



AIA[®] Document A133[™] – 2009

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

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

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

Ozarks Technical Community College
1001 East Chestnut Expressway
Springfield, Missouri 65802

Telephone: (417) 447-4810
Fax: (417) 447-4804

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

Telephone:
Fax:

for the following Project:
(Paragraph deleted)

The Architect:

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

Harlin H. Hill, Architect
Ozarks Technical Community College
1001 East Chestnut Expressway
Springfield, Missouri 65802

Telephone: (417) 447-4810
Fax: (417) 447-4804
Email: hillh@otc.edu

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

ADDITIONS AND DELETIONS:

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

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

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

Init.

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

The Owner and Construction Manager agree as follows.

Init.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents shall mean those documents as defined in Article 1, Section 1.1.1 of the AIA A201-2007 General Conditions of the Contract for Construction, as modified.

§ 1.1 Whenever AIA Document A201-2007 is mentioned herein, it shall be deemed to be that version as modified for the Project.

§ 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.

§ 1.2.1 Promptly after executing this Agreement, the Construction Manager shall provide the Owner with a project organization chart identifying those persons the Construction Manager is assigning to the Project, together with their respective responsibilities.

§ 1.2.2 The Construction Manager shall not be an agent of the Owner, except as otherwise provided herein.

§ 1.2.3 The Construction Manager shall maintain the confidentiality of financial and/or other information specifically designated as confidential by the Owner, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Construction Manager from establishing a claim or defense in an adjudicatory proceeding. The Construction Manager shall require of its Subcontractors similar agreements to maintain the confidentiality of such information.

§ 1.3 General Conditions

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

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the services and responsibilities described in this Agreement including the Exhibits referenced herein and made a part hereof. The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in writing and in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

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

§ 2.1.1.1 Preconstruction Phase Services, Nature and Scope: The Construction Manager shall provide the Owner with the technical, professional and other services defined in this Agreement.

§ 2.1.2 Consultation

As requested by the Owner and as required herein, the Construction Manager shall meet with the Architect and Owner to discuss such matters as procedures, progress, coordination, budget, design, 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.

§ 2.1.2.1 Consultation Regarding Design Reviews & Cost Estimates. The Construction Manager shall review the plans and specifications developed by the Architect and prepare construction cost estimates at specific intervals as agreed by the Construction Manager and Owner.

§ 2.1.2.2 Building System Analysis. The Construction Manager shall review the building systems, materials and equipment for general appropriateness, utilize value engineering as appropriate, and provide information, to the extent specifically known by the Construction Manager, on relative cost and expected life cycles of intended materials and equipment.

§ 2.1.2.3 Design Reviews. The Construction Manager shall make recommendations to the Owner with respect to the use of the selection of materials, Project systems and equipment and other aspects of the physical construction of the Project; and make recommendations or comparisons on various construction methods, the availability of materials and labor, time requirements for procuring long-lead items, installation and construction, including costs and construction time associated with alternative designs or materials, the budget and constructability. The review of proposed building systems, materials and equipment for appropriateness as contemplated by this Section will be accomplished by Construction Manager from the perspective of a construction manager for the Project. In no event shall the Construction Manager be deemed to be performing, or be required to perform, any design or engineering in connection with the Project.

§ 2.1.2.4 Recommendations Regarding Investigations. The Construction Manager shall recommend to the Owner that investigations, surveys, tests, analyses and reports be obtained as necessary to document existing conditions for the proper execution of the Work.

§ 2.1.2.5 Permitting. The Construction Manager shall assist the Owner in obtaining the necessary approvals for the Work, and shall obtain all necessary permits and licenses for the construction of the Work.

§ 2.1.2.6 Variance Assistance. The Construction Manager shall assist the Owner and the Architect, when requested, by providing information for the preparation and submission of applications or other documents necessary for the issuance of any variances or approvals required in connection with the design or construction of the Work from any local, state, or federal governmental authorities having jurisdiction over the Project.

§ 2.1.2.7 Construction Documents Review. The Construction Manager shall review the Contract Documents for the Work and shall notify the Owner and the Architect if the Construction Manager believes the responsibilities of the Construction Manager are not properly identified or assigned, or if the Drawings and Specifications contain any areas of conflict and/or overlap in the Work to be performed by the Construction Manager and/or the various subcontractors on the Project. The Construction Manager is not, however, qualified to perform, and is therefore not required to perform, an architectural, engineering or other design review or to perform or provide any architectural, engineering or other professional services satisfying the standards of a design professional.

§ 2.1.3 Project Schedule

When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Owner's and the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Owner's and the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's and the Owner's services and activities. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner. If the Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and the Architect to recover the lost time to the extent practicable.

§ 2.1.4 Phased Construction

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

§ 2.1.5 Preliminary Cost Estimates

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

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

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall, in cooperation with the Owner and as further provided herein, publicly advertise, in the manner prescribed by Chapter 8, RSMo 2000, and receive bids and/or proposals from trade contractors and subcontractors for the performance of the Work.

§ 2.1.6.1 Work Divisions. The Construction Manager shall make recommendations to the Owner and the Architect regarding the division of Work to facilitate the bidding and awarding of Subcontracts and the orderly progress of Work, allowing for a construction sequence which will permit the Owner to occupy the Project for its intended purposes on or before any scheduled completion dates, taking into consideration such factors as time of performance, availability of labor, overlapping trade jurisdictions, and provisions for temporary facilities. The Construction Manager shall make recommendations to the Owner and the Architect regarding the assignment of responsibilities for safety precautions and programs, temporary project facilities, equipment materials and services for the common use of subcontractors.

§ 2.1.6.2 Coordinated Bid Sets. The Construction Manager shall review and participate in the process by which the Design and Construction Documents for the Work are separated into bid packages, and by which the responsibilities of the various subcontractors are properly identified and coordinated. The Construction Manager shall coordinate the divisions of Work and the sequencing and contents of the various bid packages and subcontracts.

§ 2.1.6.3 Bidding and Negotiations. The Construction Manager and Owner shall obtain bids from qualified subcontractors and from qualified suppliers of materials or equipment and shall review such bids in a manner that does not disclose the contents of the bid, during the selection process, to a person not employed by the Construction Manager or Owner. All bids shall be made public after the award of the respective subcontract or within seven (7) days after the date of final selection of the bid, whichever is later.

§ 2.1.6.4 Bidding Assistance. The Construction Manager shall provide assistance to bidders during the bidding period for the Work. Services shall include forwarding design related questions to the Architect and distributing responses to bidders, answering bidders' construction-related questions, and distributing addenda prepared by the Architect.

§ 2.1.6.5 Pre-Bid Conference. The Construction Manager shall organize and participate in pre-bidding conferences as necessary. The Owner and the Architect shall attend and participate in all such conferences.

§ 2.1.6.6 Post –Bid Conference. For each bid package or procurement item, the Construction Manager and Owner shall conduct a post-bid conference with the apparent low bidder and the next low bidder, if necessary, to ascertain if the bids received were complete, to review bonding capability, and to determine if any bidding discrepancies exist.

§ 2.1.6.7 Subcontractor Default. In the event a selected trade contractor or subcontractor defaults in the performance of its respective portion of the Work, or fails to execute a subcontract after being selected in accordance with the procedures herein and those prescribed by law, the Construction Manager may, without advertising, fulfill the contract requirements or select a replacement subcontractor to fulfill the contract requirements as necessary.

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

§ 2.1.8 Extent of Responsibility

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

§ 2.1.9 Notices and Compliance with Laws

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

§ 2.1.9.1 M/D/WBE Requirements: The Construction Manager agrees to comply with all applicable federal, state and local laws pertaining to employment or labor relations, including all equal opportunity laws.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 The Guaranteed Maximum Price shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not, however, include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, General Conditions Expenses and the Construction Manager's Fee; and
- .4 The anticipated dates of the Commencement of the Work and Substantial Completion upon which the proposed Guaranteed Maximum Price is based.

The Construction Manager may, upon the prior written consent of the Owner which shall not be unreasonably withheld, utilize cost savings on certain line items to offset cost overages on other line items, so long as the GMP, as now established or as hereafter modified in accordance with the Contract Documents, is not exceeded

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a Construction Manager's Contingency ("Construction Contingency"), which sum is to be agreed upon by the Owner and the Construction Manager at the time the Guaranteed Maximum Price is established. Subject to the terms of the Contract, and upon prior approval by the Owner which will not be unreasonably withheld, the Construction Manager shall be entitled to allocate from, and apply against, the Construction Contingency items that are properly reimbursable Cost of the Work items, and no other. After the Guaranteed Maximum Price is established, the Construction Manager's Contingency shall be available to the Construction Manager to pay for: (a) unanticipated actual costs caused by changes in local market, labor or material conditions, (b) actual costs caused by the default or bankruptcy of a subcontractor that cannot be recovered from applicable insurance or bonds, and (c) other unanticipated costs incurred by the Construction Manager and not recoverable or reimbursable pursuant to other provisions of this Agreement; provided, however, that the Construction Manager may not apply, use, or allocate from the Construction Contingency, any amounts for any of the foregoing purposes that are a result of, relate to, or arise from, any material breach or material failure to perform by, the Construction Manager, a Subcontractor, or any party for which any of them are liable or responsible at law or under the Contract or for any non-allowable Costs of the Work. Each allocation of the Construction Contingency by the Construction Manager shall be reflected on the Application for Payment for the period during which the Construction Manager makes such allocation and application. Construction Manager shall provide to the Owner all information the Owner reasonably requests regarding use of such Construction Contingency. The Construction Manager shall use the Construction Contingency funds to pay such costs and expenses without reimbursement from the Owner. Upon Final Completion, if any funds remain in the Construction Manager's Construction Contingency, the fund shall be closed, and remaining amounts of such Construction Contingency shall be apportioned in accordance with Paragraph 5.2.1.

