



# AIA® Document A133® – 2019

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

**AGREEMENT** made as of the date listed in Exhibit C – Project Addendum  
*(In words, indicate day, month, and year.)*

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

The Cooper Health System  
1 Cooper Plaza  
Camden, New Jersey 08103

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

See Exhibit C – Project Addendum

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

See Exhibit C - Project Addendum

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

See Exhibit C - Project Addendum

The Owner and Construction Manager agree as follows.

**ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. 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™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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## ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

*(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")*

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

*(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)*

| See Exhibit C - Project Addendum

§ 1.1.2 The Project's physical characteristics:

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

| See Exhibit C - Project Addendum

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

*(Provide total and, if known, a line item breakdown.)*

| See Exhibit C - Project Addendum

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

.1 Design phase milestone dates, if any:

See Exhibit C - Project Addendum

.2 Construction commencement date:

See Exhibit C - Project Addendum

.3 Substantial Completion date or dates:

See Exhibit C - Project Addendum

.4 Other milestone dates:

See Exhibit C - Project Addendum

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

See Exhibit C - Project Addendum

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

N/A

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

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

N/A

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

The Cooper Health System  
1 Cooper Plaza  
Camden, New Jersey 08103  
Attn: Vice President of Design and Construction  
Attn: Director of Design and Construction

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

See Exhibit C - Project Addendum

§ 1.1.10 The Owner shall retain the following consultants and contractors:

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*(List name, legal status, address, and other contact information.)*

.1 Geotechnical Engineer:

See Exhibit C - Project Addendum

.2 Civil Engineer:

See Exhibit C - Project Addendum

.3 Other, if any:

*(List any other consultants retained by the Owner, such as a Project or Program Manager.)*

See Exhibit C - Project Addendum

§ 1.1.11 The Architect's representative:

*(List name, address, and other contact information.)*

See Exhibit C - Project Addendum

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:

*(List name, address, and other contact information.)*

See Exhibit C - Project Addendum

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:

*(List any Owner-specific requirements to be included in the staffing plan.)*

N/A

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:

*(List any Owner-specific requirements for subcontractor procurement.)*

Owner pre-approval of subcontractor bid list prior to procurement

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

See Exhibit C - Project Addendum

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

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

## ARTICLE 2 GENERAL PROVISIONS

### § 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents

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

## **§ 2.2 Relationship of the Parties**

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and Program Manager 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.

## **§ 2.3 General Conditions**

**§ 2.3.1** For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

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

## **§ 2.4 Deliverables**

The deliverables or work product specified in this Agreement (the "Deliverables") will become Owner's property. If any of Construction Manager's intellectual property is contained in any of the Deliverables, Construction Manager hereby grants Owner a royalty-free, non-exclusive license to use the Construction Manager's intellectual property in connection with the use of the Deliverables.

## **§ 2.5 Confidentiality**

Owner and Construction Manager both acknowledge and agree that all information communicated by one party (the "Disclosing Party") to the other (the "Receiving Party") in connection with this Agreement shall be received in confidence, shall be used only for purposes of this Agreement, and no such confidential information shall be disclosed by the Receiving Party or its agents or personnel without the prior written consent of the other party. Except to the extent otherwise required by applicable law or professional standards (e.g. disclose to Project professionals, submission to government agencies related to the Project, etc.), the obligations under this section do not apply to information that:

- a) is or become generally available to the public other than as a result of a disclosure by the Receiving Party;
- b) was known to the Receiving Party or had been previously possessed by the Receiving Party without restriction against disclosure at the time of receipt thereof by the Receiving Party;
- c) was independently developed by the Receiving without violation of this agreement; or
- d) Owner and Construction Manager agree from time to time to disclose.

Each party shall be deemed to have met its nondisclosure obligations under this Article as long as it exercises the same level of care to protect the other's information as it exercises to protect its own confidential information, except to the event that applicable law or professional standards impose a higher requirement. Construction Manager may retain, subject to the terms of this Article, one copy of Owner's confidential information required for compliance with applicable professional standards or internal policies. If either Owner or Construction Manager receives a subpoena or other validly issued administrative or judicial demand requiring it to disclose the other party's confidential information, such party shall provide prompt written notice to the other of such demand in order to permit it to seek a protective order. So long as the notifying party gives notice as provided herein, the notifying party shall be entitled to comply with such demand to the extent permitted by law, subject to any protective order or the like that may have been entered in the matter.

## **§ 2.6 Equal Employment Opportunity and Affirmative Action**

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The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

### **ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner, Program Manager and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. The Construction Manager shall perform its services consistent with the grant requirements listed in Exhibit J if indicated as required in Exhibit C – Project Addendum.

#### **§ 3.1 Preconstruction Phase**

##### **§ 3.1.1 Extent of Responsibility**

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner, Program Manager and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect, Program Manager 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. The Construction Manager shall be responsible to the Owner for acts and omissions of the Construction Manager's employees, subcontractors and their agents and employees, and of such other persons and entities for whose acts and omissions the Construction Manager may be held legally liable.

**§ 3.1.2** The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other. In addition, Construction Manager agrees appropriate Project personnel will attend Owner's meetings regarding the Project, the compensation for attending such meeting is included in the compensation for the Construction Manager's Preconstruction Phase Services as set forth in Article 5.

##### **§ 3.1.3 Consultation**

**§ 3.1.3.1** The Construction Manager shall schedule and conduct meetings with the Architect, Program Manager and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

**§ 3.1.3.2** The Construction Manager shall advise the Owner, Program Manager and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner, Program Manager and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall provide actions designed to minimize adverse effects of labor or material shortages. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase. The Construction Manager shall maintain a log of estimates of value analysis alternative designs or materials and/or possible economies, the date provided to the Owner and whether or not the value analysis alternates or economies were accepted or rejected by the Owner.

**§ 3.1.3.3** The Construction Manager shall assist the Owner, Program Manager and Architect in establishing building information modeling and digital data protocols for the Project, using the Building Information Modeling and Digital Data Exhibit, if completed, to establish the protocols for the development, use, transmission, and exchange of digital data.

##### **§ 3.1.4 Project Schedule**

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's and Program Manager's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's and Program Manager's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the

Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities (including no less than vendor equipment installations, building commissioning, transition planning, and activation planning); and identify items that 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 in advance of construction; and the occupancy requirements (including no less than vendor equipment installations, building commissioning, transition planning, and activation planning) of the Owner. Project Schedule shall be updated no less than monthly and shall incorporate Guaranteed Maximum Price approvals and Change Order approvals to accurately forecast project phasing and Substantial Completion requirements.

### **§ 3.1.5 Phased Construction**

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

### **§ 3.1.6 Cost Estimates**

**§ 3.1.6.1** Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's and Program Manager's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect, Program Manager or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems. All preliminary cost estimates shall reflect local market and relevant cost data and projections for all project elements and cost backup for major project and system elements.

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

**§ 3.1.6.2.1** If any estimate to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to reduce the cost of the Project to the Owner, Program Manager and Architect. In accordance with §3.1.3.2, the Construction Manger shall maintain a log of all appropriate value analysis recommendations to reduce the cost of the Project.

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

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

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

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

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

**§ 3.1.11 Subcontractors and Suppliers**

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

§ 3.1.11.2 The Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner, Program Manager and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or requirement fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Construction Manager shall also include for consideration the subcontractors and suppliers recommended by the Owner. The Architect, Program Manager and/or Owner will promptly reply in writing to the Construction Manager, if the Architect, Program Manager or Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner, Program Manager or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner, Program Manager or Architect to object to or reject any proposed subcontractor or supplier.

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

**§ 3.1.12 Procurement**

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

**§ 3.1.12.1 Long Lead Time Items**

The Construction Manager shall recommend to the Owner, Program Manager and Architect a schedule for procurement of long lead time items which will constitute part of the Work as required to meet the Project schedule. If such long lead time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. If directed by Owner or Program Manager, Construction Manager shall also coordinate with Owner’s independent medical equipment provider and they shall 1) meet on a regular basis to keep the Construction Manager abreast of all procurement activities and to discuss any procurement issues and 2) to coordinate a list of equipment lead times such that the Construction Manager will include installation of these items in Construction Manager’s monthly project schedule. Upon the Owner’s acceptance of the Construction Manager’s Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager and Owner shall have no further obligation under the aforementioned Contracts. Notwithstanding the foregoing, any and all contracts for medical equipment shall remain with the Owner and shall not be assigned to the Construction Manager. The Construction Manager shall expedite the delivery of long lead time items.

**§ 3.1.13 Compliance with Laws**

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

**§ 3.1.14 Other Preconstruction Services**

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

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

See Exhibit C - Project Addendum

### § 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's, Program Manager's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2. Submission of the GMP proposal shall constitute a representation and warranty from the Construction Manager to the Owner that the Construction Manager is familiar with the Project site and has received or obtained all information needs concerning the conditions of the Project site, except as expressly otherwise set forth in the GMP proposal. The Construction Manager agrees and acknowledges that: (i) the GMP proposal is just and reasonable compensation for all of the Work, including all foreseen and foreseeable risks, hazards and difficulties in connection therewith, except as otherwise expressly set forth in the GMP proposal; (ii) the Contract Time is adequate for the performance of the Work, and (iii) the Work shall not result in any lateral or vertical movement of any structure.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the information required by the Request for Proposal and the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of all allowances and alternates and a statement of their basis;
- .3 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications, including assumptions under Section 3.2.2;
- .4 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances, alternates and other items; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .5 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based. If phased occupancy is anticipated, substantial completion for each phase shall be identified;
- .6 The budget for all General Conditions costs and the basis for each General Condition item; and
- .7 Copies of all bids, take-off questions, quotes and prices.

