

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

SR CONSTRUCTION, INC., A  
NEVADA DOMESTIC  
CORPORATION,

Appellant,

vs.

PEEK BROTHERS  
CONSTRUCTION, INC., A NEVADA  
DOMESTIC CORPORATION,

Respondents.

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**Supreme Court No.: 82786**

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**JOINT APPENDIX  
VOLUME 2 PART 5**

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## **CHRONOLOGICAL INDEX FOR JOINT APPENDIX**

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beyond the purchase price of said equipment, Construction Manager shall purchase equipment and return it to the owner at the completion of the Project.

**§ 6.5.3** Costs of recycling and/or 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 and internet 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.

**6.5.7** Unless and to the extent that the Contract Documents require the Owner to provide them, Construction Manager's costs of temporary utilities as necessary for the Construction Manager to perform its Work including, but not limited to gas, water, electricity, sewer, connection fees, and utility consumptions charges.

**6.5.8** Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner.

## **§ 6.6 Miscellaneous Costs**

**§ 6.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. The Construction Manager shall be reimbursed for its insurance outlined in Section 8 Insurance and as **Exhibit (xx)** and must adhere to UHS Standard Business Terms.

**§ 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 13.4.3 of AIA Document A201-2017 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 A201-2017 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, including licenses for software, directly related to the Work with the Owner's prior approval shall be reimbursed as a general condition and not as a unit cost per hour on supervisory staff.

**§ 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.

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**§ 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.

**§ 6.6.10** The deductible portion of any losses under policies of Builder's Risk unless the Construction Manager or subcontractor is at fault in which the entity responsible for the loss would be responsible for the deductible. Notwithstanding, and for purposes of the NNSMC project, wherein the Construction Manager has furnished the Builder's Risk Insurance Policy, the deductible portion to be paid by the party responsible for the loss shall be limited to \$10,000 for general damage claims and \$25,000 for claims involving water damage. For claims against the policy where the deductible is partially paid by the party causing the loss, the balance of the deductible shall otherwise be a reimbursable expense.

**§ 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 A201-2017.

**§ 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 A201-2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 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, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 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.

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§ 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:

The Construction Manager shall, during the last week of each month, meet with the Architect and Owner (and/or other parties designated in writing by the Owner) to review and approve the draft Application for Payment submitted under Section 9.3.1 of A201. The approved draft will then be updated into a formal Application for Payment and submitted to the Owner for payment.

§ 7.1.3 Provided that an Application for Payment is received by the Owner not later than the 1st day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the 1st day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*



§ 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 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

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

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2017;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Subtract 5% retainage;
- .4 add Construction Manager's Fee, General Conditions, General Requirements, and cost for Permits (for all of which no retention shall be held) The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 and consistent with 7.1.8 below
- .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 nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2017.

§ 7.1.8 The Owner and Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the Construction Manager shall execute subcontracts in accordance with those agreements. All subcontracts and SPW shall be structured to hold retainage at 5% in conformance with NRS..

§ 7.1.9 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.

§ 7.1.10 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,

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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 A201-2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; 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:

§ 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 A201-2017. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2017. 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 A201-2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

## 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 A201-2017.

*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2017.)*

UHS prefers standard Contractor liability insurance and does not use CCIP or OCIP insurance products. The Construction Manager will adhere to UHS insurance requirements for small and large projects summarized in the UHS standard insurance requirements for Contractors.

UHS does not typically require Payment and Performance bonds on projects, but may consider bonding the entire project or individual bonding at the Subcontractor level if Contractor and UHS deem appropriate due to higher risk

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profile, limited contractors, etc. In these cases, Construction Manager shall include the cost of Labor & Material Payment and Performance Bonds on certain trade work line items within the GMP with approval from the Owner.

On a case by case basis, UHS and the Construction Manager will evaluate subcontractor default insurance programs or similar programs, UHS will ultimately decide if subcontractor default insurance is appropriate.

Builder's Risk insurance coverage will be evaluated on a case by case basis; however most new greenfield projects require the Construction Manager to carry Builders Risk. UHS traditionally carries Builder's Risk for renovations or projects that tie directly into an active facility.

