

OSE FORM 00502 –STANDARD MODIFICATIONS TO THE STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER AS CONSTRUCTOR

OWNER: University of South Carolina

PROJECT NUMBER: H36-9516-PG-B

PROJECT NAME: USC Beaufort Hilton Head Island Hospitality Management Facility CM@Risk

PROCUREMENT OFFICER: Ms. Lind Jackson

1 Standard Modifications To AIA A133-2009

1.1 These Standard Modifications amend or supplement the *Standard Form of Agreement Between Owner and Construction Manager as Constructor* (AIA Document A133) and other provisions of Bidding and Contract Documents as indicated Below

1.2 Compliance with these Standard Modifications is required by the Office of State Engineer (OSE) for all Construction Management at Risk projects when qualification based selection and bidding is used as the method of procurement.

1.3 All provisions of A133-2009, which are not so amended or supplemented, remain in full force and effect.

1.4 These Standard Modifications shall be attached to the AIA A133-2009 upon execution of the Agreement..

2 RELATED DOCUMENTS

2.1 AIA Document A133-2009 hereby incorporated by reference and referred to hereafter as A133.

2.2 AIA Document A201-2007 hereby incorporated by reference and referred to hereafter as A201.

2.3 Document 00811-0SE, Standard Supplementary Conditions, 2011 Edition.

2.4 Other documents that may be identified in the Bidding and Contract Documents.

3 MODIFICATIONS TO A133

3.1 *In Section 1.1, insert the section number 1.1.1 at the beginning of the opening sentence and insert the following sentences after the first sentence of this Section:*

Any reference in this document to the Agreement between the Owner and Construction Manager as Constructor, AIA A133, or some abbreviated reference thereof, shall mean the AIA A133, 2009 Edition as modified by OSE Form 502 CMR- Standard Modification to Agreement Between Owner and Construction Manager as Constructor. Any reference in this document to the General Conditions of the Contract for Construction, AIA Document A201, or some abbreviated reference thereof, shall mean the AIA A201, 2007 Edition as modified by OSE form 00811 – Standard Supplementary Conditions.

Convert the remaining sentences of Section 1.1 starting with the words "Upon the Owner's acceptance" into a new Section 1.1.2.

3.2 *Delete Section 1.2 and substitute following Sections*

1.2 Relationship of Parties

1.2.1 The Construction Manager shall 1) cooperate with the Architect in furthering the interests Of the Owner; 2) furnish efficient construction administration, management services and supervision; 3) furnish at all times an adequate supply of workers and materials; and 4) perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

1.2.2 The Construction Manager represents that it is an independent contractor, competent, knowledgeable, and familiar with the type of work contemplated by this Contract. The Construction Manager agrees and understands that neither it nor any of its agents or employees may act in the name of the Owner except and unless specifically authorized in writing by the Owner to do so. The Construction Manager further represents that it accepts a fiduciary role and responsibility with respect to the Owner and that it owes the Owner the duties of good faith, trust, confidence, and candor, and that it must exercise a high standard of care in managing money and property. The Construction Manager will, to its best abilities, act in the best interests of the Owner and the timely completion of the work. The Construction Manager shall furnish design review, construction administration and management services and use the Construction Manager's best efforts to construct the Project in an expeditious and economical manner consistent with the interests of the Owner.

3.3 *In Section 1.3, insert the section number 1.3.1 before the words "For the Preconstruction Phase" in the opening sentence of the section. Add the following new Sub-Section 1.3.2 to Section 1.3:*

1.3.2 Notwithstanding Section 1.3.1, the following Articles and Sections of AIA Document A201- 2007 shall apply to the Preconstruction Phase: Article 15.6 and Sections 3.18, 13.3, 13.4, 13.6, 13.9, 13.10, 13.11, 13.12, 13.13, 13.14, 13.15, 13.16, 14.5, 15.1.7, and 15.1.6.

3.3 *In Section 2.1.2, insert the section number 2.1.2.1 before the words "The Construction Manager shall schedule" in the opening sentence of the section. Add the following new Sub-Section 2.1.2.2 to Section 2.1.2:*

2.1.2.2 The Construction Manager shall actively participate in Design Coordination Meetings with the Architect and Owner for the purpose of collaborating and coordinating the final design and Construction Documents. The Construction Manager is responsible to cooperate and assist in the coordination of the development of the design of the Project within the budgeted cost and schedule. The objective of the coordination is to assure that the design meets the Owner's Program in all respects, including but not limited to the following areas:

- Cost containment and cost monitoring;
- Cost-effective decisions;
- Compatibility with Owner's architectural standards;
- Consistency with the Owner's expectations in it's Program;
- The appropriate provision of all necessary services and utilities;
- The necessary level of environmental review and documentation;
- That the Owner is kept fully aware of the progress of the Project;
- That the Project Schedule is maintained;
- That construction quality assurance complies with the Owner's Requirements;
- That the Construction Documents are reviewed for constructability; and
- That all permits and approvals are obtained for the Owner to occupy the Project.

