

 **AIA**[®] Document A134[™] – 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price

AGREEMENT made as of the ___ first ____ day _July_____ of in the year 2014

(Paragraph deleted)

BETWEEN the Owner:

College of DuPage
425 Fawell Boulevard,
Glen Ellyn, IL 60137

and the Construction Manager:

Herricane Graphics, Inc.
1275 W Roosevelt Road Ste 112
West Chicago, IL 60185

for the following Project:

Signage Projects:

Exterior Wayfinding

Dining and Entertainment

MAC Signage Package

SRC First Floor North Wall

Overhead Signs Campus Wide / Kiosks

Chaparral Hill

*Future signage projects started before June 30, 2016

The Architect:

Herricane Graphics, Inc.
1275 W Roosevelt Road Ste 112
West Chicago, IL 60185

The Owner's Designated Representative:

Julie Carey
College of DuPage

The Construction Manager's Designated Representative:

Carla Burkhart
Herricane Graphics

The Architect's Designated Representative:

Carla Burkhart
Herricane Graphics

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

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

§ 1.2.1 The Construction Manager has been engaged to provide professional construction management services, at risk, because of its character, expertise, experience, education, depth of experienced personnel, and qualifications in dealing with projects of similar scope, complexity, and magnitude. The Owner, College of DuPage, is a body politic and corporate, organized under the laws of the State of Illinois. The Owner is tax exempt. All purchases of materials, labor, services and costs related to the Project are exempt from Taxation. In the event the Project Labor and Materials are subject to tax, other than income tax or income-based tax, the owner shall reimburse the Construction Manager the amount of tax by Change Order.

§ 1.3 General Conditions

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

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reference. The term "Contractor" as used in the amended A201-2007 shall mean the Construction Manager. Any reference in this Agreement to the AIA Document A201™-2007, General Conditions of the Contract for Construction, shall mean the A201-2007 in the amended form.

(Paragraphs deleted)

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

§ 2.0.2 The Construction Manager shall designate an authorized representative who hereby has express authority to bind the Construction Manager with respect to all matters requiring the Construction Manager's approval or authorization. Construction Manager's representative shall have the authority to make representations and decisions on behalf of the Construction Manager concerning estimates and schedules, construction budgets, coordination of the Work, prosecution of the Work, changes in the Work, and all other matters related to this Agreement.

§ 2.1 Preconstruction Phase

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

§ 2.1.2 Consultation

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

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: the components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner. All project schedules (including updates) shall be formatted using Critical Path Method (CPM).

§ 2.1.3.1 The Construction Manager shall assist the Owner and Architect in preparing Construction Documents and advising the Owner on the acceptability of sub-tier subcontractors and material suppliers proposed by Subcontractors. The Construction Manager shall submit for review and approval to Owner, or its attorneys if designated by Owner, all instructions, terms, conditions, and information prepared for submission to bidders prior to release of the bid package.

§ 2.1.4 Phased Construction

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

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§ 2.1.5 Preliminary Cost Estimates

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

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Construction Manager submits a Control Estimate for the Work, pursuant to Section 2.2. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action. The Construction Manager shall reconcile any significant differences in any of its preliminary estimates of construction cost with the preliminary estimate of construction costs prepared by the Architect. Each of the reconciled estimates prepared by Construction Manager must be within 105% of the established budget before the owner may agree to proceed to the next phase of design. Construction Manager and Architect shall cooperate and coordinate their respective cost estimation responsibilities so the accuracy of the reconciliation is assured.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.6.1 Owner is a Community College bound by the procurement requirements of 110 ILCS 805/3-27.1, and is required to procure the Work through public bidding and award the contract(s) for the Work to the lowest responsive and responsible bidder. When the lowest responsive and responsible multiple prime trade bidders (hereinafter referred to as "Subcontractors") are identified, Owner shall assign those trade contracts (the "Subcontracts") to Construction Manager.

The Construction Manager shall cause the Subcontracts to incorporate substantially the following provisions:

"This Contract has been awarded by the Owner after advertisement for bids. Upon award of the Contract by the Owner, the Owner shall be deemed to have assigned its rights in this Agreement to the Owner's Construction Manager, Hurricane Graphics _____, which is identified herein as the Contractor.

By submitting its bid, the bidder shall be deemed to have consented to the aforesaid assignment, and to have agreed to become an assigned Subcontractor to the Contractor.

Upon assignment, the Subcontractor shall become a subcontractor of the Contractor pursuant to this Agreement, and, except as identified within this Agreement and as provided by law, will no longer have any contractual rights against the Owner, and shall have contractual privity only with the Contractor. The Construction Manager shall assume general supervision and control of Subcontractors from start to finish of the Project.

§ 2.1.6.2 Construction Manager shall prepare all bid invitations, instructions to bidders, and general and supplementary conditions. Construction Manager shall ensure that the amended A201-2007 general conditions are incorporated into the bid package in the form to be provided by the Owner, and that no other provisions of the bid package conflict with them. Drawings and specifications shall be provided by the Architect. During preparation of the Construction Documents by the Architect, the Construction Manager shall review said Construction Documents to ensure consistency with the bid documents prepared by the Construction Manager.

§ 2.1.6.3 Prior to advertisement for bids, unless the Owner agrees otherwise, Construction Manager shall provide all contractor or subcontract agreements to the Owner for review and comment.

