*(Dated)*

ATTACHMENT TO AIA DOCUMENT A201-2007, *General Conditions of the Contract for Construction*

The provisions of this attachment shall delete, modify and supplement the provisions contained in the "*General Conditions of the Contract for Construction*," AIA Document A201-2007 Edition. The provisions contained in this attachment will supersede any conflicting provisions of the AIA Document. The term "Agency," as used in this Attachment, shall mean the United States of America, acting through the United States Department of Agriculture.

ARTICLE 1, GENERAL PROVISIONS

Add the following subparagraph:

1.2.4 Concurrence of the Contract by the Agency is required before it is effective.

ARTICLE 2, OWNER

Delete subparagraph 2.2.5 and substitute the following:

2.2.5 The Contractor will be furnished, free of charge, \_\_\_\_\_ copies of the Drawings and Projects Manuals necessary for execution of the Work. Additional copies will be available from the Architect at the cost of reproduction and handling.

ARTICLE 4, ARCHITECT

Add the following to subparagraph 4.1.1:

The term "Architect" means the Architect, or the Engineer when the nature of the work is within the authority granted engineers by the State licensure law, or an authorized representative of the Architect or Engineer.



ARTICLE 5, SUBCONTRACTORS

Add the following to subparagraph 5.2.2:

The Contractor shall not contract with any party who is suspended or debarred by any Federal government agency from participating in Federally assisted construction projects

or to whom the Owner or the Architect has made reasonable and timely objection.

ARTICLE 7, CHANGES IN THE WORK

Delete the words ", Construction Change Directive" from subparagraph 7.1.1.

Insert the words ", Agency " after the word "Owner," and delete the words "; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor" in subparagraph 7.1.2.

Delete the words "Construction Change Directive" from subparagraph 7.1.3.

Delete subparagraph 7.2.1 and substitute the following:

7.2.1 A Change Order is a written order to the Contractor utilizing Form RD 1924-7, "Contract Change Order," or AIA G-701 signed by the Owner, Architect, Contractor, and the Agency representative. It is issued after the execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. The Contractor's signing of a Change Order indicates complete agreement therein.

Add subparagraph 7.2.2:

7.2.2 Methods used in determining adjustments to the Contract Sum may include any of the following:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluating.

- .2 Unit prices stated in the Contract Documents  
or subsequently agreed upon.

Add the following sentence to paragraph 7.3: "A Construction Change Directive may be used only for a change in response to an emergency as described in paragraph 10.4.

#### ARTICLE 8, TIME

Add the following subparagraphs:

8.2.4 The Notice to Proceed shall be issued within twenty (20) calendar days of the execution of the Agreement by the Owner. Should there be reasons why the Notice to Proceed cannot be issued within such period, the time may be extended by mutual agreement of the Owner and Contractor, with the concurrence of the Agency. If the Notice to Proceed has not been issued within the twenty (20) calendar day period or within the period mutually agreed, the Contractor may terminate the Agreement without further liability on the part of either party.

8.3.4 As outlined in Article 3 of the Agreement, the Contractor agrees to pay liquidated damages to the Owner for each calendar day the Contractor shall be in default.

#### ARTICLE 9, PAYMENTS AND COMPLETION

Delete clause 9.3.1.1 and substitute the following:

9.3.1.1 Work performed and materials supplied under a Change Order may be included for payment only after the Change Order has been approved by all appropriate parties, including the Agency.

Add the words ", using AIA Document 702, 'Application and Certificate for Payment' or Form RD 1924-18, 'Partial Payment Estimate'," after "Certificate for Payment" in subparagraph 9.4.1.



Add the following subparagraph:

9.6.8 No progress payments will be made that deplete the retainage, nor place in escrow any funds that are required for retainage, nor invest the retainage for the benefit of the Contractor. Retainage will not be adjusted until after construction is substantially complete.

Replace the word "seven" with the words "fifteen (15)" in the first sentence, third line of subparagraph 9.7.

Delete subparagraph 9.8.5, after the first sentence, and substitute the following:

9.8.5 When the Work has been substantially completed, except for Work which cannot be completed because of weather conditions, lack of materials or other reasons, which, in the judgment of the Owner, are valid reasons for non-completion, the Owner may make additional payments, retaining at all times an amount sufficient to cover the estimated cost of the Work still to be completed. Provide a copy of the Certificate to the Agency.

Delete subparagraphs 9.9.1 through 9.9.3 and substitute the following:

9.9.1 The Contractor agrees to the use and occupancy of a portion or unit of the Project before formal acceptance by the Owner under the following conditions:

.1 A "Certificate of Substantial Completion" shall be prepared and executed as provided in subparagraph 9.8.4, except that when, in the opinion of the Architect, the Contractor is chargeable with unwarranted delay in completing the Work or other Contract requirements, the signature of the Contractor will not be required. The Certificate of Substantial Completion shall be accompanied by a written endorsement of the Contractor's insurance carrier and surety permitting occupancy by the Owner during the remaining period of the Project Work. Occupancy and use by the Owner shall not commence until authorized by public authorities having jurisdiction over the Work.

- .2 Occupancy by the Owner shall not be construed by the Contractor as being an acceptance of that part of the Project to be occupied.
- .3 The Contractor shall not be held responsible for any damage to the occupied part of the Project resulting from the Owner's occupancy.
- .4 Occupancy by the Owner shall not be deemed to constitute a waiver of existing claims in behalf of the Owner or Contractor against each other.
- .5 If the Project consists of more than one building, and one of the buildings is to be occupied, the Owner, prior to occupancy of that building, shall secure permanent property insurance on the building to be occupied and necessary permits which may be required for use and occupancy.

9.9.2 With the exception of clause 9.9.1.5, use and occupancy by the Owner prior to Project acceptance does not relieve the Contractor of responsibility to maintain all insurance and bonds required of the Contractor under the Contract Documents until the Project is completed and accepted by the Owner.

Delete the second and third sentences of subparagraph 9.10.2.

#### ARTICLE 11, INSURANCE AND BONDS

Replace the words "the Contract Documents" with the words "subparagraph 11.1.5" in the first sentence of subparagraph 11.1.2.

Add the following subparagraph:

11.1.5. Insurance shall be:

- .1 Written with a limit of liability of not less than \$500,000 for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained by any one person in any one accident; and a limit of liability of not less than \$500,000 aggregate



for any such damages sustained by two or more persons in any one accident. Insurance shall be written with a limit of liability of not less than \$200,000 for all property damage sustained by any one person in any one accident; and a limit of liability of not less than \$200,000 aggregate for any such damage sustained by two or more persons in any one accident, or

- .2 Written with a combined bodily injury and damage liability of not less than \$700,000 per occurrence; and with an aggregate of not less than \$700,000 per occurrence.

Modify the first sentence of subparagraph 11.3.1 as follows:

11.3.1 Delete "Unless otherwise provided, the Owner" and substitute "The Contractor".

Add the following sentences to the end of subparagraph 11.3.1

The policy shall name as the insured the Contractor and the Owner. If the Owner is damaged by the failure of the Contractor to purchase and maintain such insurance without so notifying the Owner in writing, then the Contractor shall bear all reasonable costs attributable thereto.

