

DRAFT AIA® Document A133™ – 2009

Standard Form of Contract 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

CONTRACT (“Contract”) made as of the ____ day of ____ in the year 2018.

BETWEEN Owner:

Dallas/Fort Worth International Airport Board
2400 Aviation Drive
P.O. Box 619428
Dallas/Fort Worth International Airport
DFW Airport, Texas 75261

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

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

Architect:
(Name, legal status and address)

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

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

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

Owner and Construction Manager agree as follows.

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

- 1) The Contract Documents consist of those documents listed and further addressed in the Clause entitled “Contract Documents/Order of Precedence” set forth in Exhibit 2; Supplemental Conditions, all of which form the Contract.
- 2) Upon Owner’s acceptance of Construction Manager’s Guaranteed Maximum Price (“GMP”) proposal or Component Guaranteed Maximum Price (“CGMP”) proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the GMP/applicable CGMP Amendment and revisions prepared by Architect/Owner and furnished by Owner as described in Section 2.2.8.
- 3) The parties acknowledge that if the Project utilizes CGMP Amendments, each CGMP Amendment will have its own associated documents described in Section 2.23 and 2.28.
- 4) The Contract Documents represent the entire and integrated agreement between the parties and supersede prior negotiations, representations or agreements, either written or oral.

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

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

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

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- 5) Chapter 2269; Texas Government Code; Subchapter F (“CM@R Statute”), applies to this Contract. To the extent there is a conflict between this Contract and the CM@R Statute, this Contract will control.

§ 1.2 Relationship of the Parties

Construction Manager accepts the relationship of trust and confidence established by this Contract and covenants with Owner to cooperate with Owner and Architect and exercise Construction Manager’s skill and judgment in furthering the interests of Owner to furnish efficient construction administration, management services and supervision; to always furnish an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with Owner’s interests.

§ 1.3 General Conditions

For the Pre-Construction Phase, AIA Document A201™–2007, General Conditions of the Contract for Construction, will apply only as specifically provided in this Contract. For the Construction Phase, the general conditions of the contract will be as set forth in A201–2007, which document is incorporated herein by reference.

§ 1.4 Omitted.

ARTICLE 2 CONSTRUCTION MANAGER’S RESPONSIBILITIES

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

§ 2.1 Pre-Construction Phase

§ 2.1.1 Initial Pre-Construction Phase Services; Process for Assigning Pre-Construction Phase Services.

- 1) Pre-Construction Phase Services will be assigned and documented by the parties’ execution of a Pre-Construction Phase Services Amendment (“Pre-Con Amendment”).
- 2) When Owner identifies specific Pre-Construction Phase Services it desires Construction Manager to perform, it will provide Construction Manager with a written request (“Pre-Con Request”) for a proposal (“Pre-Con Proposal”) for those services. The Pre-Con Request will be issued by the Owner’s representative of the Procurement and Materials Management Department or a person to whom he/she may delegate.
- 3) The Pre-Con Request will contain sufficient information to enable Construction Manager to prepare a responsive Pre-Con Proposal which may include, but not be limited to the following:
 - a) scope of services;
 - b) schedule;
 - c) budget;
 - d) additional compensation terms applicable to Pre-Construction Phase Services;
 - e) additional terms and conditions applicable to Pre-Con Amendment;
 - f) facilities or equipment Owner is willing to provide to Construction Manager while performing any Pre-Construction Services; and
 - g) etc.
- 4) Within 10 Days (or sooner, if specified in the Pre-Con Request) of Construction Manager’s receipt of a Pre-Con Request, it will prepare and submit to Owner its Pre-Con Proposal.
- 5) If the parties agree on the terms of a Pre-Con Amendment, one will be prepared for their joint execution, subject to any requirement that it be legislatively approved by Owner’s Board.
- 6) The parties acknowledge that one of the first Pre-Con Amendments to be negotiated between them may involve establishing and validating a construction budget (“Construction Cost Budget”), which may include identifying packages of Pre-Construction Phase Services that will be the subject of one or more additional Pre-Con Amendments.

§ 2.1.2 Consultation

Construction Manager must schedule and conduct meetings with Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. Construction Manager must advise Owner and Architect on proposed site use and improvements, selection of materials, and building systems and equipment. Construction Manager must also provide recommendations consistent with the Project requirements to 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.