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§ 2.2.5 Deleted.

§ 2.2.6 The sum of the Cost of the Work, including the Construction Contingency, the General Conditions Expenses and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the Guaranteed Maximum Price, subject to additions and deductions by changes in the Work as provided in the Contract. Such maximum sum, as adjusted by approved changes in the Work, is referred to in the Contract as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

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

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

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

§ 2.2.10 Liquidated Damages

§ 2.2.10.1 If the Construction Manager shall fail to substantially complete the Work by _____, 20____, or within any extended time allowed by Change Order, the Construction Manager shall pay, or allow the Owner to withhold, the sum of _____ and No/100 Dollars (\$ _____) per day as liquidated damages for every day beyond said agreed Substantial Completion date. Additionally, if the Construction Manager shall fail to complete all punch-list items within sixty (60) days after the Substantial Completion date, or within any extended time allowed by Change Order, the Construction Manager shall pay, or allow the Owner to withhold, the sum of _____ and No/100 Dollars (\$ _____) per day as liquidated damages for every day beyond said date. The parties agree that liquidated damages shall be deducted first from any retainage withheld and the Construction Manager and its surety, if any, shall be responsible for liquidated damages which exceed the retainage. The parties stipulate and agree that the above amount is a reasonable forecast of the Owner's anticipated actual damages which are presently impossible to ascertain, and that the same shall be payable as liquidated damages and not as a penalty.

§ 2.2.10.2 There is no bonus for early completion by Construction Manager.

§ 2.3 Construction Phase

§ 2.3.1 General

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

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's issuance of a Notice to Proceed, consistent with the agreed schedule for the Project.

§ 2.3.2 Administration

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

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

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement and applicable law.

§ 2.3.2.4 Deleted.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute accurate meeting minutes to the Owner, the Architect and all attendees.

§ 2.3.2.6 The Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007, as modified.

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

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.3.2.9 The Construction Manager shall maintain at the Project site one record copy of all Subcontracts, Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction. The Construction Manager shall also assist the Owner in arranging for the delivery, storage, protection and security of the Owner-purchased materials, systems and equipment that are part of the Work until such items are incorporated into the Project.

§ 2.3.2.10 The Construction Manager shall review and coordinate the safety programs developed by each of the Subcontractors. The Construction Manager shall direct that all Subcontractors initiate and maintain appropriate safety precautions and programs in connection with the Work, and shall monitor the individual safety programs of each Subcontractor on the Project site. The Construction Manager and its Subcontractors shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to: (1) all employees performing any of the Work, and all other persons who may be affected thereby, (2) the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site, under the care, custody or control of the Construction Manager or any of the Subcontractors performing Work on the Project and (3) other property at the Site or reasonably proximate thereto. The Construction Manager and its Subcontractors shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss, and shall require all persons performing Work on the Project to comply with any policies and rules of the Construction Manager relating to access or behavior at the Project Site. The Owner agrees to cooperate with the Construction Manager in connection with the Construction Manager's implementation of reasonable safety precautions and programs hereunder, and the Construction Manager shall not be responsible for loss, injury or damage to the extent that such loss, injury or damage is caused by the failure of the Owner or its employees, agents or invitees to abide by such safety precautions or programs maintained by the Construction Manager hereunder.

§ 2.3.2.11 In conjunction with the Architect, the Construction Manager shall establish procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals. The Architect shall review and approve all submittals within a reasonable time, so as not to delay the Work or the Project in any way. The Construction Manager shall review all shop drawings, product data, samples and other submittals from the Subcontractors. The Construction Manager shall coordinate submittals with information contained in related documents and transmit to the Architect those which have been approved by the Construction Manager. The Construction Manager's actions shall be taken with reasonable promptness. The Construction Manager shall monitor the submittal of all shop drawings (and provide overall coordination of the transmittal process for Shop Drawings and other submittals).

§ 2.4 Professional Services

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

§ 2.5 Hazardous Materials

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

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

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

§ 3.1.2 If the Owner fails to make payments to the Construction Manager as the Contract requires, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract.

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

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

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

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are reasonably requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation

tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

§ 3.2 Owner's Designated Representative

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

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

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

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

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:
(Paragraph deleted)

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

§ 4.1.4 Hourly rates shall include the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, and employee retirement plans.

§ 4.2 Payments

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

§ 4.2.2 Payments are due and payable thirty (30) days from the presentation of the Construction Manager's properly submitted invoice. Amounts unpaid thirty (30) days after the properly submitted invoice date shall bear interest at the rate

(Paragraphs deleted)

at the legal rate prevailing at the location of the Project.

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's proper performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager, subject to the Guaranteed Maximum Price provided herein, the Contract Sum in current funds for the Construction Manager's performance of the Contract. The Contract Sum is the Cost of the

Work as defined in Section 6.1.1, including the Construction Contingency as described in Section 2.2.4, the General Conditions Expenses as defined in Section 5.1.4 and the Construction Manager's Fee as defined in Section 5.1.1.

§ 5.1.1 The Construction Manager's Fee:

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

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

Where changes in the Work are authorized pursuant to a written Change Order, the Contractor's Fee shall be added to net additive Change Orders at the rate of _____ percent (_____ %). There shall be no reduction to the Contractor's Fee as a result of deductive Change Orders. When there are additive and deductive items related to the same subject matter and to be performed at the same time, they may be combined into one Change Order.

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work: See Section 5.3.5.

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
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§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price, as it is amended from time to time. To the extent the Cost of the Work, the Construction Contingency, the Construction Manager's Fee and the General Conditions Expenses together exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

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

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

§ 5.3 Changes in the Work

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

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts, the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007 shall have the

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meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement.

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

§ 5.3.5 Unless otherwise agreed by the Owner, for any changes to the Work the Owner directs Construction Manager to perform on a time-and-materials basis, the Subcontractor actually performing the Work on such change shall be paid its actual out-of-pocket costs, plus a markup of ten percent (10%) to compensate such Subcontractor for its profit and overhead. If the Subcontractor performing such change work does not have a contract directly with the Construction Manager, then the Subcontractor in line contractually between the Construction Manager and the Subcontractor actually performing the change work shall receive five percent (5%) of the actual costs of such change, to compensate such intermediate-tier Subcontractor for its overhead and profit; if more than one level of Subcontractor exists contractually between the Construction Manager and the Subcontractor performing the changed Work, then all such intermediate-tier Subcontractors shall divide pro-rata the five percent (5%) markup. The Construction Manager's fee on changed Work shall be governed by Paragraph 5.1.2.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

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

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. Any Work performed prior to receipt of the Owner's prior written approval is subject to rejection at the Construction Manager's cost.

§ 6.1.3 Costs, as defined herein, shall be the actual costs paid by the Construction Manager, less all discounts, rebates, and salvages that shall be taken by the Construction Manager, subject to Article 6.9 of this Agreement. All payments made by the Owner pursuant to this Article 6, whether those payments are actually made before or after the execution of the Agreement, are included within the Guaranteed Maximum Price; provided, however, that in no event shall the Owner be required to reimburse the Construction Manager for any portion of the Cost of the Work incurred prior to the Commencement Date unless such compensation is otherwise expressly provided for in the Contract or hereafter authorized by the Owner in writing.

§ 6.1.4 There shall be no duplication of payment for any item that may be characterized as falling into more than one category of Costs to be Reimbursed.

§ 6.2 Labor Costs

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

§ 6.2.2 Employment expenses for the Construction Manager's supervisory and administrative personnel when stationed at the Project site with the Owner's prior written approval and only for such portion of time required and necessary for the proper performance of the Work. It is not intended that the wages or salaries of personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, whether for all or only part of their time. Employment expenses for the Contractor's home office personnel have been included in the General Conditions Expenses.

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

§ 6.2.4 The parties agree that the employment expenses for the services covered by the Construction Managers supervisory and administrative personnel, to the extent such services qualify as a Cost of the Work under Sections 6.2.1 and 6.2.2 above, shall be calculated by multiplying the actual hours expended by the Construction Manager's supervisory and administrative personnel in providing such services, by the appropriate hourly billing rate for each of the individuals. The hourly billing rates set forth on Exhibit _____ cover all employment related expenses to be paid or incurred by the Construction Manager for such services rendered on behalf of the Project, including the wages or salaries of such individuals and all taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

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

§ 6.2.6 WAGE RATES

§ 6.2.6.1 Payments of wage rates and fringe payments shall be made by the Contractor and each of its Subcontractors in an amount not less than the prevailing hourly wage rate for each craft or type of workman engaged on the Project.