§ 2.1.6.4 Construction Manager shall conduct pre-bid meetings with interested bidders in accordance with publicly announced and scheduled meetings.

§ 2.1.6.5 The Owner shall receive, open, and read aloud all bids as required by the applicable procurement laws. The Construction Manager shall record all bids, prepare bid analyses, and make recommendations to the Owner for the Owner's award of contracts and/or rejection of bids.

§ 2.1.6.6 The Subcontract documents prepared by Construction Manager shall require full compliance with all state and local laws.

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

§ 2.1.8 Extent of Responsibility

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

§ 2.1.9 Notices and Compliance with Laws

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

§ 2.1.10 Permits

The Construction Manager shall assist the Owner in obtaining building permits and special permits necessary to carry out and complete the Work. The Construction Manager shall verify that the Owner has paid all applicable fees. The Construction Manager shall assist the Owner and Architect in connection with the Owner's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the Project.

§ 2.2 Control Estimate

§ 2.2.1 Upon 100% completion of the Construction Documents by the Architect, and before advertisement for bids, the Construction Manager shall prepare a Control Estimate for the Owner's review and acceptance. The Control Estimate shall be the sum of the Construction Manager's estimate of the Cost of the Work and the Construction Manager's Fee and shall include those items set forth in Section 2.2.4 below. When the Control Estimate is acceptable to the Owner, the Owner shall, upon request by the Construction Manager, acknowledge it in writing.

§ 2.2.2 The Construction Manager shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Construction Manager's first Application for Payment and shall be revised and submitted with each Application for Payment.

§ 2.2.3 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Control Estimate for 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 in a revised Control Estimate by mutual agreement of the parties.

§ 2.2.4 The Control Estimate shall include

- .1 a list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;

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- .2 a list of the clarifications and assumptions made by the Construction Manager in the preparation of the Control Estimate, including assumptions under Section 2.2.3, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, and the Construction Manager's Fee;
- .4 the anticipated date of Substantial Completion upon which the Control Estimate is based, and a schedule for the issuance dates of the Construction Documents upon which the anticipated Substantial Completion date relies; and
- .5 a statement as to whether or not the duration from the stated date of commencement of the Construction Phase to the estimated date of Substantial Completion shall become the Contract Time and be subject to the provisions of Article 8 of A201-2007.

§ 2.2.5 The Owner shall authorize the Architect to incorporate the agreed-upon assumptions and clarifications contained in the Control Estimate. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Control Estimate and the revised Drawings and Specifications.

§ 2.2.6 The Control Estimate shall be deemed to materially vary from the aggregate total of the lowest responsive and responsible bids for the Work if the Control Estimate is at least 5% greater or 5% less than the total aggregate of those bids. In the event of such material variance, the Construction Manager shall:

- a) If the Owner chooses to accept the bids, compensate the Owner for additional design costs to modify the scope of Work to cause the Control Estimate to immaterially vary from the aggregate bids; and
- b) Negotiate respective change orders with the respective Subcontractors to incorporate the aforesaid design changes, at no additional charge to the Owner; or
- c) If the Owner chooses to reject all bids and re-bid, compensate the Owner for additional design costs to modify the scope of work for re-bidding; and
- d) Administrate re-bid of the affected portions of Work at no additional cost to the Owner. The Construction Manager shall provide additional construction management services associated with re-bidding portions of the Project and assume responsibility for time delays associated therewith at no added cost to the owner relative to Construction Management services. Additional services include, but are not limited to value engineering, bid document preparation, publication, distribution, coordinating & conducting pre-bid and post-bid meetings, bid analysis, due diligence and recommendations to award.

§ 2.3 Construction Phase

§ 2.3.1 General

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

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's issuance of a Notice to Proceed.

§ 2.3.1.3 Prior to commencement of the Construction Phase, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work.

§ 2.3.2 Administration

§ 2.3.2.1 All trade Work shall be performed by Subcontractors which have been assigned by the Owner to the Construction Manager as provided in this Agreement. If the Construction Manager has a reasonable objection to **any Subcontractor identified as the lowest responsive bidder, it shall be the burden of the Construction Manager to present demonstrative evidence to the Owner that the bidder is not responsible, and to present such evidence in a timely manner such that Owner suffers no detriment in procuring another Subcontractor if necessary.** The Construction Manager shall not perform any Work with its own forces but may participate in competitive public bidding process to provide toilets, fencing and other general conditions materials and work.

(Paragraph deleted)

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee.

§ 2.3.2.4 If the Construction Manager identifies or recommends a specific bidder that is a "related party" under Section 6.10, the Construction Manager shall promptly notify the Owner as provided in Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall prepare and regularly update no less than once per month a Construction Schedule utilizing a Critical Path Method (CPM), or another Owner pre-approved scheduling method, which incorporates the activities of the Subcontractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of shop drawings, Product Data and Samples and delivery of products requiring long lead time and procurement. Additionally, the schedule shall be in accordance with applicable Sections of A201™–2007, as amended, including the Owner's occupancy requirements.

§ 2.3.2.6 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.10.