§ 3.2.4 **Contingencies.** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a sum for contingencies ("Contingency") to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. Construction Manager understands and agrees the Owner is and shall remain the sole owner of funds for Contingency defined within Section 3.2.4 unless and until the Construction Manager uses such funds in accordance with the terms herein.

§ 3.2.4.1 Construction Manager shall request and received Owner approval regarding the use of the Contingency (or any part thereof) and shall supply the Owner with detailed information relative to each request. Construction Manager shall develop a reporting system that tracks the use of Contingency, including available remaining Contingency, in a format reasonably acceptable to the Owner and Program Manager, which shall be provided to the Owner and Program Manager on less than a bi-weekly basis. Upon completion of the Work, should there be any remaining Contingency, then the remainder savings shall be returned to the Owner.

§ 3.2.4.2 Contingency included in the Guaranteed Maximum Price shall be available to cover costs that would increase the Cost of the Work as a result of events not evident to the Owner, Program Manager, Architect, or Construction Manager as of the time, the Agreement was executed, but in no event shall Contingency be used to cover costs caused by the negligence of Construction Manager.

§ 3.2.4.3 Buyout savings will be held in a line item called "Project Contingency", which is separate from the Construction Contingency and is to be used by the Owner at its sole discretion either to cover additional Contingency items or to be allocated to Allowances, as the Owner sees fit.

§ 3.2.4.4 "Material Escalation Contingency" for this Project shall be three percent (3%) of the Cost of Work (as defined above) which represents the maximum dollar amount the Construction Manager may recover for documented cost increases due to economic, market conditions with respect to materials and equipment subcontracted or purchased by the Construction Manager for the Project during the ninety (90) day buyout period (defined below) from the Construction Manager's suppliers and subcontractors ("Material Escalation Contingency"). The "Ninety (90) Day Buyout Period" is the duration which the Construction Manager shall buyout subcontractors and suppliers pursuant to Section 3.2.4, Project Contingency of the Agreement.

In the event the Material Escalation Contingency is insufficient to cover documented increases in costs due to economic market conditions (subject to use of Construction Contingency), that risk lies solely with the Construction Manager. Upon completion of the Ninety (90) Day Buyout Period, all remaining available Material Escalation Contingency shall be returned to the Owner. Construction Manager shall submit monthly reports on the use of Material Escalation Contingency in all instances.

§ 3.2.5 **Allowances.** Allowances, if any, included in the Guaranteed Maximum Price shall be specified in the Guaranteed Maximum Price Amendment: Specific allowance items and amount(s) allocated are as set forth in Exhibit A (Guaranteed Maximum Price Amendment). The allowances include all costs associated with material, labor, storage, taxes, waste, and freight unless specifically noted otherwise within in the executed Exhibit A. The allowances do not include Construction Manager's Fee or insurance costs applicable to each, but those costs (and fee) have been included in the Guaranteed Maximum Price and no additional Fee or insurance costs shall be added to the allowance amounts stated therein.

§ 3.2.6 **Unit Prices.** Unit Prices, if any, included in the Guaranteed Maximum Price are considered complete and include (i) all materials, equipment, labor, delivery, installation, overhead, and profit and (ii) any other costs or expenses in connection with, or incidental to, the performance of that portion of the Work to which such unit prices apply. Accordingly, Fee shall not be added to the unit cost items outside of the Unit Price itself.

§ 3.2.7 **Construction Manager's General Conditions Costs.** Construction Manager shall include as part of its Guaranteed Maximum Price Proposal an itemized list of these costs and other expenses to be paid as allowable general conditions, which shall be stated as a Not to Exceed amount, which shall be paid as provided in Section 11.1 or as otherwise agreed to in writing by the Owner.

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

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

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

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

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

§ 3.2.13 The Owner shall have the right to terminate the Agreement if the parties are unable to come to terms on a mutually acceptable Guaranteed Maximum Price.

### § 3.3 Construction Phase

#### § 3.3.1 General

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

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

#### § 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings at least bi-weekly or as required by Owner to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner, Program Manager and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner, Program Manager and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

#### § 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner, Program Manager and Architect, showing percentages of completion and other information required by the Owner. Monthly reporting requirements are further described within Section 3.19 and Section 9.3.1.4 of A201-2017.

#### § 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner, Program Manager 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 brought to or removed from site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

#### § 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify monthly variances between actual and estimated costs and report the variances to the Owner, Program Manager and Architect, based on cash flow projections developed prior to commencement of the Project, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above. These reports should include all approved and unapproved change orders and/or other projected costs anticipated but not yet approved or in writing such that the estimated final cost is provided in the report. In addition, the Construction Manager shall identify the variance between the estimated final cost and the original budget. The Construction Manager shall also compare the percentage of actual completion to the percent of budget expended to date. Construction Manager shall also maintain a back charge log which shall be presented to the Owner and Program Manager each month with the Construction Manager’s progress report.

## ARTICLE 4 OWNER’S RESPONSIBILITIES

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

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner’s objectives, constraints, and criteria, including

schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements, as reasonably required by the Construction Manager.

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

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

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

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

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

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

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

## § 4.2 Owner's Designated Representative

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

**§ 4.2.1 Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner’s needs and interests. This shall not include any legal, insurance and accounting services, including auditing services, for the Construction Manager to perform its work or maintain project files, meet auditing/accounting standards or other business and related practices for the Construction Manager to provide and manage the Work or the Project.

**§ 4.3 Architect**

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services 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 with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect’s scope of services in the agreement.

**ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**

**§ 5.1 Compensation**

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

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

See Exhibit C - Project Addendum

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

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

See Exhibit C - Project Addendum

**Individual or Position**

**Rate**

**§ 5.1.2.1** Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

*(Paragraph deleted)*

**§ 5.2 Payments**

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

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

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

0 % zero percent

**ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

**§ 6.1 Contract Sum**

**§ 6.1.1** The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager’s performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager’s Fee, the total of which shall not exceed the Guaranteed Maximum Price.

**§ 6.1.2** The Construction Manager’s Fee:

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

Init.

See Exhibit C - Project Addendum

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

See AIA Document A201-2017 Article 7.3.11

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

See AIA Document A201-2017 Article 7.3.11

**§ 6.1.5** If applicable, rental rates for Construction Manager-owned equipment shall not exceed seventy percent ( 70 %) of the standard rental rate paid at the place of the Project.

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

N/A

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

N/A

**§ 6.2 Guaranteed Maximum Price**

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

**§ 6.3 Changes in the Work**

**§ 6.3.1** The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work through the execution of an Owner approved Change Order. However, the Construction Manager must indicate with every request for a change in the Work the number of additional days it requires to extend the Contract Time.

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

**§ 6.3.2** Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction, as modified.

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

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

**§ 6.3.5** If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction

Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## **ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE**

### **§ 7.1 Costs to Be Reimbursed**

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

**§ 7.1.2** Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost. This shall specifically apply to the Costs of the Work associated with mobilization and long lead items referenced at Section 11.1.2.

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

**§ 7.1.4** Costs as defined herein shall be actual costs incurred by the Contractor, less all discounts, rebates, and salvages that may be taken by the Contractor, subject to Article 7 of the Agreement. All payments made by the Owner pursuant to this Article 7, whether those payments are actually made before or after the execution of the Contract, 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 the Construction Manager has received the Owner's written consent prior to incurring such costs.

**§ 7.1.5** Notwithstanding the breakdown or categorization of any costs to be reimbursed in this Article 7 or elsewhere in the Contract Documents, there shall be no duplication of payment in the event any particular items for which payment is requested can be characterized as falling into more than one of the types of compensable or reimbursable categories.

### **§ 7.2 Labor Costs**

**§ 7.2.1** Hourly billable rates of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops. Prior to commencing the Work, the Contractor shall submit to the Owner for its approval a list of supervisory and administrative personnel employed by the Construction Manager and who will be stationed at the Project site. Such hourly billable rates will also be used for self-performed work approved by the Owner. Owner shall not pay bonuses or discretionary payments to the Construction Manager personnel or anyone hired by the Construction Manager or paid to any Subcontractor or vendor. Hourly billable rates of Construction Manager personnel stationed at the Construction Manager's principal or other offices shall not be included in the Cost of the Work.

**§ 7.2.2** Hourly billable rates of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

**§ 7.2.2.1** Hourly billable rates of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

*(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)*

See Exhibit C - Project Addendum

**§ 7.2.3** Hourly billable rates of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

**§ 7.2.4** Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, but not bonuses or discretionary payments, provided such costs are based on hourly billable rates included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

**§ 7.2.5** If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification. Owner will allow the Construction Manager to raise hourly billable rates not to exceed three percent (3%) per year unless in special individual circumstances, which approval shall not be unreasonably withheld. Owner shall not pay bonuses or discretionary payments to any Contractor personnel or anyone hired by the Construction Manager or paid to any Subcontractor or vendor.

**§ 7.2.6** Notwithstanding anything stated to the contrary herein or elsewhere in the Contract Documents, compensation of Construction Manager's executive management personnel or regional office and support staff shall not be recoverable as a Cost of the Work or as part of Construction Manager's lump sum general conditions.

### **§ 7.3 Subcontract Costs**

Subcontract costs are payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement. All Cost of Work and other provisions and requirements contained within this Agreement shall also flow through to each subcontract agreement. The Owner and Program Manager reserve the right to participate in the Construction Manager's bidding and major equipment procurement program when the Owner and Program Manager determine that it is in the Owner's best interest to do so.

