

SUPPLEMENTARY CONDITIONS
for use with
CONSTRUCTION MANAGER / GENERAL CONTRACTOR
MODIFICATIONS
to the
CONDITIONS OF THE CONTRACT

The following supplements modify, change, delete from, or add to the Conditions of the Contract:

AIA Document A201

GENERAL CONDITIONS

of the Contract for Construction, 2017 as modified April 2022

Where an Article, Paragraph, Subparagraph, or Sub-subparagraph, or Clause of Conditions is modified, added, or deleted by Supplementary Conditions, unaltered provisions of that Article, Paragraph, Subparagraph, or Sub-subparagraph, or Clause shall remain in effect.

ARTICLE 3
CONTRACTOR

Add the following sub-subparagraphs to Section 3.1.1:

- 3.1.1.1** Throughout the Contract, the General Conditions, the Specifications, and other Contract Documents, the terms Construction Manager, Construction Manager/General Contractor (CM/GC), shall have the same meaning as the term "Contractor" expressed herein.
- 3.1.1.2** The CM/GC is defined as the entity that performed Pre-Construction Phase services and is providing Construction Phase services as required herein and by the Contract Documents to affect the complete construction of the Project and to maintain the established Guaranteed Maximum Price (GMP) of the Project. The Requests for Proposals (RFP), the response to the RFP, and the Pre-Construction Scope of Services remain in full effect throughout the term of this Contract.

Add the following sub-subparagraphs to Section 3.2.1:

- 3.1.2.1** The CM/GC may perform Work with their own forces to assist with the coordination of subcontracts and minor project facilitation. The maximum percent of the GMP that the CM/GC may perform with their own forces shall be 3% of the total trade subcontracts.
- 3.1.2.2** The CM/GC shall not perform any trade contract work unless the trade package work has been solicited at least two times and received no responses in accordance with Section 3.30 below. In such case, the CM/GC shall provide to the Owner and Designer documentation of a good faith effort to solicit for such bids. The CM/GC, Owner, and Designer shall negotiate a cost for such trade contract packages based on the trade package cost provided for such package as a part of the GMP. The 3% limit in 3.1.2.1 shall not pertain to the performance of trade package work by the CM/ GC under these conditions.

Add the following subparagraph after Section 3.1.4:

- 3.1.5** The CM/GC's construction phase services shall include team management and coordination; purchasing, procurement, and logistics services; subcontract management and coordination; bid packaging; bidding; scheduling; cost controls and change order evaluation and management; periodic meetings between the Owner, CM/GC, and the Designer; site coordination of Owner's independent consultants such as testing and/or inspection; submittal process management; subcontracting; field management; safety program; post-construction phase close-out process; and warranty period services. All of these services shall be included in the CM/GC's agreed upon fee and/or General Conditions costs. The

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agreed upon fee also shall include providing through itself or its subcontractors, all necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities, and other temporary facilities to permit the CM/GC to complete all construction of the Work consistent with the Construction Documents.

Add the following sub-subparagraphs to Section 3.2.2:

3.2.2.1 By the nature of the CM/GC at risk delivery method, the CM/GC agrees and accepts greater responsibility for coordination and review of the Contract Documents than may be required or uncovered through review for, and performance of, a normal hard bid contract. This obligation is in addition to the diligence required by this section of the Terms and Conditions.

3.2.2.2 The CM/GC shall promptly notify the Designer in writing upon recognizing any features, elements, and/or language in the design documents that appear to the CM/GC to be ambiguous, confusing, conflicting, erroneous, or not in line with the design intent.

Add the following sub-subparagraph to Section 3.2.4:

3.2.4.1 Cost or time associated with clarifications or instructions provided by the Designer are limited to those items that add scope outside of the design intent of the documents and are not otherwise covered in the use of the CM/GC Contingency.

Add the following Section after Section 3.2.4:

3.2.5 The CM/GC shall continue to advise and assist the Owner and Designer during any continuing design activities as described in the Pre-Construction Scope of Services.

Add the following sub-subparagraphs to Section 3.3.1:

3.3.1.1 The CM/GC shall coordinate the work of the subcontractors and any suppliers from which any major equipment was pre-purchased, and shall coordinate the work with the activities and responsibilities of the Owner, Designer, and CM/GC to complete the Work in accordance with the Contract. Such supervisory personnel must be on site whenever Work is being performed.