Insert the word "Owner" after the words "protect the interests of the" in the second sentence of subparagraph 11.3.1.2.

Add the following sentence to the end of subparagraph 11.3.6:

The provisions of this subparagraph shall apply to the Contractor if the Contractor purchases and maintains said insurance coverage.

Delete subparagraph 11.3.7 in its entirety.

Delete subparagraph 11.4.1 and substitute the following:

11.4.1 The Contractor shall furnish the Owner bonds covering faithful performance of the Contract and payment of obligations arising thereunder within ten (10) calendar days after receipt of the Notice of Award. The surety company executing the bonds must hold a certificate of authority as an acceptable surety on Federal bonds as listed in Treasury Circular 570, and be authorized to transact business in the State where the Project is located. The bonds (using the forms included in the Bidding Documents) shall each be equal to the amount of the Contract Sum. The cost of these bonds shall be included in the Contract Sum

Add the following subparagraphs:

11.4.1.1 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current power of attorney.

11.4.1.2 If at any time a surety on any such bond is declared bankrupt or loses its right to do business in the State in which the work is to be performed or is removed from the list of surety companies accepted on Federal Bonds, the Contractor shall within ten (10) calendar days after notice from the Owner to do so, substitute an acceptable bond in such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The premiums of such bond shall be paid by any Contractor. No further payment shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable bond to the Owner.

#### ARTICLE 13, MISCELLANEOUS PROVISIONS

Add the following paragraphs:

##### 13.8 LANDS AND RIGHTS-OF WAY

13.8.1 Prior to the start of construction, the Owner shall obtain all lands and rights-of-way necessary for the execution and completion of work to be performed under this contract.



### 13.9 EQUAL OPPORTUNITY REQUIREMENTS

Non-discrimination in Employment by Federally Assisted Construction Contractors, by Executive Order 11246.

13.9.1 This section summarizes Executive Order 11246, which prohibits employment discrimination and requires employers holding non-exempt Federal contracts and subcontracts and federally-assisted construction contracts and subcontracts in excess of \$10,000 to take affirmative action to ensure equal employment opportunity without regard to race, color, religion, sex, or national origin. The Executive Order requires, as a condition for the approval of any federally assisted construction contract, that the applicant incorporate nondiscrimination and affirmative action clauses into its non-exempt federally assisted construction contracts.

13.9.2 Executive Order 11246, is administered and enforced by the Office of Federal Contract Compliance Programs (OFCCP), an agency in the U.S. Department of Labor's Employment Standards Administration. OFCCP has issued regulations at 41 CFR chapter 60 implementing the Executive Order. The regulations at 41 CFR part 60-4 establish the procedures which the Agency, as an administering agency, must follow when making grants, contracts, loans, insurance or guarantees involving federally assisted construction which is not exempt from the requirements of Executive Order 11246. The regulations which apply to Federal or federally assisted construction contractors also are published at 41 CFR part 60-4.

13.9.3 OFCCP has established numerical goals for minority and female utilization in construction work. The goals are expressed in percentage terms for the contractor's aggregate workforce in each trade. OFCCP has set goals for minority utilization based on the percentage of minorities in the civilian labor force in the relevant area. There is

a single nationwide goal of 6.9 percent for utilization of women. The goals apply to all construction work in the covered geographic area, whether or not it is federal, federally assisted or non-federal. A notice advises bidders of the applicable goals for the area where the project is to be located.

13.9.4 Application. This section applies to all of a construction contractor's or subcontractor's employees who are engaged in on-site construction including those construction employees who work on a non-Federal or non-Federally assisted construction site.

13.9.4.1 Agency officials will notify the appropriate Regional Director of OFCCP that an Agency financed construction contract has been awarded, and that the equal opportunity clauses are included in the contract documents.

13.9.4.2 The Regional Director, OFCCP-DOL, will enforce the non-discrimination requirements of Executive Order 11246.

13.9.5 The prospective contractor or subcontractor must comply with the Immigration Reform and Control Act of 1986, by completing and retaining Form I-9, "Employment Eligibility Verification," for employees hired. This form is available from the Immigration and Naturalization Service, and Department of Justice.

13.9.6 The prospective contractor or subcontractor must submit Form RD 400-6, "Compliance Statement," to the applicant and an Agency official as part of the bid package, prior to any contract bid negotiations and comply with the Executive Order 11246 as stated in the contract documents.

#### 13.10 STATUTES

13.10.1 The Contractor and each Subcontractor shall comply with the following statutes (and with regulations issued pursuant thereto, which are incorporated herein by reference):

13.10.1.1 Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). This Act provides that each Contractor shall be prohibited from inducing, by any means, any person in connection with construction to give up any part of the compensation to which the person is otherwise entitled.



13.10.1.2 Clean Air Act (42 U.S.C. 7414), section 114, and Water Pollution Control Act (33 U.S.C. 1813), section 308. Under Executive Order 11738 and Environmental Protection Agency (EPA) regulations 40 C.F.R. part 15, all Contracts in excess of \$100,000 are required to comply with these Acts. The Acts require the Contractor to:

- .1 Notify the Owner of the receipt of any communication from EPA indicating that a facility to be utilized in the performance of the Contract is under consideration to be listed on the EPA list of Violating Facilities.
- .2 Certify that any facility to be utilized in the performance of any nonexempt Contractor or Subcontractor is not listed on the EPA list of Violating Facilities as of the date of the Contract Award.
- .3 Include or cause to be included the above criteria and requirements of paragraphs .1 and .2 in every nonexempt subcontract, and that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

13.10.1.3 Restrictions on Lobbying (Public Law 101-121, section 319) as supplemented in Department of Agriculture regulations (7 CFR part 3018). This statute applies to the recipients of contracts or subcontracts that exceed \$100,000 at any tier under a Federal loan that exceeds \$150,000 or a Federal grant that exceeds \$100,000. If applicable, the Contractor must complete a certification form on lobbying activities related to the specific Federal loan or grant that is a funding source for this contract. The certification and disclosure forms shall be provided by the Owner.

#### 13.11 RECORDS

13.11.1 If the Contract is based on a negotiated Bid, the Owner, the Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Contractor which are pertinent to a specific Federal loan program for the purpose of making audit, examination, excerpts, and transcriptions. The Contractor shall maintain records for at least three years after the Owner makes final payment and all other pending matters are closed.

### 13.12 ENVIRONMENTAL REQUIREMENTS

13.12.1 Mitigation Measures - The contractor shall comply with applicable mitigation measures established in the environmental assessment for the project. These may be obtained from the Agency representative.

13.12.2 The Contractor, when constructing a Project involving trenching, excavating, or other earth moving activity, shall comply with the following environmental constraints:

13.12.2.1 Endangered Species, Historic Preservation, Human Remains and Cultural Items, Hazardous Materials, and Paleontology - Any excavation or other earth moving activity by the Contractor that provides evidence of the presence of endangered or threatened species or their critical habitat, uncovers a historical or archaeological artifact, human remains or cultural items, hazardous materials, a fossil or other paleontological materials will require the Contractor to:

- .1 Temporarily stop work;
- .2 Provide immediate notice to the Architect and the Agency, and in the case of potentially hazardous materials, provide immediate notice to local first responders and take such measures as necessary to protect the public and workers;
- .3 Take reasonable measures as necessary to protect the discovered materials or protected resource;
- .4 Abide by such direction as provided by the Agency, or Agencies responsible for resource protection or hazardous materials management; and
- .5 Resume work only upon notice from the Architect and the Agency.

