



Council Chambers  
401 S. Johnstone Avenue  
Bartlesville, OK 74003

**NOTICE OF SPECIAL MEETING  
OF THE  
BARTLESVILLE CITY COUNCIL**

**Monday, April 15, 2019  
7:00 p.m.**

**Mayor Dale Copeland  
918-338-4282**

**AGENDA**

1. **Call to order the business meeting of the Bartlesville City Council by Mayor Copeland.**
2. **Roll Call and Establishment of a Quorum.**
3. **The invocation will be provided by Pastor Jason Elmore, Friday Nite Church/President, Bartlesville Ministerial Association.**
4. **Citizens to be heard.**
5. **City Council Announcements and Proclamations**
6. **Authorities, Boards, Commissions and Committee Openings**
  - There are no openings at this time.
7. **Consent Docket**
  - a. **Approval of Minutes**
    - i. The Regular Meeting Minutes of April 1, 2019.
  - b. **Approval and/or Ratification of Appointments and Reappointments to Authorities, Boards, Commissions and Committees.**
    - i. Reappointment of Ms. Jana Blount to an additional three-year term on the White Rose Cemetery Board at the recommendation of Mayor Copeland.
8. **Discuss and take action on a Construction Management Contract with Jonesplan LLC for the Tower Center at Unity Square Project. Presented by Terry Lauritsen, Director of Water Utilities. (Tabled at the April 10, 2019 Special Meeting.)**
9. **City Manager and Staff Reports.**
10. **City Council Comments and Inquiries.**
11. **Adjournment.**

**The Notice of Meeting and Agenda was received and filed in the Office of the City Clerk and posted in prominent public view at City Hall at 5:00 p.m. on Thursday, April 11, 2019.**

*Jason Muninger*

*/s/ Elaine Banes*

**Jason Muninger, City Clerk/Finance Director**

**by Elaine Banes, Deputy City Clerk**

All discussion items are subject to possible action by the City Council. Agenda items requiring a public hearing as required by law will be so noted. The City Council may at their discretion change the order of the business agenda items. City of Bartlesville encourages participation from all its citizens. If participation at any public meeting is not possible due to a disability, notification to the City Clerk at least one working day prior to the scheduled meeting is encouraged to make the necessary accommodations. The City may waive this rule if signing is not the necessary accommodation.



City Hall, Council Chambers  
401 S. Johnstone Avenue  
Bartlesville, OK 74003

**MINUTES OF THE  
REGULAR MEETING OF THE  
BARTLESVILLE CITY COUNCIL**

**Monday, April 1, 2019  
7 p.m.**

**Dale W. Copeland, Mayor  
918-338-4282**

**MINUTES**

(Notice of Meeting was posted 12/15/18. Agenda posted March 28, 2019)

City Council Members present were Mayor Dale Copeland, Vice Mayor Alan Gentges, Jim Curd, Jr., Trevor Dorsey and Paul Stuart.

City staff present were Mike Bailey, City Manager, Jess Kane, City Attorney; Jason Muninger, City Clerk/Finance Director; Lisa Beeman, Director of Community Development and Park Planning; Terry Lauritsen, Director of Water Utilities; Micah Siemers, P.E., Director of Engineering; Shellie McGill, Library Director; Fire Chief John Banks; Kelli Williams, Chief Communications Officer; Nancy Warring, Grants Administrator; Sgt. Jim Warring; Police Chief Tracy Roles; Rick Silver, Special Assistant to the Chief of Police; Police Captain Rocky Bevard; and Elaine Banes, Executive Assistant.

- 1. Mayor Copeland called the business meeting of the Bartlesville City Council to order at 7:00 p.m.**
- 2. Roll call was conducted and a quorum established.**
- 3. The Invocation was provided by Pastor Greg Tener, First Church.**
- 4. Citizens to be heard.**
- 5. City Council Announcements and Proclamations.**
  - Councilman Stuart read the Donate Life Month – April 2019 proclamation.
  - Councilman Curd read the National Public Safety TeleCommunicators E911 Professionals Week - April 14-20, 2019 proclamation.
  - Vice Mayor Gentges read the Arbor Day – April 13, 2019 proclamation.
  - Councilman Dorsey read the National Day of Prayer – May 2, 2019 proclamation.