§ 6.2.6.2 The Contractor and each of its Subcontractors shall comply with all requirements of the prevailing wage law of the State of Missouri, R.S.Mo. §§ 290.210 through 290.340.

§ 6.2.6.3 The prevailing hourly rate of wages is subject to change as provided by law. Any such change shall not be the basis of any claim by the Contractor against the Owner for an increase in the Contract Sum or Contract Time.

§ 6.2.6.4 The Contractor shall post the prevailing wage rates on the Project in a prominent and accessible location.

§ 6.2.6.5 The Contractor shall file with the Owner an affidavit that it has complied will requirements of the prevailing wage law. Receipt of aforementioned affidavit shall be a condition precedent to receipt of final payment by the Contractor.

§ 6.2.6.6 The Owner may, at any time, request and inspect the Contractor's payrolls for the Project to verify compliance.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to its Subcontractors of every tier in accordance with the requirements of the written subcontracts properly entered into under this Agreement.

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

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

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

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

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

§ 6.5.2 Rental charges for all necessary temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the Project site and costs of

transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior written approval. The total rental cost of any rental item shall not exceed the purchase price of any comparable item. Rates of the Construction Manager owned equipment and quantities of equipment shall be subject to the Owner's prior written approval. Rental charges shall be consistent with those generally prevailing in the location of the Project. The Construction Manager shall obtain multiple bids for all machinery and equipment to be rented. The Owner shall, with the advice of the Construction Manager, determine which bid is to be accepted.

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

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

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

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior written approval. The aggregate cost of materials stored off site shall not exceed Three Hundred Thousand Dollars (\$300,000) at any time without the written approval of the Owner

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior written approval. To the extent Construction Manager requires any of its Subcontractors to be bonded, the cost of such bonds shall be included as a Cost of the Work.

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable and for which the Owner is not exempt.

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

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

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

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

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

§ 6.6.8 Deleted.

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

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner, to the extent not (a) caused by the Construction Manager, a Subcontractor, or anyone for whom they are responsible, or (b) not resulting from the Construction Manager's failure to properly perform its duties hereunder.

§ 6.7.2 Costs reasonably incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007, as modified, and not resulting from the negligence of the Construction Manager, its Subcontractors or the Construction Manager's failure to properly perform its duties hereunder.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager, a Subcontractor, or anyone for whom they are responsible, and only to the extent that the costs of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

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

§ 6.8 Costs Not To Be Reimbursed

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

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

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts available to the Construction Manager shall accrue to the Owner if (1) the Construction Manager has received payment from the Owner during the cash discount period and in sufficient time for the Construction Manager to obtain such discount, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained. The Construction Manager shall make the Owner aware of all opportunities to obtain discounts.

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

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent (10%) in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

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

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three (3) years after final payment, or for such longer period as may be required by law. The Owner shall maintain the confidentiality of all such records it or its accountants obtain from Construction Manager.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment, including all supporting documentation as required per Section 7.1.2, claim waiver forms and other requirements stated herein, properly submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents. With each month's Application for Payment, the Construction Manager shall provide Conditional Claim Waivers for itself and for each and every Subcontractor and supplier whose contract amounts are deemed sufficient by the Owner to require claim waivers.

§ 7.1.2 The period covered by each Application for Payment shall be one (1) calendar month ending on the last day of the month.

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the first (1st) day of a month, the Architect will review and make a certification to the Owner within seven (7) days after receipt of the Application for Payment. Based on the Architect's recommendation, the Owner shall make payment of the certified amount to the Construction Manager not later than twenty-eight (28) days after the Architect receives the Application for Payment. 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. The Construction Manager shall furnish the Owner with claim waivers with each invoice or application for payment indicating that the Construction Manager unconditionally waives the right to claim, if any, amounts previously paid by the Owner on this Project.

§ 7.1.3.1 If the Construction Manager does not make payment to its Subcontractors, Sub-subcontractors and suppliers as required by the Contract, then the Owner reserves the right to make payment by joint checks. Such joint check(s) will be payable to the Construction Manager and its Subcontractors, Sub-subcontractors or suppliers. The Construction Manager shall furnish the Owner with conditional and unconditional claim waivers from each Subcontractor, Sub-subcontractor or supplier. The issuance of a joint check at any time as permitted above shall not

create any contractual relationship between the Owner and any Subcontractor, Sub-subcontractor or supplier, nor create any expectation of joint checks in the future. This provision shall be incorporated into each subcontract or purchase order issued by the Construction Manager for this Project.

§ 7.1.3.2 The Construction Manager shall hold all funds paid to it by the Owner for the benefit of the Subcontractors, Sub-subcontractors and suppliers on this Project only and, except for Construction Manager Fee, no amounts paid by the Owner shall be used by the Construction Manager to pay bills on other projects.

§ 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 or other back-up information required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment. In addition to other required items, each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner, and in compliance with applicable statutes of the State where the Project is located:

- .1 A duly executed and acknowledged Construction Manager's Sworn Statement showing all Subcontractors with whom the Construction Manager has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor in the Application for Payment, and the amount to be paid to the Construction Manager from such progress payment, together with similar sworn statements from all Subcontractors;
- .2 Duly executed conditional waivers of mechanics' and material suppliers' claims from the Construction Manager and all Subcontractors in the amounts for which payment is requested by the Construction Manager in the Application for Payment; and
- .3 Such other information or documentation as the Owner may reasonably require to satisfactorily audit each Application for Payment if a question arises.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents prior to the submission of the Contractor's first Application for Payment. Submission and approval by the Owner and the Architect of the Construction Manager's schedule of values is a condition precedent to the Construction Manager's right to payment under the first Application for Payment. 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 and the General Conditions Expenses shall be shown as single separate items. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect or the Owner may require. This schedule, when, and only when, approved in writing by the Architect and the Owner, shall be used as a basis for reviewing the Construction Manager's Applications for Payment and shall not be changed by the Construction Manager without prior written approval by the Owner and the Architect, although subject to modification as required by Change Orders.

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

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the approved schedule of values, less retainage of ten percent (10%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007, as modified;
- .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, less retainage of ten percent (10%);
- .3 Add an appropriate portion of the Construction Manager's Fee and the Construction Manager's General Condition Expenses less retainage of ten percent (10%) on all amounts. An appropriate portion of the Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1;
 - .4 Subtract retainage of ten percent (10%) from that portion of the Work that the Construction Manager self-performs;
 - .5 Subtract the aggregate of previous payments made by the Owner;
 - .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation;
 - .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007, as modified; and
 - .8 Subtract amounts, if any, being withheld by the Owner as provided in the Contract Documents.

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

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

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

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager no later than forty-five (45) days after:

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct nonconforming Work and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment;
- .3 a final Certificate for Payment has been issued by the Architect;
- .4 final conditional claim waivers from the Construction Manager and all Subcontractors, warranties, operation and maintenance manuals, record drawings and other close-out documents are submitted;
- .5 a Final Certificate of Occupancy has been issued for the Project;
- .6 AIA Documents G706 and G706A are executed, if required; and
- .7 completion of all punch list items.

The Owner's final payment to the Construction Manager shall be made no later than thirty (30) days after the issuance of the Architect's final Certificate for Payment.

§ 7.2.2 The Owner reserves the right to submit the Contractor's final accounting to internal or outside auditors. If so, the auditors will review and report in writing on the Construction Manager's final accounting within thirty (30) days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of work as the Owner's auditors report, to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Subparagraph 7.2.1 have been met, the Architect will, within thirty (30) days after receipt of the Owner's auditors final accounting, either issue to the Owner a final certificate for Payment with a copy to the

Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Subparagraph 9.5.1 of the AIA Document A201 – 2007, as modified. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2007, as modified. The Owner and Architect are not responsible for verifying the accuracy of the Construction Manager's final accounting. If the Owner elects not to submit the final accounting to an outside accountant, the Architect shall determine final payment in accordance with Section 9.4.1 of the AIA Document A201-2007, as modified.

§ 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 Owner is entitled to adjust the final Application or to obtain a refund of any overpayment. The Construction Manager shall be entitled to submit the dispute, pursuant to the dispute resolution procedures set out in the Contract Documents without a further decision of the Architect. Such submission shall be made by the Construction Manager within thirty (30) days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment; failure to submit the dispute within this thirty (30) day period shall result in the substantiated amount reported by the Owner's accountants becoming binding on the Construction Manager. Pending a final resolution, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 In addition to the Owner's right to audit at final payment, the Owner shall have the right to audit the Construction Manager's billings to date at any time during the Project and the Construction Manager agrees to make its records available to the Owner and its accountants for such purpose at the Construction Manager's offices. Such interim audit shall not take place more often than quarterly unless the Owner has a good faith basis to suspect an overbilling. If the Owner's accountant's report indicates that the Cost of the Work (before Construction Manager's Fee) is less than previously billed by the Construction Manager, adjustment shall be made on the current month's Application for Payment. Alternatively, the Owner may demand a refund of amounts over-billed and paid prior to date of audit. Notwithstanding anything herein to the contrary, it is agreed that fixed lump sum amounts shall not be subject to audit. However, if an audit discloses that the Construction Manager has been overpaid for the Cost of the Work and such overpayment has resulted in a corresponding overpayment of the Construction Manager's Fee based upon percent completion, then such overpayment of the Construction Manager's Fee also shall be refunded to the Owner in the next Application for Payment.