13.12.3 Lead-Based Paint - The Contractor and Owner shall comply with applicable Agency requirements of the Lead-Based Paint Poisoning Prevention Act, as amended (42 U.S.C. 4821), and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851) for rehabilitation work on residential property built prior to 1978.



13.13 DEBARMENT AND SUSPENSION

13.13.1 The Contractor shall comply with the requirements of 7 CFR part 3017, which pertains to the debarment or suspension of a person from participating in a Federal program or activity.

ARTICLE 15 CLAIMS AND DISPUTES

Add the words "may be" after "on the parties but" in the last sentence of subparagraph 15.2.5.

Replace the word "shall" with the word "may" in the first sentence, first occurrence of subparagraph 15.3.2

15.4.1.2 The arbitrators will select a hearing location as close to the Owner's locale as possible.

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Forms and Certifications to be included in RFP 1-2021

- Exhibit A – Affidavit of Compliance with Tennessee Criminal History Records  
Check Tennessee Code Annotated, Section 49-5-413
- Exhibit B – Drug-Free Workplace
- Exhibit C – Drug-Free Workplace Affidavit
- Exhibit D – Iran Divestment Act T.C.A. § 12-12-106
- Exhibit E – Non-Collusion Affidavit of Prime Bidder
- Exhibit F – Bid Envelope – State Contractor Licensing Info
- Exhibit G – Insurance Checklist
- Exhibit H – Equal Employment – Compliance Statement (Form RD 400-6)
- Exhibit I – Disclosure of Lobbying Activities (RD Instruction 1940-Q Exhibit A-1)
- Exhibit J – Debarment, Suspension Lower Tier Transaction (Form AD-1048)



**AFFIDAVIT OF COMPLIANCE WITH  
TENNESSEE CRIMINAL HISTORY RECORDS CHECK  
TENNESSEE CODE ANNOTATED, SECTION 49-5-413**

(To be submitted with bid/proposal by contractor)

I, \_\_\_\_\_, president or other principal Officer of  
\_\_\_\_\_, swear or affirm that the  
\_\_\_\_\_  
(Name of Company)

Company is in compliance with Public Chapter 587 of 2007, codified at Tennessee Code Annotated 49-5-413, in effect at the time of this bid submission at least to the extent required of governmental entities. I further swear or affirm that the company is in compliance with Tennessee Code Annotated, § 49-5-413.

\_\_\_\_\_  
President or Principal Officer

For:

\_\_\_\_\_  
Name of Company

STATE OF TENNESSEE } CITY  
OF } }

Subscribed and sworn before me by \_\_\_\_\_,  
President or principal officer of \_\_\_\_\_, On  
this \_\_\_\_\_ day of \_\_\_\_\_ 2 \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**COMPLETE AND SUBMIT WITH BID/PROPOSAL**

**DRUG FREE WORKPLACE**

All vendors with five (5) or more employees must execute the attached Drug Free Workplace Affidavit to verify compliance with TCA 50-9-113 and return same with response. Failure to comply with this requirement will declare that submittal non-responsive.

Town of Jonesborough, Tennessee – Policy No. HR-131

**SECTION I – PURPOSE OF THE DRUG & ALCOHOL TESTING PROGRAM**

The Town of Jonesborough, Tennessee recognizes its responsibility to provide safe and efficient operations for our employees, our citizens and the general public. Our commitment to provide safe and efficient operations is shown by the implementation of programs and procedures which ensure compliance with appropriate safety measures, as well as the letter and intent of all applicable laws and regulations. There is sufficient evidence to conclude that the use of illegal drug/alcohol; drug/alcohol dependence and drug/alcohol abuse seriously impairs an employee's performance and general physical and mental health. The illegal possession and use of drugs, alcohol and/or narcotics by employees of the Town is a crime in this jurisdiction and is clearly unacceptable. Therefore, the Town of Jonesborough, Tennessee has adopted this written policy to ensure an employee's fitness for duty as a condition of employment; to ensure the drug tests and alcohol tests are conducted on safety-sensitive positions in the categories of: pre-employment, random testing, suspicion testing, and return-to-duty testing.

To comply with TCA Title 50 Chapter 9 Part 1, all bidders and/or proposers of service to the Town must have a testing program of the same or better than the requirements of the Town of Jonesborough, Tennessee.

**COMPLETE AND SUBMIT WITH BID/PROPOSAL**



## DRUG-FREE WORKPLACE AFFIDAVIT

State of \_\_\_\_\_

City of \_\_\_\_\_

I, \_\_\_\_\_, being duly sworn, depose, and say that:

- 1) I am a principal officer of \_\_\_\_\_, the firm that has submitted the attached or enclosed bid or proposal, my title being \_\_\_\_\_ of the firm; and
- 2) I have personal knowledge of the policies of the above-named firm with respect to the maintenance of a drug-free workplace; and
- 3) I certify that all provisions and requirements of the Tennessee Drug-Free Workplace Program, as established by Tennessee Code Annotated §§ 50-9-113 have been met and implemented.

(Signed) \_\_\_\_\_

(Title) \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

\_\_\_\_\_

Title

My Commission expires \_\_\_\_\_

**COMPLETE AND SUBMIT WITH BID/PROPOSAL**

**ACKNOWLEDGEMENT OF  
REQUIREMENTS FOR BIDS, REQUESTS FOR PROPOSALS, AND CONTRACTS  
BETWEEN THE TOWN OF JONESBOROUGH  
AND OTHER PARTIES AND THE REQUIREMENTS OF IRAN DIVESTMENT ACT**

**Name of Solicitation:** JONESBOROUGH SCHOOL

**Bid/RFP Number:** RFP# 1-2021

**Name of Bidder/Proposer:** \_\_\_\_\_

The Undersigned hereby acknowledges that the Bidder/Proposer has carefully reviewed the Requirements For Bids, Requests for Proposals, and Contracts between the Town of Jonesborough and Other Parties and the requirements of the Iran Divestment Act (Sealed Solicitations General Terms & Conditions #20), and understands that these documents are considered part of the Contract Documents and all Bids/Proposals shall be conditioned by the document.

By submission of this bid/proposal, each bidder/proposer and each person signing on behalf of any bidder/proposer certifies, and in the case of a joint bid/proposal each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder/proposer is not on the Iran investment activities list created pursuant to T.C.A. § 12-12-106.