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

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

**§ 7.4.2** Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials and/or used field office furniture, fixtures, business equipment and/or IT equipment paid for by the Owner, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

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

**§ 7.5.2** Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall not exceed seventy percent (70%) of the prices found in the nationally recognized Associated Equipment Dealer's Construction Rental Equipment Greenbook and shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item. For rental equipment not owned by the Construction Manager and where a rental agreement contains an option to purchase and this option is exercised, the equity accrued shall be credited to the Owner against the total rental cost of that equipment on Work. Prior to beginning the Work, the Construction Manager shall submit a list to the Owner of rental equipment owned by the Construction Manager or a subsidiary or affiliate of the Construction Manager indicating proposed rental rates. In lieu of renting certain items of equipment, machinery and tools valued at more than five hundred dollars (\$500.00) from the Construction Manager or other third parties, the Owner reserves the right to have those items purchased and maintained as a Cost of the Work. A record showing the disposition of these items is to be on file at the Construction Manager's office on the project site. Ownership of the items not consumed during construction shall remain with the Owner upon completion of the Project. The Construction Manager shall attached to each monthly Application for Payment an itemized list of rental equipment owned by the Construction Manager or its subsidiaries or affiliates and the applicable preapproved rates for such equipment used on the Work during that period.

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

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

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

**§ 7.6 Miscellaneous Costs**

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. If the Owner optionally implements and funds directly an Owner Controlled Insurance Program (OCIP) for the Project, no insurance costs other than the insurance costs required in the OCIP contract provisions to be paid by Construction Manager shall be included in the Cost of the Work.

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

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

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

§ 7.6.2.1 To the extent the Construction Manager engages a subcontractor to provide tangible goods or services for the Project, the Construction Manager agrees to provide subcontractor with a copy of the Form ST-5, the New Jersey sales tax exemption certificate attached as Exhibit I. The Construction Manager further agrees to cooperate with subcontractor to obtain any exemption from New Jersey sales and use tax to the extent such an exemption is available in respect of any tangible goods or services provided by subcontractor pursuant to this Agreement or any separate agreement between the subcontractor and the Construction Manager. The Construction Manager agrees not to charge or attempt to collect, directly or indirectly, any sales tax attributable to goods and or services provided by subcontractor, to the extent such goods and services are exempt from New Jersey sales and use tax under applicable New Jersey law and in accordance with the Form ST-5.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay. If Construction Manager’s Guaranteed Maximum Price includes fees that Owner has paid or is required to pay directly, Construction Manager shall deduct fees from Guaranteed Maximum Price as a deductive change order.

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

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

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner’s consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager’s Fee or subject to the Guaranteed Maximum Price.

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

§ 7.6.7 Costs of document reproductions and delivery charges.

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

§ 7.6.9 Legal 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.

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

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

### § 7.7 Other Costs and Emergencies

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

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

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

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

### § 7.8 Related Party Transactions

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

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

### § 7.9 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;

- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .9 Costs for services incurred during the Preconstruction Phase;
- .10 Technology, Data Processing, Project Specific Web Sites, or Project Management System Costs incurred by the Construction Manager in preparing the Project schedule, timesheets, accounting, Project cost reports and Project status reports, and any other report necessary to the progress of the Work, data processing costs related to the Work but not for construction or accounting software already owned by the Construction Manager or updates, revisions or purchases that occur during the course of construction and/or used at the Construction Manager's home office;
- .11 Any fees paid to Contractor organizations (AGC, ABC, etc.) and/or to Construction Manager's business license;
- .12 Recruitment or training costs of personnel, including but not limited to recruiting or sign up bonuses;
- .13 Overtime expense of any salaried personnel;
- .14 Any expenses for General Conditions costs that cause the total of General Conditions costs to exceed that set forth in the GMP Amendment;
- .15 Claims for extended home office overhead or costs of equipment which is idle due to the Contractor's fault or neglect, overtime due to Contractor's fault or neglect, correction of non-confirming work, work performed without proper authorizations as required by the contract documents or any other costs the contract does not expressly allow;
- .16 Costs the Construction Manager incurred in responding to the request for proposal including estimating costs;
- .17 Costs to correct defective Work and other costs to comply with Construction Manager's warranty obligations under this Agreement; and
- .18 Any uninsured loss which results from a failure of Construction Manager to maintain insurance required by the Construction Documents or the denial of coverage under such insurance or the failure of an insurer to otherwise pay claims under such insurance.

## **ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS**

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained. All proceeds from the sale of surplus materials and equipment, refunds of or credits on insurance premiums, and all sums the Construction Manager is permitted to retain from remittances to any governmental agency for sales tax applicable to procurement of materials and equipment shall accrue to the Owner's account and shall be credited to the Guaranteed Maximum Price. The Construction Manager shall not obtain for its own benefit any discounts, rebates, or refunds in connection with the Work prior to providing the Owner with ten (10) days' prior written notice of the potential discount, rebate, or refund and an opportunity to furnish funds necessary to obtain such discount, rebate, or refund on behalf of the Owner in accordance with the requirements of this Section 8.1.

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

## **ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS**

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall attempt to obtain a minimum of three (3) bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner

shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

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

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

§ 9.3 Construction Manager shall obtain bids on all of the Work, including third party bids of any Work that Construction Manager desires to self-perform. Construction Manager shall prepare and submit its own bids on any Work it intends to self-perform and, with the bid, include the hourly billable rates of Construction Manager's construction workers as well as the hourly billable rates of supervisory and administrative personnel. The decision to utilize the Construction Manager for self-performed work is at the sole discretion of the Owner. For self-performed work, the Construction Manager will be expected to sign a subcontract utilizing the same provision as any other subcontractor or as may be modified by the Owner.

## **ARTICLE 10 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 the Construction Manager's principal place of business, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of five (5) years after final payment, or for such longer period as may be required by law or indicated elsewhere in the Contract Documents. All records shall be maintained in accordance with Generally Accepted Accounting Practices (GAAP), consistently applied. Subcontractors retained by the Construction Manager on a cost-plus basis must have the same obligations to retain records and permit audits as required of Construction Manager under this Article 10. Within one hundred and eighty (180) days after Substantial Completion of the Project and approval of all Change Orders, the final accounting will be provided by the Construction Manager for the Owner's approval. All forms of Cost to Be Reimbursed under Article 7 shall be subject to the Owner's rights referenced in this Article 10, inclusive of general conditions charges or any other aspect of the Cost of the Work which may be billed to the Owner on a stipulated sum basis. The Owner's right to access the Contractor's records shall not be affected by the commencement of any formal dispute resolution procedure and is independent and separate from any rights to discovery provided therein.

## **ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES**

### **§ 11.1 Progress Payments**

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

§ 11.1.2 With the specific exception of the Construction Manager's one (1) time initial Application for Payment to cover Costs of the Work associated with mobilization and long lead cycle items, the period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

See Exhibit C – Project Addendum

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 25<sup>th</sup> day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the last day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than forty-five ( 45 ) days after the Architect receives the Application for Payment.  
*(Federal, state or local laws may require payment within a certain period of time.)*

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit timesheets, petty cash accounts, receipted invoices or invoices with check vouchers attached, subcontractor requisitions, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus timesheets for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee. The Construction Manager shall use the AIA Payment Application Form 702 and the AIA Schedule of Values Form 701, and shall include an Inbudget Transfer column so that no percent complete per line exceeds 100%.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment. The original Schedule of Values cannot be changed once the GMP has been determined. However, the Construction Manager shall add an "Adjusted" or "Revised" Schedule of Values column to the original scheduled values.

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

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

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

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

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

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, with the agreement of the Owner, stored at a bonded and licensed facility where the Owner can reasonably visually verify or receive other acceptable verification of the storage of materials. If verification is necessary or required by Owner and/or Architect by a site visit outside of a local site visit for materials and equipment suitably stored off the site in a license and bonded facility, Construction Manager shall pay all costs associated with site visits/review, outside of local site visits by Owner and/or Architect;

- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

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

**§ 11.1.8 Retainage**

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

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

Ten Percent (10%)

§ 11.1.8.1.1 The following items are not subject to retainage:

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

General Conditions, Insurance, and Fee

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

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

Upon 50% completion of the Work for a particular subcontractor, the required amount shall be reduced to 5% on all future payment applications for payment with prior approval of the Owner. However, upon mutual agreement between Owner and Construction Manager and before the Project's Substantial Completion date, payment in full including release of applicable retainage may be made to the Construction Manager for a particular subcontractor's Work that is fully and satisfactory completed, provided that the Construction Manager and Subcontractors provide a satisfactory complete release of all claims for such Work and provided that both have complied with all requirements for final payment in accordance with the Contract Documents. At Substantial Completion, the overall retained amount shall be reduced to 150% of the value of the punch list. Upon Substantial Completion of the Work, Construction Manager acknowledges and agrees that Owner may retain one hundred and fifty percent (150%) of such amounts as the Architect and Owner shall reasonably determine is necessary to protect Owner from the cost of remedying incomplete, defective or nonconforming Work shall be applicable to such Work, and shall be withheld from the Construction Manager until such incomplete, defective or non-conforming Work is completed.

Owner shall have the right to reinstate and withhold retainage in full (10%) at any time to the extent that Construction Manager has not or fails to comply with the requirements of this agreements or elsewhere in the Contract Documents. Payment of all remaining retainage to Construction Manager (less amounts needed to complete punch list items) will be considered by the Owner at the late of the time of Substantial Completion or the achievement of a final Certificate of

Occupancy for the entire Project, subject to Owner approval, which shall not be unreasonably withheld, or otherwise at the time of Final Payment.