§ 2.1.3

- 1) When, in the Owners assessment (which decision is final) Project requirements have been sufficiently identified, Construction Manager, when requested and as directed by Owner, must prepare and periodically update a Project schedule for Architect's review and Owner's acceptance. The Project schedule must coordinate and integrate Construction Manager's services, Architect's services, other Owner consultants' services, and Owner's responsibilities and identify items that could affect the Project's timely completion.
- 2) Depending on Owner's directives, the Project schedule may include the entire Project or be limited to 1 or more Components.
- 3) The updated Project schedule must include additional information directed by Owner which may include, but not be limited to the following:
 - a) date(s) for submitting the GMP/ or applicable CGMP proposal(s);
 - b) applicable Component(s) of the Work;
 - c) times of commencement and completion required of each Subcontractor/Subconsultant;
 - d) ordering and delivery of products, including those that must be ordered well in advance of construction;
 - e) the occupancy requirements of Owner; and/or
 - f) etc.

§ 2.1.4 Component Construction

- 1) Construction Manager must provide recommendations concerning accelerated or fast-track scheduling, procurement strategy and, if directed by Owner, Component construction.
- 2) Construction Manager must confirm the constructability of the Project, establish and validate the Construction Cost Budget and the Project Schedule, and depending on Owner's directives, either:
 - a) **GMP Option:** propose a Guaranteed Maximum Price for the entire Project and provide a proposed schedule for achieving Substantial Completion of the entire Project by a date directed by Owner; or
 - b) **CGMP Option:** propose the Components it plans to segregate the Work into and, as requested, provide a Component Guaranteed Maximum Price and schedule for achieving Substantial Completion for the Component and, if requested, the entire Project by a date directed by Owner. Depending on Owner's directives, Construction Manager may be required to provide a proposed schedule for 1 or more Components, as well as dates for Substantial Completion for particular Components.
- 3) Regardless of which option is used, Construction Manager must review the design with the Architect and Owner and make recommendations with respect to dividing the Work (either within a Component or within the entire Project) in such a manner that will permit the Construction Manager to solicit Trade Packages and to award Subcontracts and/or Supply Agreements to maintain the Project Schedule. The Construction Manager must take into consideration such factors cost reductions, cost information, constructability, provisions for temporary facilities, procurement and construction scheduling issues, natural and practical lines of severability, sequencing effectiveness, access and availability constraints, safety, total time for completion, construction market conditions, availability of labor and materials, community relations, local participation, diversity of work force and any other factors pertinent to saving time and cost by overlapping design and construction. "Trade Packages" are the portion of the Construction Documents and other documents used by Construction Manager to procure the services and materials necessary to complete the Work.
- 4) If Owner directs Construction Manager to construct the Project in Components, the parties will use CGMP Amendments for the Components. In that case, the sum of all CGMP Amendments may not exceed the Construction Cost Budget, excluding monies expended/to be expended for Pre-Construction Phase Services, but including Construction Manager's Contingencies described in Section 2.2.4, Construction Manager's General Conditions and Construction Manager's Fee. Any CGMP Amendment will more specifically address the Component Work included in it and the payment of Construction Manager's Fee associated with the Component Work, as well as any other details necessary. CGMP Amendments will be issued by the Owner's representative of the Procurement and Materials Management Department or a person to whom he/she may delegate.

§ 2.1.5 Preliminary Cost Estimates

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

§ 2.1.5.2 As Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, Construction Manager must prepare and update, at appropriate intervals agreed to by Owner, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design. Such estimates must be provided for Architect's review and Owner for its approval. Construction Manager must inform Owner and Architect when estimates of the Cost of the Work exceed the Construction Cost Budget and make recommendations for corrective action.

§ 2.1.6 Subconsultants/Subcontractors

Construction Manager must develop bidders' interest in the Project by implementing community outreach programs and initiating other appropriate measures (of its own volition or as directed by Owner) to ensure that its solicitation of bids/proposal for the Project achieve a level of competition acceptable to Owner and realize appropriate savings because of that competition.

§ 2.1.7 Construction Manager must prepare, for Architect's review and Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. Construction Manager must expedite and coordinate the bidding, ordering and delivery of materials that must be ordered well in advance of construction.

§ 2.1.8 Extent of Responsibility

Construction Manager must exercise reasonable care in preparing schedules and estimates. 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 Construction Manager must promptly report to Architect and Owner any nonconformity discovered by or made known to Construction Manager as a request for information in such form as Architect/Owner may require.

§ 2.1.9 Notices and Compliance with Laws

Construction Manager must 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.