**Name of & Title of Signer (Print or Type):** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**COMPLETE AND SUBMIT WITH BID/PROPOSAL**



NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

State of \_\_\_\_\_)

County of \_\_\_\_\_)

\_\_\_\_\_, being first duly sworn, deposes and says that:

(1) Is \_\_\_\_\_ of \_\_\_\_\_

\_\_\_\_\_, the Bidder who has submitted the attached Bid;

(2) Is fully informed respecting the preparation and contents of the attached Bid and of all the pertinent circumstances respecting such Bid;

(3) Such Bid is genuine and is not a collusive or sham Bid;

(4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including this affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly, with any other Bidder, firm, or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm, or person, to fix the price or prices in the attached Bid or of any other Bidder, or to fix any overhead, profit, or cost element of the Bid price or the Bid prices of any other Bidder, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against the Owner or any person interested in the Contract; and

(5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

By: \_\_\_\_\_ Title:

\_\_\_\_\_

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

By: \_\_\_\_\_

My commission expires \_\_\_\_\_, 20\_\_\_\_\_

COMPLETE AND SUBMIT WITH BID/PROPOSAL

**EXHIBIT F****STATE CONTRACTORS LICENSING INFORMATION  
SOLICITATION ENVELOPE FORM**

THIS FORM MUST BE FIRMLY ATTACHED TO THE OUTSIDE OF THE ENVELOPE  
CONTAINING THE RFP, NO RFP WILL BE CONSIDERED IF THIS FORM IS INCOMPLETE OR  
NOT ATTACHED TO THE OUTSIDE OF THE RFP ENVELOPE

TO:	Town of Jonesborough, Tennessee Glenn Rosenoff, Town Administrator 123 Boone Street, Jonesborough, TN 37659 RFP# 1-2021 – Construction Manager/General Contractor JONESBOROUGH SCHOOL
DUE DATE & TIME:	July 7, 2021, 4:00PM, EDT
LOCATION:	TOWN OF JONESBOROUGH 123 BOONE STREET, JONESBOROUGH, TENNESSEE 37659
NAME OF BIDDER:	
ADDRESS OF BIDDER:	
FEDERAL ID # OF BIDDER	
LICENSE NO.	
LICENSE CLASSIFICATION OF BIDDER:	
EXPIRATION DATE:	
MONETARY LIMITS:	

**COMPLETE AND SUBMIT WITH BID/PROPOSAL**



# INSURANCE CHECKLIST

## REQUIRED COVERAGE (marked by "x")

## MINIMUM LIMITS

- ☒ 1. Worker's Compensation (proprietor/partners/executive officers exclusion not allowed) ..... Statutory limits of Tennessee and Employer's Liability ..... \$100,000/accident, \$100,000/disease, \$500,000/disease policy limit
- ☒ 2. Commercial General Liability (including Premises/Operations) ..... \$1,000,000 CSL BI/PD each occurrence, \$1 Million annual aggregate
- ☒ 3. Automobile Liability & Owned/Hired/Non-Owned Vehicles ..... \$500,000 BI/PD each accident, Uninsured Motorist
- ☒ 4. Independent Contractors ..... \$1,000,000 CSL BI/PD each occurrence, \$1 Million annual aggregate
- ☒ 5. Products/Completed Operations ..... \$1,000,000 CSL BI/PD each occurrence, \$1 Million annual aggregate
- ☒ 6. Contractual Liability ..... \$1,000,000 CSL BI/PD each occurrence, \$1 Million annual aggregate
- ☒ 7. Personal and Advertising Injury Liability ..... \$1,000,000 each offense, \$1 Million annual aggregate
- ☒ 8. Umbrella Liability ..... \$1 Million Bodily Injury, Property Damage and Personal Injury
- ☒ 9. Per Project Aggregate
- ☐ 10. Professional Liability ..... \$1 Million per occurrence/claim
- ☐ a. Architects and Engineers ..... \$1 Million per occurrence/claim
- ☐ b. Asbestos Removal Liability ..... \$2 Million per occurrence/claim
- ☐ c. Medical Malpractice ..... \$1 Million per occurrence/claim
- ☐ d. Medical Professional Liability ..... \$1 Million per occurrence/claim
- ☐ 11. Miscellaneous E & O ..... \$1 Million per occurrence/claim
- ☐ 12. Motor Carrier Act End. (MCS-90) ..... \$1 Million BI/PD each accident, Uninsured Motorist
- ☐ 13. Motor Cargo Insurance
- ☐ 14. Garage Liability ..... \$1 Million Bodily Injury, Property Damage per occurrence
- ☐ 15. Garagekeepers Liability ..... \$500,000 Comprehensive, \$500,000 Collision
- ☐ 16. Inland Marine-Bailee's Insurance ..... \$
- ☐ 17. Moving and Rigging Floater ..... Endorsement to CGL
- ☐ 18. Dishonesty Bond ..... \$
- ☒ 19. Builder's Risk/Installation Floater ..... Provide coverage in the full amount of contract
- ☒ 20. XCU Coverage ..... Endorsement to CGL
- ☒ 21. Carrier Rating shall be Best's Rating of B++V or better or its equivalent
- ☒ 22. Notice of cancellation, non-renewal or material change in coverage shall be provided to Town at least **30 days** prior to action. Worker's Compensation and/or non-payment of premium - notification may be **10 days** prior to action.
- ☒ 23. The Town of Jonesborough, Tennessee shall be named as Additional Insured on all policies except Worker's Compensation, Auto and Professional Liability. **Per Acord 25 (2009/01), policies must be endorsed; please submit copy of endorsement.** (Cert. Holder: Town of Jonesborough, Attn: Town Administrator, 123 Boone Street, Jonesborough, TN 37659 email [GRosenoff@jonesboroughtn.org](mailto:GRosenoff@jonesboroughtn.org))
- ☒ 24. Certificate of Insurance shall show project number or other contract identifier used by the Town of Jonesborough.
- ☐ 25. OTHER INSURANCE REQUIRED: \_\_\_\_\_

## INSURANCE AGENT'S STATEMENT:

I have reviewed the above requirements with the bidder named below. The bidder has coverage with this agency for all of the areas marked with the exception of the following numbers:

Comments: \_\_\_\_\_

Is Professional Liability excluded under General Liability? Yes \_\_\_\_\_ No \_\_\_\_\_

Is Contractual Liability excluded under Comm. General Liability? Yes \_\_\_\_\_ No \_\_\_\_\_

Is Independent Contractors excluded under Comm. General Liability? Yes \_\_\_\_\_ No \_\_\_\_\_

Carrier ratings: Insurer A \_\_\_\_\_; Insurer B \_\_\_\_\_; Insurer C \_\_\_\_\_; Insurer D \_\_\_\_\_

AGENCY NAME: \_\_\_\_\_

AUTHORIZED SIGNATURE: \_\_\_\_\_

Date: \_\_\_\_\_

## CONTRACTOR'S STATEMENT:

I have reviewed the above requirements with my insurance agent(s) and, if awarded a contract, will provide all coverage marked.

CONTRACTOR'S NAME: \_\_\_\_\_

AUTHORIZED SIGNATURE \_\_\_\_\_

RFP Number: **1-2021**

Bid or Project Name: Construction Manager/General Contractor – Jonesborough School

**This form and the General Contract Form must be signed and returned with the bid package. The Certificate of Insurance must be provided to Purchasing prior to contract award**

COMPLIANCE STATEMENT

This statement relates to a proposed contract with \_\_\_\_\_

\_\_\_\_\_  
(Name of borrower or grantee)

who expects to finance the contract with assistance from either the Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), or the Rural Utilities Service (RUS) or their successor agencies, United States Department of Agriculture (whether by a loan, grant, loan insurance, guarantee, or other form of financial assistance). I am the undersigned bidder or prospective contractor, I represent that:

1. ☐ I have, ☐ have not, participated in a previous contract or subcontract subject to Executive 11246 (regarding equal employment opportunity) or a preceding similar Executive Order.
2. If I have participated in such a contract or subcontract, ☐ I have, ☐ have not, filed all compliance reports that have been required to file in connection with the contract or subcontract.