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

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

See Exhibit C – Project Addendum

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

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

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

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

## § 11.2 Final Payment

§ 11.2.1 Construction Manager must submit its Application for Final Payment, within one hundred and eighty (180) days of Substantial Completion. Final Payment constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when all conditions precedent listed herein are met:

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which 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 in accordance with Section 11.2.2.2;
- .4 when the Surety has provided to the Owner a written consent (Consent of Surety);
- .5 the Owner has received a properly executed lien waiver and release of claims by Construction Manager and properly executed final conditional lien waiver (with the only condition being release from the title company to the Construction Manager of the final payment) and release of claims by Construction Manager's Subcontractors and suppliers, all in a form satisfactory to Owner;
- .6 assignments of all guarantees and warranties from the Construction Manager, Subcontractors, vendors, suppliers or manufacturers are provided to the Owner;
- .7 the Owner has been provided all maintenance and operating instruction manuals; and
- .8 a marked-up set of as-built documents has been submitted to the Owner and Architect.

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

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

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect’s reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager’s final accounting.

§ 11.2.2.3 Pending final resolution of a disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect’s final Certificate for Payment and approved by the Owner. If the Owner’s auditor’s cost savings exceed 1.0% of the Cost of the Work, the Construction Manager shall reimburse the Owner for the costs of the audit. This cost shall be deducted from the Final Payment.

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

See Exhibit C – Project Addendum

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

### § 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any.)*

0 % zero percent

## ARTICLE 12 DISPUTE RESOLUTION

### § 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager’s Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

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

See Exhibit C - Project Addendum

### § 12.2 Binding Dispute Resolution

For any Claim the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

Arbitration pursuant to Article 15 of AIA Document A201–2017

Litigation in a court of competent jurisdiction

Other: *(Specify)*

Init.

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

### **§ 12.3 Attorneys' Fees**

If one party to this Agreement institutes litigation with the other party arising out of the terms and conditions of this Agreement, or performance under this Agreement, the prevailing party shall be entitled to recover from the other party its reasonable attorney's fees and expenses and consultant's fees and expenses. The parties agree that the fee award need not be computed in accordance with any court schedule, but shall be such as to fully reimburse all fees and expenses actually incurred in good faith, it being the intention of the parties to fully compensate for all fees or expenses paid or incurred in good faith. The prevailing party is that party receiving substantially the relief that is sought by court judgement.

## **ARTICLE 13 TERMINATION OR SUSPENSION**

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

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

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

**§ 13.1.3** Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201-2017.

**§ 13.1.4** In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

**§ 13.1.5** If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1** Take the Cost of the Work properly performed as determined by the Architect by the Construction Manager to the date of termination;
- .2** Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3** Subtract the aggregate of previous payments made by the Owner for Construction Phase services; and
- .4** Subtract any cost not allowed under the terms and conditions of the Agreement or not customarily billed to the Owner in the construction industry resulting from an audit.

**§ 13.1.6** The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager

under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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

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

### **§ 13.2.1 Termination**

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

### **§ 13.2.2 Termination by the Owner for Cause**

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

- .1 Take the Cost of the Work properly performed as determined by the Architect by the Construction Manager to the date of termination;
- .2 Add the Construction Manager’s Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner;
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017; and
- .5 Subtract any costs not allowed under the terms and conditions of the Agreement or not customarily billed to the Owner in the construction industry resulting from an audit.

**§ 13.2.2.2** The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

### **§ 13.2.3 Termination by the Owner for Convenience**

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

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

N/A

## **§ 13.3 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Construction Manager may submit a request for Change Order for an equitable adjustment in the Guaranteed Maximum Price for demonstrated additional cost and/or for an increase in Contract Time based upon demonstrated impacts to the critical path of the Construction Schedule.

**ARTICLE 14 MISCELLANEOUS PROVISIONS**

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 14.2 Successors and Assigns**

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

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

**§ 14.3 Insurance and Bonds**

**§ 14.3.1 Preconstruction Phase**

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than **One Million Dollars** (\$ **1,000,000.00** ) for each occurrence and **Two Million Dollars** (\$ **2,000,000.00** ) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than **One Million Dollars** (\$ **1,000,000.00** ) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

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

§ 14.3.1.4 Workers’ Compensation at statutory limits and Employers Liability with policy limits not less than **Five Hundred Thousand Dollars** (\$ **500,000.00** ) each accident, **Five Hundred Thousand Dollars** (\$ **500,000.00** ) each employee, and **Five Hundred Thousand Dollars** (\$ **500,000.00** ) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than **One Million Dollars** (\$ **1,000,000.00** ) per claim and **One Million Dollars** (\$ **1,000,000.00** ) in the aggregate.

**§ 14.3.1.6 Other Insurance**

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

Coverage	Limits
See Exhibit C – Project Addendum	

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

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

**§ 14.3.2 Construction Phase**

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

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

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

See Exhibit C – Project Addendum

§ 14.5 Other provisions:

**§ 14.5.1 Notices**

Any notice provided or required to be given under this Agreement must be in writing and shall be served (and shall be deemed to have been served): (i) by hand delivering a copy thereof to the party being served in person or by commercial courier; (ii) by postage prepaid certified mail, return receipt requested; or (iii) by nationally recognized guaranteed overnight delivery service.

As to the Owner:

The Cooper Health System  
1 Cooper Plaza  
Camden, New Jersey 08103  
Attn: Vice President of Design and Construction  
Attn: Director of Design and Construction

With a copy to:

The Office of General Counsel  
The Cooper Health System  
1 Federal Street, Suite S-400  
Camden, NJ 08103

As to the Architect: See Exhibit C - Project Addendum

As to the Construction Manager: See Exhibit C - Project Addendum

**§ 14.5.2 Severability**

If any term, covenant or condition of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each term, covenant and condition of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

**§ 14.5.3 Miscellaneous**

§ 14.5.3.1 All rights, privileges and remedies afforded to the parties by this Agreement shall be cumulative and not exclusive, and the exercise of such remedies shall not be deemed to be a waiver of any other rights, remedies or privileges provided for herein or available at law or equity.

§ 14.5.3.2 The failure of either party to seek redress for violation, or to insist upon the strict performance, of any covenant, agreement, provision or condition of this Agreement shall not constitute a waiver thereof and such party shall have all remedies provided for herein or by applicable law with respect to the same or any subsequent act or omission which constitutes such violation or nonperformance.

§ 14.5.3.3 The captions appearing in this Agreement are inserted only as a matter of convenience and for referenced and in no way define, limit or describe the scope of intent of this Agreement or any of the provisions hereof.

§ 14.5.3.4 Services provided by the Construction Manager hereunder shall be performed in a reasonably prompt manner and shall be in accordance with the professional standards applicable to such services on the type of Project contemplated by this Agreement, and Construction Manager shall be responsible for services provided hereunder whether such services are provided directly by Construction Manager or by any subcontractors or consultants hired by Construction Manager. The Construction Manager will perform duties and services and make decisions called for hereunder promptly and without unreasonable delay and will give this Project such priority in the office as is reasonably necessary to cause the Construction Manager services hereunder to be timely and properly performed consistent with sound professional practices.

§ 14.5.3.5 All reference to the A201-2017 or General Conditions shall mean the AIA Document A201-2017 as modified.

§ 14.5.4 **Non-Waiver.** The Owner's approval of any portion of the Work furnished hereunder shall not in any way relieve the Construction Manager of responsibility for the accuracy of the Work. The Owner's approval or acceptance of, or payment for, any of the Construction Manager's services shall not be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract.

§ 14.5.5 **Licensing.** The Construction Manager warrants and represents that it is and will remain during the full term of the Project a duly licensed General Contractor and/or Construction Manager under applicable laws and regulations of the state in which the Project is located and is authorized to do business in the state in which the Project is located.

§ 14.5.6 **Compliance with Applicable Law.** Throughout the Project, the Construction Manager shall comply with applicable governmental statutes, laws, codes, ordinances, regulations, standards and practices of all regulatory authorities having jurisdiction or rights of approval affecting the Project and, in accordance with the professional standards described above in this Contract, adhere thereto in the performance of the Construction Manager's services under this Contract.

§ 14.5.7 **Independent Contractor.** The Construction Manager is an independent contractor. The Construction Manager shall have no right to incur indebtedness nor to enter any contract on behalf of the Owner. Notwithstanding the foregoing, this Contract establishes a fiduciary relationship between Construction Manager and Owner. The Construction Manager acknowledges that the Owner is relying upon the Construction Manager's skill and experience in connection with this Work called for hereunder.

§ 14.5.8 **Construction Manager's Financial Condition.** The Construction Manager hereby represents, promises, and warrants to the Owner that the Construction Manager is financially solvent and possesses sufficient experience, licenses, authority, personnel and working capital to complete the services required hereunder; that the Construction Manager has visited the site for the Project and thoroughly familiarized itself with the local conditions under which the services required hereunder are to be performed; and that the Construction Manager shall correlate its observations of the same with all of the requirements of this Contract and of the Construction Documents.

§ 14.5.9 The Construction Manager shall be responsible, at its sole cost and expense, for managing or resolving all labor disputes and/or work stoppages so as to minimize to the extent feasible the impact of any such labor dispute and/or work stoppage on the Owner's operations, facilities or personnel, provided that such labor disputes and/or work stoppages could have been avoided through intervention by the Construction Manager. The Construction Manager's responsibilities shall include, but not be limited to, taking all legal action necessary to minimize or, if possible, eliminate the impact of any labor dispute and/or work stoppage.