#### 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 A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 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 A201–2017, 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.)*

☒ [ X ] Arbitration pursuant to Section 15.4 of AIA Document A201–2017

☐ [ ] Litigation in a court of competent jurisdiction

☐ [ ] Other: *(Specify)*

### § 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

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

### ARTICLE 10 TERMINATION OR SUSPENSION

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

**§ 10.1.1** Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2017.

**§ 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

Init.



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 execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination; plus equitable compensation for any demobilization costs incurred by the Construction Manager.
- .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 Establishing Guaranteed Maximum Price**

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201-2017.

**§ 10.2.1** If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201-2017 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

**§ 10.2.2** If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201-2017 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

## **§ 10.3 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2017. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

## **ARTICLE 11 MISCELLANEOUS PROVISIONS**

**§ 11.1** Terms in this Agreement shall have the same meaning as those in A201-2017.

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**§ 11.2 Ownership and Use of Documents**

Section 1.5 of A201–2017 shall apply to both the Preconstruction and Construction Phases.

**§ 11.3 Governing Law**

Section 13.1 of A201–2017 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 A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make 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 A201–2017, 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.)

Include Billing rates, Equipment Rate Schedules, Insurance Certifications, etc in this section.

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

Mark D'Arcy

20EA916A5BB24C6...  
**OWNER (Signature)**

Mark D'Arcy Vice President, Design & Construction  
(Printed name and title)

Bret Loughridge

F7E0B6440C5744A...  
**CONSTRUCTION MANAGER (Signature)**

Bret Loughridge President  
(Printed name and title)

Init.



## **Additions and Deletions Report for** **AIA<sup>®</sup> Document A133<sup>™</sup> – 2009**

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:51:21 ET on 07/20/2020.

### **PAGE 1**

**AGREEMENT** made as of the 6th day of May in the year 2020

...

Sparks Family Medical Center, Inc. c/o  
Universal Health Services of Delaware367 South Gulph Road  
King of Prussia, PA 19406

...

SR Construction, Inc.  
3579 Red Rock Street  
Las Vegas, Nevada 89103

...

Northern Nevada Sierra Medical Center  
625 Innovation Drive  
Reno, Nevada 89511

...

*(Name, legal status and address)*

ESa Architects.  
1033 Demonbreun Street, Suite 800  
Nashville, Tennessee 37203  
615-329-9445

...

*(Name, address and other information)*

Sean Applegate, MS, CHFM  
Sr. Regional Project Manager  
Universal Health Services, Inc.

### **PAGE 2**

Bret Loughridge  
President  
SR Construction, Inc.  
3579 Red Rock Street



702-877-6111

...

Matt Childress  
ESa Architects.  
1033 Demonbreun Street, Suite 800  
Nashville, Tenn 37203  
615-329-9445

**PAGE 3**

For the Preconstruction Phase, AIA Document ~~A201™-2007~~, ~~A201™-2017~~, 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~~, ~~A201-2017~~, which document is incorporated herein by reference. The term "Contractor" as used in ~~A201-2007~~ ~~A201-2017~~ shall mean the Construction Manager.

**PAGE 4**

**2.1.2.1** If the Project will involve building information modeling ("BIM"), the Owner, Construction Manager and Architect/Engineer shall jointly develop a BIM Execution Plan for Owner's review and approval. The BIM Execution Plan shall be consistent with the Owner's AIA A201-2017 General Conditions section 1.8 BIM Use and Reliance; and shall be completed to a level of LOD 400 at a minimum. Upon the Owner's approval of the BIM Execution Plan, if any, the BIM Execution Plan shall become a Contract Document.

**§ 2.1.3** When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically (typically monthly) 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 together with the Architect and Owner's consultants and representatives, identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

**PAGE 5**

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~~ quasi-governmental authorities for inclusion in the Contract Documents.

...

**§ 2.2.1** At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee. In the A201, references to the "Contract Sum" shall refer to the Guaranteed Maximum Price upon the Owner's acceptance of the Guaranteed Maximum Price proposal.

...

