



ADDENDUM NO. 5

# REQUEST FOR QUALIFICATIONS

**PART A: PRE-CONSTRUCTION SERVICES and  
PART B: CONSTRUCTION SERVICES (Construction Manager at Risk)**

**H. P. Long Field House Renovation**

Louisiana State University  
Baton Rouge, Louisiana  
Project Number 19-601-18-01, F.19002227

January 31, 2019

**ITEM NO. 1: EXHIBIT 8 - AIA A133-2009 as modified by Owner**

Disregard the content of Exhibit 8 included within Addendum No. 2. as pages 11, 16, 19, 24 and 36 were inadvertently replaced by pages taken from another exhibit. This Addendum No. 5 includes the reissued Exhibit 8 – Form of Agreement Between Owner and Construction Manager as Constructor (AIA A133-2009 as modified by Owner) in its entirety (attached).

**END OF ADDENDUM**

# AIA<sup>®</sup> Document A133<sup>™</sup> – 2009

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

## **PART A: PRE-CONSTRUCTION SERVICES(or Part B: Construction Services)**

\***AGREEMENT** made as of the  day of **April** in the year **2019**

**BETWEEN** the Owner:

**State of Louisiana**

**Office of the Governor**

**Division of Administration**

**Claiborne Office Building, 1201 North Third Street, Suite 7-160**

**Baton Rouge, LA 70804-9095**

and the Construction Manager:

**To be Determined**

for the following Project:

**H. P. Long Field House Renovation**

**Louisiana State University**

**Baton Rouge, Louisiana.**

**State Project No. 19-601-18-01, F.19002227**

The Architect:

**Remson Haley Herpin Architects / Tipton Associates, AJV**

**200 Government Street, Suite #100**

**Baton Rouge LA 70802**

The Owner's Designated Representative:

**W. Patrick Williams, Architect / Project Manager**

**Office of Facility Planning and Control**

**DOA / State of Louisiana**

Construction Manager's Designated Representative:

**To Be Determined**

The Architect's Designated Representative:

**Samuel J. Herpin, AIA**

**Remson Haley Herpin Architects, APAC**

The Owner and Construction Manager agree as follows.

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

AIA Document A201<sup>™</sup>-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 The Contract Documents**

The Contract Documents consist of this Agreement, AIA A133-2009 Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is also the Constructor, as modified by the Owner; AIA A201-2017 General Conditions of the Contract for Construction, as modified by the Owner; the Owner's Construction Documents, which include the Drawings, Addenda issued during the proposal period and acknowledged by the Proposers, Project Manuals, including the Specifications, all exhibits, instructions, provisions, amendments and post-bid addenda attached thereto or referenced herein; the Owner's Request for Qualifications (RFQ) for Part A: Pre-Construction Services and Part B: Construction Services (Construction Management at Risk) Services dated January 30, 2019; the Construction Manager's Proposal dated \_\_\_\_\_, 2019, issued in response to the Owner's RFQ; and the Construction Manager's Construction Phase Critical Path Method Schedule described herein, hereinafter collectively referred to as the "Contract Documents" are hereby incorporated by reference and are made part of this Construction Agreement Between the Owner and the Construction Manager, hereinafter referred to as the "Parties" and individually as a "Party".

### **§ 1.2 Relationship of the Parties**

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

### **§ 1.3 General Conditions**

For Pre-Construction Services, or in the event that the Pre-Construction and Construction proceed concurrently, A201-2017, as modified by the Owner, shall apply to the Pre-Construction Services as provided in this Agreement. For Construction Services, the General Conditions of the contract shall be the AIA® Document A201-2017, General Conditions of the Contract for Construction, as modified by the Owner, which is incorporated herein by reference. The term "Contractor" as used in A201-2017 shall mean the Construction Manager @ Risk.

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

The Construction Manager's Pre-Construction Services responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Services responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for Construction to commence prior to completion of the Pre-Construction Services, 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.

Construction Manager and its Subcontractors shall perform all Part A: Pre-Construction Services and Part B: Construction Services as described in the Owner's Request for Qualifications, Owner / Construction Manager Agreement AIA A133-2009, as modified by Owner, and General Conditions AIA A201-2017, as modified by Owner for Part A: Pre-Construction Services and Part

B: Construction Services (Construction Management at Risk) for the H. P. Long Field House Renovation project, Louisiana State University, Baton Rouge, Louisiana (Project No. 19-601-18-01, F.19002227), hereinafter referred to as the “ RFQ.” The Owner’s RFQ and all addenda are hereby incorporated by reference as if fully set forth herein. Construction Manager shall provide all necessary personnel, supplies, and equipment required to perform the Pre-Construction and Construction Services as generally described herein.

The Parties understand and agree that the Huey P. Long Field House Renovations project consists of, but is not be limited to, the construction of the following Phases of the Work:

### **Part B: Construction Services - CMR Responsibility Items**

(the following is a general overview of the anticipated and required CMR work scope included in the two (2) major phases of Part B: Construction Services)

#### **PHASE I**

Utilities Infrastructure

Demolition (general – portion of existing 1936 addition - unoccupied areas)  
Demolition (selective - hazardous materials – unoccupied areas)

Construction (new additions)  
Construction (interior renovations - unoccupied areas - light)  
Construction (interior renovations - unoccupied areas - heavy)

Low Slope Roofs (confirm need for replacement - unoccupied areas)  
Waterproofing / Masonry Tuck-pointing & Restoration (unoccupied areas)

#### **PHASE II**

Site / Former Pool Shell Modifications / Plaza Development

Demolition (general - occupied areas)  
Demolition (selective - hazardous materials - occupied areas)

Construction (interior renovations to occupied areas – light)  
Construction (interior renovations to occupied areas – heavy)

Clay Tile Roofs (confirm need for underlayment replacement / reinstall tile – occupied areas)  
Low Slope Roofs (confirm need for replacement - occupied areas)  
Waterproofing / Masonry Tuck-pointing & Restoration (occupied areas)

### **Part B: Construction Services - CMR Coordination / Integration Only Items**

(the following is a general overview of the anticipated and required CMR coordination / integration scope included in the two (2) major phases of Part B: Construction Services)

#### **PHASES I and II**

Artwork (% for the Arts)  
Independent Testing (any required testing not made a requirement of CMR per construction docs)  
FF&E (non-fixed furnishings / equipment)  
Surveys (Geotechnical / Topographic)

The anticipated division of the Project into the above referenced Phases shall be for the purpose of completion of Construction Documents by the Architect and cost accounting only and shall not control or dictate the Construction Manager's combination of the Work into subcontractor bid packages or the award of subcontract agreements. As indicated in Article 7.1.7, it is anticipated that Certificates of Substantial Completion, and/or partial Certificates of Substantial Completion, shall be awarded based on the Construction Manager's completion and Owner occupancy of the above referenced Phases.

Construction Manager understands and agrees that Time is of the Essence of this Agreement and Construction Manager agrees to take all reasonable steps to avoid delays in the construction of the Project.

## **§ 2.1 PRE-CONSTRUCTION SERVICES**

### **§ 2.1.1 Preliminary Evaluation**

Upon commencement of the contract, the Construction Manager shall review in-progress Schematic Design phase design documents and assist the Architect with the development of the design through the Design Development and Construction Documents phases of design and complete a comprehensive review of final Project Plans and Specifications for each Phase of the work with the specific intent to (1) identify and eliminate conflicts, discrepancies, errors, and omissions within the documents prior to completion of the documents and/or release of the documents for subcontractor pricing, (2) implement and conduct a constructability program to identify and document Project costs and schedule savings opportunities, (3) develop a validation estimate of Project costs, and (4) develop a baseline schedule for construction of the Project. The Construction Manager shall submit its written reports from the above referenced plan reviews to the Owner and Architect at the various phases of design where referenced in 2.1.7 and participate in meetings with the Owner and Architect to review the above referenced reports in detail.

### **§ 2.1.2 Coordination**

The Construction Manager shall complete a preliminary assessment of the program requirements, project budget, and site conditions including but not limited to existing structures and surface topography, surface and subsurface utilities, access and staging opportunities and limitations in order to offer recommendations regarding the approach to construction. Upon completion of this assessment, the Construction Manager shall submit recommendations and information to the Owner and Architect regarding site usage and site improvements; building systems, equipment and construction feasibility; and selection and availability of materials and labor; time requirements for installation and construction; assignment of responsibilities for safety measures and programs; temporary Project facilities; equipment, materials and services for common use of the Constructor and Owner's representatives and/or separate contractors, if any; cost factors, including costs of alternative materials or designs, preliminary budgets, and possible cost savings; recognizing and tracking the resolution of conflicts in the proposed Drawings and Specifications; methods of delivery of materials, systems, and equipment; and any other matters necessary to accomplish the Project in accordance with the Work progress Schedule and the AFC. Notwithstanding the above, the Construction Manager shall not be required to provide A/E services unless specifically required by the Construction Documents. Construction Manager's recommendations and information provided are furnished solely in its capacity as a contractor.