§ 14.5.10 The Owner reserves the right to pay any Subcontractor, supplier or vendor of any description, with approval of Construction Manager, by joint check to avoid construction lien related exposure. Upon receipt of any such joint check, Construction Manager agrees to execute such check and deliver same to the other payee listed on the check. Construction Manager shall credit such payments against any amounts owed to it by Owner.

§ 14.5.11 The Construction Manager shall comply with all CMS-promulgated vaccine requirements for eligible staff at health care facilities that participate in the Medicare and Medicaid programs related to the COVID-19 pandemic.

**ARTICLE 15 SCOPE OF THE AGREEMENT**

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

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™-2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .5 Building Information Modeling and Digital Data Exhibit (if completed)

See Exhibit C - Project Addendum

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

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

See Exhibit C – Project Addendum

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
See Exhibit C – Project Addendum			

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

See Exhibit C – Project Addendum

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

\_\_\_\_\_  
**OWNER** (Signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
**CONSTRUCTION MANAGER** (Signature)

\_\_\_\_\_  
(Printed name and title)

LICENSE NO.: See Exhibit C – Project Addendum  
JURISDICTION: See Exhibit C – Project Addendum

# **Additions and Deletions Report for** **AIA® Document A133® – 2019**

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 12:07:16 ET on 03/16/2026.

## **PAGE 1**

**AGREEMENT** made as of the day of ~~—~~in the year ~~—~~date listed in Exhibit C – Project Addendum

...

The Cooper Health System  
1 Cooper Plaza  
Camden, New Jersey 08103

...

See Exhibit C – Project Addendum

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See Exhibit C - Project Addendum

...

See Exhibit C - Project Addendum

## **PAGE 2**

See Exhibit C - Project Addendum

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See Exhibit C - Project Addendum

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See Exhibit C - Project Addendum

## **PAGE 3**

See Exhibit C - Project Addendum

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See Exhibit C - Project Addendum

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See Exhibit C - Project Addendum

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See Exhibit C - Project Addendum

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See Exhibit C - Project Addendum

...

N/A

...

N/A

...

The Cooper Health System  
1 Cooper Plaza  
Camden, New Jersey 08103  
Attn: Vice President of Design and Construction  
Attn: Director of Design and Construction

...

See Exhibit C - Project Addendum

**PAGE 4**

See Exhibit C - Project Addendum

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See Exhibit C - Project Addendum

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See Exhibit C - Project Addendum

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See Exhibit C - Project Addendum

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See Exhibit C - Project Addendum

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N/A

...

Owner pre-approval of subcontractor bid list prior to procurement

...

See Exhibit C - Project Addendum

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

**PAGE 5**

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 Program Manager 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.

...

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

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

**§ 2.4 Deliverables**

The deliverables or work product specified in this Agreement (the "Deliverables") will become Owner's property. If any of Construction Manager's intellectual property is contained in any of the Deliverables, Construction Manager hereby grants Owner a royalty-free, non-exclusive license to use the Construction Manager's intellectual property in connection with the use of the Deliverables.

**§ 2.5 Confidentiality**

Owner and Construction Manager both acknowledge and agree that all information communicated by one party (the "Disclosing Party") to the other (the "Receiving Party") in connection with this Agreement shall be received in confidence, shall be used only for purposes of this Agreement, and no such confidential information shall be disclosed by the Receiving Party or its agents or personnel without the prior written consent of the other party. Except to the extent otherwise required by applicable law or professional standards (e.g. disclose to Project professionals, submission to government agencies related to the Project, etc.), the obligations under this section do not apply to information that:

- a) is or become generally available to the public other than as a result of a disclosure by the Receiving Party;
- b) was known to the Receiving Party or had been previously possessed by the Receiving Party without restriction against disclosure at the time of receipt thereof by the Receiving Party;
- c) was independently developed by the Receiving without violation of this agreement; or
- d) Owner and Construction Manager agree from time to time to disclose.

Each party shall be deemed to have met its nondisclosure obligations under this Article as long as it exercises the same level of care to protect the other's information as it exercises to protect its own confidential information, except to the event that applicable law or professional standards impose a higher requirement. Construction Manager may retain, subject to the terms of this Article, one copy of Owner's confidential information required for compliance with applicable professional standards or internal policies. If either Owner or Construction Manager receives a subpoena or

other validly issued administrative or judicial demand requiring it to disclose the other party's confidential information, such party shall provide prompt written notice to the other of such demand in order to permit it to seek a protective order. So long as the notifying party gives notice as provided herein, the notifying party shall be entitled to comply with such demand to the extent permitted by law, subject to any protective order or the like that may have been entered in the matter.

## **§ 2.6 Equal Employment Opportunity and Affirmative Action**

The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

### **PAGE 6**

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. ~~The Owner-Owner, Program Manager~~ and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. The Construction Manager shall perform its services consistent with the grant requirements listed in Exhibit J if indicated as required in Exhibit C – Project Addendum.

...

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. ~~The Owner-Owner, Program Manager~~ and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the ~~Architect-Architect, Program Manager~~ 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. The Construction Manager shall be responsible to the Owner for acts and omissions of the Construction Manager's employees, subcontractors and their agents and employees, and of such other persons and entities for whose acts and omissions the Construction Manager may be held legally liable.

**§ 3.1.2** The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other. In addition, Construction Manager agrees appropriate Project personnel will attend Owner's meetings regarding the Project, the compensation for attending such meeting is included in the compensation for the Construction Manager's Preconstruction Phase Services as set forth in Article 5.

...

**§ 3.1.3.1** The Construction Manager shall schedule and conduct meetings with the ~~Architect-Architect, Program Manager~~ and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

**§ 3.1.3.2** The Construction Manager shall advise the ~~Owner-Owner, Program Manager~~ and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the ~~Owner-Owner, Program Manager~~ and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall provide actions designed to minimize adverse effects of labor or material shortages. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase. The Construction Manager shall maintain a log of estimates of value analysis alternative designs or materials and/or possible economies, the date provided to the Owner and whether or not the value analysis alternates or economies were accepted or rejected by the Owner.

**§ 3.1.3.3** ~~The Construction Manager shall assist the Owner and Architect in establishing written Owner, Program Manager and Architect in establishing building information modeling and digital data protocols for the Project, using the Building Information Modeling and Digital Data Exhibit, if completed, to establish the protocols for the development, use, transmission, reliance, and exchange of digital data, including building information models for the Project and exchange of digital data.~~

...

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's ~~and Program Manager's~~ review and the Owner's acceptance. The Construction Manager shall obtain the Architect's ~~and Program Manager's~~ approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's ~~responsibilities; responsibilities (including no less than vendor equipment installations, building commissioning, transition planning, and activation planning);~~ and identify items that 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 in advance of construction; and the occupancy requirements ~~(including no less than vendor equipment installations, building commissioning, transition planning, and activation planning)~~ of the Owner. Project Schedule shall be updated no less than monthly and shall incorporate Guaranteed Maximum Price approvals and Change Order approvals to accurately forecast project phasing and Substantial Completion requirements.

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

...

**§ 3.1.6.1** Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's ~~and Program Manager's~~ review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the ~~Architect Architect, Program Manager~~ or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems. All preliminary cost estimates shall reflect local market and relevant cost data and projections for all project elements and cost backup for major project and system elements.

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

**§ 3.1.6.2.1** If any estimate to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to reduce the cost of the Project to the Owner, Program Manager and Architect. In accordance with §3.1.3.2, the Construction Manger shall maintain a log of all appropriate value analysis recommendations to reduce the cost of the Project.

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

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

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

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

§ 3.1.11.2 The Construction Manager shall ~~develop bidders' interest in the Project.~~ seek to develop subcontractor interest in the Project and shall furnish to the Owner, Program Manager and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or requirement fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Construction Manager shall also include for consideration the subcontractors and suppliers recommended by the Owner. The Architect, Program Manager and/or Owner will promptly reply in writing to the Construction Manager, if the Architect, Program Manager or Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner, Program Manager or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner, Program Manager or Architect to object to or reject any proposed subcontractor or supplier.

...

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

#### **§ 3.1.12.1 Long Lead Time Items**

The Construction Manager shall recommend to the Owner, Program Manager and Architect a schedule for procurement of long lead time items which will constitute part of the Work as required to meet the Project schedule. If such long lead time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. If directed by Owner or Program Manager, Construction Manager shall also coordinate with Owner's independent medical equipment provider and they shall 1) meet on a regular basis to keep the Construction Manager abreast of all procurement activities and to discuss any procurement issues and 2) to coordinate a list of equipment lead times such that the Construction Manager will include installation of these items in Construction Manager's monthly project schedule. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager and Owner shall have no further obligation under the aforementioned Contracts. Notwithstanding the foregoing, any and all contracts for medical equipment shall remain with the Owner and shall not be assigned to the Construction Manager. The Construction Manager shall expedite the delivery of long lead time items.

...

See Exhibit C - Project Addendum

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§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the ~~Owner's~~ Owner's, Program Manager's and Architect's

review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2. Submission of the GMP proposal shall constitute a representation and warranty from the Construction Manager to the Owner that the Construction Manager is familiar with the Project site and has received or obtained all information needs concerning the conditions of the Project site, except as expressly otherwise set forth in the GMP proposal. The Construction Manager agrees and acknowledges that: (i) the GMP proposal is just and reasonable compensation for all of the Work, including all foreseen and foreseeable risks, hazards and difficulties in connection therewith, except as otherwise expressly set forth in the GMP proposal; (ii) the Contract Time is adequate for the performance of the Work, and (iii) the Work shall not result in any lateral or vertical movement of any structure.

...

**§ 3.2.3** The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the information required by the Request for Proposal and the following:

...