§ 7.2.5 If the above audit, or any other audit under Section 12.2.3.1, shows an overbilling by the Construction Manager more than three percent (3%) of the net amount certified to date, then the Construction Manager shall pay for the cost of the audit, but not to exceed an amount equal to the discrepancy discovered. This payment may be credited to the Owner by a deductive Change Order issued by the Owner, which does not require the Construction Manager's signature.

ARTICLE 8 INSURANCE AND BONDS

§ 8.1 For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2007.

§ 8.2 The Construction Manager shall provide payment and/or performance bonds from a surety and in a form acceptable to the Owner, covering the Construction Manager's obligations for the Work. The cost thereof shall be included in the Cost of the Work.

§ 8.3 The Construction Manager shall deliver the required bonds to the Owner at least three (3) days before the commencement of any Work at the Project site.

(Table deleted)

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007, as modified.

§ 9.1.2 In any dispute arising under or in connection with this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees, in addition to any other damages recoverable, from the non-prevailing party.

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

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

Arbitration pursuant to Section 15.4 of AIA Document A201–2007

Litigation in a court of competent jurisdiction

Other: (Specify)

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager’s Construction Phase (Paragraphs deleted) services.

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination

§ 10.1.1 The Contract may be terminated as provided in Article 14 of AIA Document A201–2007, as modified.

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

§ 10.1.3 If the Owner terminates the Contract for convenience, the Owner shall pay to the Construction Manager an amount calculated as follows:

- .1 Take the Cost of the Work actually incurred by the Construction Manager to the date of termination for convenience;
- .2 Add the Construction Manager’s Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Add the General Conditions Expenses payable through the date of termination, consistent with Section 5.1.4;
- .4 Add the reasonable costs incurred by the Construction Manager to demobilize from the site and the costs incurred by the Construction Manager on contractual commitments that it made with respect to the Project prior to the date of termination and which cannot be cancelled, with any materials and equipment thereafter received by the Construction Manager to be delivered to the Owner subject to the Owner having discharged its payment obligations under this Agreement;
- .5 Subtract the aggregate of previous payments made by the Owner for Construction Phase services;
- .6 Subtract the amount for claims that the Owner has against the Construction Manager under the Contract which claims shall be resolved in accordance with Article 9 of this Agreement if in dispute; and
- .7 Subtract the value of materials, supplies, equipment, or other items that are successfully disposed of by the Construction Manager and for which the Construction Manager retains the proceeds of such sales.

The Construction Manager hereby waives and forfeits all other claims for payment and damages. 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

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receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007, as modified.

§ 10.2.1 In the event of termination, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007, as modified, shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement, and in no event shall the Guaranteed Maximum Price be exceeded, nor shall any contrary provisions of AIA Document A201-2007, as modified, apply.

§ 10.2.2 Should the Owner terminate for cause and it later be determined that sufficient cause did not exist, such termination shall be deemed one for convenience.

§ 10.3 Suspension

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

ARTICLE 11 MISCELLANEOUS PROVISIONS

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

§ 11.2 Ownership and Use of Documents

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

§ 11.3 Governing Law

This Contract shall be governed by the laws of the State of Missouri.

§ 11.3.1 The Construction Manager hereby irrevocably submits to the jurisdiction of any state or federal court sitting in Greene County, Missouri, in any action or proceeding arising out of or related to this Agreement and the Construction Manager further agrees that the Construction Manager shall not bring any such action or proceeding in any other court, or seek to remove such action or proceeding to any other court. The Construction Manager agrees and consents that service of process by registered or certified mail shall be sufficient to obtain jurisdiction.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. The Construction Manager shall not assign this Agreement without the written consent of the Owner. If the Construction Manager attempts to make such an assignment without such consent of the Owner, the Construction Manager shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract.

§ 11.6 Aside from death, disability or termination of employment, the Construction Manager's Designated Representative named herein shall not be replaced or changed by the Construction Manager on this Project without the Owner's prior written consent, which consent shall not be unreasonably withheld. In the event of temporary absence of the Construction Manager's Designated Representative (e.g. due to illness or vacation) the Construction Manager shall appoint a substitute designated representative familiar with the Project and authorized to bind the Construction Manager.

§ 11.7 Neither the Owner's nor the Construction Manager's Designated Representative shall be changed without ten (10) days' written notice to the other party.

§ 11.8 Prior Agreement. No prior agreements concerning the Project, unless incorporated into the Contract, shall be binding upon any of the parties.

§ 11.9 Modifications to Agreement. This Agreement may not be amended or modified other than by written agreement between the parties hereto. This Agreement is acknowledged by the parties as the complete text of their mutual covenants and understanding, superseding all prior understandings which may differ from this Agreement. No change, waiver, or modification of the terms of this Agreement shall be binding unless in writing and signed by Owner and Construction Manager.

§ 11.10 Binding Effect. The covenants contained herein shall bind, and the benefits and advantages inure to, the respective successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

§ 11.11 Effective Date. The effective date of this Agreement shall be the date first above written.

§ 11.12 Independent Contractor. The relationship of the Owner and the Construction Manager is that of the Owner and independent contractor and no employer-employee relationship is hereby created. Neither the Owner nor the Construction Manager shall enjoy any of the benefits nor be subject to any of the burdens that would arise, result or proceed or project from an employer-employee relationship, but instead all the rights and duties of each party shall be limited to those provided in this Agreement for independent contractual services. The Construction Manager shall be solely responsible for the payment of all social security and unemployment taxes, wage withholding and any other requirements with respect to its employees.

§ 11.13 Notices. All notices, consents, approvals, requests, demands, and other communications (collectively, "Notices") which may or are required to be sent, delivered, given or obtained pursuant to the terms of this Agreement shall be in writing and shall be given either by hand delivery, by prepaid United States mail, faxed to confirmed fax number, e-mailed to confirmed e-mail address, or by a reputable overnight delivery service that guarantees next day delivery and provides a receipt. All Notices shall be addressed to the parties' designated representatives as defined herein.

Either party may, by Notice in the manner provided above, change its address for all subsequent Notices. All Notices given by certified mail shall be deemed given two (2) business days after they are so mailed. All Notices given by overnight delivery or hand delivery shall be deemed given on delivery. A party's failure or refusal to accept service of a Notice will constitute delivery of the Notice.

§ 11.14 Other Contracts. Notwithstanding anything in this Agreement to the contrary, nothing herein shall be construed as an obligation or requirement for the Owner to enter into other construction contracts with the Construction Manager for other portions of the Project. The Owner expressly reserves the right to have other portions of the Project constructed by someone other than the Construction Manager, at the Owner's sole discretion.

§ 11.15 The Construction Manager represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Contract), as a material inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and the final completion of the Work:

- .1 The Construction Manager is financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to complete the Work and perform all obligations hereunder;

- .2 The Construction Manager is able to furnish the plant, tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
- .3 The Construction Manager is authorized to do business in the State of Missouri and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Construction Manager and over the Work and the Project;
- .4 The Construction Manager's execution of this Agreement and performance thereof is within the Construction Manager's duly authorized powers;
- .5 The Construction Manager's duly authorized representative has visited the site of the Project, is familiar with the local conditions under which the Work is to be performed, and has correlated observations with the requirements of the Contract; and
- .6 The Construction Manager is a contractor that possesses experience and expertise in the business administration, construction, construction management and superintendence of projects of the size, complexity and nature of this particular Project and will perform the Work with the care, skill and diligence of such a construction manager.

ARTICLE 12 SCOPE OF THE AGREEMENT

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

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for
(Paragraphs deleted)
Construction, as modified.

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

Ozarks Technical Community College

By: _____
OWNER *(Signature)*

CONSTRUCTION MANAGER *(Signature)*

By: _____
(Printed name and title)

(Printed name and title)

Additions and Deletions Report for **AIA[®] Document A133[™] – 2009**

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:31:13 on 11/03/2011.

PAGE 1

AGREEMENT made as of the day of in the year Two Thousand and Eleven

...

(Name, legal status and address)

Ozarks Technical Community College
1001 East Chestnut Expressway
Springfield, Missouri 65802

Telephone: (417) 447-4810
Fax: (417) 447-4804

...

Telephone:
Fax:

...

(Name and address or location)

The Architect:
(Name, legal status and address)

...

(Name, address and other information)

Harlin H. Hill, Architect
Ozarks Technical Community College
1001 East Chestnut Expressway
Springfield, Missouri 65802

Telephone: (417) 447-4810
Fax: (417) 447-4804
Email: hillh@otc.edu

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The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. shall mean those documents as defined in Article 1, Section 1.1.1 of the AIA A201-2007 General Conditions of the Contract for Construction, as modified.

§ 1.1 Whenever AIA Document A201-2007 is mentioned herein, it shall be deemed to be that version as modified for the Project.

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§ 1.2.1 Promptly after executing this Agreement, the Construction Manager shall provide the Owner with a project organization chart identifying those persons the Construction Manager is assigning to the Project, together with their respective responsibilities.

§ 1.2.2 The Construction Manager shall not be an agent of the Owner, except as otherwise provided herein.