**§ 2.2.4 Construction Manager's Contingency Fund -** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. The Construction Manager shall notify the Owner at least monthly of the nature and amounts applied from the Construction Contingency. Contractor's Construction Contingency is available for construction and coordination



issues and must be spent in accordance with Article 6 of this Agreement and shall be appropriately reviewed with the Owner.

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

PAGE 6

§ 2.3.1.1 For purposes of Section 8.1.2 of ~~A201-2007, A201-2017~~, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

...

**2.3.1.3 Weather Day Allowance.** The Contract Time, Guaranteed Maximum Price and the Construction Manager's overall schedule will include and accommodate an allowance of work days, to be set forth in the Guaranteed Maximum Price Amendment, anticipated to be lost for adverse weather impacts on the critical path and throughout the entire schedule. The weather days should be established from local knowledge and using reasonable documentation, and include 30 year construction averages from the National Oceanic and Atmospheric Administration (NOAA).

The Construction Manager shall notify the Owner in writing of any days lost due to adverse weather beyond a reasonable weather day allowance (together with dates, description of work activities impacted, etc.) and at each construction meeting, and shall review and justify to the Owner that the adverse weather delayed the critical path.

If adverse weather conditions that are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time (e.g. greater than 20% of reasonable estimates), could not have been reasonably anticipated and had an adverse effect on the scheduled construction. The contractor is usually entitled to additional contract time, but not additional compensation for weather delays and would apply under the Delay section of this Contract.

§ 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, bids~~, subject to those ~~person or entities that meet financial requirements and that would enter subcontracts acceptable to the Construction Manager.~~ The Construction Manager shall obtain bids from at a minimum of three (3) Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Owner and 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.

The Construction Manager shall at the commencement of procurement provide the Owner with a detailed list of prequalified and preapproved subcontractors for Owners review and approval. Construction Manager shall endeavor to obtain a minimum of three (3) bids for each trade as may be available in the region where the project is located. Notwithstanding this requirement, if the Construction Manager and owner determines that pre-selecting a subcontractor to be a key Trade Partner is in the best interest of the project, Construction Manager shall make such recommendation of award to the Owner for its review and approval. Owner requires a competitive process for onboarding Trade Partners which shall be reviewed and approved prior to any bidding.

2.3.2.1.1 The Construction Manager shall request in writing any potential trades which the Construction Manager may Self-Perform Work ("SPW"). UHS shall give approval for trades in which the Construction Manager may self-perform work; potential trades may include Framing, Drywall, Concrete, Panelized exterior/interior walls, Firestopping, Doors/Frames/Hardware, Acoustical Ceilings, and Specialties. If Construction Manager is authorized to SPW, the Construction Manager will obtain a minimum of 3 sealed bids which are opened in front of a UHS designated representative. If Construction manager does not obtain at least 3 qualified bids, the SPW will not be



allowed.

The Construction Manager shall not be entitled to any savings for SPW as set forth in Section 5.2.1, and 100% of all savings shall be reverted to the Owner.

For clarity, Construction Manager's fee shall be assessed on SPW.

2.3.2.1.2 If Construction Manager docs SPW, Construction Manager shall:

- A. Inform the Owner of the price, scope, and agreed contract terms prior to the bid process.
- B. Provide three sealed bids if proposal on a stipulated sum basis
- C. Bid all material with a minimum of 3 vendors
- D. Provide time in the schedule to allow the Owner the right to reject any self-perform bid proposal that does not meet criteria above.

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

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**§ 2.3.2.6** Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2007-A201-2017.

**§ 2.3.2.7** 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. Owner The Construction Manager, its contractors and subcontractors are responsible for the safety of the site, their personnel, and for the safe prosecution of the work on the Project. The Owner shall in no way be held responsible for providing Safety oversight for the work of the Construction Manager and its Contractors and Subcontractors. The Owner shall require that Contractor's performing work directly for the Owner are required to adhere to the Construction Manager's project safety requirements.

...

Section 3.12.10 of A201-2007-A201-2017 shall apply to both the Preconstruction and Construction Phases.

...

Section 10.3 of A201-2007-A201-2017 shall apply to both the Preconstruction and Construction Phases.