§ 2.3.2.7 In collaboration with the Architect, the Construction Manager shall establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals. The Construction Manager shall review all Shop Drawings, Product Data, Samples and other submittals from the Subcontractors for apparent compliance with Subcontract requirements. The Construction Manager shall transmit to the Architect those submittals which have been reviewed by the Construction Manager. The Construction Manager's actions shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner or Subcontractors. The Construction Manager shall receive and process all other submittals required by the Construction Documents, including certified payrolls, work plans, safety plans, periodic schedule updates, and the like.

§ 2.3.2.8 The Construction Manager shall create and maintain a log of all submittals showing, at a minimum, the dates of submittal, review, and return, disposition, and description.

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

The Construction Manager shall cooperate with the Commissioning Agent employed by the Owner throughout the construction of the Project.

§ 2.3.2.10 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 and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the Work, accidents, injuries, and other information required by the Owner.

§ 2.4 Professional Services

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

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases. **Construction Manager shall provide immediate written notice to the Owner and Architect if the Construction Manager discovers the existence of any and all hazardous material, including, but not limited to any lead or lead based material and asbestos, asbestos-related products including the extent and location of same. Construction Manager shall not be responsible for the removal, encapsulation, transportation or disposal of any hazardous material.**

§ 2.6 Staffing

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Construction Manager shall adequately staff the Project. At all times during the Construction Phase, Construction Manager shall maintain one competent, full-time superintendent at the Project site to supervise the Work and coordinate the progress of the Subcontractors, as well as other full time competent staff as required to properly staff the Project. If any such individual is no longer employed on the Project pursuant to this paragraph, Construction Manager shall propose to Owner the names of other individuals as substitutes. No person shall be employed on the Project if Owner has a reasonable objection. If Owner notifies Construction Manager that it has reasonable objection to any such individual, Construction Manager shall remove such person from the Project and propose substitutes to Owner for Owner's approval.

§ 2.7 Subcontractors' Insurance and Bonds

Construction Manager shall procure Certificates of Insurance from each of the Subcontractors immediately upon award of each Subcontract and verify conformance of same with the Contract Documents prior to allowing the Subcontractors onto the Site. Insurance of Subcontractors shall name Owner, Construction Manager, and Architect as "Additional Insureds". Copies of same shall be transmitted by the Construction Manager to the Owner and Architect before Subcontractors may commence Work on the Project. As provided in Section 2.19, the Construction Manager shall procure Performance and Payment Bonds covering all Work on the Project.

§ 2.8 Schedule

§2.8.1 Time is of the essence of this Agreement. Construction Manager shall, with the Owner's approval, establish the Construction Schedule. Construction Manager shall schedule, sequence and coordinate the performance of the Subcontractors on the Project so that completion shall be in accordance with the Construction Schedule.

§2.8.2 The Construction Schedule shall commence with the notice to proceed, and shall schedule the Subcontractors' Work using a Critical Path Method or other scheduling methodology approved by Owner. Construction Manager shall update the Project Construction Schedule on a monthly basis to show current and forecasted progress and completion. A copy of each schedule and schedule update shall be transmitted to the Owner, Architect and each Subcontractor. Additionally, Construction Manager shall develop a look-ahead schedule for discussion at each weekly construction coordination meeting. The weekly look-ahead shall, at a minimum, show the schedule for the past week and upcoming two weeks.

§2.8.3 If a monthly Project Schedule update indicates that the previously-approved Project construction schedule may not be met, the Construction Manager shall recommend corrective action to the Owner.

§ 2.9 Cost Records Construction Manager shall verify and maintain in accordance with generally accepted accounting principles detailed cost accounting records for Work performed on the basis of unit costs, and on the basis of actual costs for labor and materials and other bases showing all costs, and shall maintain and transmit to Owner all receipts, invoices, purchase orders, canceled checks, bills of lading and other documents and evidence of payment or indebtedness to support such records as Owner may request. Construction Manager shall audit, verify and recommend approval or rejection or modification of all Change Orders submitted by Subcontractors. Construction Manager shall afford the Owner access to these records and preserve them for a period of three (3) years after final payment. The Owners reserves the right to audit all Construction Manager record, payments and documentation at any time, even after any payment is made, and deduct such errors from any payment due the Construction Manager and if no such payments are due, invoice the Construction Manager for such incorrect amounts which Construction Manager shall pay within 30 days after receiving such invoice.

§2.10 Requests for Information

§2.10.1 The Construction Manager shall transmit to the Architect requests for interpretations, information, or clarification of the meaning and intent of the Drawings and Specifications, and shall timely assist in the resolution of such requests.

§ 2.10.2 The Construction Manager shall create and maintain a log of all requests for information from all Subcontractors, showing, at a minimum, a description of the request, date of submission, a description of the response, and date of response.

§ 2.11 Subcontractor Change Orders

§2.11.1 Without invalidating this Agreement or any Subcontract, and without notice to any respective surety, Owner may make changes to the Subcontractor contracts. The Construction Manager shall review requests for changes, assist in negotiating Subcontractors' proposals, submit recommendations to the Architect and Owner, and, if they are accepted, prepare Change Orders and Construction Change Directives which incorporate the modifications to the Construction Documents. **For each change anticipated to be paid by lump sum, Construction Manager shall prepare a detailed estimate for the respective Change Order or Construction Change Directive. Construction Manager shall compare the detailed value estimate with the submittal of the Subcontractor. Construction Manager shall require that each Subcontractor submit such invoices, purchase orders, labor and material records, and schedule analyses as is necessary to verify the accuracy of the Change Order or Construction Change Directive price and/or schedule adjustment. Construction Manager shall submit a detailed recommendation for the Owner's review and approval for each Change Order or Construction Change Directive. Construction Manager shall systematically maintain all documentation supporting each change and upon completion of the Project turn over such documentation to the Owner.**

§2.11.2 The Construction Manager shall create and maintain a log of all requests for changes showing, at a minimum, date of submission, description of request, requested change in contract price, requested change in contract time, and disposition of request.