The Construction Manager shall review the Construction Documents, including without limitation, the Owner's Program (as appropriate) to understand the requirements of the Project.

3.4 *After the second sentence of Section 2.1.7, insert the following sentence:*

The cost of all such items shall be included in the Cost of the Work set forth in Article 6.1.

3.5 *Add the following sentences to the end of Section 2.2.1:*

Before proposing a Guaranteed Maximum Price, the Construction Manager shall carefully study and compare the various Drawings and Specifications relative to the Work, as well as the information furnished by the Owner pursuant to this Agreement, shall take field measurements of any existing conditions related to the Work, and shall observe any conditions at the site affecting it. This review is for the purpose of confirming the accuracy of the Construction Manager's estimate of the cost of the Work and for the purpose of facilitating coordination and construction by the Construction Manager. The Construction Manager's review is not for the purpose of (1) discovering design errors and omissions that are latent or are not obvious to the average Construction Manager licensed for projects of the scope and size of this Project performing a reasonable review of the Drawings and Specifications; (2) discovering violations of the International Code Council series of codes as adopted by South Carolina; (3) or discovering latent inconsistencies and ambiguities in the Drawings and Specifications. The Construction Manager shall promptly notify the Architect of any errors, inconsistencies, or omissions discovered by the Construction Manager. Such notice shall be made in writing and shall be submitted to the Architect prior to proposing a Guaranteed Maximum Price.

3.6 *Add the following sentence to the end of the Section 2.2.7:*

The Construction Manager may not commence construction of any portion of the Work prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price unless the Owner and the Construction Manager agree on a fixed price or a guaranteed maximum price regarding that portion of the construction. All cost for any such work shall be included in the Cost of the Work set forth in Article 6.1.

3.7 *Delete Sub-Section 2.3.2.1 and substitute the following:*

2.3.2.1 The Construction Manager shall invite bids for all major components of the construction work. The Construction Manager shall not self-perform any construction work for which subcontractor bids are invited, unless no acceptable bids are received or a subcontractor fails to perform.

3.8 *Delete the words of Sub-Section 2.3.2.2 and insert the word "RESERVED."*

3.9 *Add the following to the end of the last sentence of Sub-Section 2.3.2.3:*

and the General Conditions of the Contract for Construction (General Conditions).

3.10 *In Sub-Section 2.3.2.4, delete the words "recommends a specific" and substitute the words "proposes to subcontract with a."*

3.11 *Add the following sentences to the end of Section 3.2:*

The Construction Manager acknowledges and accepts that the authority of the Owner and its representative to act on certain matters without the prior approval of the Office of State Engineer is prohibited or limited by the South Carolina Codified Laws, as Amended and the Manual for Planning and Execution of State Permanent Improvements Projects-Part 2 (Manual). The Construction Manager further agrees to be bound by and subject to any approval processes set forth in the Manual.

3.12 *Delete Section 4.2.2 and substitute the following:*

4.2.2 Payments are due and payable twenty-one days from the date the Construction Manager's invoice is received by the Owner. In accordance with S.C. Code Ann. § 29-6-50, the Owner, shall pay the Construction Manager interest, beginning on the due date, at the rate of one percent a month or a pro rata fraction thereof on the unpaid balance as may be due. However, no interest is due unless the Construction Manager notifies the Owner of its intent to charge interest at the time request for payment is made.

3.13 *Add the following to the end of the sentence of Section 5.1.2:*

shall be as set forth in the General Conditions.

3.14 *Delete the words of Section 5.1.3 and insert the word "RESERVED."*

3.15 *Delete the words of Section after 5.1.4 and insert the word "RESERVED."*

3.16 *Delete Section 5.3.1 and substitute the following:*

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, General Condition of the Contract for Construction. As provided in the General Conditions, the Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work which negatively impact achievement of substantial completion as shown on the last updated Project Schedule issued before the date of the change order.