**PAGE 9**

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-A201-2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

**PAGE 10**



The Construction Manager shall be paid for its direct personnel expense per Section 4.1.4 below not to exceed in the aggregate of \$2,331,341 , unless authorized in writing by the Owner or by Addendum.

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed ~~within (—)~~ within(4) (Four) 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. Preconstruction rates will be reimbursed at the rates set forth in Exhibit (xx). For ease of calculations, the UHS billable rate for labor should begin with raw salary and increased by applicable taxes, benefits, and holiday/vacation/sick. These rates shall be consistent with UHS Standard Business Terms.

...

0 % Zero

...

Shall be two and three quarters percent (2.75%) of the Cost of the Work

...

The fee for changes in the work will be the same fee enumerated in 5.1.1. above.

...

Shall Not be Less Than 10% and Not More Than 15% Combined Total for Overhead & Profit on Change Orders, unless otherwise approved by Owner

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed ~~percent (—%) of the standard rate paid at the place of the Project.~~ Eighty percent (80 %) of the standard rates as listed in the regionally adjusted AED Greenbook.

§ 5.1.5 Unit prices, if any: None

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All savings within the GMP shall be refunded to the Owner.

...

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document ~~A201-2007,~~ A201-2017, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document ~~A201-2007,~~ A201-2017, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document ~~A201-2007~~ A201-2017 and the term "costs" as used in Section ~~7.3.7~~ 7.3.4 of AIA Document ~~A201-2007~~ A201-2017 shall have the meanings



assigned to them in AIA Document ~~A201-2007~~ A201-2017 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document ~~A201-2007~~ A201-2017 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

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*(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, as a separate staff summary in Section 11.5 or as in Exhibit (xx)~~, 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~~ 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. For ease of calculations, the UHS billable rate for labor should begin with raw salary (annual salary divided by 2080 hours) and the billable rate for the burden items outlined in this section shall be fixed at forty-one percent (41 %) of substantiated and verified payroll for applicable taxes, benefits, and holiday/vacation/sick. Substantiated payroll shall be hours worked properly charged to the project times the base salary rate of each employee. Audit shall be limited to verifying payroll hours and base salary rate of each employee once rates are approved.

§ 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 shall not be~~ directly reimbursable and are not considered cost of the work. Any bonus, profit sharing and incentives should be included in the fee

...

§ 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. If the total rental or lease of equipment is estimated to be beyond the purchase price of said equipment, Construction Manager shall purchase equipment and return it to the owner at the completion of the Project.

§ 6.5.3 Costs of recycling and/or 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 and internet service at the site and reasonable petty cash expenses of the site office.

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6.5.7 Unless and to the extent that the Contract Documents require the Owner to provide them, Construction Manager's costs of temporary utilities as necessary for the Construction Manager to perform its Work including, but not limited to gas, water, electricity, sewer, connection fees, and utility consumptions charges.

6.5.8 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner.



§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. The Construction Manager shall be reimbursed for its insurance outlined in Section 8 Insurance and as Exhibit (xx) and must adhere to UHS Standard Business Terms.

...

§ 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~~ 13.4.3 of AIA Document ~~A201-2007~~ A201-2017 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~~ A201-2017 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, including licenses for software, directly related to the Work with the Owner's prior ~~approval~~ approval shall be reimbursed as a general condition and not as a unit cost per hour on supervisory staff.

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§ 6.6.10 The deductible portion of any losses under policies of Builder's Risk unless the Construction Manager or subcontractor is at fault in which the entity responsible for the loss would be responsible for the deductible. Notwithstanding, and for purposes of the NNSMC project, wherein the Construction Manager has furnished the Builder's Risk Insurance Policy, the deductible portion to be paid by the party responsible for the loss shall be limited to \$10,000 for general damage claims and \$25,000 for claims involving water damage. For claims against the policy where the deductible is partially paid by the party causing the loss, the balance of the deductible shall otherwise be a reimbursable expense.

...

§ 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~~ A201-2017.

...

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document ~~A201-2007~~ A201-2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

~~§ 6.8 Costs Not To Be Reimbursed~~ Costs Not to Be Reimbursed

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The Construction Manager shall, during the last week of each month, meet with the Architect and Owner (and/or other parties designated in writing by the Owner) to review and approve the draft Application for Payment submitted under Section 9.3.1 of A201. The approved draft will then be updated into a formal Application for Payment and submitted to the Owner for payment.