§ 1.2.3 The Construction Manager shall maintain the confidentiality of financial and/or other information specifically designated as confidential by the Owner, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Construction Manager from establishing a claim or defense in an adjudicatory proceeding. The Construction Manager shall require of its Subcontractors similar agreements to maintain the confidentiality of such information.

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

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The Construction Manager shall perform the services and responsibilities described in this Agreement including the Exhibits referenced herein and made a part hereof. The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in writing and in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

...

§ 2.1.1.1 Preconstruction Phase Services, Nature and Scope: The Construction Manager shall provide the Owner with the technical, professional and other services defined in this Agreement.

~~The Construction Manager shall schedule and conduct meetings~~ As requested by the Owner and as required herein, the Construction Manager shall meet with the Architect and Owner to discuss such matters as procedures, progress, coordination, budget, design, 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.

§ 2.1.2.1 Consultation Regarding Design Reviews & Cost Estimates. The Construction Manager shall review the plans and specifications developed by the Architect and prepare construction cost estimates at specific intervals as agreed by the Construction Manager and Owner.

§ 2.1.2.2 Building System Analysis. The Construction Manager shall review the building systems, materials and equipment for general appropriateness, utilize value engineering as appropriate, and provide information, to the extent specifically known by the Construction Manager, on relative cost and expected life cycles of intended materials and equipment.

§ 2.1.2.3 Design Reviews. The Construction Manager shall make recommendations to the Owner with respect to the use of the selection of materials, Project systems and equipment and other aspects of the physical construction of the Project; and make recommendations or comparisons on various construction methods, the availability of materials and labor, time requirements for procuring long-lead items, installation and construction, including costs and construction time associated with alternative designs or materials, the budget and constructability. The review of proposed building systems, materials and equipment for appropriateness as contemplated by this Section will be accomplished by Construction Manager from the perspective of a construction manager for the Project. In no event shall the Construction Manager be deemed to be performing, or be required to perform, any design or engineering in connection with the Project.

§ 2.1.2.4 Recommendations Regarding Investigations. The Construction Manager shall recommend to the Owner that investigations, surveys, tests, analyses and reports be obtained as necessary to document existing conditions for the proper execution of the Work.

§ 2.1.2.5 Permitting. The Construction Manager shall assist the Owner in obtaining the necessary approvals for the Work, and shall obtain all necessary permits and licenses for the construction of the Work.

§ 2.1.2.6 Variance Assistance. The Construction Manager shall assist the Owner and the Architect, when requested, by providing information for the preparation and submission of applications or other documents necessary for the issuance of any variances or approvals required in connection with the design or construction of the Work from any local, state, or federal governmental authorities having jurisdiction over the Project.

§ 2.1.2.7 Construction Documents Review. The Construction Manager shall review the Contract Documents for the Work and shall notify the Owner and the Architect if the Construction Manager believes the responsibilities of the Construction Manager are not properly identified or assigned, or if the Drawings and Specifications contain any areas of conflict and/or overlap in the Work to be performed by the Construction Manager and/or the various subcontractors on the Project. The Construction Manager is not, however, qualified to perform, and is therefore not required to perform, an architectural, engineering or other design review or to perform or provide any architectural, engineering or other professional services satisfying the standards of a design professional.

§ 2.1.3 Project Schedule

When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Owner's and the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Owner's and the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's ~~services~~ and the Owner's services and activities. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner. If the Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and the Architect to recover the lost time to the extent practicable.

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager ~~suggests~~ suggest alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

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The Construction Manager ~~shall develop bidders' interest in the Project.~~ shall, in cooperation with the Owner and as further provided herein, publicly advertise, in the manner prescribed by Chapter 8, RSMo 2000, and receive bids and/or proposals from trade contractors and subcontractors for the performance of the Work.

§ 2.1.6.1 Work Divisions. The Construction Manager shall make recommendations to the Owner and the Architect regarding the division of Work to facilitate the bidding and awarding of Subcontracts and the orderly progress of Work, allowing for a construction sequence which will permit the Owner to occupy the Project for its intended purposes on or before any scheduled completion dates, taking into consideration such factors as time of performance, availability of labor, overlapping trade jurisdictions, and provisions for temporary facilities. The Construction Manager shall make recommendations to the Owner and the Architect regarding the assignment of responsibilities for safety precautions and programs, temporary project facilities, equipment materials and services for the common use of subcontractors.

§ 2.1.6.2 Coordinated Bid Sets. The Construction Manager shall review and participate in the process by which the Design and Construction Documents for the Work are separated into bid packages, and by which the responsibilities of the various subcontractors are properly identified and coordinated. The Construction Manager shall coordinate the divisions of Work and the sequencing and contents of the various bid packages and subcontracts.

§ 2.1.6.3 Bidding and Negotiations. The Construction Manager and Owner shall obtain bids from qualified subcontractors and from qualified suppliers of materials or equipment and shall review such bids in a manner that does not disclose the contents of the bid, during the selection process, to a person not employed by the Construction Manager or Owner. All bids shall be made public after the award of the respective subcontract or within seven (7) days after the date of final selection of the bid, whichever is later.

§ 2.1.6.4 Bidding Assistance. The Construction Manager shall provide assistance to bidders during the bidding period for the Work. Services shall include forwarding design related questions to the Architect and distributing responses to bidders, answering bidders' construction-related questions, and distributing addenda prepared by the Architect.

§ 2.1.6.5 Pre-Bid Conference. The Construction Manager shall organize and participate in pre-bidding conferences as necessary. The Owner and the Architect shall attend and participate in all such conferences.

§ 2.1.6.6 Post –Bid Conference. For each bid package or procurement item, the Construction Manager and Owner shall conduct a post-bid conference with the apparent low bidder and the next low bidder, if necessary, to ascertain if the bids received were complete, to review bonding capability, and to determine if any bidding discrepancies exist.

§ 2.1.6.7 Subcontractor Default. In the event a selected trade contractor or subcontractor defaults in the performance of its respective portion of the Work, or fails to execute a subcontract after being selected in accordance with the procedures herein and those prescribed by law, the Construction Manager may, without advertising, fulfill the contract requirements or select a replacement subcontractor to fulfill the contract requirements as necessary.

§ 2.1.7 Long-Lead-Time Items. The Construction Manager shall prepare, for the Owner's and the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the

Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

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

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§ 2.1.9.1 M/D/WBE Requirements: The Construction Manager agrees to comply with all applicable federal, state and local laws pertaining to employment or labor relations, including all equal opportunity laws.

§ 2.2.1 ~~At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.~~

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does ~~not not, however,~~ include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

...

- .3** A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, General Conditions Expenses and the Construction Manager's Fee; and
- .4** The anticipated ~~date of~~ dates of the Commencement of the Work and Substantial Completion upon which the proposed Guaranteed Maximum Price is ~~based; and~~ based.
- .5** A ~~date by which the Owner must accept the Guaranteed Maximum Price.~~ The Construction Manager may, upon the prior written consent of the Owner which shall not be unreasonably withheld, utilize cost savings on certain line items to offset cost overages on other line items, so long as the GMP, as now established or as hereafter modified in accordance with the Contract Documents, is not exceeded

§ 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. a Construction Manager's Contingency ("Construction Contingency"), which sum is to be agreed upon by the Owner and the Construction Manager at the time the Guaranteed Maximum Price is established. Subject to the terms of the Contract, and upon prior approval by the Owner which will not be unreasonably withheld, the Construction Manager shall be entitled to allocate from, and apply against, the Construction Contingency items that are properly reimbursable Cost of the Work items, and no other. After the Guaranteed Maximum Price is established, the Construction Manager's Contingency shall be available to the Construction Manager to pay for: (a) unanticipated actual costs caused by changes in local market, labor or material conditions, (b) actual costs caused by the default or bankruptcy of a subcontractor that cannot be recovered from applicable insurance or bonds, and (c) other unanticipated costs incurred by the Construction Manager and not recoverable or reimbursable pursuant to other provisions of this Agreement; provided, however, that the Construction Manager may not apply, use, or allocate from the Construction Contingency, any amounts for any of the foregoing purposes that are a result of, relate to, or arise from, any material breach or material failure to

perform by, the Construction Manager, a Subcontractor, or any party for which any of them are liable or responsible at law or under the Contract or for any non-allowable Costs of the Work. Each allocation of the Construction Contingency by the Construction Manager shall be reflected on the Application for Payment for the period during which the Construction Manager makes such allocation and application. Construction Manager shall provide to the Owner all information the Owner reasonably requests regarding use of such Construction Contingency. The Construction Manager shall use the Construction Contingency funds to pay such costs and expenses without reimbursement from the Owner. Upon Final Completion, if any funds remain in the Construction Manager's Construction Contingency, the fund shall be closed, and remaining amounts of such Construction Contingency shall be apportioned in accordance with Paragraph 5.2.1.

~~§ 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. Deleted.~~

~~§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. The sum of the Cost of the Work, including the Construction Contingency, the General Conditions Expenses and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the Guaranteed Maximum Price, subject to additions and deductions by changes in the Work as provided in the Contract. Such maximum sum, as adjusted by approved changes in the Work, is referred to in the Contract as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.~~

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

...