§ 2.11.3 The Construction Manager shall create and maintain a log of all approved change orders showing, at a minimum, dates of approval, description, reason for change, agreed price of change, and agreed change of contract time, if any.

§ 2.12 Claims

§ 2.12.1 The Construction Manager shall assist the Owner and Architect in the review, evaluation and documentation of Claims. The Construction Manager shall provide a written recommendation to the Owner suggesting the proper disposition of each Claim. **Construction Manager shall require that each Subcontractor submit such invoices, purchase orders, labor and material records, and schedule analyses as is necessary to verify the accuracy of the Claim's cost and schedule impact. Construction Manager shall submit a detailed recommendation that reasonably facilitates the Owner's review and consideration of each Claim.**

§ 2.12.2 The Construction Manager shall create and maintain a log of all Claims showing, at a minimum, date of submission, description of claim, demanded change in contract price, demanded change in contract time, and disposition.

§ 2.13 Equitable Extension of Time and No Damages for Delay. To the extent that Construction Manager's services under this Agreement are delayed by the Owner or causes not under control of Construction Manager, the Contract Time shall be equitably extended. For all delays, such extension of the Contract Time shall be Construction Manager's sole and exclusive remedy.

§ 2.14 Site Safety

§ 2.14.1 At appropriate intervals, Construction Manager shall hold regular safety meetings with all Subcontractors then engaged in onsite Work. Construction Manager shall maintain all required safety records and logs. The Construction Manager shall review, evaluate, and make recommendations to the Subcontractors regarding the Safety Programs developed by each of the Subcontractors. Neither the Owner, Construction Manager, nor the Architect are responsible for site safety. Construction Manager shall cause each individual Subcontracts to provide that the Subcontractors are solely responsible for the means and methods of prosecuting their respective Work. The foregoing shall not relieve Subcontractors of their responsibility for site safety for their Work and the Work performed by their personnel.

§ 2.15 Quality Control

§ 2.15.1 Construction Manager shall review the Work of Subcontractors for compliance with the requirements of the Contract Documents. As appropriate, the Construction Manager shall have authority, upon written authorization from the Owner, to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. The

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Construction Manager, in consultation with the Architect and Owner, shall have the right and obligation to reject Work which does not conform to the requirements of the Contract Documents.

§ 2.15.2 The Construction Manager shall obtain from the responsible Subcontractor(s) correction of all portions of the Work which do not comply with the Contract Documents or do not meet good workmanlike standards.

§ 2.16 As-Built Documents. Construction Manager shall obtain data from Subcontractors and maintain a current set of accurate As Built Drawings and Specifications clearly marked to show reported actual changes during construction. Construction Manager shall transmit a copy of all As Built Drawings and Specifications to Architect for the preparation of final As Built Documents. Construction Manager shall periodically (not less than monthly) review Subcontractors' data to verify that they are recording information sufficient to allow preparation of the As Built Documents.

§ 2.17 Submission of Record Documents. Prior to final payment at the completion of the Project, the Construction Manager shall inventory and turn over to the Owner one copy of the following: Record/As Built Drawings and Specifications prepared by the Architect, the daily log, progress reports, project manual, field orders, change orders, requests for changes, requests for information, claims, Subcontractor pay applications, communications, submittals, and all other Construction Documents.

§ 2.18 Operations and Maintenance Training Manuals. Construction Manager shall arrange and schedule operating and maintenance training on mechanical, electrical and other systems for Owner's personnel by factory authorized representatives commencing upon start-up and the commissioning of each system prior to substantial completion. Construction Manager shall receive all operating and maintenance manuals from Subcontractors, and, along with the Architect, shall review for completeness, clarity, and conformance with the respective Contract Documents. After all operations and maintenance manuals are received and approved, but no later than turnover of operations to Owner's personnel, Construction Manager shall transmit all approved operations and maintenance manuals to the Owner.

§ 2.19 Performance and Payment Bonds. Construction Manager shall furnish to the Owner a payment bond and performance bond from each subcontractor in accordance with Article 11 of the A201 General Conditions, as amended. . The payment bond and the performance bond shall each be 100% of the cost of the work for each subcontractor , such that the bonds cover all Work by all Subcontractors.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 When requested by the Construction Manager, the Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project.

(Paragraph deleted)

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

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

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

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

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

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

§ 3.2 Owner's Designated Representative

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

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

§ 3.3 Architect

The Owner shall retain an Architect to provide services as necessary to design and complete the Project. The Owner shall provide the Construction Manager with a copy of the agreement between the Owner and the Architect.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1

Preconstruction Phase services which include Personnel Expenses, and General Conditions, which is in Construction Manager's Construction Management Services Proposal shall be a total Lump Sum Compensation as follows:

See chart in § 5.1.1 The Construction Manager's Fee:

Preconstruction Services include the following:

- Preconstruction Programming, Cost Reconciliation and Project Design Meetings not to exceed fifteen (15) meetings.
- One Schematic Design Development Cost Estimate and Reconciliation.
- All detailed cost estimated to be reconciled with Architect's detailed cost estimate.