3.3.1.2 The CM/GC shall develop and implement a Project safety program in accordance with this contract and all applicable regulations.

- .1** It is understood that the Owner requires a safe work environment, and the requirement for a safe work environment is considered part of this agreement.
- .2** The cost of safety incentives shall not be part of this Agreement without receipt of prior written approval of the Owner. If the CM/GC wishes to provide safety incentives, he may do so at his own cost.
- .3** The CM/GC shall document any safety violations it discovers, and shall document actions taken to protect the safety of persons and property engaged in the Work.

Add the following sub-subparagraphs to Section 3.3.2:

3.3.2.1 The CM/GC representatives provided in the response to the RFP for the CM/GC will remain on the site and in responsible charge of the Work for so long as those persons remain employed by the CM/GC, or unless and until the Owner requests their removal during the course of the Work. All requests for substitutions of personnel must be submitted by the CM/GC and be approved in writing by the Owner.

Add the following sub-subparagraphs to Section 3.3.3:

3.3.3.1 The CM/GC shall perform quality control inspections on subcontractor work to guard the Owner against defects and deficiencies and shall coordinate this activity with the Construction Administration responsibilities of the Designer, Commissioning Agent, and other representatives of the Owner. If the CM/GC is self-performing trade contract work, the CM/GC shall maintain its obligation for these inspections separate from their direct supervision of such work.

- 3.3.3.2** The CM/GC shall advise the Designer and other representatives of the Owner regarding all identified deviations from the Contract Documents and shall require or perform corrective action as needed to bring them into compliance.
- 3.3.3.3** The CM/GC shall provide inspection reports as a part of all regularly scheduled, periodic progress meetings.
- 3.3.3.4** The Owner reserves the right to independently contract for additional compliance inspection and testing.

Add the following Section after Section 3.3.3:

- 3.3.4** The CM/GC shall schedule and conduct regular progress meetings with trade contractors as conditions of the Project require. The CM/GC shall conduct regular Owner's meetings, and any other meetings as may be required, at which trade contractors, Owner, Designer, and other designated representatives, and the CM/GC can jointly discuss such matters.
- 3.3.4.1** The CM/GC shall take and distribute complete minutes of meetings to all attendees, and to the Designer and Owner, within three business days of such meetings. Representatives of the Owner and Designer may attend meetings and shall in any case receive all notices and minutes of meetings.

Add the following sub-subparagraphs to Section 3.4.2:

- 3.4.2.1** During subcontractor bidding as described in section 3.30 and throughout the progress of the Work, the CM/GC shall document substitution requests and coordinate such requests with the Designer as follows:
 - .1** The CM/GC shall log all substitution requests;
 - .2** The CM/GC shall review substitution requests to ensure they are complete and in accordance with the Contract Documents and the design intent;
 - .3** The CM/GC shall not submit a substitution request to the Designer if the CM/GC believes it to be inappropriate;
 - .4** The CM/GC shall track and monitor all substitution requests until all substitution requests are processed and approved by the Designer and Owner; and
 - .5** The CM/GC shall include substitution requests, if applicable, on the agenda at the progress meetings.
- 3.4.2.2** The CM/GC shall develop and implement a system for review, negotiation, and processing of proposed modifications that is consistent with, and compatible with, the Contract Documents, and the CM/GC shall, with complete supporting data, recommend necessary changes to the Owner and the Designer for approval.
 - .1** Modification proposals must only include actual net costs; that is, trade contractors' change order proposals and General Conditions items, if applicable, only. No additional CM/GC fee shall be assessed for Owner requested modifications to the work of the Project, until such modifications aggregate to a sum in excess of 5% of the Projects' original GMP. The Projects' original GMP is defined as the GMP for the total overall Project in its entirety, including all fast-tracked activities and/or pre-purchased items.
 - .2** All actual net costs, associated with scope reductions shall revert to the Owner in accordance with the Conditions of the Contract.
 - .3** At such time as the modifications exceed 5% of the GMP, the CM/GC fee used shall be the lower of the rates stated in Paragraph 7.5.1 of the General Conditions or the fee applied to the Projects' original GMP, and as enumerated in the RFP response.

Delete sub-subparagraph 3.8.2.3 in its entirety and substitute the following:

- 3.8.2.3** whenever costs are more than or less than allowances, the allowance shall be adjusted by Field Order. If the actual cost of the item exceeds the allowance, the additional cost may be paid from the CM/GC Contingency to the extent that funds remain in the CM/GC Contingency. If the actual cost of the item is less than the allowance, any

unexpended funds shall be moved to the Owner Reserve.