### **§ 2.1.3 Constructability Program**

The Construction Manager shall provide a “Constructability Report” at the various phases of design where referenced in 2.1.7. The constructability program shall follow accepted industry practices and be reviewed by the Owner and Architect at the various design milestones. The Construction Manager shall prepare a “Constructability Report” that identified items that may, in the Contractor’s opinion, negatively impact construction of the Project. The “Constructability Report” shall address the overall coordination of Project Drawings, Specifications, and details and identify discrepancies that may potentially generate Change Orders or claims once Project construction commences. Contractor shall update the report at least once monthly during the Pre-Construction Phase. Contractor shall also implement a system for tracking questions, resolutions, decisions, directions and other informational matters that arise during the development of the Drawings and Specifications for the Project. The decision tracking system shall be in a format approved by the Owner and Architect and updated by the Construction Manager at least once monthly during the Pre-Construction Phase.

### **§ 2.1.4 Consultation**

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

The Construction Manager shall make recommendations to the Owner and Architect regarding organization of the Construction Documents to facilitate the bidding and awarding of construction subcontracts in a manner that promotes the interest of the Project and Owner. These recommendations may include, but are not limited to, phased or staged construction or multiple separate contracts. These recommendations shall take into consideration such factors as time of performance, type and scope of work, availability of labor and materials, overlapping trade jurisdictions, provision for temporary facilities, comparisons of factory and on-site production costs, shipping costs, code restrictions, Owner’s goal for local subcontractor participation, and other related goals.

The Construction Manager shall review the Construction Documents with the Owner and Architect to eliminate areas of conflict and overlap in the work to be performed by the various subcontractors and/or Owner’s separate contractors. The Construction Manager shall review the Construction Documents to ensure that they contain adequate provision for jobsite areas required for construction, all temporary facilities necessary for the performance of the Work, and provisions for all of the jobsite facilities necessary to manage, inspect, and supervise construction of the Project.

### **§ 2.1.5 Preliminary Project Schedule**

Within thirty (30) days of the Owner’s Notice To Proceed with Part A: Pre-Construction Services, the Construction Manager shall evaluate the proposed Project Schedule and sequence of Work, and prepare, and periodically update, a Preliminary Project Schedule, in accordance with the



requirements of Section 3.10 of AIA A201-2017, as modified by Owner, for the Owner and Architect's review and approval. The Construction Manager shall coordinate and integrate the Preliminary Project Schedule with the services and activities of the Owner, Architect and Construction Manager. As design proceeds, the Preliminary Project Schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If Preliminary Project Schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

### **§ 2.1.6 Phased Construction**

The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

### **§ 2.1.7 Preliminary Cost Estimates**

Within thirty (30) days of receipt of the Owner's Notice to Proceed with Part A: Pre-Construction Services, the Construction Manager shall prepare for the review and approval of the Owner and Architect a control estimate of Project costs, utilizing quantity survey, unit cost, volume, or other appropriate cost estimating techniques. The Construction Manager's control estimate(s) shall be based on the most current plans and specifications for each Phase of the Project. Allowances and estimates may be included within the control estimate for elements of the Work for which the design is yet to be completed. The cost estimate reports shall be completed at the one-hundred percent (100%) completion of Schematic Design and Design Development, and at the thirty percent (30%), sixty percent (60%), ninety percent (90%) and one-hundred percent (100%) completion of the Construction Documents for construction. The GMP Proposal shall be due at the completion of ninety-five percent (95%) of the CD Phase of the Construction Documents.

### **§ 2.1.8 Preliminary Estimate Reconciliation**

Following reconciliation of the control estimate with the Owner and Architect, if the reconciled control estimate prepared by the Construction Manager exceeds the Owner's funds Available For Construction (AFC), the Construction Manager shall prepare and submit written recommendations to the Owner and Architect regarding appropriate actions to be taken to reduce the Project costs to an amount within the Owner's AFC.

The Construction Manager is solely responsible for the construction budget and for preparing and updating all procurement and control estimates and distributing them to the Owner and Architect throughout the duration of the Project. The Construction Manager shall provide continuous cost consultation services throughout the duration of the Project, including identification and tracking of decisions that affect the scope and/or quality of the project while providing ongoing updates of their cost and budget impact. The Construction Manager shall advise the Owner and Architect immediately if the Construction Manager has reason to believe that the most current control estimate will exceed the AFC or not meet the Owner's requirements and will as a result recommend reasonable strategies for bringing the Project in line with the control estimate and the AFC.

### **§ 2.1.9 Subcontractors and Suppliers**

The Construction Manager shall seek to develop subcontractor interest in the Project and, in accordance with Section 5.2.2. of AIA Document A201-2017, as amended by the Owner, shall furnish to the Owner and Architect for their review and approval, a list of potential subcontractors, accompanied by a summary of the qualifications, relevant experience, and financial status of each potential subcontractor, including suppliers who are proposed by the Construction Manager to furnish materials or equipment fabricated to a special design, from whom bids and/or proposals may be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner knows of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor or supplier. The pre-qualification of subcontractors and/or suppliers may continue into the Construction Phase of the Project.

The Construction Manager shall develop a bid / proposal package strategy in coordination with the Architect that addresses the entire scope of each phase and stage of the Project. The Construction Manager is restricted from self-performing any portion of the project. The bid / proposal package strategy shall be reviewed with the Owner and Architect on a regular basis and revised throughout the buyout of the Project in order to best promote the interests of the Project and Owner. The Construction Manager shall provide an analysis of the types and quantities of labor required for the Project and review the appropriate categories of labor required for critical phases or stages and make recommendations that minimize the adverse effects of labor shortages.

The Construction Manager shall refine, implement and monitor required subcontractor procurement to promote equal employment opportunity in the provision of goods and services to the Owner for the Project.

The Construction Manager shall consult with and make recommendations to the Owner and Architect on the acquisition schedule for fixtures, furniture and equipment, and coordinate with Owner as may be required to meet the overall construction program.

### **§ 2.1.10 Obtaining Bids / Proposals**

The Construction Manager shall solicit competitive lump sum sealed bids / proposals from trade contractors or subcontractors for the performance of all elements of the Project, establish criteria for determining the bid or proposal that provides the best value to the Owner, and consult with Owner and Architect on strategy for procurement. A minimum of three (3) bids / proposals shall be solicited. The Construction Manager shall notify the Owner and Architect in writing in advance of the date in which bids / proposals are due for the various bid packages and phases of work.

The Construction Manager shall schedule and conduct pre-bid / pre-proposal conferences with interested proposers, subcontractors, material suppliers, equipment suppliers, and record minutes of the conferences. The Construction Manager shall provide sufficient notice to Owner and Architect of all such conferences.

The Construction Manager shall review the proposals in a manner that does not disclose the contents of any proposal to persons outside the Owner and Architect during this selection process.

Based on the selection criteria included in the proposals process, the Construction Manager shall recommend to the Owner the bid / proposal that provides the best value to the Owner for the Project. Upon Owner's written concurrence in the recommendation, the Construction Manager may negotiate the terms of the subcontract with the apparent best value bidder / proposer.

### **§ 2.1.11 Long-Lead-Time Items**

The Construction Manager shall identify and recommend to the Owner a schedule for procurement of materials and/or equipment requiring extended delivery times and advise owner on expedited procurement of those items to meet the Project schedule. The Construction Manager shall advise Owner and Architect on the preparation of performance specifications and requests for technical proposals for the procurement and installation of systems and components and for the procurement of long lead items. If requested by Owner and subject to the Owner's prior written approval, issue requests for technical proposals to qualified sources and receive proposals and assist in their evaluation.

If such long-lead-time items are procured by the Owner, they shall be procured on terms and conditions mutually acceptable to the Construction Manager and Owner. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Owner shall assign all contracts for such items to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead-time items.

With the specific written approval of the Owner and/or Architect, the Construction Manager shall, when reasonably required to maintain the Project schedule, be permitted to contract with subcontractors and to enter into contracts to secure long-lead time items prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal for this Project.

### **§ 2.1.12 Extent of Responsibility**

The Construction Manager does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and Architect. It is not the Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, the Construction Manager shall immediately notify the Owner's Representative in writing.

## **§ 2.2 Guaranteed Maximum Price (GMP) Proposal and Contract Time**

**§ 2.2.1** Upon the request of the Owner, the Construction Manager shall submit / propose a Guaranteed Maximum Price (GMP), consisting of the sum of the subcontractor bids/proposals mutually selected by the Construction Manager and Architect for all portions of the Work submitted for subcontractor pricing, and/or the Construction Manager's estimates of the costs for all portions of the Work not yet submitted for subcontractor pricing for the Cost of the Work; all General Conditions costs; the Construction Manager Fee, the Construction Manager Staffing and Site Office Costs, and the Owner and Construction Manager Contingencies accompanied by the proposed Contract Time.