The Mayor presented the proclamations to representatives of each organization expressing appreciation for each event and organization. Mr. Bailey added his appreciation to the E911 Dispatchers who are often unrecognized, working behind the scenes, but vitally essential and important to the whole community.

- 6. Authorities, Boards, Commissions and Committee Openings**
  - One opening on the Board of Adjustment

Mayor Copeland read the openings and encouraged citizens to volunteer on City Committees. Applications can be found at [www.cityofbartlesville.org](http://www.cityofbartlesville.org) or at City Hall in the City Manager's Office.

## **7. Consent Docket**

### **a. Approval of Minutes**

- i. The Regular Meeting Minutes of March 18, 2019.

### **b. Approval and/or Ratification of Appointments and Reappointments to Authorities, Boards, Commissions and Committees**

- i. Appointment of Ms. Rhonda Hudson, Dr. Bruce McGowan and Mr. Dallas Lewis to three-year terms on the Bartlesville Public Library Board at the recommendation of Mayor Copeland.
- ii. Appointment of Ms. Kinder Shamhart to fill an unexpired term on the Board of Adjustment (BOA) at the recommendation of Mayor Copeland.
- iii. Reappointment of Ms. Brittany Hess and Mr. Tyler Hartzell to additional three-year terms on the Bartlesville Public Library Board at the recommendation of Mayor Copeland.
- iv. This reappointment was pulled from the agenda for further consideration. Reappointment of Ms. Andrea Nightingale to an additional three-year term on the City Planning Commission (CPC) at the recommendation of Vice Mayor Gentges.

### **c. Approval of Ordinance**

- i. An ordinance amending Chapter 3, Article I of the Bartlesville Municipal Code to establish requirements to keep and maintain chickens or laying hens in single-family residential area.

### **d. Approval of Resolutions**

- i. A resolution supporting the Wyland National Mayor's Challenge for Water Conservation.
- ii. A resolution proclaiming April as Fair Housing Month in the City of Bartlesville.
- iii. A resolution amending the budget of the City of Bartlesville, Oklahoma for Fiscal Year 2018-2019, appropriating private grant revenues from Phillips 66.
- iv. A resolution amending the budget of the City of Bartlesville, Oklahoma for Fiscal Year 2018-2019, appropriating insurance proceeds from OMAG.

### **e. Approval of Agreements and Contracts**

- i. Contract between the City of Bartlesville and Worley Consulting for design services on Ohio, Harvard and Hazel Asphalt Rehabilitation Project.
- ii. Contract between the City of Bartlesville/Bartlesville Public Library and Keleher Outdoor Advertising for billboards in May 2019.
- iii. Service Agreement between the City of Bartlesville and US Cellular for cellular phones and smart devices.
- iv. Lease Agreement between the City of Bartlesville and MailFinance for a folder inserter and bill printing software.
- v. Lease and Maintenance Agreement between the City of Bartlesville and R.K. Black and Cannon Financial for copiers and service.
- vi. Airport Hangar Lease Agreement between the City of Bartlesville, ConocoPhillips Company and Agwerx Aviation, Inc.

### **f. Receipt of Bids**

- i. Bid No. 2018-2019-030 for the 16<sup>th</sup>, Shawnee and Stonewall Concrete Paving Rehab Project.

- ii. Bid No. 2018-2019-031 for Thirty-five (35) new Nexedge VHP Portable Radios with antennas, intrinsically safe batteries, battery chargers and labor for installation.

Mayor Copeland read the consent docket in its entirety.

Vice Mayor Gentges moved to approve the consent docket, seconded by Mr. Stuart.

Aye: Mr. Stuart, Mr. Dorsey, Mr. Curd, Vice Mayor Gentges, Mayor Copeland  
Nay: None  
Motion: Passed

**8. Discuss and take action to award Bid No. 2018-2019-030 for the 16<sup>th</sup>, Shawnee and Stonewall Concrete Paving Rehab Project. Presented by Councilman Curd.**

Mr. Curd moved to award the bid to Contech, Inc., Broken Arrow, Oklahoma, in the amount of \$346,055.00, seconded by Mr. Stuart.