(Paragraphs deleted)

§ 4.2 Payments

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

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice and shall be paid at a timing consistent with Owner's payment procedures and schedules.. Amounts unpaid sixty (60) 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% per annum in accordance with 815 ILCS 201/2

ARTICLE 5 COMPENSATION AND PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 5.1

§ 5.1.1 The Construction Manager's Fee:

All signage projects will be lump sum – Future projects to be submitted as lump sum values in the same breakdown.

PROJECT	ESTIMATED COST OF CONSTRUCTION (Subcontractor Value)	PRECONSTRUCTION FEE (Lump Sum)	CONSTRUCTION FEE (Lump Sum)	INSURANCE	FEE SUBTOTAL	ESTIMATED PROJECT TOTAL
Exterior Wayfinding	\$60,000.00	\$8,750.00	\$8,250.00	\$2,310.00	\$19,310.00	\$79,310.00
Dining and Entertainment Signage	\$50,000.00	\$5,425.00	\$6,651.00	\$1,862.28	\$13,938.28	\$63,938.28
MAC Interior Signage	\$50,000.00	\$2,355.00	\$6,282.26	\$1,759.12	\$10,396.38	\$60,396.38
SRC First Floor North Wall	\$25,000.00	\$4,750.00	\$3,570.00	\$999.60	\$9,319.60	\$34,319.60
Overhead Signs Campus Wide / Kiosks	\$60,000.00	\$8,125.00	\$8,175.00	\$2,289.00	\$18,589.00	\$78,589.00
Chaparral Hill	\$60,000.00	\$8,455.00	\$8,214.00	\$2,300.00	\$18,969.00	\$78,969.00
Total	\$305,000.00	\$37,860.00	\$41,142.26	\$11,520.00	\$90,522.26	\$395,522.26

NOT TO EXCEED REIMBURSABLES	VALUE
Printing	\$1,500.00
Mileage / Travel	\$2,500.00
Shipping	\$1,500.00
Total	\$5,500.00

Total Compensation: \$96,022.26

(Table deleted)

(Paragraphs deleted)

§ 5.2 Changes in the Work

§ 5.2.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction as amended. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work. Construction Manager shall be compensated for any Owner approved Changes in Work (Change Orders) as follows: 8% of the cost of work which will include construction fee, general conditions, and insurance.

(Paragraph deleted)

§ 5.2.3 If the Construction Manager receives any Drawings, Specifications, interpretations or instructions from the Owner or Architect which are inconsistent with the Contract Documents, or encounters unanticipated conditions, any of which will result in a significant change in the Cost of the Work or estimated date of Substantial Completion , the

Construction Manager shall promptly notify the Owner and Architect in writing and shall not proceed with the affected Work until the Construction Manager receives further written instructions from the Owner and Architect.

(Paragraph deleted)

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean the cost of all Subcontracts including any Owner approved Change Orders entered into by Construction Manager pursuant to public bid to perform all work and all management functions as required for completion of the Project as set forth in this Agreement and in the approved Plans and Specifications. The Cost of the Work excludes the Construction Manager's Preconstruction fees which are fixed.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost.

(Paragraph deleted)

§ 6.2.1 Construction Manager has included within its Lump Sum Fee all expenses for all its labor (subject to § 11.5 below), supervisory and administrative personnel costs including benefits including but not limited to taxes, insurance, contributions customarily given or required by law.

(Paragraphs deleted)

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors and suppliers shall be in accordance with the requirements of the General Condition of Construction, AIA Document A201-2007 as amended, which is attached hereto and incorporated by reference herein as **Exhibit A**.

(Paragraphs deleted)

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

§ 6.5.1 With the Owner's prior written approval, that portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work in excess of 100 miles from the Project Site

(Paragraphs deleted)

§ 6.6 Miscellaneous Costs

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

(Paragraph deleted)

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

§ 6.6.4 With prior written approval of Owner based on the recommendation of either the Construction Manager, or Architect, fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

(Paragraphs deleted)

§ 6.8 Costs Not to Be Reimbursed

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

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- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 through 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 through 6.7; and
- .7 Costs for services incurred during the Preconstruction Phase.

§ 6.9 Discounts, Rebates and Refunds

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

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

§ 6.9.3 Subject to the Architect's initial written review and approval if issued, Costs incurred on the Project caused by the Construction Manager's failure to fulfill its obligations under this Agreement or its negligence shall be at the Construction Manager's sole and exclusive expense.

§ 6.10 Related Party Transactions

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

§ 6.10.2 If any of the costs to be reimbursed or Costs of the Work 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, the transaction may proceed. Otherwise, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party.

§ 6.11 Accounting Records

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

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ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 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 by checks payable directly to the Construction Manager for the Work completed, and for the Preconstruction Fee, Construction Fee, Insurance Fee, Staffing Expenses, and Reimbursable Expenses, as provided below and elsewhere in the Contract Documents. The Owner's payments to the Construction Manager for the Cost of the Work shall be promptly paid by the Construction Manager to the Subcontractors for Work properly performed as included and certified in each respective Application for Payment. Construction Manager shall provide Owner with lien waivers from Trade Contractors as provided in the Contract Documents.