§ 2.2.10 Liquidated Damages

§ 2.2.10.1 If the Construction Manager shall fail to substantially complete the Work by _____, 20____, or within any extended time allowed by Change Order, the Construction Manager shall pay, or allow the Owner to withhold, the sum of _____ and No/100 Dollars (\$ _____) per day as liquidated damages for every day beyond said agreed Substantial Completion date. Additionally, if the Construction Manager shall fail to complete all punch-list items within sixty (60) days after the Substantial Completion date, or within any extended time allowed by Change Order, the Construction Manager shall pay, or allow the Owner to withhold, the sum of _____ and No/100 Dollars (\$ _____) per day as liquidated damages for every day beyond said date. The parties agree that liquidated damages shall be deducted first from any retainage withheld and the Construction Manager and its surety, if any, shall be responsible for liquidated damages which exceed the retainage. The parties stipulate and agree that the above amount is a reasonable forecast of the Owner's anticipated actual damages which are presently impossible to ascertain, and that the same shall be payable as liquidated damages and not as a penalty.

§ 2.2.10.2 There is no bonus for early completion by Construction Manager.

...

~~§ 2.3.1.2~~ The Construction Phase shall commence upon the Owner's ~~acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier,~~ consistent with the agreed schedule for the Project.

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

~~§ 2.3.2.3~~ Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below. Agreement and applicable law.

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

~~§ 2.3.2.5~~ The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute ~~minutes to the Owner and Architect.~~ accurate meeting minutes to the Owner, the Architect and all attendees.

~~§ 2.3.2.6~~ Upon the execution of the ~~Guaranteed Maximum Price Amendment,~~ The Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of ~~A201-2007.~~ A201-2007, as modified.

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

...

~~§ 2.3.2.9~~ The Construction Manager shall maintain at the Project site one record copy of all Subcontracts, Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction. The Construction Manager shall also assist the Owner in arranging for the delivery, storage, protection and security of the Owner-purchased materials, systems and equipment that are part of the Work until such items are incorporated into the Project.

~~§ 2.3.2.10~~ The Construction Manager shall review and coordinate the safety programs developed by each of the Subcontractors. The Construction Manager shall direct that all Subcontractors initiate and maintain appropriate safety precautions and programs in connection with the Work, and shall monitor the individual safety programs of each Subcontractor on the Project site. The Construction Manager and its Subcontractors shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to: (1) all employees performing any of the Work, and all other persons who may be affected thereby, (2) the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site, under the care, custody or control of the Construction Manager or any of the Subcontractors performing Work on the Project and (3) other

property at the Site or reasonably proximate thereto. The Construction Manager and its Subcontractors shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss, and shall require all persons performing Work on the Project to comply with any policies and rules of the Construction Manager relating to access or behavior at the Project Site. The Owner agrees to cooperate with the Construction Manager in connection with the Construction Manager's implementation of reasonable safety precautions and programs hereunder, and the Construction Manager shall not be responsible for loss, injury or damage to the extent that such loss, injury or damage is caused by the failure of the Owner or its employees, agents or invitees to abide by such safety precautions or programs maintained by the Construction Manager hereunder.

§ 2.3.2.11 In conjunction with the Architect, the Construction Manager shall establish procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals. The Architect shall review and approve all submittals within a reasonable time, so as not to delay the Work or the Project in any way. The Construction Manager shall review all shop drawings, product data, samples and other submittals from the Subcontractors. The Construction Manager shall coordinate submittals with information contained in related documents and transmit to the Architect those which have been approved by the Construction Manager. The Construction Manager's actions shall be taken with reasonable promptness. The Construction Manager shall monitor the submittal of all shop drawings (and provide overall coordination of the transmittal process for Shop Drawings and other submittals).

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

...

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

...

§ 3.1.4.3 The Owner, when such services are reasonably requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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~~The Owner shall identify a~~ designates the individual listed on the first page of this Agreement as its representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work

of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2007, as modified, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

...

The Owner shall retain an Architect to provide services, duties and ~~responsibilities as described in AIA Document B103™ 2007, Standard Form of Agreement Between Owner and Architect, responsibilities,~~ including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. ~~The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.~~

...

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

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

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

...

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

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

(Insert rate of monthly or annual interest agreed upon.)

~~—%~~ at the legal rate prevailing at the location of the Project.

...

§ 5.1 For the Construction Manager's proper performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager ~~the Contract Sum in current funds.~~ Manager, subject to the Guaranteed Maximum Price provided herein, the Contract Sum in current funds for the Construction Manager's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 ~~plus the Construction Manager's Fee as defined in Section 6.1.1, including the Construction Contingency as described in Section 2.2.4, the General Conditions Expenses as defined in Section 5.1.4 and the Construction Manager's Fee as defined in Section 5.1.1.~~

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Where changes in the Work are authorized pursuant to a written Change Order, the Contractor's Fee shall be added to net additive Change Orders at the rate of _____ percent (_____ %). There shall be no reduction to the

Contractor's Fee as a result of deductive Change Orders. When there are additive and deductive items related to the same subject matter and to be performed at the same time, they may be combined into one Change Order.

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work: See Section 5.3.5.

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

...

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

...

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work ~~subsequent to the execution of the Guaranteed Maximum Price Amendment~~ may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to ~~subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the subcontracts,~~ the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. ~~Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.~~

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§ 5.3.5 ~~If no specific provision is made in Section 5.1.2 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 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly. Unless otherwise agreed by the Owner, for any changes to the Work the Owner directs Construction Manager to perform on a time-and-materials basis, the Subcontractor actually performing the Work on such change shall be paid its actual out-of-pocket costs, plus a markup of ten percent (10%) to compensate such Subcontractor for its profit and overhead. If the Subcontractor performing such change work does not have a contract directly with the Construction Manager, then the Subcontractor in line contractually between the Construction Manager and the Subcontractor actually performing the change work shall receive five percent (5%) of the actual costs of such change, to compensate such intermediate-tier Subcontractor for its overhead and profit; if more than one level of Subcontractor exists contractually between the Construction Manager and the Subcontractor performing the changed Work, then all such intermediate-tier Subcontractors shall divide pro-rata the five percent (5%) markup. The Construction Manager's fee on changed Work shall be governed by Paragraph 5.1.2.~~

...

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

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. ~~The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.~~ Any Work performed prior to receipt of the Owner's prior written approval is subject to rejection at the Construction Manager's cost.

§ 6.1.3 Costs, as defined herein, shall be the actual costs paid by the Construction Manager, less all discounts, rebates, and salvages that shall be taken by the Construction Manager, subject to Article 6.9 of this Agreement. All payments made by the Owner pursuant to this Article 6, whether those payments are actually made before or after the execution of the Agreement, are included within the Guaranteed Maximum Price; provided, however, that in no event shall the Owner be required to reimburse the Construction Manager for any portion of the Cost of the Work incurred prior to the Commencement Date unless such compensation is otherwise expressly provided for in the Contract or hereafter authorized by the Owner in writing.

§ 6.1.4 There shall be no duplication of payment for any item that may be characterized as falling into more than one category of Costs to be Reimbursed.

...

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

§ 6.2.2 ~~Wages or salaries of~~ Employment expenses for the Construction Manager's supervisory and administrative personnel when stationed at the ~~site with the Owner's prior approval.~~ ~~(If it is~~ Project site with the Owner's prior written approval and only for such portion of time required and necessary for the proper performance of the Work. It is not intended that the wages or salaries of ~~certain~~ personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, ~~identify in Section 11.5, the personnel to be included,~~ whether for all or only part of their time, and the rates at which their time will be charged to the Work.)~~time.~~ Employment expenses for the Contractor's home office personnel have been included in the General Conditions Expenses.

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

§ 6.2.4 ~~Costs~~ The parties agree that the employment expenses for the services covered by the Construction Managers supervisory and administrative personnel, to the extent such services qualify as a Cost of the Work under Sections 6.2.1 and 6.2.2 above, shall be calculated by multiplying the actual hours expended by the Construction Manager's supervisory and administrative personnel in providing such services, by the appropriate hourly billing rate for each of the individuals. The hourly billing rates set forth on Exhibit _____ cover all employment related expenses to be paid or incurred by the Construction Manager for such services rendered on behalf of the Project, including the wages or salaries of such individuals and all taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

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

§ 6.2.6 WAGE RATES

§ 6.2.6.1 Payments of wage rates and fringe payments shall be made by the Contractor and each of its Subcontractors in an amount not less than the prevailing hourly wage rate for each craft or type of workman engaged on the Project.

§ 6.2.6.2 The Contractor and each of its Subcontractors shall comply with all requirements of the prevailing wage law of the State of Missouri, R.S.Mo. §§ 290.210 through 290.340.

§ 6.2.6.3 The prevailing hourly rate of wages is subject to change as provided by law. Any such change shall not be the basis of any claim by the Contractor against the Owner for an increase in the Contract Sum or Contract Time.

§ 6.2.6.4 The Contractor shall post the prevailing wage rates on the Project in a prominent and accessible location.

§ 6.2.6.5 The Contractor shall file with the Owner an affidavit that it has complied will requirements of the prevailing wage law. Receipt of aforementioned affidavit shall be a condition precedent to receipt of final payment by the Contractor.

§ 6.2.6.6 The Owner may, at any time, request and inspect the Contractor's payrolls for the Project to verify compliance.