Aye: Mr. Dorsey, Mr. Curd, Vice Mayor Gentges, Mr. Stuart, Mayor Copeland  
Nay: None  
Motion: Passed

**9. Discuss and take action to award Bid No. 2018-2019-031 for Thirty-five (35) new Nexedge VHP Portable Radios with antennas, intrinsically safe batteries, battery chargers and labor for installation. Presented by Councilman Curd.**

Mr. Curd moved to award the bid to Radio Communications Specialists, Springfield, Missouri, in the amount of \$27,162.62 (purchased will be from grant funds provided by Phillips 66), seconded by Mr. Dorsey.

Aye: Mr. Curd, Vice Mayor Gentges, Mr. Stuart, Mr. Dorsey, Mayor Copeland  
Nay: None  
Motion: Passed

**10. A public hearing to consider and take action on an application from Dan Keleher of Keleher Architects, on behalf of Grand Lake Mental Health Center, Inc., for approval of a rezoning from RS-5 (Residential Single-Family) to C-5 (General Commercial), a Site Development Plan, and Planned Unit Development (PUD) on property located at the intersection of Adams Boulevard and Penn Avenue, legally described as Lots 3,4,5,6,7,8,9,10,11,12,13 and 14, Block 7, Lincoln Second Addition, Bartlesville, Washington County Oklahoma. (Case No. PC-19-05-RZ/PUD/SDP). Presented by Lisa Beeman, Director of Community Development.**

Ms. Beeman reported that the request proposes approval of a rezoning, supplemental designation planned unit development and site development plan for a 2.01-acre tract to permit the construction of a 13,240 ft. addition to the existing Grand Lake Mental Health Center. This includes the rezoning of the south 100 feet of the site from its current zoning of Single-Family Residential to General Commercial. Ms. Beeman provided the land use and zoning history of the area; soil regulations in the National Zinc Overlay District; current ownership; the applicant's request to modify the setbacks required along Penn to accommodate the new construction; landscaping, screening, sidewalks; parking, signage,

lighting, public participation and the comprehensive plan supporting the neighborhood unit concept of development. When reporting on site drainage and utilities, Ms. Beeman stated that all utilities are accessible to the site and will be extended, if needed, at the cost of the developer. The site currently drains from south to north towards Adams Boulevard. On-site stormwater detention is required and plans must be approved by the City Engineer before the permit is issued. The homeowner to the west has experienced run-off problems onto his property and was concerned about additional run-off. One of the recommended conditions addresses this concern.

Ms. Beeman continued reporting that the City Planning Commission voted on March 26, 2019 5-0 to recommend approval of the request with the following conditions: 1) The site must meet the minimum requirements of the Landscaping and Residential Protection Standards of the Zoning Regulations; 2) all existing mature trees along the south and west property lines shall be preserved; 3) A 15-foot exception to the setback requirements shall be granted in order to permit the proposed addition to be located 10-feet from the west property line; 4) sidewalks must be provided on Penn, 8<sup>th</sup> Street, and Adams Blvd. at the time of construction of the proposed addition; and 5) prior to issuance of a building permit for the proposed addition, a topographic plan detailing stormwater runoff shall be approved by the City Engineer for the deposition and final grading of excess soil on lots owned by Grand Lake Mental Health located on the west side of Penn Avenue. Said plan shall ensure that storm water runoff from these lots be directed to Penn Avenue and not to adjacent property owners. Where practical, said plan shall aim to alleviate existing stormwater runoff from these lots to the north.

A brief discussion was held covering clarification of sidewalk requirements; the current parking lot that built in the last two years; clarification on NZOD soil requirements; and the drainage condition regarding the landowner to the west.

Mayor Copeland opened the public hearing at 7:36 p.m. There being no one appear to speak, the Mayor closed the public hearing at 7:36 p.m.

Vice Mayor Gentges moved to adopt the ordinance to rezone the property as presented, seconded by Mr. Stuart.

Mr. Curd inquired, and Ms. Beeman clarified and assured the Council that the drainage issue would be accomplished according to the plan set out as one of the conditions of the ordinance to rezone and will move the runoff away from the homeowner's property.