§ 2.1.10 Other Pre-Construction Phase Services

Construction Manager may also be required to provide the following Pre-Construction Phase Services:

- 1) Provide professionals, on a full or part-time "as needed" basis, to provide Pre-Construction Phase Services assigned. The number and assignments of the individuals may fluctuate. Owner reserves the right to review resumes and interview proposed personnel for Pre-Construction Phase Services and to approve or reject Construction Manager's proposed candidates at Owner's sole discretion. This right also applies to proposed replacement personnel when personnel must be replaced. The professionals providing Pre-Construction Phase Services may be required to office onsite at the DFW Design, Code and Construction ("DCC") Building Complex. If that is the case, office space, office furniture and telephone service may be supplied by Owner, but Construction Manager must supply its own vehicles and other supplies necessary.
- 2) Work on a Day-to-Day basis with DCC during the design phase to develop and administer the Pre-Construction Phase Services for the Project.
- 3) Provide a qualified representative(s) to attend design coordination meetings and any other meetings upon request from Owner staff (attendance of disciplines will be determined by Owner staff). Work will include coordination and assistance on all aspects of the design phase.
- 4) Develop and maintain detailed Project schedules, generally including, but not limited to:
 - a. Provide overall master schedule identifying all phases of Work for the Project.
 - b. Provide or assist in providing detailed Project phasing plans, for efficient execution of the Project.
 - c. Provide schedule impact analysis regarding changes and other Project impacting items.
 - d. Provide schedule updates for progress and revisions.
2. A CPM Schedule must include:
 - a. Detailed Critical Path Method (CPM) Diagram of all Project activities, including procurement and delivery of major deliverables or field equipment, and Subconsultant/Subcontractor schedules.
 - b. Work Breakdown Structure (WBS) as defined by Project's Scope of Work
 - c. Respective WBS assignment for each Activity
 - d. Summary Bar Chart-(Gantt Chart)

- e. Resource & Cost loading –
 - i. Cost loading must include:
 - 1. Budgeted Cost
 - 2. Cost to Date
 - 3. (S-Curve) graphical report including: Contract amount line, Baseline curve, Milestone markers, Work-in-Progress, ETC Curve, EAC line.
 - f. Planned cash flows based on early and late activity dates. Bi-weekly graphical reporting of actual cashflow vs. baseline plan.
 - g. Responsibility Code by Company
 - h. Primavera XER files will be submitted monthly
- 3. Issue Bi-weekly Progress Reports to Owner on the status, activities and progress of the Project.
- 4. Provide services required to develop and implement all necessary studies to determine actual facility needs, components and arrangements.
- 5. Prepare budget estimates of capital cost for the Project based on baseline documents and other estimates as needed to support the Project.
- 6. Coordinate with Owners DFW Cost Engineer regarding quantity takeoff, and cost estimating.
- 7. Provide all requested coordinating, supervising, programming, scheduling, cost control, administration, and support services during Project design phase.
- 8. Review and monitor the quality and progress of the Drawings, Specifications and material requisitions during design phase as requested.
- 9. Perform value engineering studies and recommend alternative designs, materials and methods if design adversely affects cost, schedule, constructability or operations.
- 10. Provide constructability reviews to ensure Project can be constructed as efficiently and effectively as possible. Make recommendation for changes to the plans and specifications based on this review.
- 11. Conduct site visits and field investigation to ensure plans and specifications accurately reflect current field conditions. Make recommendations for changes to the plans and specifications based on these investigations.
- 12. Develop Subconsultant/Subcontractor bid packages to ensure the success of the Project by packaging Work in a cost-effective manner, allowing opportunities for all size firms to participate in the Work in conjunction with the Architect/Engineer of Record.
- 13. Prepare cost estimates of the Subconsultant/Subcontractor bid packages based on completed drawings And Specifications.
- 14. Perform all other services as requested to maintain Project schedule.
- 15. Assist in the development of the specific plans relating to implementation of the Project. This may include, but is not limited to the following:
 - a. Insurance and Safety Plans
 - b. Project procedures related to Project implementation
 - c. Risk Management Plan
 - d. Environmental Plan
 - e. Business Development and Diversity Plan
 - f. Public Outreach Plan
 - g. Resource Plan
 - h. Project Documentation Standards
 - i. Communication Plan
 - j. Phasing Strategy/Sequencing Plan
 - k. Commissioning plan

§ 2.2 GMP/CGMP Proposal and Contract Time

§ 2.2.1 As directed by the Owner, Construction Manager must prepare a GMP proposal or CGMP proposals for Owner's review and acceptance. The GMP in the proposal must be the sum of Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, Construction Manager's General Conditions and Construction Manager's Fee. A CGMP in a CGMP proposal must be the sum of Construction Manager's estimate of the Cost of the Work for the applicable Component, including contingencies described in Section 2.2.4, and the portion of Construction Manager's General Conditions and Fee allocated to the Component.

§ 2.2.2 To the extent that the Drawings and Specifications applicable to the GMP or specific CGMP at issue are anticipated to require further development by Architect, Construction Manager must provide in the GMP/CGMP for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further

development (as agreed to by the Owner) does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, will be incorporated by Change Order.