**§ 2.2.2** Not Used.

### **§ 2.2.3 Basis of Guaranteed Maximum Price (GMP)**

The Construction Manager shall include with the Guaranteed Maximum Price (GMP) proposal a written statement of its basis, which shall include:

- .1** A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.
- .2** A list of allowances and estimates and a statement of their basis. Any allowances included within the accepted GMP shall be subject to prior approval by the Owner.
- .3** A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.
- .4** The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, Owner and Construction Manager Contingencies, and the Fee that comprise the Guaranteed Maximum Price.
- .5** The Construction Manager's baseline Project schedule indicating the Dates of Commencement and Dates of Acceptance (Substantial Completion) for the Parts of the Project upon which the proposed Guaranteed Maximum Price is based.

**§ 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.

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

**§ 2.2.6** Not Used

**§ 2.2.7** Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed for Part B: Construction Services, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

**§ 2.2.8** Upon acceptance by the Owner of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in Amendment No. 1. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Date of Acceptance (Substantial Completion) shall be subject to adjustment as provided in the Contract Documents.

**§ 2.2.9** The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP Proposal. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with the schedules agreed to by the Owner, Architect,

and Construction Manager. The Construction Manager shall promptly notify the Architect and Owner if such revised Drawings and Specifications are materially inconsistent with the agreed-upon assumptions and clarifications.

§ 2.2.10 The Guaranteed Maximum Price shall include in the Cost of the Work only those taxes which are enacted at the time the Guaranteed Maximum Price is established. Should the Construction Manager and Owner be unsuccessful at arriving at an agreed to GMP, in accordance with State of Louisiana revised statute RS 38:2225.2.4 subparagraph G.(6):

*“If owner and the CMAR contractor are not able to agree upon constructability, construction phasing and sequencing, the GMP for the project, the maximum number of contract days to complete the project, and to reach a negotiated agreement, then the project shall be readvertised and publicly bid utilizing the design-bid-build delivery method, provided the CMAR contractor shall be prohibited from bidding on the project.”*

Accordingly, the Owner shall be required to terminate this Agreement. Prior to termination, Construction Manager shall provide Owner with all documents, reports, memos, estimates, spreadsheets, schedules, electronic documents, drawings, details, submittals and meeting minutes (hereinafter referred to within this paragraph as “records”) created or obtained by Construction Manager relating to its scope of services for this Project, which records shall be the property of the Owner along with all copyrights therein.

## § 2.3 CONSTRUCTION SERVICES

### § 2.3.1 General

§ 2.3.1.1 Construction Services shall commence on the earlier of:

- (1) the Owner's written acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, or
- (2) the Owner's first authorization to the Construction Manager to:
  - a) Award a subcontract, or
  - b) Issue a purchase order for materials or equipment required for the Work.

### § 2.3.2 Administration

§ 2.3.2.1 The Construction Manager is **prohibited from self-performing** any portion of the Work of the Project with its own forces or the forces of an Affiliated Entity, as defined in Section 11.22. All portions of the Work shall be performed under subcontracts or by other appropriate agreements with the Construction Manager.

The Construction Manger shall organize and maintain a competent, full-time staff at the project site with clearly defined lines of authority and communication as necessary to coordinate construction activities, monitor and direct the progress of the work and further the project goals of the Owner and Architect.

§ 2.3.2.1.1. The Construction Manager shall obtain a minimum of three (3) bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list of potential bidders previously accepted by the Owner and Architect in accordance with Section 2.1.6., after analyzing such bids, shall deliver such bids to the Owner and



Architect. By mutual agreement between the Owner and Construction Manager, and with the input of the Architect, bids will be reviewed and accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection. Positive variances between the Cost of the Work included within the Construction Manager's GMP proposal accepted by the Owner and the actual Cost of the Work established through subcontractor pricing shall remain within the Construction Manager controlled portion of the GMP until such time as 90% of the Project Cost of the Work has been established through subcontractor agreements, upon which time the positive variances shall be transferred to the Owner's Contingency.

**§ 2.3.2.1.2** Following acceptance by the Owner, the GMP will be modified only for the following reasons:

- a) If the scope of Work is changed by the Owner.
- b) If unforeseen or hidden conditions are encountered for which the Construction Manager has no responsibility.
- c) If there are latent errors or omissions found within the Contract Documents for which the Construction Manager has no responsibility.
- d) The approval of Claims by the Owner for additional compensation or additional time in accordance with Article 15 of AIA Document A201-2017, as modified by Owner.

**§ 2.3.2.2** Not Used.

**§ 2.3.2.3** Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Sections 7.1.8 and 7.1.9 and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

**§ 2.3.2.4** Not Used

**§ 2.3.2.5** The Construction Manager shall schedule and conduct meetings at which the Owner, Architect, Construction Manager, and where or if appropriate, Subcontractors, can discuss the status of the Work. A meeting shall be held where the Phases of the Project can be discussed on no less than a weekly basis in the Construction Manager's on-site Project office. As mutually agreed by the Parties, the Construction Manager shall prepare meeting minutes in a Prolog Project Management Systems format agreeable to the Owner and Architect and distribute minutes from the previous meeting no less than three (3) consecutive workdays in advance of the next scheduled meeting date. ”

**§ 2.3.2.6** Within 14 days after the Owner's acceptance of the Guaranteed Maximum Price proposal, the Construction Manager shall prepare, and submit for review and approval by the Owner and Architect, a detailed Project Schedule in accordance with Section 3.10 of AIA Document A201-2017, as modified by Owner, including the Owner's occupancy requirements.

**§ 2.3.2.7** The Construction Manager shall provide one copy of each report of daily construction activities to the Owner and Architect on a daily basis. The Construction Manager shall submit said reports by no later than 9:00 a.m., on the next work day following the performance of the Work, reports of Work performed on Friday, Saturday or Sunday shall be provided the following



Monday. The Construction Manager's daily report shall contain a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner and/or Architect may reasonably require. The log shall be available to the Owner and Architect.

**§ 2.3.2.8** The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect at regular intervals. The Construction Manager shall adhere to the requirements regarding the administration of the contract as contained in the Project Manuals.

**§ 2.3.2.9** The Owner shall contract separately and provide all required services of testing laboratories for these services required by the Contract Document. The Construction Manager shall include within its Guaranteed Maximum Price the cost for, and provide, all required services of testing laboratories to perform the third-party testing services required by the Contract Documents where such tests or services must be repeated due to a failure of the Work to meet the requirements of the Contract Documents. In cases where tests indicate the Work does not conform to the requirements of the Contract Documents, the Construction Manager shall bear the cost of retesting such non-conforming Work, as well as the cost of all corrective measures, unless the failure is due to circumstances beyond the control of the Construction Manager. In such cases, and unless the failure is due to circumstances beyond the control of the Construction Manager, as determined by the Architect, neither the costs of such retesting nor the costs of corrective measures shall be included as a reimbursable cost, as defined in Article 6 of this Agreement, within the Guaranteed Maximum Price. In addition, the Guaranteed Maximum Price shall not be increased due to the cost of such tests, or the cost of any corrective measures that may be necessary due to the failure of the Work to conform to the Contract requirements, unless the failure is due to circumstances beyond the control of the Construction Manager, as determined by the Architect.

**§ 2.3.2.9.1** If the Construction Manager determines the services of a geotechnical engineer are required in addition to the Geotechnical Report included within the Project Manuals, the Construction Manager shall advise the Architect in writing that such services are required and shall include a justification for those services. If the Architect agrees such additional services are necessary and are not included in the scope of the Work on which the Guaranteed Maximum Price is based, the Owner shall provide such services at no additional cost to the Construction Manager.

## **§ 2.4 Professional Services**

Section 3.12.10 of A201–2017, as modified by Owner, shall apply to both Pre-Construction and Construction Services.

## **§ 2.5 Hazardous Materials**

Section 10.3 of A201–2017, as modified by Owner, shall apply to both Pre-Construction and Construction Services.

# **ARTICLE 3 OWNER'S RESPONSIBILITIES**

## **§ 3.1 Information and Services**

**§ 3.1.1** Upon written request by the Construction Manager, the Owner shall provide information in a timely manner regarding the requirements of the Project.

§ 3.1.2 The Owner shall, at the written request of the Construction Manager, prior to commencement of Construction and thereafter, furnish to the Construction Manager reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract.

§ 3.1.3 The Owner shall establish and update an overall budget for the Project which shall include contingencies for Owner changes in the Work and other costs which are the responsibility of the Owner.

### **§ 3.1.4 Structural and Environments Tests, Surveys and Reports**

During Pre-Construction Services, the Architect, on behalf of the Owner, shall furnish services specified in Article 3, Sections 3.1.4.1- 3.1.4.5 with reasonable promptness and at the Owner's expense. Except to the extent that the Construction Manager knows of any inaccuracy, the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests described in Sections 3.1.4.1 through 3.1.4.5 but shall exercise customary precautions relating to the performance of the Work.

§ 3.1.4.1 Reports, surveys, drawings and tests concerning the conditions of the site where required by law.

§ 3.1.4.2 Surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; right-of-ways, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining 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 information on the survey shall be referenced to a project benchmark.