Aye: Vice Mayor Gentges, Mr. Stuart, Mr. Dorsey, Mr. Curd, Mayor Copeland  
Nay: None  
Motion: Passed

**11. Discuss and take action to accept a donation for \$20,000 from Leadership Bartlesville Class XXVII and the Bartlesville Young Professionals to be used for the purchase and installation of outdoor musical instruments at Tower Center at Unity Square. Presented by Lisa Beeman, Director of Community Development.**

Ms. Beeman reported that members of Leadership Bartlesville Class XXVII and Bartlesville Young Professionals have raised \$20,000 that they would like to donate to the City to be used specifically for the purchase and installation of outdoor musical instruments to be located at Tower Center at Unity Square. Emily Allen-Worrell, 2017-18 Hot Street Party Event Chair and Young Professional President-elect reported on the events that raised the funds for donation.

Vice Mayor Gentges added that had enjoyed being a part of the fund-raising. Mayor Copeland stated his appreciation to both groups commenting on what an amazing community we live in.

Mr. Dorsey moved to accept the donation of \$20,000.00 as presented, seconded by Mr. Curd.

Aye: Mr. Stuart, Mr. Dorsey, Mr. Curd, Vice Mayor Gentges, Mayor Copeland  
Nay: None  
Motion: Passed

**12. Discuss and take action on a Lease and Operating Agreement between the City of Bartlesville and the Bartlesville Community Center Trust Authority for the management, maintenance, and operation of the Tower Center at Unity Square. Presented by Jess Kane, City Attorney.**

Mr. Kane reported that using the Memorandum of Understanding previously approved by the City Council, and adding pertinent agreed-upon information, the lease and operating agreement was prepared.

Vice Mayor Gentges stated his appreciation to Mr. Kane for preparing it for City Council review and approval. He added that the Agreement is an annual agreement and clearly sets out each entities responsibilities. Mr. Curd concurred, and also appreciated Val Callaghan, Managing Director of the Bartlesville Community Center, for her assistance as well.

Vice Mayor Gentges moved to approve the Agreement as presented, seconded by Mr. Curd.

Aye: Mr. Dorsey, Mr. Curd, Vice Mayor Gentges, Mr. Stuart, Mayor Copeland  
Nay: None  
Motion: Passed

**13. Discuss and take action on resolution supporting the creation of a cultural district for the City of Bartlesville. Presented by Val Callaghan, Managing Director of the Bartlesville Community Center.**

Ms. Callaghan reported on several of the important reasons for creating a cultural district such as, 1) it will increase public awareness and access to visual performance and literary arts; 2) it will enhance art and cultural programming; 3) it shows support of the local art and culture community; and 4) it will foster a community spirit that encourages creativity and engages citizens in the arts as a community. The proposed cultural district would incorporate the Bartlesville Community Center, Bartlesville Library, the Price Tower Art Center and the new Tower Center at Unity Square. She stated her appreciation for Nancy Warring who organized all of the paperwork for this to happen years ago. The timing was not right at that time, but now it is. Three additional reasons for approving the creation of the district are, 1) that the citizens of Bartlesville asked for it via the Angelou Study; 2) Bartlesville will gain statewide recognition as a cultural arts district setting us a part in the State; and 3) funding. The Oklahoma Arts Council offers a grant for \$25,000 that can be matched by in-kind donation.

Mr. Curd and Vice Mayor Gentges agreed that the creation of a cultural district it is long overdue, a great idea and makes Bartlesville comparable to other large Oklahoma cities. Mr. Stuart and Mayor Copeland agreed. Mayor Copeland added that he had visited with Ms. Callaghan earlier in the day about structure, reporting, finances, etc. and feels satisfied this is a positive move for Bartlesville.

Mr. Curd moved to approve the resolution creating a cultural district as presented, seconded by Mr. Dorsey.

Aye: Mr. Curd, Vice Mayor Gentges, Mr. Stuart, Mr. Dorsey, Mayor Copeland  
Nay: None  
Motion: Passed

#### **14. New Business**

There was no new business to report.

#### **15. City Manager and Staff Reports.**

Mr. Bailey provided information on Operation Cleanhouse (4/13), Yard and Leaf Residential Collection (May 6-10), and Locust Road Closing.