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

§ 7.1.3 Upon receipt of a properly submitted Certificate for Payment, payment shall be made as provided in the Local Government Prompt Payment Act.

(Paragraph deleted)

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate each item of Work comprising the entire Cost of the Work and clearly setting forth the amount due under the Application for Payment to each Subcontractor, and the amount due to the Construction Manager for Construction Manager's Preconstruction Fee, Construction Fee, Insurance Fee, Staffing Expenses, and Reimbursable Expenses, all of which shall be shown as single and separate items. The Application for Payment and/or schedule of values shall be prepared in such form and supported by such data and documentation to substantiate its accuracy as the Architect or Owner may require. This schedule of values, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment. 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 percentage of that portion of the Work which has actually been completed.

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

- .1 Take the Cost of the Work completed during the period covering the Application for Payment, as adjusted by Change Orders applicable to that period, if any, less retention of ten percent (10%) clearly setting forth the amount due to each Subcontractor for the applicable progress payment;
- .2 Add the Construction Manager's Preconstruction Fee and Construction Fee for the period covering the Application for Payment, less retainage of ten percent (10%). The Construction Manager's Fee shall be computed as provided in Article 4 and 5;
- .3

(Paragraphs deleted)

Add the Insurance Fee, General Conditions and Reimbursable Expenses incurred during the period covering the Application for Payment;

- .6 Subtract amounts, if any, for which the Architect or Owner has withheld a payment error or withdrawn a Certificate for Payment as provided in the Contract Documents.

§ 7.1.7 The Owner and Construction Manager shall agree upon a mutually acceptable procedure for review and confirmation of Construction Manager's payments to Subcontractors. Construction Manager shall ensure that each Subcontract provides that retention of ten percent (10%) shall be withheld from each Subcontractor Application for Payment and paid as a part of Final Payment.

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

§ 7.1.9 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the

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Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner directly to the Construction Manager for the Cost of the Work, and for its Preconstruction Fee, Construction Fee, Insurance Fee, and General Conditions when

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

The Owner's final payment to the Construction Manager shall be made in accordance with the Local Government Prompt Payment Act, 50 ILCS 505/1, *et seq.*

(Paragraphs deleted)

ARTICLE 8 INSURANCE AND BONDS

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

Responsible Party	Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
Construction Manager	Commercial General Liability	\$2,000,000 Each Occurrence
		\$2,000,000 General Aggregate
		\$1,000,000 Personal and Advertising Injury
		\$2,000,000 Products-Completed Operations Aggregate
	Automobile Liability	\$1,000,000 Each Accident

- .1 The policy shall be endorsed to have the General Aggregate apply to this Project only.
- .2 Productions and Completed Operations insurance shall be maintained for a minimum period of at least four (4) year(s) after either 90 days following Substantial Completion or final payments, whichever is earlier.
- .3 The Contractual Liability insurance shall include coverage sufficient to meet the obligations in Section 3.18 of AIA Document A201-2007, as amended.

Responsible Party	Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
Owner	Property Insurance	\$2,500 Deductible Per Occurrence – Aggregate Deductible
	Boiler and Machinery	Sufficient to protect it from claims which may arise from operations under this Agreement

§ 8.2 Umbrella or excess of loss coverage for Employer's Liability, Comprehensive Liability and Auto Liability of not less than Four Million (\$ 4,000,000.00) for one occurrence and subject to the same aggregate limits specified in paragraphs 8.1.2 and 8.1.3.

§ 8.3 Construction Manager shall purchase and maintain at its own expense the insurance coverages noted above on an occurrence basis insuring the Construction Manager, its employees and agents, the Owner and the Indemnities as required herein. Insurance shall be placed with insurance companies rates at least "A"; and an financial rating not lower than "Class V" or better by Best's Key Rating Guide and shall incorporate a provision requiring the giving of written notice to Owner at least thirty (30) days prior written notice of the cancellation or non-renewal of any such policies.

§ 8.4 Construction Manager shall add Owner, its Board Members, officers, agents, employees and their successors and assigns as well as Architect, its officers, agents, employees and their successors and assigns as additional insurances to the policies enumerated herein. Construction Manager is not responsible for carrying professional liability insurance for either itself or for the Architect. The insurance coverage afforded under these policies shall be primary and non-contributing to any insurance carried independently by Owner. Said amendatory rider or endorsement shall indicate that as respect to Owner, there shall be severability of interest under said insurance policy. Construction Manager shall name the Owner as additional insured as referenced in said Liability Policies and an ISO Additional Insured Endorsement CG 20 10 or approved equivalent shall be issued and a copy shall be transmitted to Owner with the Certificate of Insurance.

§ 8.5 Construction Manager shall maintain the insurance described herein during the term hereof. If the Construction Manger fails to furnish and maintain the insurance required herein, the Owner may after written notice to Construction Manager, purchase such insurance on behalf of the Construction Manager and the Construction Manager shall pay the cost thereof to Owner upon demand. Construction Manager shall furnish to Owner any and all information needed to obtain such insurance.

§ 8.6 Construction Manager shall submit certificates of insurance and policies for inspection and copying in form and substance satisfactory to Owner, evidencing the effectiveness of the foregoing insurance coverage along with original copies of the amendatory riders to any such policies to Owner for Owner's approval before Construction Manager commences the rendition of any services hereunder.