3.17 *Delete the last sentence of Section 5.3.3.*

- 3.18 *In Section 6.6.5, delete everything after the words "process or product required by the Contract Documents" and insert a period*
- 3.19 *Delete the words of Section 6.6.8 and insert the word "RESERVED."*
- 3.20 *Delete Section 7.1.1 and substitute the following:*
- 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, in the General Conditions, and elsewhere in the Contract Documents. In the event of a conflict between the provisions of this Article and the provisions of the General Conditions, the provisions of the General Conditions shall control unless this Article, by its clear and unambiguous terms, overrides the provisions of the General Conditions, expressly setting for by Section Number the terms of the General Conditions which are overridden by this Article.
- 3.21 *Delete the words of Section 7.1.3 and insert the word "RESERVED."*
- 3.22 *In the space provided in Sub-Section 7.1.7.3 for inserting the amount of retainage, insert "three and one half percent (3.5 %)."*
- 3.23 *In the space provided in Sub-Section 7.1.7.4 for inserting the amount of retainage, insert "three and one half percent (3.5 %)."*
- 3.24 *Add the following sentence to the end of Section 7.1.8:*
- The percentage of retainage held on subcontracts shall not be more than three and one half percent (3.5%).
- 3.25 *Add the following sentence to the end of Section 7.1.9:*
- Storage of materials off site of the construction project shall require bonding and insurance. Insurance shall name the Construction Manager and the Owner as benefactors in the event of loss, damage, or failure of delivery to the project.
- 3.26 *Add the following sentence to the end of the paragraph of Article 8:*
- However, the penal amount of the performance bond and the penal amount of the payment bond required in Section 11.4 of AIA Document A201-2007 shall not be less than the amount of the GMP for each.
- 3.27 *Delete Section 9.1 and substitute the following:*
- 9.1 Any Claim between the Owner and the Construction Manager shall be resolved in accordance with the provisions set forth in Article 15 of A201-2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Architect shall be required as a condition precedent to dispute resolution.
- 3.28 *Delete the words of Section 9.2 and insert the word "Reserved"*
- 3.29 *Delete the words of Section 9.3 and insert the word "Reserved"*
- 3.30 *In Section 10.1.3, delete the first sentence of the last paragraph and substitute the following sentence:*
- If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement prior to the date of assignment provided those cost would have been reimbursable as Cost of the Work if the contract had not been terminated.
- 3.31 *In Section 10.2.2, insert a period after the words "Sections 10.1.2 and 10.1.3 above" and delete everything after the inserted period*

3.32 *Delete Section 11.4 and substitute the following:*

11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement as a whole, or in part, without the written consent of the other and then only in accordance with and as permitted by Regulation 19-445.2180 of the South Carolina Code of Regulations, as amended: 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.

3.33 *Add the following new Sections 11.5, 11.6, 11.7, 11.8, and 11.9:*

11.5 THE OWNER'S REPRESENTATIVES:

11.5.1 Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the responsibility for and, subject to Section 7.2.1 of the General Conditions, the authority to resolve disputes under Section 15.6 of the General Conditions:

(Name, title, postal address, telephone numbers, and other information)

Mr. Jeff Lamberson, Director of Planning and Construction
University of South Carolina
743 Greene Street
Columbia, SC 29208
803-777-4022

11.5.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions: *(Name, title, postal address, telephone numbers, and other information)*

To Be Determined

11.6 THE CONTRACTOR'S REPRESENTATIVES:

11.6.1 Contractor designates the individual listed below as its Senior Representative ("Contractor's Senior Representative"), which individual has the responsibility for and authority to resolve disputes under Section 15.6 of the General Conditions:

(Name, title, postal address, telephone numbers, and other information)

TO BE DETERMINED

11.6.2 Contractor designates the individual listed below as its Contractor's Representative, which individual has the authority and responsibility set forth in Section 3.1.1 of the General Conditions: *(Name, title, address, telephone numbers, email address, and other information)*

TO BE DETERMINED

11.7 NOTIFICATION OF CHANGE:

Neither the Owner's nor the Contractor's representatives shall be changed without ten days written notice to the other party.

11.8 ECONOMIC CONFLICT OF INTEREST:

A contractor shall not have or exercise any official responsibility regarding a public contract in which the contractor, or a business with which he is associated, has an economic interest. A person working for contractor shall not have or exercise any official responsibility regarding a public contract in which the person, an individual with whom he is associated, or his family members have an economic interest. If contractor is asked by any person to violate, or does violate, either of these restrictions, contractor shall immediately communicate such information to the procurement officer. The state may rescind, and recover any amount expended as a result of, any action taken or contract entered in violation of this provision. The terms "business with which he is associated," "economic interest," "family member," "immediate family," "individual with whom he is associated," "official responsibility" and "person" have the meanings provided in Section 8-13-100.

11.9 Other provisions:

3.35 *In Section 12.2, Sub-Section 5, list the following documents in the space provided for listing documents:*

END OF DOCUMENT