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Payments made by the Construction Manager to its Subcontractors of every tier in accordance with the requirements of the subcontracts-written subcontracts properly entered into under this Agreement.

...

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

...

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

§ 6.5.2 Rental charges for all necessary temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the Project site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior written approval. The total rental cost of any rental item shall not exceed the purchase price of any comparable item. Rates of the Construction Manager owned equipment and quantities of equipment shall be subject to the Owner's prior written approval. Rental charges shall be consistent with those generally prevailing in the location of the Project. The Construction Manager shall obtain multiple bids for all machinery and equipment to be rented. The Owner shall, with the advice of the Construction Manager, determine which bid is to be accepted.

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

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

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior written approval. The aggregate cost of materials stored off site shall not exceed Three Hundred Thousand Dollars (\$300,000) at any time without the written approval of the Owner

...

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior written approval. To the extent Construction Manager requires any of its Subcontractors to be bonded, the cost of such bonds shall be included as a Cost of the Work.

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is ~~liable~~ liable and for which the Owner is not exempt.

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

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

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

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

...

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

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§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the ~~Owner~~ Owner, to the extent not (a) caused by the Construction Manager, a Subcontractor, or anyone for whom they are responsible, or (b) not resulting from the Construction Manager's failure to properly perform its duties hereunder.

§ 6.7.2 Costs reasonably incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document ~~A201-2007~~ A201-2007, as modified, and not resulting from the negligence of the Construction Manager, its Subcontractors or the Construction Manager's failure to properly perform its duties hereunder.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction ~~Manager~~ Manager, a Subcontractor, or anyone for whom they are responsible, and only to the extent that the ~~cost~~ costs of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2007-A201-2007, as modified, 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.

...

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the Project site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the Project site office;
- .3 ~~Overhead-Home office overhead~~ and general expenses, except as may be expressly included in Sections 6.1 to 6.7;

...

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

...

- .8 ~~Costs for services incurred during the Preconstruction Phase~~ Costs that have otherwise been reimbursed under a duplicate or another category of Costs to be reimbursed.

...

§ 6.9.1 Cash discounts ~~obtained on payments made by~~ available to the Construction Manager shall accrue to the Owner if (1) ~~before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, the Construction Manager has received payment from the Owner during the cash discount period and in sufficient time for the Construction Manager to obtain such discount,~~ or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained. The Construction Manager shall make the Owner aware of all opportunities to obtain discounts.

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§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent (10%) in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

...

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three (3) years after final payment, or for such longer period as may be required by law. The Owner shall maintain the confidentiality of all such records it or its accountants obtain from Construction Manager.

...

§ 7.1.1 Based upon Applications for ~~Payment~~ Payment, including all supporting documentation as required per Section 7.1.2, claim waiver forms and other requirements stated herein, properly submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents. With each month's Application for Payment, the Construction Manager shall provide Conditional Claim Waivers for itself and for each and every Subcontractor and supplier whose contract amounts are deemed sufficient by the Owner to require claim waivers.

§ 7.1.2 The period covered by each Application for Payment shall be one (1) calendar month ending on the last day of the ~~month, or as follows:~~

month.

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the first (1st) day of a month, the Architect will review and make a certification to the Owner within seven (7) days after receipt of the Application for Payment. Based on the Architect's recommendation, the Owner shall make payment of the certified amount to the Construction Manager not later than the day of the month, twenty-eight (28) days after the Architect receives the Application for Payment. 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.
(Federal, state or local laws may require payment within a certain period of time.) The Construction Manager shall furnish the Owner with claim waivers with each invoice or application for payment indicating that the Construction Manager unconditionally waives the right to claim, if any, amounts previously paid by the Owner on this Project.

§ 7.1.3.1 If the Construction Manager does not make payment to its Subcontractors, Sub-subcontractors and suppliers as required by the Contract, then the Owner reserves the right to make payment by joint checks. Such joint check(s) will be payable to the Construction Manager and its Subcontractors, Sub-subcontractors or suppliers. The Construction Manager shall furnish the Owner with conditional and unconditional claim waivers from each Subcontractor, Sub-subcontractor or supplier. The issuance of a joint check at any time as permitted above shall not create any contractual relationship between the Owner and any Subcontractor, Sub-subcontractor or supplier, nor create any expectation of joint checks in the future. This provision shall be incorporated into each subcontract or purchase order issued by the Construction Manager for this Project.

§ 7.1.3.2 The Construction Manager shall hold all funds paid to it by the Owner for the benefit of the Subcontractors, Sub-subcontractors and suppliers on this Project only and, except for Construction Manager Fee, no amounts paid by the Owner shall be used by the Construction Manager to pay bills on other projects.

§ 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 or other back-up information required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment. In addition to other required items, each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner, and in compliance with applicable statutes of the State where the Project is located:

- .1 A duly executed and acknowledged Construction Manager's Sworn Statement showing all Subcontractors with whom the Construction Manager has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor in the Application for Payment, and the amount to be paid to the Construction Manager from such progress payment, together with similar sworn statements from all Subcontractors;
- .2 Duly executed conditional waivers of mechanics' and material suppliers' claims from the Construction Manager and all Subcontractors in the amounts for which payment is requested by the Construction Manager in the Application for Payment; and

- .3 Such other information or documentation as the Owner may reasonably require to satisfactorily audit each Application for Payment if a question arises.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. ~~Documents prior to the submission of the Contractor's first Application for Payment. Submission and approval by the Owner and the Architect of the Construction Manager's schedule of values is a condition precedent to the Construction Manager's right to payment under the first Application for Payment.~~ 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 and the General Conditions Expenses shall be shown as a single separate ~~item-items.~~ The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect ~~may require. This schedule, unless objected to by the Architect, or the Owner may require. This schedule, when, and only when, approved in writing by the Architect and the Owner,~~ shall be used as a basis for reviewing the Construction Manager's Applications for ~~Payment.~~ Payment and shall not be changed by the Construction Manager without prior written approval by the Owner and the Architect, although subject to modification as required by Change Orders.

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

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- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the ~~schedule of values;~~ approved schedule of values, less retainage of ten percent (10%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document ~~A201-2007; A201-2007,~~ as modified;
- .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; writing, less retainage of ten percent (10%);~~
- .3 ~~Add the Construction Manager's Fee, less retainage of — percent (—%). The an appropriate portion of the Construction Manager's Fee and the Construction Manager's General Condition Expenses less retainage of ten percent (10%) on all amounts. An appropriate portion of the Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion; 5.1;~~
- .4 Subtract retainage of ~~percent (—%) ten percent (10%)~~ from that portion of the Work that the Construction Manager self-performs;

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- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; ~~and~~
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document ~~A201-2007; A201-2007,~~ as modified; ~~and~~
- .8 Subtract amounts, if any, being withheld by the Owner as provided in the Contract Documents.

§ 7.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than ten percent (10%). The Owner and Construction Manager shall agree upon ~~(1)~~ a mutually acceptable procedure

for review and approval of payments to ~~Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements. Subcontractors.~~

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

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

...

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager ~~when~~ no later than forty-five (45) days after:

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct ~~Work as provided in Section 12.2.2 of AIA Document A201-2007,~~ nonconforming Work and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; ~~and~~
- .3 a final Certificate for Payment has been issued by ~~the Architect~~ the Architect;
- .4 ~~final conditional claim waivers from the Construction Manager and all Subcontractors, warranties, operation and maintenance manuals, record drawings and other close-out documents are submitted;~~
- .5 a Final Certificate of Occupancy has been issued for the Project;
- .6 AIA Documents G706 and G706A are executed, if required; and
- .7 completion of all punch list items.

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

Payment.

§ 7.2.2 ~~The Owner's~~ Owner reserves the right to submit the Contractor's final accounting to internal or outside auditors. If so, the auditors will review and report in writing on the Construction Manager's final accounting within ~~30~~ thirty (30) days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of ~~the Work~~ work as the Owner's auditors ~~report~~ report, to be substantiated by the Construction Manager's final accounting, and provided the other conditions of ~~Section Subparagraph 7.2.1~~ Section Subparagraph 7.2.1 have been met, the Architect will, within ~~seven~~ thirty (30) days after receipt of ~~the written report of the Owner's auditors, auditors final accounting,~~ either issue to the Owner a final ~~Certificate~~ certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in ~~Section Subparagraph 9.5.1 of the AIA Document A201-2007.~~ A201-2007, as modified. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document ~~A201-2007.~~ The Architect is A201-2007, as modified. The Owner and Architect are not responsible for verifying the accuracy of the Construction Manager's final accounting. If the Owner elects not to submit the final accounting to an outside accountant, the Architect shall determine final payment in accordance with Section 9.4.1 of the AIA Document A201-2007, as modified.