- .2 A list of all allowances and alternates and a statement of their basis;
- .3 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, proposal to supplement the information contained in the Drawings and Specifications, including assumptions under Section 3.2.2;
- ~~.3~~ .4 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including ~~allowances; allowances,~~ alternates and other items; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- ~~.4~~ .5 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- ~~.5~~ A date by which the Owner must accept the Guaranteed Maximum Price-based and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based. If phased occupancy is anticipated, substantial completion for each phase shall be identified;
- .6 The budget for all General Conditions costs and the basis for each General Condition item; and
- .7 Copies of all bids, take-off questions, quotes and prices.

**§ 3.2.4 Contingencies.** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to sum for contingencies ("Contingency") to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. Construction Manager understands and agrees the Owner is an shall remain the sole owner of funds for Contingency defined within Section 3.2.4 unless and until the Construction Manger uses such funds in accordance with the terms herein.

**§ 3.2.4.1** Construction Manager shall request and received Owner approval regarding the use of the Contingency (or any part thereof) and shall supply the Owner with detailed information relative to each request. Construction Manager shall develop a reporting system that tracks the use of Contingency, including available remaining Contingency, in a format reasonably acceptable to the Owner and Program Manager, which shall be provided to the Owner and Program Manager on less than a bi-weekly basis. Upon completion of the Work, should there be any remaining Contingency, then the remainder savings shall be returned to the Owner.

**§ 3.2.4.2** Contingency included in the Guaranteed Maximum Price shall be available to cover costs that would increase the Cost of the Work as a result of events not evident to the Owner, Program Manager, Architect, or Construction Manager as of the time, the Agreement was executed, but in no event shall Contingency be used to cover costs caused by the negligence of Construction Manager.

**§ 3.2.4.3** Buyout savings will be held in a line item called "Project Contingency", which is separate from the Construction Contingency and is to be used by the Owner at its sole discretion either to cover additional Contingency items or to be allocated to Allowances, as the Owner sees fit.

§ 3.2.4.4 "Material Escalation Contingency" for this Project shall be three percent (3%) of the Cost of Work (as defined above) which represents the maximum dollar amount the Construction Manager may recover for documented cost increases due to economic, market conditions with respect to materials and equipment subcontracted or purchased by the Construction Manager for the Project during the ninety (90) day buyout period (defined below) from the Construction Manager's suppliers and subcontractors ("Material Escalation Contingency"). The "Ninety (90) Day Buyout Period" is the duration which the Construction Manager shall buyout subcontractors and suppliers pursuant to Section 3.2.4, Project Contingency of the Agreement.

In the event the Material Escalation Contingency is insufficient to cover documented increases in costs due to economic market conditions (subject to use of Construction Contingency), that risk lies solely with the Construction Manager. Upon completion of the Ninety (90) Day Buyout Period, all remaining available Material Escalation Contingency shall be returned to the Owner. Construction Manager shall submit monthly reports on the use of Material Escalation Contingency in all instances.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both. **Allowances.** Allowances, if any, included in the Guaranteed Maximum Price shall be specified in the Guaranteed Maximum Price Amendment: Specific allowance items and amount(s) allocated are as set forth in Exhibit A (Guaranteed Maximum Price Amendment). The allowances include all costs associated with material, labor, storage, taxes, waste, and freight unless specifically noted otherwise within in the executed Exhibit A. The allowances do not include Construction Manager's Fee or insurance costs applicable to each, but those costs (and fee) have been included in the Guaranteed Maximum Price and no additional Fee or insurance costs shall be added to the allowance amounts stated therein.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. **Unit Prices.** Unit Prices, if any, included in the Guaranteed Maximum Price are considered complete and include (i) all materials, equipment, labor, delivery, installation, overhead, and profit and (ii) any other costs or expenses in connection with, or incidental to, the performance of that portion of the Work to which such unit prices apply. Accordingly, Fee shall not be added to the unit cost items outside of the Unit Price itself.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs. **Construction Manager's General Conditions Costs.** Construction Manager shall include as part of its Guaranteed Maximum Price Proposal an itemized list of these costs and other expenses to be paid as allowable general conditions, which shall be stated as a Not to Exceed amount, which shall be paid as provided in Section 11.1 or as otherwise agreed to in writing by the Owner.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents. Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.9 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. If the Owner notifies the Construction Manager that the

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

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

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

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

§ 3.2.13 The Owner shall have the right to terminate the Agreement if the parties are unable to come to terms on a mutually acceptable Guaranteed Maximum Price.

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§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings at least bi-weekly or as required by Owner to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the ~~Owner~~ Owner, Program Manager and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the ~~Owner~~ Owner, Program Manager and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201-2017.

...

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the ~~Owner~~ Owner, Program Manager and Architect, showing percentages of completion and other information required by the Owner. Monthly reporting requirements are further described within Section 3.19 and Section 9.3.1.4 of A201-2017.

...

The Construction Manager shall keep, and make available to the ~~Owner~~ Owner, Program Manager 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~~ brought to or removed from site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

...

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 monthly variances between actual and estimated costs and report the variances to the ~~Owner and Architect~~ Owner, Program Manager and Architect, based on cash flow projections developed prior to commencement of the Project, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above. These reports should include all approved and unapproved change orders and/or other projected costs anticipated but not yet approved or in writing such that the estimated final cost is provided in the report. In

addition, the Construction Manager shall identify the variance between the estimated final cost and the original budget. The Construction Manager shall also compare the percentage of actual completion to the percent of budget expended to date. Construction Manager shall also maintain a back charge log which shall be presented to the Owner and Program Manager each month with the Construction Manager's progress report.

...

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

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

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

...

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

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

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§ 4.2.1 **Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. This shall not include any legal, insurance and accounting services, including auditing services, for the Construction Manager to perform its work or maintain project files, meet auditing/accounting standards or other business and related practices for the Construction Manager to provide and manage the Work or the Project.

...

See Exhibit C - Project Addendum

...

See Exhibit C - Project Addendum

...

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

...

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

...

0 % zero percent

...

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's ~~Fee.~~Fee, the total of which shall not exceed the Guaranteed Maximum Price.

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See Exhibit C - Project Addendum

...

See AIA Document A201-2017 Article 7.3.11

...

See AIA Document A201-2017 Article 7.3.11

~~§ 6.1.5 Rental~~ If applicable, rental rates for Construction Manager-owned equipment shall not exceed seventy percent ( 70 % ) of the standard rental rate paid at the place of the Project.

...

N/A

...

N/A

...

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the ~~Work.~~Work through the execution of an Owner approved Change Order. However, the Construction Manager must indicate with every request for a change in the Work the number of additional days it requires to extend the Contract Time.

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

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for ~~Construction~~ Construction, as modified.

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§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner’s prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost. This shall specifically apply to the Costs of the Work associated with mobilization and long lead items referenced at Section 11.1.2.

...

§ 7.1.4 Costs as defined herein shall be actual costs incurred by the Contractor, less all discounts, rebates, and salvages that may be taken by the Contractor, subject to Article 7 of the Agreement. All payments made by the Owner pursuant to this Article 7, whether those payments are actually made before or after the execution of the Contract, 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 the Construction Manager has received the Owner’s written consent prior to incurring such costs.

§ 7.1.5 Notwithstanding the breakdown or categorization of any costs to be reimbursed in this Article 7 or elsewhere in the Contract Documents, there shall be no duplication of payment in the event any particular items for which payment is requested can be characterized as falling into more than one of the types of compensable or reimbursable categories.

§ 7.2.1 ~~Wages or salaries~~ Hourly billable rates of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner’s prior approval, at off-site workshops. Prior to commencing the Work, the Contractor shall submit to the Owner for its approval a list of supervisory and administrative personnel employed by the Construction Manager and who will be stationed at the Project site. Such hourly billable rates will also be used for self-performed work approved by the Owner. Owner shall not pay bonuses or discretionary payments to the Construction Manager personnel or anyone hired by the Construction Manager or paid to any Subcontractor or vendor. Hourly billable rates of Construction Manager personnel stationed at the Construction Manager’s principal or other offices shall not be included in the Cost of the Work.

§ 7.2.2 ~~Wages or salaries~~ Hourly billable rates of the Construction Manager’s supervisory and administrative personnel when stationed at the site and performing Work, with the Owner’s prior approval.

§ 7.2.2.1 ~~Wages or salaries~~ Hourly billable rates of the Construction Manager’s supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

...

See Exhibit C - Project Addendum

§ 7.2.3 ~~Wages and salaries~~ Hourly billable rates of the Construction Manager’s supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, but not bonuses or discretionary payments, provided such costs are based on ~~wages and salaries~~ hourly billable rates included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification. Owner will allow the Construction Manager to raise hourly billable rates not to exceed three percent (3%) per year unless in special individual circumstances, which approval shall not be unreasonably withheld. Owner shall not pay bonuses or

discretionary payments to any Contractor personnel or anyone hired by the Construction Manager or paid to any Subcontractor or vendor.

§ 7.2.6 Notwithstanding anything stated to the contrary herein or elsewhere in the Contract Documents, compensation of Construction Manager's executive management personnel or regional office and support staff shall not be recoverable as a Cost of the Work or as part of Construction Manager's lump sum general conditions.

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Payments-Subcontract costs are payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement. All Cost of Work and other provisions and requirements contained within this Agreement shall also flow through to each subcontract agreement. The Owner and Program Manager reserve the right to participate in the Construction Manager's bidding and major equipment procurement program when the Owner and Program Manager determine that it is in the Owner's best interest to do so.

...

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, materials and/or used field office furniture, fixtures, business equipment and/or IT equipment paid for by the Owner, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

...