§ 2.2.3 Construction Manager must include with the GMP/CGMP proposal a written statement of its basis, which must 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 Construction Manager in the preparation of the GMP/CGMP proposal, including assumptions under Section 2.2.2, to supplement the information provided by Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed GMP/CGMP, including a statement of the estimated Cost of the Work included in it, organized by trade categories or systems, Construction Manager's Contingency, and Construction Manager's General Conditions and Fee in the case of a GMP or, in the case of a CGMP, that portion of Construction Manager's General Conditions and Fee allocated to the CGMP; and
- .4 The anticipated date of Substantial Completion upon which the proposed GMP/CGMP is based, if a date of Substantial Completion has not otherwise been provided by Owner.

§ 2.2.4 In preparing Construction Manager's GMP/CGMP proposal, Construction Manager must include any Construction Manager's Contingencies it deems appropriate or as directed by Owner. Owner may also include in any GMP Amendment/CGMP Amendment an Owner's Allowance subject to its control that will be excluded from the GMP/CGMP.

§ 2.2.5 Construction Manager must meet with Owner and Architect to review the GMP/CGMP proposal. If Owner and Architect discovers any inconsistencies or inaccuracies in the information presented, it will promptly notify Construction Manager, who must make appropriate adjustments to the GMP/CGMP proposal, its basis, or both.

§ 2.2.6 Owner will notify Construction Manager in writing whether it has accepted the GMP/CGMP proposal. Following acceptance of a GMP/CGMP proposal, Owner and Construction Manager will execute the GMP Amendment/a CGMP Amendment amending this Contract, subject to legislative approval. The GMP Amendment/CGMP Amendment must set forth the agreed upon GMP/CGMP with the information and assumptions upon which it is based.

§ 2.2.7 Omitted.

§ 2.2.8 Owner will provide any required revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications to be contained in the GMP Amendment/CGMP Amendment. Owner will, in a reasonable amount of time, furnish those revised Drawings and Specifications to Construction Manager as they are revised. Construction Manager must notify Owner and Architect of any inconsistencies between the GMP Amendment/CGMP Amendment and the revised Drawings and Specifications.

§ 2.2.9 Construction Manager's GMP/CGMP proposal must take into consideration all sales, consumer, use and similar taxes for the Work provided by Construction Manager for which Owner is exempt by being a non-taxable governmental entity.

§ 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 will mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase will commence upon Owner's issuance of a:

- 1) GMP Notice to Proceed after execution the GMP Amendment; or
- 2) CGMP Notice to Proceed after the execution of the first CGMP Amendment.¹

¹ Owner will also issue Notices to Proceed concerning each CGMP Amendment executed for the Project.

§ 2.3.2 Administration

§ 2.3.2.1 and § 2.3.2.2 The performance of Work under this Contract and the solicitation of that Work will be done in accordance with the Contract Documents and the CM@R Statute.

§ 2.3.2.3 Subcontracts or other agreements must conform to the applicable provisions of this Contract.

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

§ 2.3.2.5 Construction Manager must schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. Construction Manager must prepare and promptly distribute minutes to Owner and Architect, unless directed otherwise by Owner.

§ 2.3.2.6 Upon the execution of the GMP Amendment/CGMP Amendment, Construction Manager must prepare and submit to Owner and Architect a construction schedule that reflects the completion dates dictated by the Owner, for the Work and submittal schedule in accordance with Section 3.10 of A201–2007. For a GMP Amendment, the schedule must address the Project in its entirety. For a CGMP Amendment, the schedule must also address the Component to which the CGMP Amendment applies. Owner may, in its discretion, direct Construction Manager to include other information in any of the schedules required under this clause.

§ 2.3.2.7 Construction Manager must record the progress of the Project. Monthly, or otherwise as agreed to by Owner, Construction Manager must submit written progress reports to Owner and Architect, showing percentages of completion and other information required by Owner. Construction Manager must also keep, and make available to 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 Owner.

§ 2.3.2.8 Construction Manager must 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. Construction Manager must identify variances between actual and estimated costs and report the variances to Owner and Architect and must provide this information in its monthly reports to Owner and Architect, in accordance with Section 2.3.2.7.

§ 2.4 Professional Services

Section 3.12.10 of A201–2007 will apply to both the Pre-Construction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007 will apply to both the Pre-Construction and Construction Phases.

ARTICLE 3 OWNER’S RESPONSIBILITIES

§ 3.1 Information and Services Required of Owner

§ 3.1.1 Owner will provide information, with reasonable promptness, regarding requirements for and limitations on the Project.