§ 3.1.4.3 Subject to the Architect's prior written approval, the services of a geotechnical engineer when such services are requested by the Construction Manager to perform percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipated subsoil conditions, with reports and appropriate professional recommendations.

§ 3.1.4.4 Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

§ 3.1.4.5 The services of other consultants when, in the opinion of the Architect, such services are reasonably required by the scope of the Project.

### **§ 3.2 Owner's Designated Representative**

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. This representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such

decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. The Owner's designated representative is the Office of Facility Planning and Control.

### **§ 3.2.1 Legal Requirements**

The Owner shall advise the Architect and Construction Manager of any special legal requirements relating specifically to the Project that differ from those generally applicable to construction in the jurisdiction of the Project. The Owner shall furnish such legal services as are necessary to provide the information and services required under Section 3.1.

### **§ 3.3 Architect**

The Owner shall retain an Architect to provide Basic Services as described in its Contract Between Owner and Designer, current as of the date of this Agreement and as modified by the Owner. The Owner shall authorize and cause the Architect to provide only those Preconstruction and Construction Phase Additional Services approved by the Owner in writing in advance. Such services shall be provided in accordance with time schedules agreed to by the Owner and Architect. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a copy of the Owner's Agreement with the Architect, from which compensation provisions may be deleted.

## **ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRE-CONSTRUCTION SERVICES**

The Owner shall compensate and make payments to the Construction Manager for Part A: Pre-Construction Services as follows:

### **§ 4.1 Compensation**

**§ 4.1.1** For the services described in Section 2.1, Section 2.2, and the Owner's Request for Qualifications, the Construction Manager shall be compensated the fixed, lump sum Pre-Construction Services fee of **Seventy-Five Thousand Dollars (\$75,000.00)**. Construction Manager shall complete Exhibit 11 "Pre-Construction Fee Worksheet", included within the Owner's Request for Qualifications for the total labor and expenses associated with these services. **Should actual labor and/or expenses exceed the man-hours included within Exhibit 11, there shall be no fee adjustment for Part A: Pre-Construction Services.**

**§ 4.1.2** Not Used

**§ 4.1.3** Not Used

### **§ 4.2 Payments**

**§ 4.2.1** Payments shall be made monthly following presentation of the Construction Manager's invoice and shall be in proportion to services performed and the Construction Manager's Exhibit 11 "Pre-Construction Fee Worksheet" and billing schedule included within its proposal in response to the Owner's RFQ.

**§ 4.2.2** Payments for Pre-Construction Services are due and payable thirty (30) days from the date the Construction Manager's invoice, approved by the Architect, is received by the Owner.

## ARTICLE 5 COMPENSATION FOR CONSTRUCTION SERVICES

Should the Construction Manager be awarded Part B: Construction Services (Construction Management at Risk), the Owner shall compensate the Construction Manager for Construction Services as follows:

### § 5.1 Compensation

§ 5.1.1 For Part B: Construction Services and the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager in current funds the Contract Sum consisting of the Cost of the Work, as defined in Article 6, the Construction Manager's Construction Phase Site Office and Staffing Costs, the Owner Contingency where earned and the Construction Manager Contingency where earned, as defined herein, and the Construction Manager's Fee, as described in the Owner's RFQ and below.

### 5.2 Guaranteed Maximum Price (GMP)

Should the Construction Manager be awarded Part B: Construction Services and the performance of the Work described in Article 2.3 and the Owner's Request for Qualifications, the Construction Manager shall be compensated the not-to-exceed sum of     TBD     **Dollars** (\$     TBD    .00) for the Cost of the Work, the Construction Manager's Site Office and Staffing Costs, as described in the Owner's RFQ and below, and a total of five percent (5%) Contingency based on the GMP, as described herein. In addition, to the above referenced not-to-exceed value for the Cost of the Work, the Construction Manager shall be paid a Fee in the stipulated amount of     TBD     **Dollars** (\$     TBD    .00) for Construction Services.

### Cost of the Work, including General Conditions

### Construction Manager's Construction Services Site Office and Staffing Costs

### Contingencies

As indicated above, the GMP shall include a total Construction Contingency of five percent (5%) of the GMP or (    TBD    ). Said Construction Contingency shall consist of (1) the Owner Contingency and (2) the Construction Manager Contingency

### Owner Contingency

The Owner Contingency shall be the sole property of the Owner established by multiplying the Cost of the Work, as first established within this Agreement, including General Conditions' costs but excluding the Construction Manager's Fee, by four percent (4.0%) or (    TBD    ). The Owner is under no obligation to increase the value of the Owner's Contingency beyond the dollar value first established due to adjustments to the Contract Sum by Change Orders. With the prior written consent of the Owner, said Owner's Contingency may be used to compensate the Construction Manager for additional costs which are the results of:

- (1) Subcontractor default due to no fault of the Construction Manager;
- (2) Unusually adverse market conditions relating to labor costs or the cost of materials arising after establishment of the GMP for which the Construction Manager is not responsible and could not have reasonably predicted;
- (3) Increases in the Cost of the Work due to the Architect's reasonable interpretation of the Contract Documents per Article 1.2.3 of the AIA Document A201-2017, as modified by the Owner;

- (4) Portions of the Work having been inadvertently omitted from the Cost of the Work by the Construction Manager. However, in no event shall the Owner's Contingency be awarded to a subcontractor who, following the establishment of the GMP, notifies the Construction Manager that costs for portions of its scope were omitted from the subcontractor's firm fixed bid/proposal due to causes beyond the control of the Construction Manager or the Owner,
- (5) Other conditions affecting the Cost of the Work for which the Construction Manager bears no responsibility, and
- (6) Other conditions which, in the sole discretion of the Owner, warrant the award of additional compensation to the Construction Manager from the Owner's Contingency.

As indicated above, the Owner Contingency shall be the property of the Owner and may be approved for use by the Construction Manager only upon the prior written consent of the Owner, which consent shall not be unreasonably withheld for uses number one (1) through five (5) above. Award of the Owner's Contingency for use number six (6) above shall be at the Owner's sole discretion and may be withheld for any reason. Any unused Owner's Contingency remaining at the completion of the Project shall be returned to the Owner and the GMP decreased accordingly by Change Order.

It is agreed and understood by the Parties that the Owner will manage the award of additional compensation to the Construction Manager from the Owner Contingency, including additional compensation awarded under use number six (6) as defined above, in a manner to achieve a potential zero dollar (\$0.00) balance in the Owner Contingency at the completion of the Project. In the event the Owner's use of its Contingency in accordance with use number six (6) above causes the remaining balance of Owner Contingency to be decreased to an amount insufficient to compensate the Construction Manager for legitimate and approvable requests for compensation in accordance with uses number one (1) through five (5), as defined above, and as reasonably determined by the Owner, the Owner agrees, upon the written request of the Construction Manager, to restore the balance of the Construction Contingency by an amount not to exceed the value of all compensation previously approved by the Owner under use number six (6) above. The Owner's reinstatement of the Owner's Contingency under this paragraph shall not cause the total value of the Owner's Contingency to exceed the amount first established and stipulated below.

#### Construction Manager Contingency

The Construction Manager Contingency shall be established by multiplying the Cost of the Work, including General Conditions costs (excluding Construction Managers Fee), by one percent (1.0%) or **(TBD)**. This Contingency is also the property of the Owner; however, said Contingency may be used by the Construction Manager for Work which is reasonably required to complete the Project but which was not indicated in the Contract Documents and could not have been reasonably anticipated by the Construction Manager prior to establishment of the Cost of the Work. The Construction Managers' use of this Contingency shall not exceed **fifty thousand dollars (\$50,000.00)** per occurrence without the prior written consent of the Owner, which consent will not unreasonably be withheld. The Construction Manager agrees to exercise its fiduciary responsibility to the Owner in its use of this Contingency. The Construction Manager further agrees to maintain and submit an accounting of its use (in a form agreeable to the Owner) with its monthly Application for Payment and report its use of this contingency to the Owner at the weekly Project Meetings. Any unused Construction Manager's Contingency remaining at the completion of the Project shall be returned to the Owner and the GMP decreased accordingly by Change Order.



## Guaranteed Maximum Price (GMP)

The Guaranteed Maximum Price for this Project is the amount of (\$     **TBD**     Dollars (\$     **TBD**    .00) and is the sum of the following components and values:

\$                     .00 – Cost of the Work, including General Conditions Costs  
\$                     .00 – Construction Manager’s Site Office and Staffing Costs  
\$                     .00 – Owner Contingency  
\$                     .00 – Construction Manager Contingency  
\$                     .00 – Construction Manager’s Fee  
  
\$     **TBD**    .00 – Guaranteed Maximum Price

§ 5.2.1 The sum of the Cost of the Work, the Construction Manager’s Site Office and Staffing Costs, and the Construction Manager’s Fee are guaranteed by the Construction Manager not to exceed the amount provided above and in GMP Proposal, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 5.2.2 Following approval of the Construction Manager’s Schedule of Values for the Project, underruns of costs on line items within the Guaranteed Maximum Price, with the exception of the Owner Contingency and the Construction Manager Contingency lines, may be used to offset overruns of the same, with the net amount of the total underruns being returned to the Owner by the Construction Manager at the completion of the Project. However, following the approval of the Construction Manager’s schedule of values, the contract values of specific line items may be adjusted within the GMP only by change order or the prior written approval of the Owner. For this Article 5, an “underrun” is defined as a cost which is less than the dollar amount of that cost as provided for herein, and an “overrun” is defined as a cost in excess of the dollar amount of that cost as provided for herein. No provision for shared savings between the Owner and Construction Manager is included in this Agreement or elsewhere.