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall not exceed seventy percent (70%) of the prices found in the nationally recognized Associated Equipment Dealer's Construction Rental Equipment Greenbook and shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item. For rental equipment not owned by the Construction Manager and where a rental agreement contains an option to purchase and this option is exercised, the equity accrued shall be credited to the Owner against the total rental cost of that equipment on Work. Prior to beginning the Work, the Construction Manager shall submit a list to the Owner of rental equipment owned by the Construction Manager or a subsidiary or affiliate of the Construction Manager indicating proposed rental rates. In lieu of renting certain items of equipment, machinery and tools valued at more than five hundred dollars (\$500.00) from the Construction Manager or other third parties, the Owner reserves the right to have those items purchased and maintained as a Cost of the Work. A record showing the disposition of these items is to be on file at the Construction Manager's office on the project site. Ownership of the items not consumed during construction shall remain with the Owner upon completion of the Project. The Construction Manager shall attached to each monthly Application for Payment an itemized list of rental equipment owned by the Construction Manager or its subsidiaries or affiliates and the applicable preapproved rates for such equipment used on the Work during that period.

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§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. If the Owner optionally implements and funds directly an Owner Controlled Insurance Program (OCIP) for the Project, no insurance costs other than the insurance costs required in the OCIP contract provisions to be paid by Construction Manager shall be included in the Cost of the Work.

...

§ 7.6.2.1 To the extent the Construction Manager engages a subcontractor to provide tangible goods or services for the Project, the Construction Manager agrees to provide subcontractor with a copy of the Form ST-5, the New Jersey sales tax exemption certificate attached as Exhibit I. The Construction Manager further agrees to cooperate with subcontractor to obtain any exemption from New Jersey sales and use tax to the extent such an exemption is available in respect of any tangible goods or services provided by subcontractor pursuant to this Agreement or any separate agreement between the subcontractor and the Construction Manager. The Construction Manager agrees not to charge

or attempt to collect, directly or indirectly, any sales tax attributable to goods and or services provided by subcontractor, to the extent such goods and services are exempt from New Jersey sales and use tax under applicable New Jersey law and in accordance with the Form ST-5.

**§ 7.6.3** Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay. If Construction Manager's Guaranteed Maximum Price includes fees that Owner has paid or is required to pay directly, Construction Manager shall deduct fees from Guaranteed Maximum Price as a deductive change order.

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~~§ 7.6.9 Legal, mediation and arbitration~~ **§ 7.6.9** Legal 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.

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- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase-Phase;
- .10 Technology, Data Processing, Project Specific Web Sites, or Project Management System Costs incurred by the Construction Manager in preparing the Project schedule, timesheets, accounting, Project cost reports and Project status reports, and any other report necessary to the progress of the Work, data processing costs related to the Work but not for construction or accounting software already owned by the Construction Manager or updates, revisions or purchases that occur during the course of construction and/or used at the Construction Manager's home office;
- .11 Any fees paid to Contractor organizations (AGC, ABC, etc.) and/or to Construction Manager's business license;
- .12 Recruitment or training costs of personnel, including but not limited to recruiting or sign up bonuses;
- .13 Overtime expense of any salaried personnel;
- .14 Any expenses for General Conditions costs that cause the total of General Conditions costs to exceed that set forth in the GMP Amendment;
- .15 Claims for extended home office overhead or costs of equipment which is idle due to the Contractor's fault or neglect, overtime due to Contractor's fault or neglect, correction of non-confirming work, work performed without proper authorizations as required by the contract documents or any other costs the contract does not expressly allow;
- .16 Costs the Construction Manager incurred in responding to the request for proposal including estimating costs;
- .17 Costs to correct defective Work and other costs to comply with Construction Manager's warranty obligations under this Agreement; and
- .18 Any uninsured loss which results from a failure of Construction Manager to maintain insurance required by the Construction Documents or the denial of coverage under such insurance or the failure of an insurer to otherwise pay claims under such insurance.

...

**§ 8.1** Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained. All proceeds from the sale of surplus materials and equipment, refunds of or credits on insurance premiums, and all sums the Construction Manager is permitted to retain from remittances to any governmental agency for sales tax applicable to procurement of materials and equipment shall accrue to the Owner's account and shall be credited to the Guaranteed Maximum Price. The Construction Manager shall not obtain for its own benefit any discounts, rebates, or refunds in connection with the Work prior to providing the Owner with ten (10) days' prior written notice of the potential discount, rebate, or refund

and an opportunity to furnish funds necessary to obtain such discount, rebate, or refund on behalf of the Owner in accordance with the requirements of this Section 8.1.

...

**§ 9.1** Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall attempt to obtain a minimum of three (3) bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

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**§ 9.3** Construction Manager shall obtain bids on all of the Work, including third party bids of any Work that Construction Manager desires to self-perform. Construction Manager shall prepare and submit its own bids on any Work it intends to self-perform and, with the bid, include the hourly billable rates of Construction Manager's construction workers as well as the hourly billable rates of supervisory and administrative personnel. The decision to utilize the Construction Manager for self-performed work is at the sole discretion of the Owner. For self-performed work, the Construction Manager will be expected to sign a subcontract utilizing the same provision as any other subcontractor or as may be modified by the Owner.

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~~ to the Construction Manager's principal place of business, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of ~~three~~ five (5) years after final payment, or for such longer period as may be required by law by law or indicated elsewhere in the Contract Documents. All records shall be maintained in accordance with Generally Accepted Accounting Practices (GAAP), consistently applied. Subcontractors retained by the Construction Manager on a cost-plus basis must have the same obligations to retain records and permit audits as required of Construction Manager under this Article 10. Within one hundred and eighty (180) days after Substantial Completion of the Project and approval of all Change Orders, the final accounting will be provided by the Construction Manager for the Owner's approval. All forms of Cost to Be Reimbursed under Article 7 shall be subject to the Owner's rights referenced in this Article 10, inclusive of general conditions charges or any other aspect of the Cost of the Work which may be billed to the Owner on a stipulated sum basis. The Owner's right to access the Contractor's records shall not be affected by the commencement of any formal dispute resolution procedure and is independent and separate from any rights to discovery provided therein.

...

**§ 11.1.2** The ~~With the specific exception of the Construction Manager's one (1) time initial Application for Payment to cover Costs of the Work associated with mobilization and long lead cycle items, the period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:~~

See Exhibit C – Project Addendum

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 25<sup>th</sup> day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the last day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than forty-five ( 45 ) days after the Architect receives the Application for Payment.

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§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, timesheets, petty cash accounts, receipted invoices or invoices with check vouchers attached, subcontractor requisitions, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls timesheets for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee. The Construction Manager shall use the AIA Payment Application Form 702 and the AIA Schedule of Values Form 701, and shall include an Inbudget Transfer column so that no percent complete per line exceeds 100%.

...

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment. The original Schedule of Values cannot be changed once the GMP has been determined. However, the Construction Manager shall add an "Adjusted" or "Revised" Schedule of Values column to the original scheduled values.

...

- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing; with the agreement of the Owner, stored at a bonded and licensed facility where the Owner can reasonably visually verify or receive other acceptable verification of the storage of materials. If verification is necessary or required by Owner and/or Architect by a site visit outside of a local site visit for materials and equipment suitably stored off the site in a license and bonded facility, Construction Manager shall pay all costs associated with site visits/review, outside of local site visits by Owner and/or Architect;

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- .6 Retainage withheld pursuant to Section ~~41.1.8~~.11.1.8, including on Construction Manager's self-performed Work.

...

Ten Percent (10%)

...

General Conditions, Insurance, and Fee

...

Upon 50% completion of the Work for a particular subcontractor, the required amount shall be reduced to 5% on all future payment applications for payment with prior approval of the Owner. However, upon mutual agreement between Owner and Construction Manager and before the Project's Substantial Completion date, payment in full including release of applicable retainage may be made to the Construction Manager for a particular subcontractor's Work that is fully and satisfactory completed, provided that the Construction Manager and Subcontractors provide a satisfactory complete release of all claims for such Work and provided that both have complied with all requirements for final payment in accordance with the Contract Documents. At Substantial Completion, the overall retained amount shall be

reduced to 150% of the value of the punch list. Upon Substantial Completion of the Work, Construction Manager acknowledges and agrees that Owner may retain one hundred and fifty percent (150%) of such amounts as the Architect and Owner shall reasonably determine is necessary to protect Owner from the cost of remedying incomplete, defective or nonconforming Work shall be applicable to such Work, and shall be withheld from the Construction Manager until such incomplete, defective or non-conforming Work is completed.

Owner shall have the right to reinstate and withhold retainage in full (10%) at any time to the extent that Construction Manager has not or fails to comply with the requirements of this agreements or elsewhere in the Contract Documents. Payment of all remaining retainage to Construction Manager (less amounts needed to complete punch list items) will be considered by the Owner at the late of the time of Substantial Completion or the achievement of a final Certificate of Occupancy for the entire Project, subject to Owner approval, which shall not be unreasonably withheld, or otherwise at the time of Final Payment.

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See Exhibit C – Project Addendum

...

**§ 11.2.1** Final payment, Construction Manager must submit its Application for Final Payment, within one hundred and eighty (180) days of Substantial Completion. Final Payment constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when all conditions precedent listed herein are met:

...

- .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 in accordance with Section 11.2.2.2.11.2.2.2;
- .4 when the Surety has provided to the Owner a written consent (Consent of Surety);
- .5 the Owner has received a properly executed lien waiver and release of claims by Construction Manager and properly executed final conditional lien waiver (with the only condition being release from the title company to the Construction Manager of the final payment) and release of claims by Construction Manager’s Subcontractors and suppliers, all in a form satisfactory to Owner;
- .6 assignments of all guarantees and warranties from the Construction Manager, Subcontractors, vendors, suppliers or manufacturers are provided to the Owner;
- .7 the Owner has been provided all maintenance and operating instruction manuals; and
- .8 a marked-up set of as-built documents has been submitted to the Owner and Architect.