§ 3.1.2 Omitted.

§ 3.1.3 Omitted.

§ 3.1.4 Omitted.

§ 3.1.4.1 Omitted.

§ 3.1.4.2 Omitted.

§ 3.1.4.3 Omitted.

§ 3.1.4.4 Omitted.

§ 3.2 Owner's Designated Representative

Owner will identify a representative authorized to act on behalf of Owner with respect to the Project. Owner's representative will render decisions promptly and furnish information expeditiously, to avoid unreasonable delay in the services or Work of Construction Manager. The term "Owner" means Owner or Owner's authorized representative.

§ 3.2.1 Omitted.

§ 3.3 Omitted.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For Construction Manager's Pre-Construction Phase Services, Owner will compensate Construction Manager as follows:

§ 4.1.1.1 Construction Manager (and its Subconsultants/Subcontractors if any) will be compensated for Pre-Construction Phase Services pursuant to the fully loaded hourly rates set forth ~~on Exhibit 5; Pre-Construction Phase Services Fully Burdened Hourly Rates in the Contract Documents.~~ Construction Manager will not be entitled to any mark-up on Subconsultant/Subcontractor invoices.

§ 4.1.1.2 Compensation for Pre-Construction Phase Services is limited to the fully loaded hourly rates and does not include payment to Construction Manager or its Subconsultants/Subcontractors for any additional Costs. The provision of all resources necessary to provide the Pre-Construction Phase Services are the responsibility of Construction Manager and all such Costs are to be satisfied out of the fully burdened hourly rates set forth in this Agreement, except for resources this Agreement obligates Owner to provide.

§ 4.1.2 Additional details concerning any Pre-Construction Phase Services will be included in the Pre-Con Amendment applicable to them.

§ 4.1.3 At Owner's discretion, certain reimbursable expenses may be allowed if it identifies a cost item that may not be included in the fully-burdened hourly rates and it is in its best interests to compensate Construction Manager for such costs. Construction Manager must obtain Owner's prior written approval for reimbursement of these costs prior to incurring them.

§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for Pre-Construction Phase Services will be made monthly in accordance with the hours such services were performed.

§ 4.2.2 Payments are due and payable in accordance with the Texas Prompt Pay Act; Texas Government Code Chapter 2251("Prompt Pay Act") and the Contract Documents.

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1

- 1) For the complete construction of the Project per the requirements of the Contract Documents, Construction Manager will be paid the sum of the following:
 - a) the Cost of the Work;
 - b) General Conditions; and
 - c) Fee.
- 2) For Construction Manager's performance of the Work as described in Section 2.3, Owner will pay Construction Manager in accordance with the GMP Amendment or the CGMP Amendments.

§ 5.1.1 Construction Manager's Fee:

- 1) Is the lump sum amount of \$_____.

- 2) Construction Manager's Fee is the amount paid by Owner for all profit and Overhead Costs for the Construction Phase.
- 3) "Overhead Costs" are defined as: all costs that, in Owner's judgment, are not directly attributable to the Project. These costs include, but are not limited to, such items as: all off-site personnel and office expense; drafting equipment and engineering instruments; taxes and insurance other than those included as salary cost, but excluding State and Federal income tax; library and periodical expenses, and other means of keeping abreast of advances in any technical, business or professional field such as attendance at technical and professional meetings and subscriptions to trade, business, professional or technical periodicals; costs of memberships in trade, business, technical, and professional organizations; all safety awards, all suggestion awards, all incentive compensation and all bonuses (cash or otherwise) for on-site or off-site personnel. This definition is not intended as being all-inclusive. The final determination of whether specific costs are included Overhead Costs is at Owner's discretion. Owner's decision on this issue is final.
- 4) When the parties execute the GMP Amendment/a CGMP Amendment, the way Construction Manager's Fee is paid will be addressed in that document/those documents. In no event can the aggregate of Construction Manager's Fee contained in all CGMP Amendments ever exceed Construction Manager's Fee.

§ 5.1.2 Construction Manager's General Conditions:

- 1) Construction Manager's General Conditions will be paid by Owner in accordance with the GMP Amendment or multiple CGMP Amendments and will be negotiated between Owner and Construction Manager prior to the execution of each amendment.
- 2) "General Conditions" are defined as: on-site management, administrative personnel, insurance, bonds, equipment, utilities, and incidental work, including minor field labor and materials. It includes, but is not limited to: All supervision and project management, including Superintendent, Assistant Superintendent; Permits; Mobilization; De-Mobilization; Field Engineer and Helper – Site work; Field Engineer and Helper – Building; Engineer – Technology; Layout Equipment/ Material; Professional Surveyor; Field Office; Field Office Furnishings; Office Supplies; Field Office Maintenance and Repair; Copier and Supplies; Storage; Communication Devices (telephone, radio, etc.); Project Signs; Construction Fence - Install/Remove/Maintain; Access Construction; General Clean-up; Clean-up Finish Areas; Clean-up Site/ Paving and Walks; Dumpsters; Temporary Water Service; Temporary Electrical Service; Temporary Lighting; Temporary Telephone Service; Temporary Protection (Weather); Temporary Protection (Fire); Equipment Start and Testing; Monthly Ice and Cups; Monthly Toilets; Monthly Water; Quality Control.