§ 8.7 The insurance obligation of the Construction Manager under this Article shall not extend to the liability of the Architect, its agents or employees arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving or failure to give directions or instructions by the Architect, its agents or employees, provided that such giving or failure to give is the cause of the injury or damage.

§ 8.8 If Construction Manager is self insured for any or all of the above coverage, Construction Manger shall disclose same to the Owner and shall establish to the Owner's satisfaction sufficient security to demonstrate financial responsibility should a self-insured loss occur. Construction Manager shall disclose deductibles for all insurance coverages and the triggering thresholds for all stop-loss policies.

§ 8.9 To the extent Construction Manger is responsible for a property loss due to its error or omission, it shall be responsible for payment of the deductible in an amount of \$2,500 for each occurrence not to exceed in the aggregate \$10,000. To the extent an assigned trade contractor is responsible for a property loss, it shall be responsible for payment of the deductible in an amount not to exceed \$15,000. In no event shall Owner be responsible for the deductible caused by an act or omission of Construction Manager or Subcontractors. Owner shall name Construction Manager an "**Additional Insured**" on the policy of insurance.

§ 8.10 **Performance Bond and Payment Bond.** The Construction Manager if directed by the Owner in writing to furnish a Performance Bond and a Payment Bond to the extent commercially available equal to one hundred percent (100%) of the Construction Manager's Construction Phase Fee plus its General Conditions Expenses, the cost of which shall be reimbursed by Owner in addition to the reimbursable budget as per ¶5.1. Each Subcontractor or trade contractor shall furnish a Performance Bond and a Payment Bond covering 100% faithful performance of their respective portion of the Project Cost thereof which shall be a reimbursable expense included in the Cost of the Work.

The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum. The Performance Bond and Payment Bond for the full Value of the Project shall be secured from sureties having a Best's Insurance Guide Key Rating (current edition) of not lower than A- and a financial rating not lower than Class V or better. The Bonds shall be issued in the form of AIA Document No. A 311, 1970 Edition or other Owner approved form. The Owner and Construction Manger shall be named as "**Dual Obligees**" on Performance Bonds and Payment bonds submitted by Subcontractors. Premiums paid by Construction Manager for a Performance Bond and Payment Bond shall be a reimbursable expense paid by Owner.

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ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Claims, disputes other matters in question between the parties to this Agreement which arise prior to the commencement of the Construction Phase or which relate solely to the Preconstruction Phase services of the Construction Manager, Architect or to the Owner's obligations to the Construction Manager during the Preconstruction Phase may at the Owner's exclusive option be resolved by mediation, arbitration or litigation. Within thirty (30) days of a request, Owner shall elect the dispute resolution process and disclose same to Construction Manager.

Any mediation conducted pursuant to this Article 9 shall be held in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect, unless the parties mutually agree otherwise. Demand for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. Any demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen.

Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration may be made concurrently with a demand for mediation and shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based upon such claim, dispute or other matter in question would be barred by the applicable statute of limitations. Arbitration shall be conducted in accordance with **this Article 9**.

9.4 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

(Paragraphs deleted)

§ 9.5 At the Owner's exclusive option, all claims, disputes and other matters in question between any of the Architect, Owner, Construction Manager, Subcontractor or any material supplier arising out of, or relating to, agreements to which two or more of said parties are bound, or the Contract Documents or the breach thereof, or in any way related to the project, shall be decided by litigation or arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, as modified herein, unless the parties mutually agree otherwise. In any such arbitration, the arbitrator(s) shall make separate findings as to liability and the amount of damages with respect to each party to the arbitration to the extent any liability or responsibility for damages exists. The Construction Manager, Architect, Subcontractors and Material Suppliers who have an interest in the dispute shall be joined as parties to the arbitration. The Owner's contracts with the Construction Manager, Architect, and the Subcontractor's subcontract with the subcontractors and material suppliers, shall require such joinder. The arbitrator(s) shall have authority to decide all issues between the parties including but not limited to claim as for extras, delay and liquidated damages, matter involving defects in the Work, right to payment, whether matters decided by the Architect involve aesthetic effect and whether the necessary procedures for arbitration have been followed. The foregoing agreement to arbitrate and any other agreement to arbitrate with an additional person or persons, duly consented to by the parties, shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction thereof.

§ 9.6 Notice of demand for arbitration shall be filed in writing with the other party to the arbitration and with the American Arbitration Association. The demand for arbitration shall be made within a reasonable time after the claim dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

§ 9.7 All parties shall carry on the Work and perform their duties during any arbitration proceedings, and the Owner shall continue to make payments as required by agreements and contract document. However, at the request of any party, contested payments may be placed in an escrow account pending resolution of the dispute.

§ 9.8 In addition to the other rules of the American Arbitration Association applicable to any arbitration hereunder, the following shall apply: (a) Promptly upon the filing of the arbitration each party shall be required to set forth in writing and to serve upon each other party a detailed statement of its contentions of fact and law. (b) All parties to the arbitration shall be entitled to reasonable discovery procedures and to the scope of discovery applicable to civil actions under Illinois law, including the provisions of the Code of Civil Procedure and Illinois Supreme Court rules applicable

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to discovery. Such discovery shall be noticed, sought and governed by those provision of Illinois law. (c) The arbitration shall be commenced and conducted as expeditiously as possible consistent with affording reasonable discovery as provided herein. Similarly, the scope of discovery and the extend of proceedings hereunder relating to discovery, shall be consistent with the parties intent that the arbitration be conducted as expeditiously as possible. (d) the arbitrator(s) shall apply the terms and conditions of this Agreement and apply the law of Illinois. (e) These additional rules shall be implemented and applied by the arbitrator(s).