## § 5.3 Changes in the Work

§ 5.3.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Part B: Construction Services (AIA A133-2009, as modified by Owner) Agreement may be determined by any of the methods listed in Section 7.3.3 of A201–2017.

§ 5.3.2 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 A201™–2017 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Section 7.3.7 of A201™–2017 shall have the meanings assigned to them in that document and shall not be modified by this Article 5. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.



§ 5.3.3 In calculating adjustments to the Contract, the terms "cost" and "costs" as used in the above-referenced provisions of A201™–2017 shall mean the Cost of the Work as defined in Article 6 of this Agreement, and the term "and a reasonable allowance for overhead and profit" shall mean the Construction Manager's Fee as defined in Section 5.1.1 of this Agreement.

§ 5.3.4 If no specific provision is made in Section 5.1.1 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.1 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the basis of the Fee established for the original Work. However, the Construction Manager shall be due no increase in its stipulated Fee until such time as the Cost of the Work, as indicated above, is increased by five percent (5.0%) as the result of change order adjustments to the Guaranteed Maximum Price, or the value of the Cost of the Work exceeds \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).00).

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

### **§ 6.1 Costs to be Reimbursed**

§ 6.1.1 The term "Cost of the Work" shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily 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 6.2.1-6.7.1.

§ 6.1.2 Not Used

### **§ 6.2 Labor Costs**

- .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 agreement, at off-site workshops.
- .2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's agreement.
- .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.
- .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 that such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.1 through 6.2.4 included in 6.2 as reformatted

§ 6.2.5 Not Used

### **§ 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**

- .1** Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.
- .2** Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

**§ 6.4.1 through 6.4.2** included in 6.4 as reformatted

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

- .1** Costs, including transportation, installation, maintenance, dismantling and the removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value. Owner shall participate in the decision to purchase or rent the machinery, equipment, or hand tools. If Owner decides that such items are to be purchased rather than rented, these items will be the property of Owner and will be returned to and retained by the Owner after completion of the work. Costs shall be consistent with current prevailing market rates and shall not exceed the current costs that a willing and prudent purchaser would be expected to pay for such goods, services, materials, equipment, labor, tools, supplies, machinery, or temporary facilities in East Baton Rouge Parish, Louisiana.
- .2** Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval. Rental rates of Contractor's own equipment shall not exceed the current Associated Equipment Distributors (AED) Manual charges, as adjusted for the location of the Project, or the lowest rental rate reasonably available for the equipment from commercial rental companies within the area of the project, without Owner's prior written approval, and in no event shall the total of such rental charges exceed the depreciated fair market value of the equipment when first put into service in connection with the Work. Operating Costs (per AED), if any, are to be billed at actual cost.
- .3** Costs of removal of debris from the site.
- .4** Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office.

- .5 That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties related to the Work. All such travel and subsistence expenses of Construction Manager's personnel shall be in accordance with Owner's current Travel and Lodging Policy.

§ 6.5.1 through 6.5.5 included in 6.5 as reformatted

§ 6.5.6 Not Used

### § 6.6 Miscellaneous Costs

- .1 That portion directly attributable to this Contract of premiums for insurance and bonds. Cost of the required insurance coverages, performance and payment bonds, Builder's Risk Insurance and other insurance policies required by this Agreement, are all included in the General Condition Costs as referenced in paragraphs 5.1.1 and 5.2 above. All insurance and bond costs are to be at actual and auditable cost inclusive of all premium adjustments.
- .2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.
- .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.
- .4 Fees of testing laboratories for tests required by the Contract Documents and Article 2.3.2.8. of this Agreement, except those related to nonconforming Work other than that for which payment is permitted by Section 6.1.8.2.
- .5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents
- .6 Data processing costs related to the Work. (Note: Only for costs expended on the site as part of the General Condition Costs. Home office data processing costs of any nature are not reimbursable under this Agreement.)
- .7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.
- .8 Each Party shall be responsible for its own legal fees, costs and expenses relating to this Agreement.
- .9 Expenses for relocation and temporary living allowances for the Construction Manager's personnel shall only be reimbursed by the Owner if the Owner approves such costs in writing beforehand.

§ 6.6.1 through 6.6.9 included in 6.6 as reformatted

### § 6.7 Other Costs

- .1 That Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

### § 6.7.1 Emergencies and Repairs to Damaged or Nonconforming Work

The Cost of the Work shall also include costs described in Section 6.1.1. which are incurred by the Construction Manager 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 A201-2017.

## § 6.7.2 through 6.7.3 Not Used

§ 6.7.4 The costs described in Sections 6.2.1 through 6.7.1 shall be included in the Cost of the Work notwithstanding any provision of A201™–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

## § 6.8 Costs not to be Reimbursed

§ 6.8.1 The Cost of the Work shall not include:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principle office or offices other than the site office, except as specifically provided in Section 6.2.1.
- .2 Expenses of the Construction Manager's principle office and offices other than the site office, except as specifically provided in Section 6.2.1.
- .3 Overhead and general expenses, except as may be expressly included in Section 6.2.1.
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.
- .5 Rental costs of machinery and equipment, except as specifically provided in Section 6.5.
- .6 Costs due to the negligence of the Construction Manager or to the failure of the Construction Manager to fulfill a specific responsibility to the Owner set forth in this Agreement.
- .7 Costs incurred in the performance of Pre-Construction Phase Services
- .8 Any cost not specifically and expressly described in Sections 6.2 through 6.7.
- .9 Costs that would cause the Guaranteed Maximum Price to be exceeded.
- .10 Bonuses and other discretionary expenses unless specifically approved in writing by the Owner.
- .11 Insurance and/or bond deductibles.

## § 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured.

§ 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 Not Used

## § 6.11 Accounting Records

§ 6.11.1 The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be the Prolog Management System. The Owner and its accountants shall be afforded access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to

this Project, and the Construction Manager shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

a) The Construction Manager shall keep full and detailed accounts in accordance with Generally Accepted Accounting Principles (GAAP) and exercise such cost controls as may be necessary for proper financial management under this Agreement. Owner's accountants, Owner's agent, its authorized representative, and auditors for the State of Louisiana shall be afforded reasonable access, at reasonable times, to the Construction Manager's detailed cost reports, time sheets, payroll burden calculations, insurance rates (workers compensation and general liability) and the support therefore, insurance contracts, invoices, bills, reimbursable expenses reports, records, books, foreman's reports, superintendent daily logs, correspondence, instructions, as-built record drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other records, drawings or data relating to the Work performed in accordance with this Agreement, and the Construction Manager shall preserve these for a period of three (3) years after final payment, or for such longer period as may be required by law.

b) Construction Manager's records which shall include accounting records (hard copy, as well as computer readable data if reasonably available), written policies and procedures, subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets correspondence; change order files (including documentation); and any other supporting evidence necessary to substantiate charges related to this Agreement (all foregoing hereinafter referred to as "records") shall be opened to inspection and subject to audit by Owner's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of (1) Construction Manager's compliance with this Agreement, and (2) compliance with provisions for Change Orders, payments or Claims submitted by the Construction Manager or any of its Subcontractors or other payees.

c) Such audits may require inspection from time-to-time and at reasonable times and places of any and all such information, materials and data as set forth above of every kind and character. Such records subject to audit shall also include those records necessary to evaluate and verify direct costs (including overhead allocations) as they may apply to costs associated with this Agreement.

d) Owner's agent or its authorized representative shall have reasonable access at reasonable times to the Construction Manager's facilities, shall be allowed to interview current or former employees that have direct involvement with the performance of this Agreement, shall have access to all necessary records, shall be provided adequate and appropriate work space in order to conduct audits in compliance with this Article, and will be provided support from the Construction Manager's staff as required. Construction Manager shall provide such access and/or all necessary records or support upon 14 calendar day notice by Owner to Construction Manager.

e) The Construction Manager shall provide the Owner and Architect with an executed copy of all subcontracts, (with subcontractors, materialmen, suppliers or other vendors of services, supplies or materials) including Change Orders or other contracts and/or any document required under this Agreement entered into in furtherance of the Work, if specifically requested by the Owner or Architect.