§ 5.1.3 Omitted.

§ 5.1.4 Omitted.

§ 5.1.5 Omitted.

§ 5.2 Compensation Not to Exceed Amount

§ 5.2.1

- 1) Construction Manager guarantees that compensation paid to it under the Contract Documents for the Construction Phase may not exceed the lesser of the:
 - a. Construction Cost Budget; or
 - b. the GMP; or
 - c. all CGMP's.
- 2) To the extent the Cost of the Work exceeds the GMP or the sum of all CGMP's, Construction Manager must bear those additional costs.

§ 5.2.2 The GMP/each CGMP is subject to additions and deductions, as directed by the Owner, by Change Order as provided in the Contract Documents.

§ 5.3 Changes in the Work

§ 5.3.1 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. Owner will issue such changes in writing.

§ 5.3.2 Adjustments to the GMP/a CGMP because of changes in the Work after the execution of the GMP Amendment/a CGMP 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 Omitted.

§ 5.3.4 In calculating adjustments to the GMP/a CGMP, the terms “cost” and “costs” as used in the above-referenced provisions of AIA Document A201–2007 will mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Contract and the term “fee” will mean Construction Manager’s Fee as defined in Section 5.1 of this Contract.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work will mean costs necessarily and reasonably incurred by Construction Manager in the proper performance of the Work. Such costs will be at rates not higher than the standard paid at the place of the Project, except with prior consent of Owner. The Cost of the Work will include only the items set forth in Sections 6.1 through 6.7, or as approved by the Owner, who’s decision is final.

§ 6.1.2 Where any cost is subject to Owner’s prior approval, Construction Manager must obtain this approval prior to incurring the cost. The parties will endeavor to identify any such costs prior to executing the GMP Amendment/a CGMP Amendment.

§ 6.2 Labor Costs

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

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

§ 6.2.3 Wages and salaries of 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 Labor Burden for Costs paid or incurred by Construction Manager for taxes, insurance, contributions, assessments and benefits required by law, including customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, for wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3

§ 6.3 Subcontract Costs

Payments made by Construction Manager to Subconsultants/Subcontractors will be in accordance with the requirements of the Subcontracts and Owner will reimburse Construction Manager for payments made by it to Subconsultants/Subcontractors in the same manner. Construction Manager must bid out Subconsultant/Subcontractor Work in a way that it is most advantageous to Owner. Owner reserves the right to dictate the way in which Subconsultant/Subcontractor Work is to be solicited and awarded. Construction Manager is not entitled to any mark-up on Subcontract costs.

§ 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

- 1) Costs of materials described in Section 6.4.1 more than those installed to allow for reasonable waste and spoilage. Unused excess materials, if any, will, at the option of Owner:
 - a) become Owner’s property at the completion of the Work;
 - b) must be sold by Construction Manager in accordance with directions provided by Owner. Any amounts realized from such sales must be credited to Owner as a deduction from the Cost of the Work; and/or
 - c) must be retained by Construction Manager at its cost (such costs will not be reimbursed as Cost of the Work).

- 2) Owner will advise Construction Manager in writing as to the preferred manner in dealing with unused excess materials.
- 3) Construction Manager must, throughout the Project, maintain an accurate and up to date inventory of all unused excess materials to which this provision applies.
- 4) Owner, may from time to time, request from Construction Manager a copy of the accurate and up to date inventory, which will be provided to Owner within 3 Days of its request.

§ 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 Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed will 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 Construction Manager will mean fair market value.

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

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

§ 6.5.4 Costs of document reproductions.

§ 6.5.5 Omitted.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to Owner's prior approval and if Construction Manager submits to Owner evidence that such offsite stored materials and equipment are insured to the Owner's satisfaction.

§ 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.

§ 6.6.2 Omitted.

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

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

§ 6.6.5 Omitted.

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

§ 6.6.7 Omitted.

§ 6.6.8 Omitted.

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

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Omitted.