§ 7.2.3 If the Owner's ~~auditors~~ 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 request mediation of the ~~disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007.~~ Owner is entitled to adjust the final Application or to obtain a refund of any overpayment. The Construction Manager shall be entitled to submit the dispute, pursuant to the dispute resolution procedures set out in the Contract Documents without a further decision of the Architect. Such submission shall be

made by the Construction Manager within ~~30~~thirty (30) days after the Construction ~~Manager's~~Manager's receipt of a copy of the Architect's final Certificate for ~~Payment. Failure to request mediation within this 30 day Payment;~~Payment. Failure to request mediation within this thirty (30) day period shall result in the substantiated amount reported by the Owner's auditors accountants becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, resolution, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

~~§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager. In addition to the Owner's right to audit at final payment, the Owner shall have the right to audit the Construction Manager's billings to date at any time during the Project and the Construction Manager agrees to make its records available to the Owner and its accountants for such purpose at the Construction Manager's offices. Such interim audit shall not take place more often than quarterly unless the Owner has a good faith basis to suspect an overbilling. If the Owner's accountant's report indicates that the Cost of the Work (before Construction Manager's Fee) is less than previously billed by the Construction Manager, adjustment shall be made on the current month's Application for Payment. Alternatively, the Owner may demand a refund of amounts overbilled and paid prior to date of audit. Notwithstanding anything herein to the contrary, it is agreed that fixed lump sum amounts shall not be subject to audit. However, if an audit discloses that the Construction Manager has been overpaid for the Cost of the Work and such overpayment has resulted in a corresponding overpayment of the Construction Manager's Fee based upon percent completion, then such overpayment of the Construction Manager's Fee also shall be refunded to the Owner in the next Application for Payment.~~

~~§ 7.2.5 If the above audit, or any other audit under Section 12.2.3.1, shows an overbilling by the Construction Manager more than three percent (3%) of the net amount certified to date, then the Construction Manager shall pay for the cost of the audit, but not to exceed an amount equal to the discrepancy discovered. This payment may be credited to the Owner by a deductive Change Order issued by the Owner, which does not require the Construction Manager's signature.~~

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~~For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007.~~§ 8.1 For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007.

~~§ 8.2 The Construction Manager shall provide payment and/or performance bonds from a surety and in a form acceptable to the Owner, covering the Construction Manager's obligations for the Work. The cost thereof shall be included in the Cost of the Work.~~

~~(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)~~

~~§ 8.3 The Construction Manager shall deliver the required bonds to the Owner at least three (3) days before the commencement of any Work at the Project site.~~

~~Type of Insurance or Bond~~

~~Limit of Liability or Bond Amount (\$0.00)~~

...

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

§ 9.1.2 In any dispute arising under or in connection with this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees, in addition to any other damages recoverable, from the non-prevailing party.

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

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Litigation in a court of competent jurisdiction

...

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007 for Claims arising from or relating to the Construction Manager's Construction Phase ~~services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.~~ *(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)* ~~services.~~

...

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

§ 10.1.1 ~~Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201-2007. The Contract may be terminated as provided in Article 14 of AIA Document A201-2007, as modified.~~

...

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

- .1 Take the Cost of the Work actually incurred by the Construction Manager to the date of ~~termination;~~ termination for convenience;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Add the General Conditions Expenses payable through the date of termination, consistent with Section 5.1.4;
- .4 Add the reasonable costs incurred by the Construction Manager to demobilize from the site and the costs incurred by the Construction Manager on contractual commitments that it made with respect to the Project prior to the date of termination and which cannot be cancelled, with any materials and equipment thereafter received by the Construction Manager to be delivered to the Owner subject to the Owner having discharged its payment obligations under this Agreement;
- ~~.3~~ .5 Subtract the aggregate of previous payments made by the Owner for Construction Phase ~~services;~~ services;
- .6 Subtract the amount for claims that the Owner has against the Construction Manager under the Contract which claims shall be resolved in accordance with Article 9 of this Agreement if in dispute; and
- .7 Subtract the value of materials, supplies, equipment, or other items that are successfully disposed of by the Construction Manager and for which the Construction Manager retains the proceeds of such sales.

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

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

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

~~§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Price Amendment,~~ In the event of termination, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of ~~A201-2007~~ A201-2007, as modified, shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this ~~Agreement~~ Agreement, and in no event shall the Guaranteed Maximum Price be exceeded, nor shall any contrary provisions of AIA Document A201-2007, as modified, apply.

~~§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment,~~ the amount payable to the Construction Manager under Section 14.1.3 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed. Should the Owner terminate for cause and it later be determined that sufficient cause did not exist, such termination shall be deemed one for convenience.

...

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

...

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

...

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

...

Section 13.1 of A201-2007 shall apply to both the Preconstruction and Construction Phases. This Contract shall be governed by the laws of the State of Missouri.

§ 11.3.1 The Construction Manager hereby irrevocably submits to the jurisdiction of any state or federal court sitting in Greene County, Missouri, in any action or proceeding arising out of or related to this Agreement and the Construction Manager further agrees that the Construction Manager shall not bring any such action or proceeding in any other court, or seek to remove such action or proceeding to any other court. The Construction Manager agrees and consents that service of process by registered or certified mail shall be sufficient to obtain jurisdiction.

...

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. ~~Neither the Owner nor the~~ The Construction Manager shall not assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201-2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party Owner. If the Construction Manager attempts to make such an assignment without such consent, that party consent of the Owner, the Construction Manager shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions: Where reference is made in this Agreement to a provision of AIA Document A201-2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract.

§ 11.6 Aside from death, disability or termination of employment, the Construction Manager's Designated Representative named herein shall not be replaced or changed by the Construction Manager on this Project without the Owner's prior written consent, which consent shall not be unreasonably withheld. In the event of temporary absence of the Construction Manager's Designated Representative (e.g. due to illness or vacation) the Construction Manager shall appoint a substitute designated representative familiar with the Project and authorized to bind the Construction Manager.

§ 11.7 Neither the Owner's nor the Construction Manager's Designated Representative shall be changed without ten (10) days' written notice to the other party.

§ 11.8 Prior Agreement. No prior agreements concerning the Project, unless incorporated into the Contract, shall be binding upon any of the parties.

§ 11.9 Modifications to Agreement. This Agreement may not be amended or modified other than by written agreement between the parties hereto. This Agreement is acknowledged by the parties as the complete text of their mutual covenants and understanding, superseding all prior understandings which may differ from this Agreement. No change, waiver, or modification of the terms of this Agreement shall be binding unless in writing and signed by Owner and Construction Manager.

§ 11.10 Binding Effect. The covenants contained herein shall bind, and the benefits and advantages inure to, the respective successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

§ 11.11 Effective Date. The effective date of this Agreement shall be the date first above written.

§ 11.12 Independent Contractor. The relationship of the Owner and the Construction Manager is that of the Owner and independent contractor and no employer-employee relationship is hereby created. Neither the Owner nor the Construction Manager shall enjoy any of the benefits nor be subject to any of the burdens that would arise, result or proceed or project from an employer-employee relationship, but instead all the rights and duties of each party shall be limited to those provided in this Agreement for independent contractual services. The Construction Manager shall be solely responsible for the payment of all social security and unemployment taxes, wage withholding and any other requirements with respect to its employees.

§ 11.13 Notices. All notices, consents, approvals, requests, demands, and other communications (collectively, "Notices") which may or are required to be sent, delivered, given or obtained pursuant to the terms of this Agreement shall be in writing and shall be given either by hand delivery, by prepaid United States mail, faxed to confirmed fax number, e-mailed to confirmed e-mail address, or by a reputable overnight delivery service that guarantees next day delivery and provides a receipt. All Notices shall be addressed to the parties' designated representatives as defined herein.

Either party may, by Notice in the manner provided above, change its address for all subsequent Notices. All Notices given by certified mail shall be deemed given two (2) business days after they are so mailed. All Notices given by overnight delivery or hand delivery shall be deemed given on delivery. A party's failure or refusal to accept service of a Notice will constitute delivery of the Notice.

§ 11.14 Other Contracts. Notwithstanding anything in this Agreement to the contrary, nothing herein shall be construed as an obligation or requirement for the Owner to enter into other construction contracts with the Construction Manager for other portions of the Project. The Owner expressly reserves the right to have other portions of the Project constructed by someone other than the Construction Manager, at the Owner's sole discretion.

§ 11.15 The Construction Manager represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Contract), as a material inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and the final completion of the Work:

- .1 The Construction Manager is financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to complete the Work and perform all obligations hereunder;
- .2 The Construction Manager is able to furnish the plant, tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
- .3 The Construction Manager is authorized to do business in the State of Missouri and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Construction Manager and over the Work and the Project;
- .4 The Construction Manager's execution of this Agreement and performance thereof is within the Construction Manager's duly authorized powers;
- .5 The Construction Manager's duly authorized representative has visited the site of the Project, is familiar with the local conditions under which the Work is to be performed, and has correlated observations with the requirements of the Contract; and
- .6 The Construction Manager is a contractor that possesses experience and expertise in the business administration, construction, construction management and superintendence of projects of the size, complexity and nature of this particular Project and will perform the Work with the care, skill and diligence of such a construction manager.

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- .2 AIA Document A201-2007, General Conditions of the Contract for Construction
- ~~.3 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:~~
- ~~.4 AIA Document E202™-2008, Building Information Modeling Protocol Exhibit, if completed, or the following:~~
- ~~.5 Other documents:
(List other documents, if any, forming part of the Agreement.)~~

Construction, as modified.

...

Ozarks Technical Community College

By: _____

...

By: _____



Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:31:13 on 11/03/2011 under Order No. 1253855017_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)