If the proposed contract is for \$50,000 or more and I have 50 or more employees, I also represent that:

3. ☐ I have, ☐ have not previously had contracts subject to the written affirmative action programs requirements of the Secretary of Labor.
4. If I have participated in such a contract or subcontract, ☐ I have, ☐ have not developed and placed on file at each establishment affirmative action programs as required by the rules and regulations of the Secretary of Labor.

I understand that if I have failed to file any compliance reports that have been required of me, I am not eligible and will not be eligible to have my bid considered or to enter into the proposed contract unless and until I make an arrangement regarding such reports that is satisfactory to either the RHS, RBS or RUS, or to the office where the reports are required to be filed.

I also certify that I do not maintain or provide for my employees any segregated facilities at any of my establishments, and that I do not permit my employees to perform their services at any location, under my control, where segregated facilities are maintained. I certify further that I will not maintain or provide for my employees any segregated facilities at any of my establishments, and that I will not permit my employees to perform their services at any location, under my control, where segregated facilities are maintained. I agree that a breach of this certification is a violation of the Equal Opportunity clause in my contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and wash rooms, restaurants and other eating areas time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. I further agree that (except where I have obtained identical certifications for proposed subcontractors for specific time periods) I will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause; that I will retain such certifications in my files; and that I will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods): (See Reverse).

---

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays the valid OMB control number. The valid OMB control number for this information collection is 0575-0018. The time required to complete this information collection is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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## EXHIBIT H

### NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF NON-SEGREGATED FACILITIES

A certification of Nonsegregated Facilities, as required by the May 9, 1967, order (32F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted prior to the award of a subcontract exceeding \$ 10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

Date

\_\_\_\_\_  
*(Signature of Bidder or Prospective Contractor)*

\_\_\_\_\_  
*Address (including Zip Code)*

## EXHIBIT I

RD Instruction 1940-Q  
Exhibit A-1

### CERTIFICATION FOR CONTRACTS, GRANTS AND LOANS

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or Federal loan, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant or loan.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant or loan, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including contracts, subcontracts, and subgrants under grants and loans) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

---

(name)

---

(date)

---

(title)

oOo



**EXHIBIT J**

This form is available electronically.

Form Approved – OMB No. 0505-0027  
Expiration Date: 04/30/2022

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion AD-1048  
Lower Tier Covered Transactions**

The following statement is made in accordance with the Privacy Act of 1974 (5 U.S.C. § 552a, as amended). This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, and 2 C.F.R. §§ 180.300, 180.335, Participants' responsibilities. The regulations were amended and published on August 31, 2005, in 70 Fed. Reg. 51865-51880. Copies of the regulations may be obtained by contacting the Department of Agriculture agency offering the proposed covered transaction.

According to the Paperwork Reduction Act of 1995 an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0505-0027. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The provisions of appropriate criminal and civil fraud privacy, and other statutes may be applicable to the information provided.

***(Read instructions on page two before completing certification.)***

- A. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency;
- B. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

ORGANIZATION NAME

PR/AWARD NUMBER OR PROJECT NAME

NAME(S) AND TITLE(S) OF AUTHORIZED REPRESENTATIVE(S)

SIGNATURE(S)

DATE

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotope, American Sign Language, etc.) should contact the responsible agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [How to File a Program Discrimination Complaint \(https://www.ascr.usda.gov/filing-program-discrimination-complaint-usda-customer\)](https://www.ascr.usda.gov/filing-program-discrimination-complaint-usda-customer) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442.

**EXHIBIT J**  
**Instructions for Certification**

- (1) By signing and submitting this form, the prospective lower tier participant is providing the certification set out on page 1 in accordance with these instructions.
- (2) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.
- (3) The prospective lower tier participant shall provide immediate written notice to the person(s) to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (4) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549, at 2 C.F.R. Parts 180 and 417. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
- (5) The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- (6) The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- (7) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the System for Award Management (SAM) database.
- (8) Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (9) Except for transactions authorized under paragraph (5) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.



REFERENCE ONLY DOCUMENTS

Certificate of Owner's Attorney (RD Instruction 1942-A Guide 18 Page 7)

USDA Rural Development Concurrence (RD Instruction 1942-A Guide 18 Page 8)

Example Contractor's Insurance Certificate

14. Certificate of Owner's Attorney.

I, the undersigned, \_\_\_\_\_, the duly authorized and acting legal representative of \_\_\_\_\_, do hereby certify as follows

I have examined the attached contract(s) and performance and payment bond(s) and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements are adequate and have has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with terms, conditions, and provisions thereof.

\_\_\_\_\_  
Date: \_\_\_\_\_

NOTE: Delete phrase "performance and payment bonds" when not applicable.

**REFERENCE ONLY**



15. Rural Development Concurrence.

As lender or insurer of funds to defray the costs of this contract, and without liability for any payments thereunder, Rural Development (Rural Development) hereby concurs in the award of this CONTRACT to

\_\_\_\_\_

U.S. Department of Agriculture  
Rural Development

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

This CONTRACT shall not be effective unless and until concurred in by the State Director of Rural Development, U.S. Department of Agriculture or a delegated representative.

**REFERENCE ONLY**



## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME: _____	PHONE (A/C, No, Ext): _____	FAX (A/C, No): _____
	E-MAIL ADDRESS: _____		
INSURED	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: _____		
	INSURER B: _____		
	INSURER C: _____		
	INSURER D: _____		
	INSURER E: _____		
	INSURER F: _____		

**COVERAGES**

CERTIFICATE NUMBER: 18/19 GEN w/ BR

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EX (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER: _____	X					EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/OP AGG \$ 2,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A					<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Builders Risk - Mthly Rpt AOP Deductible: \$2,500			Frame Limit: \$5,000,000			Masonry NC or Better Limit: \$25,000,000 JM or Non-Combustible Limit: \$10,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Project: Jonesborough School, Town of Jonesborough, Tennessee  
RFP Identification No. The Town of Jonesborough, Tennessee together with all of its various departments, bureaus, and agencies, as well as any affiliated or subsidiary board, committee, or authority, including but not limited to the Town of Jonesborough Public School System are additional insured (ongoing & completed operations) with respect to general liability on a primary & non-contributory basis as required by written contract per police for #

**CERTIFICATE HOLDER****CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

REFERENCE ONLY



**PROPOSAL TRANSMITTAL/STATEMENT OF CERTIFICATIONS AND ASSURANCES**

The Proposer must complete and sign this Technical Proposal Transmittal. It must be signed, in the space below, by an individual empowered to bind the proposing entity to the provisions of this RFP and any contract awarded pursuant to it.