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

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subconsultants/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/Subconsultant/Subcontractor/supplier and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 will be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require 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 may not include the items listed below:

- .1 Salaries and other compensation of Construction Manager’s personnel stationed at Construction Manager’s principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of Construction Manager’s principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 Construction Manager’s capital expenses, including interest on Construction Manager’s capital employed for the Work;
- .5 Costs due to the negligence or failure of Construction Manager, Subconsultants/Subcontractors 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 that would cause the GMP/CGMP to be exceeded;
- .8 Costs for services incurred during the Pre-Construction Phase; and
- .9 Costs Owner determines, in its sole discretion, are not reimbursable Cost of the Work.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by Construction Manager will accrue to Owner if (1) before making the payment, Construction Manager included them in an Application for Payment and received payment from Owner, or (2) Owner has deposited funds with Construction Manager with which to make payments; otherwise, cash discounts will accrue to Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment will accrue to Owner, and Construction Manager must make provisions so that they can be obtained. Construction Manager must advise Owner in writing within 3 Days of its receipt of a discount, rebate or refund to which this provision applies so that an appropriate adjustment to Construction Manager’s payment of the Cost of the Work can be made.

§ 6.9.2 Amounts that accrue to Owner in accordance with the provisions of Section 6.9.1 must be credited to 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” will mean:

- a) a parent, subsidiary, affiliate or other entity having common ownership or management with Construction Manager;
- b) any entity in which any stockholder in, or management employee of, Construction Manager owns any interest more than ten percent in the aggregate;
- c) if Construction Manager is a joint venture, partnership, limited liability company or similar business entity, any Person that is a member of such business entity (e.g. for a joint venture, all Persons that are joint venturers, for a partnership, all Persons that are partners and for a limited liability company, all Persons that are members); or
- d) any Person which has the right to control the business or affairs of Construction Manager.

The term “related party” includes any member of the immediate family of any Person identified in this Clause.

§ 6.10.2 If any Cost of the Work to be reimbursed arises from a transaction between Construction Manager and a related party, Construction Manager must notify 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 Owner, after such notification, authorizes the proposed transaction, then the cost incurred will be included as a Cost of the Work to be reimbursed, and Construction Manager must procure the Work, equipment, goods or service from the related party, as a Subcontractor/Subconsultant, according to the requirements of the Contract Documents. If Owner fails to authorize the transaction, Construction Manager must procure the Work, equipment, goods or service from some Person other than a related party.

§ 6.11 Accounting Records

Construction Manager must 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 must be satisfactory to Owner. Owner and Owner's auditors must, during regular business hours and upon reasonable notice, be afforded access to, and must be permitted to audit and copy, 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. Construction Manager must preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to Owner by Construction Manager and payment determinations made by Owner, it will make progress payments to Construction Manager as provided in the Contract Documents. Owner will endeavor to pay each approved Application for Payment within 30 Days of its receipt.

§ 7.1.2 The period covered by each Application for Payment will be one calendar month ending on the last Day of the month.

§ 7.1.3 Owner will make payment of monies it determines are payable under a Pay Application in accordance with the Prompt Pay Act and the Contract Documents.

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

§ 7.1.5 Each Application for Payment must be based on the most recent schedule of values applicable to the Work encompassed in the Pay Application submitted by Construction Manager in accordance with the Contract Documents. The schedule of values must allocate the entire GMP/CGMP among the various portions of the associated Work, except that Construction Manager's Fee (or the portion of it applicable to a CGMP) must be shown as a single separate item. All schedules of values must be prepared in such form and supported by such data to substantiate their accuracy as Owner may require. These schedules, unless objected to by Owner, will be used as a basis for reviewing Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment must show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion will 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 Construction Manager on account of that portion of the Work for which Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the GMP/CGMP allocated to that portion of the Work in the applicable schedule of values.

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

- .1** Take that portion of the GMP/CGMP properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the GMP/CGMP

allocated to that portion of the Work in the applicable schedule of values. Pending final determination of cost to Owner of changes in the Work, amounts not in dispute may be included as provided in Section 7.3.9 of AIA Document A201–2007;

- .2 Add that portion of the GMP/CGMP 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 Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add Construction Manager's General Conditions and Fee payable for the specific progress payment, less retainage of five percent (5%). Construction Manager's General Conditions and Fee will be payable in accordance with the GMP Amendment/CGMP Amendment
- .4 Subtract retainage of five percent (5 %) from that portion of the Work that Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by Owner;
- .6 Subtract the shortfall, if any, indicated by Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which Owner has withheld, as provided in Section 9.5 of AIA Document A201–2007.

§ 7.1.8 Owner and Construction Manager will agree upon (1) a mutually acceptable procedure for review and approval of payments to Subconsultants/Subcontractors and (2) the percentage of retainage held on Subcontracts, and Construction Manager must execute Subcontracts in accordance with those agreements.