## **ARTICLE 7 CONSTRUCTION SERVICES PAYMENTS**

### **§ 7.1 Progress Payments**

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

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

Applications for payment shall only be made for Work completed during the period covered by the application. Applications for payment shall not be for Work projected to be completed after the application for payment is submitted. The Construction Manager shall make its best effort, and shall require the same of its sub-contractors, to include within each Application for Payment all costs incurred by the Construction Manager and sub-contractors within the period covered by the Application for Payment. Costs in excess of ninety (90) days old included within Applications for Payment may be subject to disapproval by the Owner.

**7.1.3** Provided an Application for Payment is approved by the Architect and forwarded to the Owner not later than the tenth (10<sup>th</sup>) day of a month, the Owner shall make payment to the Construction Manager not later than the tenth (10<sup>th</sup>) day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment, unless the Application for Payment is rejected due to errors or ineligible billing.

**§ 7.1.4** With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

**§ 7.1.5** Each Application for Payment shall be based upon the most recent schedule of values approved by the Owner and Architect 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 Owner or Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

**§ 7.1.6** Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage 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 which 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 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 may be included as provided in Section 7.3.9 of A201™–2017, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.
- .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 (5.0%). The Construction Manager's Fee shall be an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Sections bears to a reasonable estimate of the probable Cost of the Work upon its completion.
- .4 Subtract the aggregate of previous payments made by the Owner.
- .5 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 accountants in such documentation.
- .6 Subtract amounts, if any, for which the Owner or Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of A201™–2017.
- .7 Due to the construction phasing and Owner occupancy requirements of the Project, it is anticipated that Certificates of Substantial Completion for the Phases, or the combination of Phases, of the Project, or partial Certificates of Substantial Completion for portions of the Project, will be issued upon the Construction Manager's completion and the Owner's occupancy of each portion of the Project. Therefore, with the exception of amounts to be withheld to in accordance with, retainage shall be released by completed and Owner occupied portion of the Project Part. In no event shall the retainage for an individual Phase of the Project be reduced to below five percent (5%) of the approved Schedule of Values cost of the Work for that Phase of the Project, including an appropriately allocated portion of the Construction Manager's Fee, prior to Substantial Completion of that Project Phase.

§ 7.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than five percent (5.0%). The procedure for the Architect's review and approval of the Construction Manager's payments is defined in Article 9 of AIA Document A201-2017.

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

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

## **§ 7.2 Final Payment**

**§ 7.2.1** Final payment shall be made by the Owner to the Construction Manager when (1) the Contract has been fully performed by the Construction Manager except for the Constructor's responsibility to correct nonconforming Work, as provided in Section 12.2.2 of A201™–2017, as modified by Owner, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Owner's accountants; and (3) the expiration of the 45 day Lien Notice period, delivery of a Clear-Lien Certificate and Consent of Surety, and the approval of the Construction Manager's final Certificate for Payment by the Architect.

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

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

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

**§ 7.2.2** The Owner's accountants will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Owner by the Construction Manager. Based upon such Cost of the Work as the Owner's accountants 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 accountants, 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 Architect's reasons for withholding a certificate as provided in Section 9.5.1 of A201–2017, as modified by Owner. The time periods stated in this Section 7.2 supersede those stated in Section 9.4.1 of A201–2017.

§ 7.2.3 If the Owner's accountants 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 proceed in accordance with Article 9.

§ 7.2.4 Not Used

## **ARTICLE 8 INSURANCE AND BONDS**

### **§ 8.1 Insurance Required of the Construction Manager**

§ 8.1.1 Using its own funds, the Construction Manager shall provide and maintain from inception of the contract to the date of final payment insurance and bond coverage in the amounts required by Article 11 of AIA Document A201-2017, as modified by Owner. Construction Manager shall be responsible for payment of any and all deductibles.

### **§ 8.2 Performance Bond and Payment Bond**

§ 8.2.1 The Owner shall require the Construction Manager to furnish bonds covering the faithful performance of the Work required by the Contract Documents and payment of obligations arising there under. The amount of the bond shall be equal to one-hundred percent (100%) of the value of the contract. The Construction Manager is not required to bond the value of its Pre-Construction and Construction Services Fees nor its Construction Site Office and Staffing Costs.

§ 8.2.2 The Construction Manager shall deliver the required bonds to the Owner prior to the execution of the Part B: Construction Services agreement.

## **ARTICLE 9 MISCELLANEOUS PROVISIONS**

### **§ 9.1 Dispute Resolution**

§ 9.1.1 The Parties shall use their best good faith efforts to resolve all disputes between them. No dispute shall be submitted to arbitration or mediation unless expressly agreed to in writing by the Owner and Construction Manager.

### **§ 9.2 Other Provisions**

§ 9.2.1 Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction, as modified by Owner.

### **§ 9.2.2 Extent of Contract**

This Contract, which includes this Agreement and the other documents incorporated herein by reference, 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 the Owner and Construction Manager. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

### **§ 9.2.3 Ownership and Use of Documents**

All designs, Drawings, Specifications, details, documents, models, data, electronic documents and information, and all other work products of the Construction Manager and Architect relating to the Project are Instruments of Service for the Project, whether or not the Project is completed, and are the property of the Owner along with all copyrights therein. The Construction Manager shall obtain grants from its subcontractors consistent with this Agreement. The Owner is entitled to the

possession of all such Instruments of Service specifically developed for the Project upon completion of the Project, termination of this Agreement, or upon the Owner's request, whichever occurs first, and upon payment of all amounts due to Construction Manager under this Agreement. The Owner may reuse any of the Instruments of Service created by the Construction Manager and its subcontractors for the Project or any addition or modification to any portion of the Project, or for any other project, including new projects, as the Owner desires without the permission of or compensation to the Construction Manager or Project Architect. The Construction Manager shall not be liable for any injury or damages resulting from the reuse of the Instruments of Service by the Owner if the Construction Manager is not involved in the reuse project.

#### **§ 9.2.4 Governing Law**

This Agreement and all other Contract Documents referenced herein and elsewhere, shall be construed and enforced in accordance with the laws of the State of Louisiana. The sole venue for any legal action arising under this Agreement shall be the Nineteenth Judicial Court in and for the Parish of East Baton Rouge, State of Louisiana. This provision shall survive the termination of this Agreement.

#### **§ 9.2.5 Assignment**

Construction Manager shall not assign, pledge, or transfer its duties, rights or obligations in this Agreement, in whole or in part, without first obtaining the prior written consent of the Owner. Any attempt by Construction Manager to assign this Agreement, in whole or in part, without the prior written consent of the Owner shall render the assignment null and void.

### **ARTICLE 10 TERMINATION OR SUSPENSION**

#### **§ 10.1 Termination Prior to Establishing Guaranteed Maximum Price (GMP)**

**§ 10.1.1** Prior to execution of Part B: Construction Services (AIA A133-2009, as modified by Owner) Agreement establishing the Guaranteed Maximum Price, the Owner may terminate this Contract at any time without cause, and the Construction Manager may terminate this Contract, for any of the reasons described in Section 14.2 of AIA A201-2017, as modified by Owner. The Owner may, at any time, terminate this Agreement, in whole or in part, for the Owner's convenience and without cause. Termination by the Owner under this subparagraph shall be by Notice of Termination delivered to the Construction Manager specifying the extent of termination and the effective date thereof.

**§ 10.1.2** If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 prior to commencement of Construction Services, the Construction Manager shall be equitably compensated for Part A: Pre-Construction Services performed prior to receipt of Notice of Termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Section 4.1.1 and shall not include unrealized profit and/or overhead.

**§ 10.1.3** If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 after commencement of the Part B: Construction Services, the Construction Manager shall, in addition to the compensation provided in Section 10.1.2, be paid an amount calculated as follows:

- .1** Take the Cost of the Work, including General Conditions, incurred by the Construction Manager.
- .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 which bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion.

- .3 Subtract the aggregate of previous payments made by the Owner on account of the Construction Phase.

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.

Subcontracts, purchase orders and rental agreements entered into by the Construction Manager with the Owner's written approval prior to the execution of Part B: Construction Services (A133-2009, as modified by Owner) Agreement shall contain provisions permitting assignment to the Owner as described above. If the Owner accepts such assignment, the Owner shall reimburse or indemnify the Construction Manager with respect to all costs arising under the subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager shall terminate such subcontract, purchase order or rental agreement and the Owner shall pay the Construction Manager the costs necessarily incurred by the Construction Manager by reason of such termination.

## **§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price (GMP)**

Subsequent to execution of Part B: Construction Services (133-2009 as modified by Owner) Agreement, the agreement / contract may be terminated as provided in Article 14 of A201–2017, as modified by Owner.

**§ 10.2.1** In the event of such termination by the Owner, the amount payable to the Construction Manager pursuant to Section 14.1 of A201-2017, as modified by Owner, shall not exceed the pro-rated and documented amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

**§ 10.2.2** In the event of such termination by the Construction Manager, the amount to be paid to the Construction Manager under Section 14.2 of A201-2017, as modified by Owner, shall not exceed the pro-rated and documented amount the Construction Manager would have been entitled to receive under Sections 10.1.2 and 10.1.3 of this Agreement. The Construction Manager Fee shall be calculated based on the percentage of Work completed.