**PROPOSER LEGAL ENTITY NAME:** \_\_\_\_\_

**PROPOSER FEDERAL TAXPAYER IDENTIFICATION NUMBER:** \_\_\_\_\_

**Tennessee Contractor License Information:**

License Number: \_\_\_\_\_

License Classification(s) applicable to Project: \_\_\_\_\_

License Expiration Date: \_\_\_\_\_ Dollar Limit: \$ \_\_\_\_\_

**In regard to the project identified in the header above the Proposer does hereby affirm and expressly declare, confirm, certify, and assure the following:**

1. This proposal constitutes (a) a commitment to provide all services as defined in the RFP Pro Forma Master Contract (MC) and attached Scope of Services for the total contract period and (b) confirmation that the Proposer shall comply with all of the provisions in this Request for Proposal and shall accept all terms and conditions set out in the MC.
2. The information detailed in the proposal submitted herewith in response to the subject RFP is accurate.
3. The proposal submitted herewith in response to the subject RFP shall remain valid for at least 60 days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract pursuant to the RFP.
4. The Proposer acknowledges and accepts that the full proposal contents and associated documents shall become open to public inspection.
5. As applicable to the proposed Master Contract, the Proposer shall comply with:
  - a) the laws of the State of Tennessee;
  - b) Title VI of the federal Civil Rights Act of 1964;
  - c) Title IX of the federal Education Amendments Act of 1972;
  - d) the Equal Employment Opportunity Act and the regulations issued there under by the federal government;
  - e) the Americans with Disabilities Act of 1990 and the regulations issued there under by the federal government;
  - f) the condition that the submitted proposal was independently arrived at, without collusion, under penalty of perjury; and,
  - g) the condition that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Proposer in connection with the Procurement under this RFP.
6. The Proposer shall provide proof of insurance in accordance with the requirements of the RFP.
7. This Proposer's status required by the State Building Commission Policy and Procedures, is:

(True or False) \_\_\_\_\_ The Proposer and/or any of the Proposer's employees, agents, independent contractors and/or proposed Subcontractors have been convicted of, pled guilty to, or pled nolo contendere to any contract crime involving a public contract.

(Yes or No) \_\_\_\_\_ The Proposer is a "Certified Diversity or Disadvantaged Business Enterprise, "Women Owned, Minority Owned, or Small Business, per TCA. § 12-3-801-808. If "Yes", then indicate the applicable status and name the Certifying Agency below.

Status: \_\_\_\_\_ Certifying Agency: \_\_\_\_\_

8. The Proposer acknowledges receipt of Addenda:

Addendum number and date: \_\_\_\_\_ Addendum number and date: \_\_\_\_\_

Addendum number and date: \_\_\_\_\_ Addendum number and date: \_\_\_\_\_

*By signing this Proposal of Certifications and Assurances, below, the signatory also certifies legal authority to bind the submitting entity to the provisions of this RFP and any contract awarded pursuant to it.*

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Printed Name and Title:** \_\_\_\_\_ **Email :** \_\_\_\_\_

## TECHNICAL PROPOSAL & EVALUATION GUIDE — SECTION A

**PROPOSER NAME:**

### SECTION A — MANDATORY REQUIREMENTS & INFORMATION

The Proposer must address all Mandatory Requirements & Information items and provide, in sequence, the information and documentation as required (referenced with the associated item references). The RFP Coordinator will review all mandatory requirements & information items, including but not limited to the following:

- Proposal received on or before the Proposal Deadline.
- Technical Proposal copies and Cost Proposal packaged separately.
- Technical Proposal contains no cost data, except as requested.
- Proposer did not submit alternate proposals.
- Proposer did not submit multiple proposals in a different form.
- Technical Proposal does not contain any restrictions of the rights of the Owner or other qualification of the proposal.

Proposal Page # (to be completed by Proposer)	Mandatory Requirement Items	Owner Use ONLY Pass/Fail
	<b>A.1</b> Provide the <i>Proposal Transmittal and Statement of Certifications and Assurances</i> (RFP Attachment 5.6) completed and signed, in the space provided, by an individual empowered to bind the Proposer to the provisions of this RFP and any resulting contract.	
	<b>A.2</b> Identify your firm's primary contact person for the Owner including mailing address, telephone number, and e-mail address.	
	<b>A.3</b> Provide a letter(s) from an insurance and/or surety agency stating your firm's capability to provide insurance and 100% Performance and Payment Bond for this Project in accordance with the Town's Requirements and General Conditions.	
	<b>A.4</b> Identify your firm's form of business (i.e., individual, sole proprietor, corporation, non-profit corporation, partnership, limited liability company) and the name of the U.S. state in which it is established. <b>Include copy of State Contractors License.</b>	
	<b>A.5</b> Provide a statement of whether there have been any mergers, acquisitions, or sales of your firm within the last five years, and if so, an explanation providing relevant details.	



	<p><b>A.6</b> Provide the following:</p> <p>a. Quick Ratio and the Debt-to-Worth ratio for the last three years of your firm's operations.</p> <p>b. Your firm's insurance experience modification rate for the last three (3) years.</p> <p>c. Total (100 %- do not pro-rate) monthly direct personnel expense (raw salary x labor burden multiplier) for all key personnel.</p> <p>d. Current percent of contract rate charged by the surety for your firm's contract bond.</p>	
	<p><b>A.7</b> List contracts with the Owner and other local governments and state governments including current contracts and contracts completed within the previous five years</p>	
	<p><b>A.8</b> List current contracts on which your firm will be committed, with client name, dollar amount, the start and completion dates, and the services being provided (e.g. Construction manager, General Contractor, etc. )</p>	
	<p><b>A.9</b> Provide a statement that discloses any pending litigation against your firm; and if such litigation exists, an attached opinion of counsel as to whether the pending litigation will impair your firm's performance in a contract under this RFP.</p>	
	<p><b>A.10</b> Provide a statement declaring whether, in the last ten years, your firm has filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors, and if so, an explanation providing relevant details.</p>	
	<p><b>A.11</b> Provide a statement declaring whether your firm, or any individual who shall perform work under the contract, has a possible conflict of interest (e.g., employment by the Town of Jonesborough, Tennessee) and, if so, the nature of that conflict.</p>	
	<p><b>A.12</b> Provide a statement declaring whether your firm, or any of the employees whom shall perform work under the contract, have been convicted of, pled guilty to, or pled nolo contendere to any felony, and if so, an explanation providing relevant details.</p>	
	<p><b>A.13</b> Acknowledge acceptance of project requirements by the Town of Jonesborough and USDA funding Agency covered in RFP Attachments 5.1A, 5.1B, 5.2A, 5.2B, 5.3, 5.4, 5.5, and 5.5A.</p>	