He also expressed his appreciation of and respect for the Bartlesville Police Department and how they successfully handled the shooting that occurred the previous week on Baylor Drive. He added his appreciation of all of the agencies who assisted in the case as well.

#### **16. City Council Comments and Inquiries.**

Mayor Copeland agreed with Mr. Bailey, as did Vice Mayor Gentges, regarding the good job the police department did handling the shooting event last week.

In response to Mr. Stuart's inquiry, Mr. Bailey reported that the first draft of the recycling survey is being reviewed by staff. Once finalized later this week, it will soon be offered to the public for their input.

In response to Mr. Curd's inquiry, Mr. Siemers reported that the rehabilitation of Price Road is progressing well. He reported that it is a multistage project, and will be greatly improved once completed.

Mr. Curd commended the Oklahoma Department of Transportation (ODOT) for the completion and clean up of the repairs to the bridge on Adams Boulevard. Mr. Siemers confirmed that clean up will be wrapped-up by the end of April.

Mayor Copeland reported a successful groundbreaking ceremony last Friday for Tower Center at Unity Square. He appreciated Lt. Gov. Pinnell for his attendance and all of the other dignitaries who participated in the event.

He reminded citizens not to be alarmed for large amounts of smoke since this is the season for pasture burning by local farmers and ranchers.

Mayor Copeland closed with congratulating City Attorney Jess Kane on his first report to the City Council.

#### **17. There being no further business to address, the Mayor adjourned the meeting at 8:11 p.m.**

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Dale W. Copeland, Mayor

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Jason Muninger, City Clerk/Finance Director





**I. SUBJECT, ATTACHMENTS, AND BACKGROUND**

Reappoint Jana Blount as board member to an additional three-year term on the White Rose Cemetery Board. Ms. Blount was appointed to the board on February 2019 to fill an unexpired term from a previous board member that expires April 2019.

**II. STAFF COMMENTS AND ANALYSIS**

Ms. Blount is an active member on the White Rose Cemetery Board. She is a valuable member.

**III. RECOMMENDED ACTION**

Mr. Henry highly recommends Ms. Blount's reappointment, and Mayor Copeland concurs. Please set this reappointment for approval on the next available City Council agenda.

**I. SUBJECT, ATTACHMENTS, AND BACKGROUND**

Discuss and take action on a Construction Management Contract with Jonesplan LLC for the Tower Center at Unity Square project

Attachments:

Contract

**II. STAFF COMMENTS AND ANALYSIS**

One of the designated projects on the voter approved 2018 GO Bond issue is to develop a green space between the Price Tower and Community Center. The overall budget for the project is \$1.75MM.

Council approved the Tower Center concept on November 5, 2018 and a professional service contract with Ambler Architects for the design of the green space on December 3, 2018. The design team has been working with the Design Review Committee over the past several months to develop and finalize the looks and finishes for the various elements within the Tower Center project area. In conjunction with this design effort, Council hired Jonesplan, who is a contractor with experience in green space type projects, on January 7, 2019 to perform constructability reviews of the construction documents as well as provide construction estimates for the project. Last Friday, April 5, 2019, the Tower Green Design Committee received a presentation from Jonesplan on the estimated construction costs for the project as well as took action to recommend the final design with potential modifications to the City Council for consideration. A separate action on the final construction documents will be presented to Council at its April 10<sup>th</sup> meeting.

With Jonesplan's involvement in the preconstruction activities, staff initiated negotiations for a contract with Jonesplan as a Construction Manager as Constructor without a Guaranteed Maximum Price. The draft contract is attached. As of the writing of the staff report, negotiations are still underway regarding the fees and contract language for the General Conditions, which are highlighted in the contract, along with the Control Estimate and Schedule. These items are anticipated to be finalized and presented to Council at the meeting on Wednesday.

**III. RECOMMENDED ACTION**

Staff recommends approval of a Construction Manager and Constructor without a Guaranteed Maximum Price contract with Jonesplan, contingent on successful negotiations of the outstanding items referenced in the comments section.

# AIA<sup>®</sup> Document A134<sup>™</sup> - 2009

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

AGREEMENT made as of the 10<sup>th</sup> day of April in the year 2019  
(In words, indicate day, month and year.)