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination For Convenience

§ 10.1.1 The Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201-2007, as amended.

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

§ 10.1.3 In the event of termination of this Agreement pursuant to Section 10.1.1, after the commencement of the Construction Phase, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work actually incurred by the Construction Manager to the date of termination;
- .2 Add a the Construction Manager Fee, Insurance Fee and General Conditions expenses payable for the current period up to the date of termination, as prorated up to the date of termination, plus the amount of the Construction Fee and Insurance Fee and Staffing Expenses previously paid under Article 4;
- .3 Add the Reimbursable Costs actually incurred by the Construction Manager up to the date of termination; and
- .4 Subtract the aggregate of previous payments made by the Owner for Construction Phase services, including all payments for the Cost of the Work, and for the Construction Fee, Insurance Fee, Staffing Expenses, and Reimbursable Expenses.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. Owner may in its sole discretion, elect to require Construction Manager to assign all Subcontracts back to Owner. 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 any of the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such Subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such Subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of Subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs properly 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.

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§ 10.2 Termination For Cause

§ 10.2.1 The Owner may terminate this Agreement for cause in accordance with Article 14 of the A201 General Conditions.

(Paragraphs deleted)

§ 10.3 Suspension

The Owner may suspend the Work for an aggregate period or periods of forty-five (45) days, as provided in A201™-2007, without any equitable adjustment to the Construction Manager's Fee. If such suspension exceeds thirty (30) days, the Construction Manager's Fee shall be equitably adjusted.

§ 10.4 Force Majeure

Neither party shall be liable for failing to perform obligations arising under this Agreement to the extent such failure is caused by fire, flood, earthquake, hurricane or another natural disaster, an act of God, war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity or telephone service.

ARTICLE 11 MISCELLANEOUS PROVISIONS

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

§ 11.2 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party against either the Owner or the Construction Manager. Owner and Construction Manager acknowledge and agree that the obligations of the Construction Manager are solely for the benefit of the Owner and not intended in any respect to benefit the Architect, Subcontractors, or any other third parties.

§ 11.3 In case of conflict between this Agreement and any other document incorporated or referenced herein, this Agreement shall prevail, followed in order of precedence by the A201 General Conditions as amended, then by the supplementary conditions, then by Owner's request for qualifications or proposal, then by the drawings and specifications, and then by the Construction Manager's proposal, if such proposal is a part of the Contract Documents.

(Paragraphs deleted)

§11.4 The Construction Manager shall endeavor to keep the Project free from mechanic's liens. If the Owner is required to withhold money pursuant to a notice of lien or lien against public funds, the Construction Manager shall indemnify, defend and hold harmless the Owner for all costs incurred in connection with such lien and any resulting litigation, including attorneys' fees. The Construction Manager shall ensure that a similar provision is incorporated into the Subcontracts.

§ 11.5 Construction Manager acknowledges that this is a public works project governed by the Illinois Prevailing Wage Act. Construction Manager shall pay its laborers, if any, and ensure that all Subcontractors pay their laborers not less than the established prevailing rate of wages. 820 ILCS 130/1 et seq. Construction Manager shall comply with all reporting requirements of the Illinois Prevailing Wage Act. Similarly, the Construction Manager shall assure that all Subcontractors and sub-tier subcontractors comply with the reporting requirements of the Illinois Prevailing Wage Act.

§ 11.6 Construction Manager represents that it has in place a Sexual Harassment Policy in accordance with the Illinois Human Rights Act and shall ensure that all Subcontractors have in place a Sexual Harassment Policy prior to commencement of Work on the Project. 775 ILCS 5/1-105.

§ 11.7 Construction Manager represents that it does not discriminate in its hiring practices based upon race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service. Construction Manager shall require that no Subcontractor discriminates as set forth in this Section.

§ 11.8 Construction Manager represents that it is in conformance with the Drug Free Workplace Act. 30 ILCS 580/1 et seq.

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§ 11.9 Construction Manager certifies that it is not barred from contracting as a result of bid rigging or bid rotation. 720 ILCS 5/33 E-11.

§ 11.10 Ownership and Use of Documents

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

§ 11.11 Governing Law

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

§ 11.12 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Except for the assignment of Subcontracts to the Construction Manager as provided herein, neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner’s rights and obligations under this Agreement.

§ 11.13 Other provisions:

ARTICLE 12 SCOPE OF THE AGREEMENT

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

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A134–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price, as amended;
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction, as amended and provided by the Owner.
- .3
- .4
- .5 Other documents: N/A

(Paragraphs deleted) Owners Design Standards, latest edition.

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

OWNER (Signature)

10/15/2014

CONSTRUCTION MANAGER (Signature)

College of DuPage

PPS
EMR

(Printed name and title)

By: _____
Board President

Attest: _____
Board Secretary

(Row deleted)

Init.