## TECHNICAL PROPOSAL & EVALUATION GUIDE — SECTION B

<b>PROPOSER NAME:</b>		
<b>SECTION B — QUALIFICATIONS &amp; EXPERIENCE</b>		
The Proposer must address all Qualifications and Experience section items and provide, in sequence, the information and documentation as required (referenced with the associated item references).		
Proposal Page # (to be completed by Proposer)	Qualifications & Experience Items	Owner Use ONLY
	<b>B.1 General Qualifications:</b> Provide a brief statement indicating your firm's credentials to deliver the services required by this RFP. Include your firm's license information, number of years in business, number of employees, type of client base, and location of offices. Name the location of the office that is providing services.	<b>0-4 points</b>
	<b>B.2 Projects:</b> Provide a Project Reference Form for each of no more than three (3) projects of similar scope and complexity, completed or being constructed by your firm. For each project, complete the <i>Project Reference Form</i> (2 pages) included after this section.	<b>0-12 points</b>
	<b>B.3 Personnel:</b> Provide one page resumes of key personnel whom will be assigned to this project, with title/position, education, professional license or registration, and general employment history. Key personnel shall include, at a minimum, the project executive, project manager(s), superintendent(s), and pre-construction phase cost estimator(s). Provide relevant references for the project manager(s) and superintendent(s) with names and contact information.	<b>0-12 points</b>
	<b>B.4 Projects/Personnel:</b> Provide a table that identifies the personnel named in B.3 that worked on any projects named in B.2, and their job titles for those projects.	<b>0-6 points</b>
	<b>B.5 Staffing:</b> Provide the estimated amount of time in hours per Week that each of the key personnel will be committed to this Project during the pre-construction and construction phase.	<b>0-4 points</b>
	<b>B.6 Consultants:</b> Provide a listing of the construction management consultants that will be assigned to this project in the pre-construction phase, and be under the administrative control of the CM/GC. Provide names of each, with position, firm name, education, professional registration, and general employment history.	<b>0-4 points</b>
	<b>B.7 History, Stability and Availability:</b> Section A Items 1.5 thru A.12 provided will be evaluated.	<b>0-3 points</b>
(Maximum Section B Score = 45 points)		
SCORE (for all Section B items above:		



## Project Reference Form

Project # ☐

Page 1 of 2

*Utilize project reference forms with Section B, Qualifications and experience, of the Qualifications and Evaluation Guide.*

<b>PROPOSER NAME:</b>	
Owner/Agency Name: _____	
Address: _____ City: _____ State: _____ Zip: _____	
Contact Person's Name: _____ Title: _____	
Phone: _____ E-Mail: _____	
Designer of Record: _____ Design Firm Name: _____ Phone: _____	

### Project Information:

Project Title:	
Owner's Project or Contract #:	
Project Location (City, State):	
Construction Start Date:	
Construction Completion Date:	
Project Square Footage (New):	
Project Square Footage (Renovation):	
Dollar Value of Construction: \$	
CM/GC Contingency Assigned: \$	
CM/GC Contingency Returned to Owner: \$	
Project Executive:	
Project Manager:	
Construction Superintendent:	
Electrical Subcontractor:	
HVAC Subcontractor:	
Plumbing Subcontractor:	
Masonry Subcontractor:	
Third Party Commissioning Agent (if used):	
Sustainability Criteria (if used):	

## Project Reference Form

Project #

Page 2 of 2

*Utilize project reference forms with Section B, Qualifications and experience, of the Qualifications and Evaluation Guide.*

<b>PROPOSER NAME:</b>	
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A. Provide a brief description of the project that includes the scope of the work and the services provided by your firm. Relate the work in this project to the scope and required services contained in the RFP.



## TECHNICAL PROPOSAL & EVALUATION GUIDE — SECTION C

<b>PROPOSER NAME:</b>		
<b>SECTION C — TECHNICAL APPROACH</b>		
The Proposer must address all Technical Approach section items and provide, in sequence, the information and documentation as required (referenced with the associated item references).		
Proposal Page # (to be completed by Proposer)	Technical Approach Items	Owner Use ONLY
	<b>C.1    Approach:</b> Provide a statement indicating how your firm will deliver the pre-construction and construction management services required by this RFP. Include a project organizational chart designating the lines of authority. Discuss the roles and decision making authority of each person and specific experience each has with pre-construction services, constructability issues, and value engineering.	<b>0-10 points</b>
	<b>C.2    Pre-Construction Management Methods:</b> Describe the methods to be used for the following services: a. schedule development including information on how your company intends to meet the schedule b. cost model c. constructability d. value engineering e. subcontractor qualification process including information to be requested from potential subcontractors	<b>0-4 points</b>
	<b>C.3    Construction Management Methods:</b> Describe the methods to be used for the following services for this project. a. tracking and reporting construction scope, schedule and accounting information including CM/GC contingency reporting. b. quality control program for construction c. safety program for construction d. construction documentation.	<b>0-4 points</b>
	<b>C.4    Sustainable Construction:</b> Describe your firm's experience with implementing criteria for sustainable design and construction such as State of Tennessee Sustainable Design Guidelines, LEED, Green Globes or Energy Star	<b>0-3 points</b>

	<b>C.5</b> Provide a brief descriptive summary for your firm's existing programs and procedures designed to encourage and foster commerce with business enterprises owned by minorities, women, persons with a disability and small business enterprises and an estimate of the level of participation of these businesses in a contract awarded to your firm pursuant to this RFP.	<b>0-4 points</b>
(Maximum Section C Score = 25 points)		
SCORE (for all Section C items above, C.1 through C.5):		



**ATTACHMENT 5.8 COST PROPOSAL****PRE-CONSTRUCTION PHASE SERVICES FEE GUIDE- SECTION A****PROPOSER NAME:****Enter Name (only on first sheet - other sheets are linked)**

Provide the total lump sum fee for delivery of the Pre-Construction Phase Services (PCPS) for this Project as defined by Contract Attachment A, Article 1. This fee should not include costs of printing the Designer's design/construction documents, geotechnical investigations, or property surveys during the PCPS. This fee will be paid upon successful completion of services and is not to be included as a part of the CM/GC construction services Guaranteed Maximum Price. This fee may be negotiated prior to execution of the Contract.

Pre-construction Phase Services Lump Sum Fee

**CM/GC CONSTRUCTION SERVICES FIXED FEE-SECTION B**

The proposed cost for the CM/GC construction services fixed fee shall be for providing the construction services defined in the RFP Attachment 5.3 A133, Article 2 for the total contract time and project closeout. The Fee shall be stated as a percentage of the Project construction cost that includes the following:

- General company overhead and profit
- Personnel not directly assigned to the Project such as accountants, clerks, secretaries and personnel other than those listed under Construction Services General Conditions Budget (whether on site or in the office)
- Company officers and other personnel with supervisory status not listed under Construction Services General Conditions Budget
- The cost of main office equipment and related supplies, maintenance and service not located on site.

CM/GC Construction Services Fixed Fee

**CM/GC CONSTRUCTION SERVICES GENERAL CONDITIONS BUDGET GUIDE-SECTION C**

The CM/GC owned equipment and corresponding rental rates proposed for use on this Project shall not exceed 80% of the Associated Equipment Distributors Nationally Averaged Rental Rates for Construction Equipment (AED) rates.

Labor burden multiplier

A breakdown of the labor burden may be requested from the successful proposer prior to the execution of the Master Contract.