Add the following Sections after Section 3.8.3:

- 3.8.4** The CM/GC Contingency is defined as an allowance established as a part of the GMP within the Construction Services Agreement (CSA).
- 3.8.5** The Owner Reserve is defined as those excess funds remaining from the total amount of Trade Costs established in the CSA, and those unexpended funds from any allowances in the CSA, as described in paragraph 3.8.2.3.
- 3.8.6** Upon completion of the CM/GC's obligations under the Contract, all funds remaining in the CM/GC Contingency, Owner Reserve, or other allowances shall be credited to the Owner by Change Order

Delete Section 3.9.2 in its entirety and replace with the following:

- 3.9.2** The Contractor shall utilize the services of the superintendent identified in the RFP for CM/GC as long as that person remains employed by the CM/GC, or unless the Owner has reason to request otherwise during the course of the Work. Requests for substitutions of personnel shall be approved in writing by the Owner.

Add the following subparagraph after Section 3.10.3:

- 3.10.4** The CM/GC shall recommend to the Owner and Designer a schedule for procurement of long-lead time items and/or activities that will constitute part of the Work as required to meet the Project schedule. Procurement of long lead time items shall be considered a part of the services covered under the CSA Procurement of long lead items by the CM/GC shall not be considered to be within the 3% limit as long as the items purchased are installed by anyone other than the CM/GC.

Add the following subparagraphs to Section 3.22:

- 3.22.1** The CM/GC shall devise, implement and maintain at the Project site, a structured document control system which includes and tracks records of all necessary contracts, Requests for Information (RFI), shop drawings, samples, purchases, materials, equipment, maintenance and operating manuals and instructions, and any other documents and revisions thereto which arise out of the Contract. The CM/GC shall keep these documents readily available to the Designer and the Owner any time during the performance of this Contract.
- 3.22.2** The CM/GC shall keep accurate and detailed written records of Project progress throughout the duration of this Contract. The CM/GC shall submit a monthly progress report to the Designer and the Owner which shall include a progress report on the status of construction; updated copies of all logs including Pending Action Items Log, RFI Log, Modification Status Log, and Submittals Log; an updated Construction Schedule; updated Contract Time and GMP Status; and progress photographs.
- 3.22.3** The CM/GC shall maintain a detailed daily report of all events, that occur at the jobsite or elsewhere, and that affect, or may be expected to affect, Project progress. The report shall record, as applicable, weather data; including minimum and maximum temperatures, precipitation type and amount, sky conditions, and wind velocities; and be used to support the standard Weather Delay Report. The report shall include a detailed list of all material deliveries to the site and describe the construction activities of the day, along with manpower and equipment usage, including that of the trade contractors. The report shall be available to the Designer and Owner at all times and shall be turned over to the Owner upon completion of the Contract.
- 3.22.4** The CM/GC shall develop and maintain an effective system of Project cost tracking and control. The CM/GC shall maintain cost accounting records on authorized work performed under unit costs, actual costs for labor and material, or other bases requiring accounting records, and CM/GC shall afford the Designer and the Owner access to these records.
- 3.22.5** At the conclusion of the Work and prior to the submission of the final payment application, the CM/GC shall provide a written accounting, including back-up documentation

where required, of all allowances, contingencies, General Conditions, General Requirements, and all other work not performed under a bid procured, lump sum subcontract.

Add the following Section after 3.29:

3.30 Procurements of Subcontractors

- 3.30.1** The CM/GC shall provide a thorough trade coordination review of the construction documents before conducting trade contract bidding. Said review shall be performed utilizing a structured, industry-accepted process. The CM/GC shall review the final documents to ensure that they are comprehensive and complete, so that appropriate subcontractor costs may be obtained.
- 3.30.2** The CM/GC shall prequalify all subcontractors. Said subcontractors shall be publicly solicited so that all properly licensed entities have an opportunity to respond.
- 3.30.2.1** The Owner and the Designer shall cooperate and participate with the CM/GC in the CM/GC's establishment of qualification requirements for all trade contractors. Qualifications of subcontractors shall be performed utilizing criteria specific to the Project; the CM/GC shall not use predetermined lists of preferred subcontractors.
- 3.30.2.2** Basic qualification information from principal trade contractors may be requested on AIA Document 305 (Contractor's Qualification Statement). The CM/GC may also request additional Project or task specific information. The CM/GC may establish any qualification requirements that are not prohibited by law or by any specific and explicit terms of any written and published State Building Commission policies and procedures.
- 3.30.3** The CM/GC shall conduct pre-bid meetings for all trade contracts. The CM/GC shall notify the Owner and Designer of the time and place of each such meeting.
- 3.30.4** The CM/GC shall obtain written, sealed competitive bids from qualified trade subcontractors.
- 3.30.5** The CM/GC shall conduct bid openings for all trade contracts. Such bid openings shall be open to all participating bidding parties. The CM/GC shall notify the Owner and Designer of the time and place of each bid opening so either the Owner or Designer may be present.
- 3.30.6** The CM/GC shall perform bid leveling to evaluate bids and ensure that the scope of the bids is comprehensive so that the lowest responsible bidders across all trades which conform to the requirements of the construction documents can be determined for award. The bid leveling process should evaluate missing scope items, trade gaps, substitutions, exclusions, clarifications, overtime work, and any qualifications.
- 3.30.7** Rebidding trade contracts
- .1** The CM/GC may repeat the bidding for a trade contract only if the initial bidding produces no responsible, responsive bid for that portion of the work or no responsible, responsive bidder for that portion of the work will execute the subcontract form included in the bid package without material alterations. Notwithstanding the forgoing sentence, the Owner must approve of such a rebid, and such approval shall not be unreasonably withheld.
- .2** if subcontractor bidding for a trade contract is performed twice with no responsible, responsive bids, the CM/GC may elect to self-perform the work of such trade package in accordance with Paragraph 3.1.2.2.
- 3.30.8** Subcontracts shall be awarded as specified in Paragraph 5.2.

**ARTICLE 5
SUBCONTRACTORS**

Add the following clause to 5.1.1:

- 5.1.1** Throughout the Contract documents, the terms Subcontractor, Trade Contractor, and Trade Subcontractor are used interchangeably and shall have the same meaning.

Add the following Sections after 5.2.6:

5.2.7 The CM/GC shall execute subcontracts as soon as practical after the execution of the CSA. Failure to enter into subcontracts in a timely manner shall not obligate the Owner to pay any additional cost to the CM/GC.

5.2.8 All contract documents between the CM/GC and the Trade Contractors shall be made available for review by the Designer and the Owner.

5.2.9 Trade contracts are not to include contingencies. All construction contingency is to be included in the CM Contingency.

ARTICLE 6

CONSTRUCTION BY OWNER OR BY SEPARATE SUBCONTRACTOR

Delete the first sentence of 6.1.3 and replace with the following:

6.1.3 Replace the first sentence with "The CM/GC shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor. The CM/GC shall cooperate with them but shall not direct nor impede their work."

ARTICLE 7

CHANGES IN THE WORK

Add the following Section after 7.5:

7.6 Field Orders

7.6.1 A Field Order is a written instrument signed by the Owner, Contractor, and Designer for changes in the Work that neither require a change in the Contract Sum nor Contract Time.

7.6.2 A Field Order is required to be executed to utilize funds from or to, the CM Contingency or the Owner Reserve, or to reconcile amounts in allowances and unit prices.

ARTICLE 9

PAYMENTS AND COMPLETION

Delete Section 9.1.1 and replace with the following:

9.1.1 The Contract Sum is a GMP and stated in the Agreement and, including authorized modifications, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. The Contract Sum is not subject to change due to commodity, equipment, labor, or other cost fluctuations.

Add the following subparagraphs to Section 9.2:

9.2.1 The Schedule of Values shall be adjusted at the conclusion of the procurement of Subcontractors to reflect the trade costs associated with the Work and to reflect revised amounts associated with the CM/GC Contingency, Owner Reserve, and Allowances.

9.2.2 Should the Work proceed in separate phases, each phase shall be accounted for in a separate section of the Schedule of Values, including any Change Orders applicable to such phase.

9.2.3 The CM/GC Contingency and Owner Reserve, and their corresponding Field Orders, shall be accounted for independently of construction phases within the Schedule of Values.

9.2.4 All changes in the Work, whether executed by Change Order, Construction Change Directive, a written order for a minor change in the Work issued by the Designer, or Field Order, shall be reflected by subsequently added lines in the Schedule of Values and shall not otherwise modify existing lines of costs.

END OF SECTION