§ 7.1.3 Provided that an Application for Payment is received by the ~~Architect~~ Owner not later than the 1st day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the 1st day of the following month. 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.

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§ 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 the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the ~~Architect-Owner~~ may require. This schedule, unless objected to by the ~~Architect, Owner,~~ shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

...

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document ~~A201-2007;~~ A201-2017;

...

- .3 ~~Add the Construction Manager's Fee, less retainage of — percent (— %). Subtract 5% retainage;~~
- .4 ~~add Construction Manager's Fee, General Conditions, General Requirements, and cost for Permits (for all of which no retention shall be held) The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
- .4 ~~Subtract retainage of — percent (— %) from that portion of the Work that the Construction Manager self performs; and consistent with 7.1.8 below~~

...

- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document ~~A201-2007;~~ A201-2017.

§ 7.1.8 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. All subcontracts and SPW shall be structured to hold retainage at 5% in conformance with NRS.~~

**PAGE 17**

- .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;~~ A201-2017, and to satisfy other requirements, if any, which extend beyond final payment;

...

§ 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;~~ A201-2017. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document ~~A201-2007;~~ A201-2017. 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~~. A201-2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

...

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~~. A201-2017. *(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document ~~A201-2007~~.) Document ~~A201-2007~~. A201-2017.)*

UHS prefers standard Contractor liability insurance and does not use CCIP or OCIP insurance products. The Construction Manager will adhere to UHS insurance requirements for small and large projects summarized in the UHS standard insurance requirements for Contractors.

UHS does not typically require Payment and Performance bonds on projects, but may consider bonding the entire project or individual bonding at the Subcontractor level if Contractor and UHS deem appropriate due to higher risk profile, limited contractors, etc. In these cases, Construction Manager shall include the cost of Labor & Material Payment and Performance Bonds on certain trade work line items within the GMP with approval from the Owner.

On a case by case basis, UHS and the Construction Manager will evaluate subcontractor default insurance programs or similar programs, UHS will ultimately decide if subcontractor default insurance is appropriate.

Builder's Risk insurance coverage will be evaluated on a case by case basis; however most new greenfield projects require the Construction Manager to carry Builders Risk. UHS traditionally carries Builder's Risk for renovations or projects that tie directly into an active facility.

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**§ 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~~. A201-2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 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~~, A201-2017, the method of binding dispute resolution shall be as follows:

...

☒ Arbitration pursuant to Section 15.4 of AIA Document ~~A201-2007~~ A201-2017

...

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document ~~A201-2007~~ A201-2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

...



§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of ~~A201-2007~~, A201-2017.

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- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination; plus equitable compensation for any demobilization costs incurred by the Construction Manager.

...

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document ~~A201-2007~~, A201-2017.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of ~~A201-2007~~, A201-2017 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of ~~A201-2007~~, A201-2017 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

...

The Work may be suspended by the Owner as provided in Article 14 of AIA Document ~~A201-2007~~, A201-2017. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document ~~A201-2007~~, A201-2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

...

§ 11.1 Terms in this Agreement shall have the same meaning as those in ~~A201-2007~~, A201-2017.

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Section 1.5 of ~~A201-2007~~, A201-2017 shall apply to both the Preconstruction and Construction Phases.

...

Section 13.1 of ~~A201-2007~~, A201-2017 shall apply to both the Preconstruction and Construction Phases.

...

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~~, A201-2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

...

.2 AIA Document ~~A201-2007~~, A201-2017, General Conditions of the Contract for Construction

...

Include Billing rates, Equipment Rate Schedules, Insurance Certifications, etc in this section.

...

Mark D'Arcy Vice President, Design & Construction

Bret Loughridge President

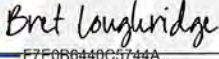


## Certification of Document's Authenticity

### AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:51:21 ET on 07/20/2020 under Order No. 2681862530 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

DocuSigned by:

  
F7E0B6440C5744A...  
(Signed)

VP Operations

(Title)

7/20/2020

(Dated)