Contract bond rate percentage based on the total GMP target

CONTRACT TIME - 23 MONTHS			COST PROPOSAL	
CM/GC CONSTRUCTION SERVICES MONTHLY GENERAL CONDITIONS BUDGET GUIDE- SECTION C				
PROPOSER NAME:		Enter Name (only on first sheet - other sheets are linked)		
<p>Provide costs for general conditions including, but not limited to, the following items for general conditions during the construction services phase (contract time). CM/GC may indicate some of these items as not applicable and may also identify additional items. These costs may be negotiated prior to an agreed to GMP. Actual cost records of general condition items will be part of the final accounting at project completion to certify total actual costs. CM/GC is to base the calculation of the monthly general conditions charge on the preliminary schedule information provided in this RFP. <b>This also includes a one time charge not just a monthly sheet.</b></p>				
Item Description	Quantity	Unit	Lump Sum Cost	Monthly Cost
Photographs	*	Mo	—	\$0.00
Superintendent ✓	*	Mo	—	\$0.00
Clerk ✓	*	Mo	—	\$0.00
Asst Superintendent ✓	*	Mo	—	\$0.00
Project Manager ✓	*	Mo	—	\$0.00
Project Director ✓	*	Mo	—	\$0.00
Project Engineer / Other ✓	*	Mo	—	\$0.00
Layout Instruments	*	Mo	—	\$0.00
Temporary Office Trailer(s)	*	Mo	—	\$0.00
Storage Trailer(s)	*	Mo	—	\$0.00
Portable Toilets	*	Mo	—	\$0.00
Temporary Construction Utilities	*	Mo	—	\$0.00
Employee Parking	**	Mo	—	0
Phones and Beepers	*	Mo	—	\$0.00
Safety Measures	*	Mo	—	\$0.00
Trash Collection and Disposal	*	Mo	—	\$0.00
Pick Up Truck	*	Mo	—	\$0.00
Auto	*	Mo	—	\$0.00
Fuel	*	Mo	—	\$0.00
Office Furniture & Equipment (fax, copier, computer, etc)	*	Mo	—	\$0.00
Supplies & Expenses	*	Mo	—	\$0.00
Permits (building, water & reviews)	1	LS	TBD	—
Insurance (including GL, Auto, Workers Comp, & Bldrs Risk)	1	LS	\$0.00	—
Contract Bond	1	LS	\$0.00	—
Gross Receipt Tax (for this project)	1	LS	\$0.00	—
Project Sign & Other Signage	1	LS	\$0.00	—
Temporary Construction Items	1	LS	\$0.00	—
Miscellaneous Printing ***	1	LS	\$0.00	—
List Additional Items as Needed			\$0.00	\$0.00
<b>TOTALS</b>			<b>\$0.00</b>	<b>\$0.00</b>
<p>* Quantity as required to accomplish the services required by the RFP and the scope of the project</p> <p>** Employee parking will be available at no cost at the project site; however, parking may be limited. The cost, if any, for additional parking will be negotiated prior to establishing the GMP.</p> <p>*** CM/GC printing only. This shall not include printing of design/construction documents.</p> <p>✓ Personnel monthly cost shall include Labor Burden.</p>				



# COST PROPOSAL

SUMMARY & SCORING GUIDE – SECTION D				
This Cost Proposal must be completed exactly as required.				
Proposer Name:	Enter Name (only on first sheet - other sheets are linked)			
Signature & Date:				
The signatory must be an individual or a company officer empowered to contractually bid the Proposer.				
The proposed cost and the submitted technical proposal associated with this cost shall remain valid for at least 60 days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any resulting contract between the Proposer and the Owner. All monetary amounts are United States currency.				
1. Pre-Construction Phase Services Lump Sum Fee				
2. Construction Services Fixed Fee	0.00%	X	\$28,000,000	\$0.00
3. Construction Services General Conditions Budget (Contract Time)				
Contract Time				
• Lump Sum Items				\$0.00
• <input type="text" value="\$0.00"/> X 23 Months				\$0.00
Monthly Rate for Contract Time				
TOTAL COST ITEMS 1-3				\$0.00
<div> <div>Lowest Evaluation Cost Amount for all Proposals</div> <div> <div>Evaluation Cost Amount Being Evaluated</div> <div>X 30 = SCORE:</div> </div> </div>				
Calculations shall result in numbers rounded to two decimal places.				

**PROPOSAL SCORE SUMMARY MATRIX**

	Qualification & Experience 45 Points						Technical 25 Points						Q&E+T			
Evaluator	1	2	3	4	5	Median	1	2	3	4	5	Median	Total Median Q&E+T	Normalized Q&E+T	Cost	Total
Proposer A																
Proposer B																
Proposer C																
Proposer D																
Proposer E																
Proposer F																

The Median of the scores of all evaluator for the Q&E+T will be totaled and then the scores will be normalized to give the highest score a value of 70 points. The formula is:

$$\frac{\text{Proposers Median Score Total Q\&E+T}}{\text{Highest Median Score Total Q\&E+T}} \times 70 \text{ Points}$$

The Cost score from the Cost Proposal will be entered in this matrix and the Normalized score for Q&E+T will be added to the Cost score to determine the Total Score. The highest score will be determined to be the apparent best-evaluated proposer.



**Town of Jonesborough, Tennessee**  
**Construction Manager/General Contractor (CM/GC)**

**RFP No. 1-2021**  
**JONESBOROUGH SCHOOL**  
**Town of Jonesborough, Tennessee**

**Architectural:** CLARK NEXSEN, JOHNSON CITY, TN  
**Mechanical:** ENGINEERING SERVICES GROUP, KNOXVILLE, TN  
**Electrical:** VREELAND ENGINEERS, KNOXVILLE, TN  
**Structural:** PROSIM ENGINEERING, JOHNSON CITY, TN  
**Civil:** DTWOOD ENGINEERING, JOHNSON CITY, TN

**Project Description and History**

This project scope is for site preparation and construction of a 2-story school of approximately 140,000 sf to accommodate up to 1100 PreK – 8<sup>th</sup> Grade students. The sitework includes grading, landscaping, pavement for parking and site access roads, sidewalks, and other service areas. The building includes classrooms, related arts and science classrooms, media center, gymnasium and support areas, cafeteria, kitchen, and administrative and support spaces. The building will be a steel frame with metal stud infill, metal stud interior partitions with impact-resistant gypsum board. Exterior walls will be faced with brick and an exterior cementitious panel cladding. The roof will be a low-slope single-ply membrane. HVAC will be roof-mounted air handlers. The project will include fire suppression and fire alarm systems.

**Current Project Status**

The Design Team is currently in the Design Development Phase.

**Pre-Proposal Conference Instructions**

Refer to the RFP Schedule of Events in the Project Specific Documents for information concerning date, time and location of the Pre-Proposal Conference.

**Work Location Space**

The service pursuant to this RFP is to be performed, completed, managed, and delivered as detailed in the RFP attachment 5.3 AIA Documents A133-2009. Work/Meeting space is not available for the CM/GC in Facility.

**Schedule**

The CM/GC pre-construction services will start with review and estimate pricing of the 100% Schematic Design Documents and activities related to the DD and CD phases.

**The tentative schedule dates for the following phases are:**

<b>Phase</b>	<b>Start Date</b>	<b>Completion Date</b>
Design Development	11/01/2020	03/01/2021
Construction Documents	03/02/2021	06/30/2021
Trade Bidding	07/20/2021	08/30/2021
Construction	09/01/2021	08/01/2023
Close Out	08/01/2023	09/01/2023

**Expectations and Objectives**

**Project Budget**

<b>Bid Target</b>	<b>\$28,000,000</b>
<b>Owner Contingency</b>	<b>\$500,000</b>
<b>MACC</b>	<b>\$28,500,000</b>

The “MACC” is the **Maximum Allowable Construction Cost** approved by the Jonesborough Board of Mayor and Aldermen.