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

City of Bartlesville  
401 South Johnstone Ave.  
Bartlesville, OK 74003

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

Jonesplan, LLC  
415 South Owasso Ave.  
Tulsa, OK 74120

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

Tower Center at Unity Square

The Architect:  
(Name, legal status and address)

Ambler Architects  
510 SE Dewey Ave., Suite 500  
Bartlesville, OK 74003

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

Terry Lauritsen  
401 S. Johnstone Ave.  
Bartlesville, OK 74003  
Telephone Number 918-338-4107  
Mobile Number 918-397-4277  
Email: tllaurit@cityofbartlesville.org

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

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

AIA Document A201<sup>™</sup>-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.

**ELECTRONIC COPYING** of any portion of this AIA<sup>®</sup> Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

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

Brad Kmita  
415 S. Owasso Ave.  
Tulsa, OK 74120  
Telephone Number 918-832-5544  
Mobile Number 918-830-6768  
Email: brad@jonesplan.com

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

Scott Ambler  
510 SE Dewey Ave, Suite 500  
Bartlesville, OK 74003  
Telephone Number 918-336-3512  
Mobile Number 918-914-1531  
Email: ska@amblerarchitects.com

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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. Upon the Owner's approval of the Control Estimate, the Contract Documents will also include the documents described in Section 2.2.4 and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.5. 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.

#### § 1.3 General Conditions

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

#### § 1.4 Contract Sum, Contract Time and Changes in the Work

The Contract Sum is the actual Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee as defined in Section 5.1. The Contract Time is the period of time, including authorized adjustment, allotted in the Contract Documents for Substantial Completion of the Work as certified by the Architect in accordance with Section 9.8 of AIA Document A201-2007. The Contract Time shall be measured from the date of commencement of the Construction Phase as established pursuant to Section 2.3.1.2 of this Agreement. Changes in the Work shall

be governed by Section 5.2 of this Agreement and not by Article 7 of A201-2007. If, however, the Contract Time has been established in accordance with Section 2.2.4.5, Article 7 of A201-2007 shall control adjustments to the Contract Time.

## ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

### § 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other. Preconstruction services have been performed under a separate agreement.

### § 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.

§ 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: submission of the Control Estimate; 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.

### § 2.1.4 Phased Construction

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

### § 2.1.5 Preliminary Cost Estimates

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

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

### § 2.1.6 Subcontractors and Suppliers

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

§ 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 establishment of the Control Estimate, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the Owner's approval of the Control Estimate, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

### § 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules, including the Control Estimate and the estimated date of Substantial Completion, except as provided in Section 2.2.4.5. 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.

### § 2.2 Control Estimate

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a 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 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 such things as 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;
- .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, contingency, 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.

## § 2.3 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 approval of the Control Estimate or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

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

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

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

§ 2.3.2.4 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.

§ 2.3.2.5 Upon the Owner's approval of the Control Estimate, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2007.

§ 2.3.2.6 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.

### ARTICLE 3 OWNER'S RESPONSIBILITIES

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

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

§ 3.1.2 Prior to the Owner's approval of the Control Estimate, or within seven days of receiving the Owner's written acknowledgement require by Section 2.2.1, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

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

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. 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. Except as otherwise provided in Section 4.2.1 of A201-2007, 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, duties and responsibilities as described in AIA Document B133™-2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

## ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

### § 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows: Preconstruction services have been performed under a separate agreement.

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:  
*(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

Preconstruction services have been performed under a separate agreement.

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within  $\leq$  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.

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

### § 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. Amounts unpaid  $\ll$   $\gg$  ( $\ll$   $\gg$ ) 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.)*

$\ll$   $\gg$  %  $\ll$   $\gg$

## ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

**Lump Sum, based on the Control Estimate - \$90,000**

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

**Based upon a percentage (5%) of the Cost of the Work, to be mutually agreed to by the Owner and Construction Manager.**

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

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§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed fifteen percent (15%) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

The General Conditions and Project Requirements shall be paid on a unit price basis per the Lump Sum Unit Price included in the attached General Conditions and Project Requirements, with a maximum amount not to exceed \$190,000, unless authorized either through Section 5.2, Changes in the Work, or in writing by the Owner.