...

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

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**§ 11.2.2.3** If the Owner’s auditors’ report concludes that the Cost of the Work, as substantiated by the Construction Manager’s final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager’s receipt of a copy of the Architect’s final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner’s auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect’s final Certificate for Pending final resolution of a disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect’s final Certificate for Payment and approved by the Owner. If the Owner’s auditor’s cost savings exceed 1.0% of the Cost of the Work, the Construction Manager shall reimburse the Owner for the costs of the audit. This cost shall be deducted from the Final Payment.

...

See Exhibit C – Project Addendum

...

0 % zero percent

...

**§ 12.1.1** Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager’s Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to ~~mediation or~~ binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

...

See Exhibit C - Project Addendum

...

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

...

[  ] Litigation in a court of competent jurisdiction

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

### **§ 12.3 Attorneys' Fees**

If one party to this Agreement institutes litigation with the other party arising out of the terms and conditions of this Agreement, or performance under this Agreement, the prevailing party shall be entitled to recover from the other party its reasonable attorney’s fees and expenses and consultant’s fees and expenses. The parties agree that the fee award need not be computed in accordance with any court schedule, but shall be such as to fully reimburse all fees and expenses actually incurred in good faith, it being the intention of the parties to fully compensate for all fees or expenses paid or incurred in good faith. The prevailing party is that party receiving substantially the relief that is sought by court judgement.

...

.1 Take the Cost of the Work ~~incurred~~ properly performed as determined by the Architect by the Construction Manager to the date of termination;

...

.3 Subtract the aggregate of previous payments made by the Owner for Construction Phase ~~services~~ services; and

.4 Subtract any cost not allowed under the terms and conditions of the Agreement or not customarily billed to the Owner in the construction industry resulting from an audit.

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

...

.1 Take the Cost of the Work ~~incurred~~ properly performed as determined by the Architect by the Construction Manager to the date of termination;

...

.3 Subtract the aggregate of previous payments made by the Owner;~~and~~

.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201-2017.~~A201-2017; and~~

.5 Subtract any costs not allowed under the terms and conditions of the Agreement or not customarily billed to the Owner in the construction industry resulting from an audit.

...

N/A

...

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2017; in such case, the ~~Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201-2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.~~ Construction Manager may submit a request for Change Order for an equitable adjustment in the Guaranteed Maximum Price for demonstrated additional cost and/or for an increase in Contract Time based upon demonstrated impacts to the critical path of the Construction Schedule.

**PAGE 27**

§ 14.3.1.1 Commercial General Liability with policy limits of not less than One Million Dollars (\$ 1,000,000.00 ) for each occurrence and Two Million Dollars (\$ 2,000,000.00 ) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than One Million Dollars (\$ 1,000,000.00 ) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

...

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than Five Hundred Thousand Dollars (\$ 500,000.00 ) each accident, Five Hundred Thousand Dollars (\$ 500,000.00 ) each employee, and Five Hundred Thousand Dollars (\$ 500,000.00 ) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than One Million Dollars (\$ 1,000,000.00 ) per claim and One Million Dollars (\$ 1,000,000.00 ) in the aggregate.

...

See Exhibit C – Project Addendum

...

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

**PAGE 28**

**§ 14.4** Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with a ~~building information modeling exhibit, the Building Information Modeling and Digital Data Exhibit~~, if completed, or as otherwise set forth below:

~~(If other than in accordance with a building information modeling exhibit, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)~~

See Exhibit C – Project Addendum

...

#### **§ 14.5.1 Notices**

Any notice provided or required to be given under this Agreement must be in writing and shall be served (and shall be deemed to have been served): (i) by hand delivering a copy thereof to the party being served in person or by commercial courier; (ii) by postage prepaid certified mail, return receipt requested; or (iii) by nationally recognized guaranteed overnight delivery service.

As to the Owner:

The Cooper Health System

1 Cooper Plaza

Camden, New Jersey 08103

Attn: Vice President of Design and Construction

Attn: Director of Design and Construction

With a copy to:

The Office of General Counsel

The Cooper Health System

1 Federal Street, Suite S-400

Camden, NJ 08103

As to the Architect: See Exhibit C - Project Addendum

As to the Construction Manager: See Exhibit C - Project Addendum

#### **§ 14.5.2 Severability**

If any term, covenant or condition of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each term, covenant and condition of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

#### **§ 14.5.3 Miscellaneous**

**§ 14.5.3.1** All rights, privileges and remedies afforded to the parties by this Agreement shall be cumulative and not exclusive, and the exercise of such remedies shall not be deemed to be a waiver of any other rights, remedies or privileges provided for herein or available at law or equity.

**§ 14.5.3.2** The failure of either party to seek redress for violation, or to insist upon the strict performance, of any covenant, agreement, provision or condition of this Agreement shall not constitute a waiver thereof and such party shall have all remedies provided for herein or by applicable law with respect to the same or any subsequent act or omission which constitutes such violation or nonperformance.

**§ 14.5.3.3** The captions appearing in this Agreement are inserted only as a matter of convenience and for referenced and in no way define, limit or describe the scope of intent of this Agreement or any of the provisions hereof.

**§ 14.5.3.4** Services provided by the Construction Manager hereunder shall be performed in a reasonably prompt manner and shall be in accordance with the professional standards applicable to such services on the type of Project contemplated by this Agreement, and Construction Manager shall be responsible for services provided hereunder

whether such services are provided directly by Construction Manager or by any subcontractors or consultants hired by Construction Manager. The Construction Manager will perform duties and services and make decisions called for hereunder promptly and without unreasonable delay and will give this Project such priority in the office as is reasonably necessary to cause the Construction Manager services hereunder to be timely and properly performed consistent with sound professional practices.

**§ 14.5.3.5** All reference to the A201-2017 or General Conditions shall mean the AIA Document A201-2017 as modified.

**§ 14.5.4 Non-Waiver.** The Owner's approval of any portion of the Work furnished hereunder shall not in any way relieve the Construction Manager of responsibility for the accuracy of the Work. The Owner's approval or acceptable of, or payment for, any of the Construction Manager's services shall not be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract.

**§ 14.5.5 Licensing.** The Construction Manager warrants and represents that it is and will remain during the full term of the Project a duly licensed General Contractor and/or Construction Manager under applicable laws and regulations of the state in which the Project is located and is authorized to do business in the state in which the Project is located.

**§ 14.5.6 Compliance with Applicable Law.** Throughout the Project, the Construction Manager shall comply with applicable governmental statutes, laws, codes, ordinances, regulations, standards and practices of all regulatory authorities having jurisdiction or rights of approval affecting the Project and, in accordance with the professional standards described above in this Contract, adhere thereto in the performance of the Construction Manager's services under this Contract.

**§ 14.5.7 Independent Contractor.** The Construction Manager is an independent contractor. The Construction Manager shall have no right to incur indebtedness nor to enter any contract on behalf of the Owner. Notwithstanding the foregoing, this Contract establishes a fiduciary relationship between Construction Manager and Owner. The Construction Manager acknowledges that the Owner is relying upon the Construction Manager's skill and experience in connection with this Work called for hereunder.

**§ 14.5.8 Construction Manager's Financial Condition.** The Construction Manager hereby represents, promises, and warrants to the Owner that the Construction Manager is financially solvent and possesses sufficient experience, licenses, authority, personnel and working capital to complete the services required hereunder; that the Construction Manager has visited the site for the Project and thoroughly familiarized itself with the local conditions under which the services required hereunder are to be performed; and that the Construction Manager shall correlate its observations of the same with all of the requirements of this Contract and of the Construction Documents.

**§ 14.5.9** The Construction Manager shall be responsible, at its sole cost and expense, for managing or resolving all labor disputes and/or work stoppages so as to minimize to the extent feasible the impact of any such labor dispute and/or work stoppage on the Owner's operations, facilities or personnel, provided that such labor disputes and/or work stoppages could have been avoided through intervention by the Construction Manager. The Construction Manager's responsibilities shall include, but not be limited to, taking all legal action necessary to minimize or, if possible, eliminate the impact of any labor dispute and/or work stoppage.

**§ 14.5.10** The Owner reserves the right to pay any Subcontractor, supplier or vendor of any description, with approval of Construction Manager, by joint check to avoid construction lien related exposure. Upon receipt of any such joint check, Construction Manager agrees to execute such check and deliver same to the other payee listed on the check. Construction Manager shall credit such payments against any amounts owed to it by Owner.

**§ 14.5.11** The Construction Manager shall comply with all CMS-promulgated vaccine requirements for eligible staff at health care facilities that participate in the Medicare and Medicaid programs related to the COVID-19 pandemic.

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.5 Building Information Modeling ~~Exhibit, if completed~~ and Digital Data Exhibit (if completed)

See Exhibit C - Project Addendum

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See Exhibit C – Project Addendum

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See Exhibit C – Project Addendum

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See Exhibit C – Project Addendum

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LICENSE NO.: See Exhibit C – Project Addendum  
JURISDICTION: See Exhibit C – Project Addendum



## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, John Vazquez, JD, Chief Legal Officer, 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 12:07:16 ET on 03/16/2026 under Order No. 4104246895 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™ – 2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, other than those additions and deletions shown in the associated Additions and Deletions Report.

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*(Signed)*

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*(Title)*

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*(Dated)*