## **§ 10.3 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of A201-2017, as modified by Owner; in such case, the Guaranteed Maximum Price, if established, shall be increased as



provided in Section 14.3.2 of A201-2017, as modified by Owner, except that the term "cost of performance of the Contract" in that Section shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1.1 and 5.3.4 of this Agreement.

## **ARTICLE 11 OTHER CONDITIONS AND SERVICES**

### **§ 11.1 Construction Manager's Fiduciary Responsibility to the Owner**

It is acknowledged and agreed by the Parties that the Owner has selected and engaged the Construction Manager as an experienced and qualified professional manager of large construction projects where the Construction Manager's sole compensation for profit and overhead is payment of a Fee, as described herein. In consideration of the payment of such Fee by the Owner for the Construction Manager's professional services required by this Agreement, the Construction Manager agrees to and assumes a fiduciary responsibility to the Owner for both Part A: Pre-Construction and Part B: Construction Services of the Project (Agreement), and warrants to the Owner that in performing its duties and responsibilities, it shall furnish its best skill and judgment to complete the Project in the most expeditious and economical manner consistent with the interests of the Owner.

### **§11.2 Services to be Performed**

Construction Manager shall perform Part A: Pre-Construction Services in accordance with the terms and conditions of this Agreement and the other Contract Documents. Construction Manager shall perform Part B: Construction Services with its subcontractors including all Work and services necessary to complete the Project in accordance with the Owner's Construction Documents (Drawings, Specifications, Addenda, Instructions, approved Change Orders, etc. Construction Manager shall provide all necessary labor, materials, equipment, tools and services required to complete the Project in accordance with the Contract Documents. Construction Manager agrees that Time is of the Essence and further agrees to take all reasonable steps to avoid delays.

### **§ 11.3 Review of Site and Drawings**

Construction Manager shall inspect jobsite, all existing conditions, and review carefully all Construction Documents (Drawings, Specifications, Addenda, Instructions, Surveys and Test Results) prior to commencement of the Work. Construction Manager shall take field measurements of existing conditions and compare the existing conditions with the information contained in the Drawings and Specifications. Construction Manager shall promptly notify the Owner and Architect of any errors or discrepancies in the Drawings or Specifications which may affect the Work. Construction Manager shall not receive any additional payments or compensation for Work or services which reasonably could have been avoided by reviewing carefully all Construction Documents (Drawings, Specifications, Addenda, etc.) or by inspecting the Project sites and the existing conditions.

### **§ 11.4 Work Area**

Construction Manager shall ensure that the job site and surrounding area are kept reasonably free from trash and waste building material. Construction Manager shall ensure that the job site and surrounding areas are cleaned at least daily in accordance with the Owner's requirements. If, after receiving written notice of its failure to maintain a clean work site, Construction Manager fails to adhere to the requirements of the Owner regarding trash removal and clean-up, the Owner may use its own or contracted personnel to clean the site and surrounding area at the Construction Manager's sole expense. Such amounts may be deducted from Construction Manager's payment.



### § 11.5 Safety Responsibility

Construction Manager shall be solely responsible for job site safety and shall report any and all job site accidents, including both injury accidents and non-injury accidents, to the Owner immediately after the accident becomes known to the Construction Manager. Construction Manager shall have full and sole authority for all safety programs and precautions in connection with the Work. Construction Manager shall use all reasonable efforts to protect the Owner against any deviations or defects in the completed construction Work. Construction Manager shall use all reasonable efforts to protect the Owner, LSU students, faculty, employees and other staff, and visitors from personal injury and property damage. Construction Manager shall have full authority to take any action whatsoever on the site regarding safety precautions and procedures. Construction Manager shall adhere to all construction safety requirements, the Owner's Interim Life Safety Measures and Minimum Contractor Requirements, incorporated into this Agreement by reference, and the Owner's Infection Control Risk Assessments (ICRA) policies and procedures when performing Work pursuant to this Agreement. The Owner maintains a tobacco free environment. **Construction Manager shall ensure its personnel and subcontractors observe this tobacco free requirement at all times** whenever on the Project site.

§ 11.6 OSHA: All work, services, materials, supplies and equipment performed and/or furnished under the terms of this Agreement shall comply with the requirements and standards specified in the Williams-Steiger Occupational Safety and Health Act of 1970 (Public Law 91-596), as amended, as well all other applicable federal, state and local laws, codes and regulations. All services performed herein must comply with all State of Louisiana Codes.

### § 11.7 Key Personnel

The following individuals are considered "Key Personnel" by the Owner, and the Construction Manager shall ensure that these individuals are assigned to this Project on a full-time basis until Substantial Completion of the same:

- \_\_\_\_\_, Project Executive;
- \_\_\_\_\_, Project Manager;
- \_\_\_\_\_, General Superintendent;
- \_\_\_\_\_, Estimator;
- \_\_\_\_\_, Scheduler
- \_\_\_\_\_, MEP Coordinator

If for any reason reassignment of Key Personnel becomes necessary, any such reassignment shall be subject to Owner approval.

### § 11.8 Compliance with Laws and Regulations

Construction Manager shall comply strictly with all local, state, and federal laws, orders and regulations applicable with its operation and the performance of the Work. This includes the obligation to comply with all regulations promulgated by state and local authorities and made

applicable to the site. Construction Manager shall comply with all rules, regulations, and policies regarding access to site or construction at the site. Should a change to a code or regulations after award of this Agreement / Contract affect the cost to perform the Work, the Contract Sum shall be adjusted consistent with the provisions of this Contract, including all notices to and approvals by Owner.

**§ 11.8.1** The Construction Manager shall not pay for any licenses, permits, inspections, and approvals required by any governmental authority for any part of the Work unless required due to the defective performance by Construction Manager or Subcontractors. Construction Manager shall properly notify the Owner if the Construction Documents (Drawings, Specifications, Addenda, etc.) are at variance with requirements of any applicable law, ordinance, rule or regulation. The Construction Manager shall require that its Subcontractors comply with the provisions of this paragraph.

### **§ 11.9 Inconsistent Acts Not Waived**

The failure of the Owner to insist in any one or more instances upon the strict performance of any of the Construction Manager's obligations shall not constitute a waiver of its right to insist on that performance at any future time. The failure of the Owner to exercise any option it may possess under this Contract shall not waive the Owner's right to exercise that option at any time. An act or omission by the Owner that may be inconsistent with any of the Owner rights under this Contract shall not waive the Owner's right to exercise such rights. No waiver or modifications of any of the Owner right's under this Contract shall be construed as a waiver or modification of any other of the Owner's right under this Contract. If the Owner makes any payment to the Construction Manager in a situation where the Owner knows or could reasonable have known that the Construction Manager has breached any of its obligations under this Contract, that payment will not constitute a waiver of any of the Owner's rights with respect to that breach. No waiver, modification, or discharge or any provision of this Contract shall be deemed to have been made unless expressed in writing and signed by authorized representatives of both Parties.

### **§ 11.10 Prohibition on Hiring/Contracting with Illegal Aliens**

In accordance with the provisions mandated by Louisiana R.S. §23.992 *et seq.*, Construction Manager hereby certifies that it shall not: (1) knowingly employ or contract with an illegal alien to perform work under this Agreement; or (2) enter into a contract with a subcontractor that fails to certify to the Construction Manager that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

**§ 11.10.1** Construction Manager certifies that it has verified or attempted to verify through participation in the Basic Employment Verification Program ("Basic Pilot Program") administered by the United States Department of Homeland Security, Citizenship and Immigration Services that its employees who are performing work under this Agreement are not illegal aliens

(<https://www.vis-dhs.com/EmployerRegistration>). If Construction Manager is not accepted into the Basic Pilot Program prior to entering into this Agreement, Construction Manager shall apply

to participate in the Basic Pilot Program every three (3) months until Construction Manager is accepted or this Agreement terminates, whichever is earlier. If the Basic Pilot Program is discontinued during the term of this Agreement, this requirement to participate in the Basic Pilot Program shall become null and void.

**§ 11.10.2** Construction Manager shall not use the Basic Pilot Program as a tool for pre-employment screening of job applicants while performing services under this Agreement.

**§ 11.10.3** If Construction Manager obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien who is performing work under this Agreement, Construction Manager shall be required to: (1) notify the Owner and the subcontractor within three (3) days that Construction Manager has actual knowledge that the subcontractor is employing or contracting with an illegal alien who is performing work under this Agreement; and (2) terminate the subcontract with the subcontractor if within three (3) days of receiving the notice, the subcontractor does not stop employing or contracting with the illegal alien who is performing work under this Agreement; except that Contractor shall not terminate the contract with the subcontractor if during such three (3) days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien to perform work under this Agreement.

**§ 11.10.4** Construction Manager shall comply with any reasonable request by the Louisiana Department of Labor (“Department”) made in the course of an investigation that the Department is undertaking pursuant to its authority under Louisiana R.S. §23.992.