§ 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. The Construction manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work. The Construction Manager shall incorporate all changes in the Work and Contract Time as separate entries in the Control Estimate.

§ 5.2.2 Increased costs for the items set forth in Section 6.1 through 6.7 that result from changes in the Work shall become part of the Cost of the Work, and the Construction Manager's Fee shall be adjusted as provided in Section 5.1.2.

§ 5.2.3 If the Construction Manager received 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 in comparison with the Control Estimate, 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 for the Owner and Architect.

§ 5.2.4 If no specific provision is made in section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provision of Section 5.1.2 will cause substantial inequity to the Owner or Construction manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original work.

## ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

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

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

§ 6.2 Labor Costs

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

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

*(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

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

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

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

### § 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

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

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

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work 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.

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

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

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

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

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

§ 6.5.5 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.

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

### § 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.

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

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

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

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

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

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

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

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

## § 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 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 Section 10.4 of AIA Document A201–2007.

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

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

## § 6.8 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the 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 to 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 to 6.7;
- .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.

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

#### § 6.11 Accounting Records

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

### ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

#### § 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to 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.

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

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§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the 3<sup>rd</sup> Monday of the month, the Owner shall make payment of the certified amount to the Construction Manager within 3 weeks of the

date the Architect certifies the amount of payment to the Owner. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment.

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

§ 7.1.5 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 and for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment.

§ 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 as described in Section 6.1.1;
- .2 Add the Construction Manager's Fee, less retainage of 5 percent ( 5%). The Construction Manager's Fee shall be computed upon the Cost of the Work described in the preceding Section 7.1.6.1 at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of five percent ( 5%) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or withdrawn a Certificate for Payment as provided in the Contract Documents.

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

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

## § 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager 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 no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

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§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, 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 Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. 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 Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment.

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

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)

#### ARTICLE 9 DISPUTE RESOLUTION

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

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

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

- Arbitration pursuant to Section 15.4 of AIA Document A201–2007
- Litigation in a court of competent jurisdiction, located in Washington County, Oklahoma
- Other: *(Specify)*

« »



### § 9.3 Initial Decision Maker

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

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## ARTICLE 10 TERMINATION OR SUSPENSION

### § 10.1 Termination Prior to Owner’s Approval of the Control Estimate

§ 10.1.1 Prior to the Owner’s approval of the Control Estimate, 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.

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

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the Owner’s approval of the Control Estimate, 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 incurred 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 5.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

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

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

## § 10.2 Termination Subsequent to the Owner's Approval of the Control Estimate

§ 10.2.1 Subsequent to the Owner's approval of the Control Estimate, the Contract may be terminated as provided in Sections 14.1.1, 14.1.2 and 14.2.1 of AIA Document A201–2007. The provisions of Article 14 of A201-2007 do not otherwise apply to this Section 10.2.

§ 10.2.2 In the event of such termination by the Owner, the amount payable to the Construction Manager shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.2 and 10.1.3 of this Agreement, less any compensation that may be awarded to the Owner pursuant to Article 9.

§ 10.2.3 In the event of such termination by the Construction Manager, the amount payable to the Construction Manager shall be in accordance with Sections 10.1.2 and 10.1.3 of the Agreement, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction manager, including a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.2.4 In addition to the Owner's right to terminate this Agreement for cause as provided in Section 14.2.1 of A201-2007, the Owner may terminate this Agreement for convenience as provided in Section 14.4; however, the Owner shall only pay the Construction Manager an amount calculated as follows:

- .1 Take the Cost of the Work incurred 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 5.1.1 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.

## § 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Control Estimate and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term “profit” shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.2.4 of this Agreement.

## ARTICLE 11 MISCELLANEOUS PROVISIONS

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

### § 11.2 Ownership and Use of Documents

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

### § 11.3 Governing Law

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

### § 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. 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. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

### § 11.5 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 A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

« »

- .4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

« »

- .5 Other documents:  
*(List other documents, if any, forming part of the Agreement.)*

« Insurance Certificate »

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

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

\_\_\_\_\_  
Dale Copeland, Mayor  
*(Printed name and title)*

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

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