§ 7.1.9 Except with Owner's prior approval, Construction Manager may 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 Construction Manager's Applications for Payment, Owner will be entitled to rely on the accuracy and completeness of the information furnished by Construction Manager and will not be deemed to represent that Owner 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 Owner has made exhaustive or continuous on-site inspections; or that Owner has made examinations to ascertain how or for what purposes Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by Owner, will be performed by Owner's auditors acting in the sole interest of Owner.

§ 7.1.11 Nothing in the Contract Documents will preclude Owner from agreeing to any early release of retainage, as it deems in its best interests.

§ 7.2 Final Payment

§ 7.2.1

- 1) Final payment, as may be adjusted under the Contract Documents, will be made by Owner to Construction Manager when:
 - .1 Construction Manager has fully performed the Contract except for Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment; and
 - .2 Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment.
- 2) Owner's final payment to Construction Manager will be made in accordance with the Prompt Pay Act.

§ 7.2.2 Owner will review Construction Manager's final accounting within 30 Days after its receipt. Based upon such Cost of the Work as substantiated by Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, Owner will either process the final payment or notify Construction Manager in writing of Owner's reasons for partially or entirely withholding payment.

§ 7.2.3 If Owner determines that the Cost of the Work, as substantiated by Construction Manager's final accounting, is less than claimed by Construction Manager, Construction Manager will be entitled to request mediation of the disputed amount. A request for mediation must be made by Construction Manager within 30 Days after Construction Manager's receipt of a copy of Owner's notice that the payment will be either partially or entirely withheld. Failure to request mediation within this 30-Day period will result in the Owner substantiated amount becoming binding on

Construction Manager. Pending a final resolution of the disputed amount, Owner will pay Construction Manager the amount indicated by Owner as payable.

ARTICLE 8 INSURANCE AND BONDS

Construction Manager will comply with the insurance and bonding requirements set forth in Exhibit __;3; Insurance and Bonding Requirements.

ARTICLE 9 DISPUTE RESOLUTION

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

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution will be litigation in a court of competent jurisdiction.

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Execution of the GMP Amendment or First CGMP Amendment

§ 10.1.1 Prior to the issuance of a GMP Notice to Proceed or the first CGMP Notice to Proceed, Owner may terminate this Contract upon not less than seven Days' written notice to Construction Manager for Owner's convenience and without cause.

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

§ 10.1.3 After the commencement of the Construction Phase, Owner may terminate this Contract upon not less than seven Days' written notice to Construction Manager for Owner's convenience and without cause. In such event, Owner will pay to Construction Manager an amount calculated as follows, which amount will be in addition to any compensation paid to Construction Manager under Section 10.1.2:

- .1** Take the Cost of the Work incurred by Construction Manager to the date of termination;
- .2** Add Construction Manager's General Conditions and Fee payable to the date of termination, computed in accordance with the GMP or applicable CGMP Amendments;
- .3** Subtract the aggregate of previous payments made by Owner for Construction Phase Services.

Owner will also pay Construction Manager fair compensation, either by purchase or rental at the election of Owner, for any equipment owned by Construction Manager which 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 Owner elects to take legal assignment of Subcontracts and purchase orders (including rental agreements), Construction Manager must, 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 Construction Manager, as Owner may require for the purpose of fully vesting in Owner the rights and benefits of Construction Manager under such Subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by Construction Manager will contain provisions allowing for assignment to Owner as described above.

If Owner accepts assignment of Subcontracts, purchase orders or rental agreements, Owner will reimburse 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 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, Construction Manager will terminate the Subcontract, purchase order or rental agreement and Owner will pay Construction Manager the costs necessarily incurred by Construction Manager because of such termination.

§ 10.2 Termination Subsequent to Establishing GMP/CGMP

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

§ 10.2.1 If Owner terminates the Contract after the commencement of the Construction Phase pursuant to Section 14.4 of A201–2007, the amount payable to Construction Manager pursuant to Section 14.4 of A201-2007 may not exceed the amount Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Contract.

§ 10.2.2 Omitted.

§ 10.3 Suspension

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

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Contract have the same meaning as those in A201–2007 or any other Contract Document.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 will apply to both the Pre-Construction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201–2007 will apply to both the Pre-Construction and Construction Phases.

§ 11.4 Assignment

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

§ 11.5 Omitted.

ARTICLE 12 SCOPE OF THE AGREEMENT

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

§ 12.2 Omitted.

Construction Manager:

By: _____

Name: _____

Title: _____

Owner:

Dallas/Fort Worth International Airport Board

By: _____

Name: _____

Title: _____