### **§ 11.11 Equal Opportunity**

Construction Manager agrees not to discriminate in its employment practices, and will render services under this Contract without regard to race, color, religion, sex, and national origin, veteran’s status, political affiliation, disabilities, or in accordance with an individual’s sexual orientation.

**§ 11.11.1** Any act of discrimination committed by the Construction Manager, or failure to comply with these statutory obligations when applicable, shall be grounds for termination of this Contract.

### **§ 11.12 Not Used**

### **§ 11.13 Warranty**

Construction Manager agrees to warrant the quality of the Work, materials and equipment provided for a period of twelve (12) months from the dates of Substantial Completion, except where longer periods for certain items are provided in the Project Manuals or where a manufacturer’s warranty is for a longer period. Construction Manager agrees to make all necessary repairs to the Work and to replace or repair any defective material and equipment during the warranty period. Construction Manager agrees to transfer all equipment and manufacturer’s warranties to Owner for all equipment, material and products provided as part of the Project. Nothing in this paragraph shall be construed to waive or limit any other claims, actions or warranties as may be made or brought on behalf of the Owner. This paragraph shall not require Construction Manager to repair or replace any Work, material or equipment damaged as a result of the negligence of the Owner.

### **§ 11.14 Discharge of Claims and Liens**

Construction Manager agrees to maintain a lien-free Project for the benefit of the Owner. Construction Manager shall take all action necessary to obtain the prompt discharge of any lien or claim, including a Verified Statement of Claim, filed against the Owner or Project. If any lien or claim is filed against the Owner or Project, the Construction Manager shall promptly, but in no

event more than fifteen (15) consecutive calendar days after request and at its own cost, obtain the discharge and full release of the lien or claim by providing payment or filing a surety bond sufficient to discharge said lien or claim. If the Construction Manager fails to take the action required by this Agreement to discharge a lien or claim, the Owner shall have the right, after consultation with the Construction Manager, to initiate a concursus proceeding in a court of competent jurisdiction.

#### § 11.15 Not Used

#### § 11.16 Construction Manager is not an Employee

It is understood and agreed by and between the Parties that the status of the Construction Manager shall be that of an independent contractor and it is not intended, nor shall it be construed, that the Construction Manager or its employees, officers, subcontractors, or other personnel are to be considered employees or officers of Owner for any purpose whatsoever. Construction Manager is a corporation and as such is responsible for the operational management, errors and omissions of its officers and employees. Construction Manager shall at all times maintain control of and appropriately supervise its employees, officers and agents. The parties intend to act and perform as independent entities and the provisions hereof are not intended to create any partnership, joint venture, agency or employment relationship between the Parties or between a Party and the employees, agents or independent contractors of the other Party.

**§ 11.16.1 Construction Manager understands that it and its employees, officers, suppliers, and subcontractors are not entitled to Unemployment benefits, Workmans' Compensation benefits or any fringe benefits from Owner. Construction Manager is obligated to pay Federal, State and local Income Taxes on any monies earned pursuant to this Agreement.**

#### § 11.17 Indemnification

**a) By the Owner:** The Owner by this Agreement does not agree to indemnify, hold harmless, exonerate or assume the defense of the Construction Manager or any other person or entity whatsoever, for any purpose whatsoever.

**b) By Construction Manager:** Construction Manager agrees to protect, defend, indemnify, save, and hold harmless, the State of Louisiana, all State Departments, Agencies, Boards and Commissions, its officers, agents, servants, employees and volunteers, from and against any and all claims, damages, expenses and liability arising out of injury or death to any person or the damage, loss or destruction of any property which may occur, or in any way grow out of, any act or omission of Construction Manager, its agents, servants and employees, or any and all costs, expenses and/or attorney fees incurred by Construction Manager as a result of any claims, demands, suits or causes of action, except those claims, demands, suits or causes of action arising out of the negligence of the State of Louisiana, all State Departments, Agencies, Boards, Commissions, its officers, agents, servants, employees and volunteers.

Construction Manager agrees to investigate, handle, respond to, provide defense for and defend any such claims, demands, suits or causes of action at its sole expense and agrees to bear all other costs and expenses related thereto, even if the claims, demands, suits, or causes of action are groundless, false or fraudulent. The State of Louisiana may, but is not required to, consult with the Construction Manager in the defense of claims, but this shall not affect the Construction Manager's responsibility for the handling and expenses of all claims.

### **§ 11.18 Severability**

In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or non-enforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Agreement and this Agreement shall be enforced to the fullest extent permitted by law. The Parties agree to renegotiate in good faith those provisions of the Agreement invalidated so that an appropriate agreement may be maintained between the Parties.

### **§ 11.19 Authorization**

Each party represents to the other that the execution and delivery of this Agreement has been duly authorized by all necessary corporate or other action, and that all approvals and consents necessary to enter into this Agreement have been obtained, and that this Agreement is signed on its behalf by its duly authorized officer, agent or representative.

### **§ 11.20 Debarment**

By signing this Agreement, Construction Manager hereby represents and warrants to the Owner that neither it nor its directors, officers or employees are currently excluded, debarred, proposed for debarment, or otherwise ineligible to participate in general construction projects; nor have they been convicted of a criminal offense related to the provision of general construction services. Construction Manager further agrees to notify the Owner within three (3) days should it or any of its directors, officers or employees becomes a debarred person during the term of this Agreement.

### **§ 11.21 Survival of Certain Agreement Provisions**

The Parties agree that all terms, conditions and covenants of this Agreement, together with any exhibits and attachments hereto, which reasonably contemplate continued performance or compliance beyond the termination of this Agreement (by expiration of the term or otherwise) shall survive such expiration or termination and shall continue to be enforceable as provided herein.

### **§ 11.22 Affiliated Entity**

The Construction Manager shall not enter into any subcontract, contract, agreement, purchase order or any other arrangement of any kind (“Arrangement”) for the furnishing of any portion of the materials, services, equipment rented for use on the project, equipment, tools, or any portion of the Work with any party or entity if such party or entity is an “Affiliated Entity”, as defined below, unless such Arrangement has been approved in writing by the Owner, after full written disclosure by the Construction Manager to the Owner of such affiliation or relationship and all details relating to the proposed Arrangement. Disclosure by the Construction Manager to an agreement by the Owner, if agreed by the Owner, shall be in advance of the Construction Manager entering into any Agreement with any “Affiliated Entity”. The term “Affiliated Entity” means any entity related to or affiliated with or having common ownership or management with the Contractor or with respect to which the Construction Manager has direct or indirect ownership or control, including, without limitation, any entity owned in whole or part by the Construction Manager; any holder of issued and outstanding shares of, or the holder of any interest in, the Construction Manager; any entity in which any officer, director, employee, partner or shareholder (or member of the family of any of the foregoing persons) of the Construction Manager or any entity owned by the Construction Manager has a direct or indirect interest, which interest includes, but is not limited to, that of a partner, employee, or agent or shareholder.



§ 11.22.1 At the Owner’s sole discretion, the Owner shall not reimburse the Construction Manager for any cost associated with any Arrangement with any Affiliated Entity, as defined above, unless the Owner has received full disclosure from the Construction Manager and given written approval of the Arrangement prior to the Construction Manager entering into any Arrangement.”

**§ 11.23 Construction**

Each party has had the opportunity to review and negotiate this Agreement as part of an arms-length transaction, and therefore this Agreement shall be interpreted and construed according to its fair meaning without consideration as to which party drafted it.

**§ 11.24 Louisiana Law Applicable / Exclusive Venue 19th Judicial District**

This Contract shall be governed by and interpreted pursuant to the laws of the State of Louisiana. The Nineteenth Judicial District Court in and for the Parish of East Baton Rouge, State of Louisiana shall be exclusive venue for bringing any action involving disputes arising under or otherwise involving the work of this Contract or any Subcontract executed pursuant to this Contract. It is explicitly agreed that this Contract does not grant either Party the right to demand arbitration or mediation.

**ARTICLE 12 SCOPE OF THE AGREEMENT**

**§ 12.1 Entire Agreement**

This document, together with all other Contract Documents as first defined above, constitute this Agreement and the full understanding of the Parties with respect to the subject matter hereof, and a complete and exclusive statement of the terms of their agreement, and no terms, conditions, understandings or agreement purporting to amend, modify, vary or waive the terms of this Agreement shall be binding unless made in writing and signed by an authorized representative of each Party. This Agreement supersedes all prior written and oral agreements regarding the subject matter hereof. In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of any other Contract Document or attachment or exhibit thereto, including any AIA Document, the terms and conditions of this Agreement shall govern and control.

**§ 12.2 Not Used**

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

**WITNESSES:**

**STATE OF LOUISIANA  
DIVISION OF ADMINISTRATION**

\_\_\_\_\_  
  
\_\_\_\_\_

BY: \_\_\_\_\_  
MARK A. MOSES  
FP&C DIRECTOR

\_\_\_\_\_  
Construction Manager Witness #1 Sign Here

BY: \_\_\_\_\_  
Construction Manager (TBD)

\_\_\_\_\_  
Construction Manager Witness #2 Sign Here