**Standard Modifications to the AIA A133-2009, SCOSE Version**

This document is to be attached to and referenced in Section 12.2.5 of the AIA A133-2009, SCOSE Version, as “Standard Modifications to the AIA A133-2009, SCOSE Version” for projects utilizing Construction Manager at Risk as the project delivery method and the AIA A201-2017, SCOSE Version, as the General Conditions.

1. *Delete the second sentence in Section 1.1.2 and substitute the following:*

Any reference in this document to the General Conditions of the Contract for Construction, AIA Document A201, or some abbreviated reference thereof, shall mean AIA Document A201-2017 Standard Supplementary Conditions, SCOSE Version.

1. *Delete the last sentence of Section 1.2.2 and substitute the following:*

The Construction Manager shall use its best efforts to construct the Project in an expeditious and economical manner consistent with the interests of the Owner.

1. *In the second sentence of Section 2.1.2.2 delete the words* “…in the coordination of…” *and replace with* “…by providing feedback during the…”
2. *Delete Section 2.2.4 and substitute the following:*

**§ 2.2.4** In preparing the Construction Manager’s Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency in the amount of       % of the Cost of the Work **or** $       . With the Owner’s written approval, which shall not be unreasonably withheld, the Construction Manager may expend funds from the contingency for the Cost of the Work. The contingency is not intended, nor shall it be used, for Owner directed scope changes or additions to the Work. The parties agree that any use of contingency must be for the Cost of the Work. If the expenditure relates to the failure of a Subcontractor to perform Work in accordance with this Agreement, the Construction Manager shall demonstrate, to the Owner’s reasonable satisfaction, that the Construction Manager has in good faith exercised all reasonable steps to obtain performance by the Subcontractor or the Subcontractor’s surety.

**§ 2.2.4.1** Allowable uses of contingency:

**.1** Shift work/overtime,

**.2** Project acceleration costs (except to the extent the Construction Manager or Subcontractor is at fault),

**.3** Safety issues,

**.4** Unknown or undiscovered pre-existing conditions or materials,

**.5** Design conflicts or errors and omissions not otherwise chargeable back to the Architect,

**.6** Corrective work as a result of damage by parties outside of the Construction Manager’s responsibility not including costs or deductibles covered by Commercial General Liability or Builder’s Risk Insurance.

**§ 2.2.4.2** Non-allowable uses of contingency:

**.1** Claim settlements with Subcontractors or suppliers,

**.2** Insurance claims including those of the Construction Manager or Subcontractors,

**.3** Changes in the final design,

**.4** Legal fees incurred by the Construction Manager (excluding litigation between the Owner, its agents, or consultants and the Construction Manager),

**.5** Errors in Subcontractor bids due to their failure to thoroughly examine the Bidding Documents and Contract Documents and failure to request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements prior to their bid submission,

**.6** Any other use other than those identified in Subparagraph 2.2.4.2 unless mutually agreed.

**§ 2.2.4.3** As the Work progresses, the Owner may request a meeting with the Construction Manager and Architect to analyze the remaining contingency and determine methods of reducing such contingency for the benefit of Owner to implement scope changes to the Work or otherwise to make the contingency available for the Owner’s use. Any such reduction in the contingency shall be documented by Change Order.

**§ 2.2.4.4** On a monthly basis, the Construction Manager shall provide to the Owner a summary of the contingency expenditures in a format approved by the Owner. The Owner has the right to audit the contingency.

1. *Delete Section 2.2.6 and substitute the following:*

**§ 2.2.6** Upon review and approval by the parties of the Guaranteed Maximum Price proposal, the Contract shall be amended by completing and attaching the Exhibit A of the A133 to the Change Order to CM-R Contract. With the signatures of the Construction Manager, Architect, Owner, and OSE as required, on the Change Order, the Guaranteed Maximum Price proposal shall be deemed effective and included as part of the Agreement without further acceptance from the Construction Manager. The Owner shall supply to the Construction Manager and Architect a copy of the approved Change Order.

1. *Insert the following at the end of Section 5.2.1 after the next to the last sentence ending in “the Owner.” and before the last sentence “Savings shall…”:*

To the extent the Cost of the Work is less than the Guaranteed Maximum Price resulting in a credit to the Owner resulting in cost savings, the savings shall be defined as the difference between the actual Cost of the Work and the GMP minus any unused contingency. Savings may be from approved substitutions, buyout savings, efficiencies created within the General Conditions, or similar cost reductions that results in actual Cost of the Work being less than the Guaranteed Maximum Price unless otherwise provided elsewhere in the Contract Documents as refundable credits.

1. *In the first sentence of Section 5.3.3 delete the words* “…Section 7.3.3.3 of AIA Document A201-2007 and the term “costs” as used in Section 7.3.7 of AIA Document A201-2007…” *and replace with* “…Section 7.3.3.3 of AIA Document A201-2017 and the term “costs” as used in Section 7.3.4 of AIA Document A201-2017…”.
2. *In the first sentence of Section 6.6.4 delete the words* “…Section 13.5.3 of AIA Document A201-2007…” *and replace with* “…Section 13.4.3 of AIA Document A201-2017…”.
3. *Delete the first paragraph in Article 8 and substitute the following:*

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 8. However, the penal amount of the performance bond and the penal amount of the payment bond shall not be less than the amount of the GMP for each.

**§ 8.1 Owners Insurance**

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article and, upon the Contractor’s request, provide a copy of the policies required by Section 8.1.2. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

**§ 8.1.1 Liability Insurance**

The Owner shall be responsible for purchasing and maintaining the Owner’s usual general liability insurance.

**§ 8.1.2 Optional Insurance**

The Owner shall purchase and maintain the insurance selected below.

**[ ]**  **.1 Other Insurance**

*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*

|  |  |
| --- | --- |
| **Coverage** | **Limits** |
|       |       |

**§ 8.2 Contractors Insurance and Bonds**

**§ 8.2.1 Certificates of Insurance.** The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner’s written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section 8.2.5.1 and Section 8.2.6.1. The certificates will show the Owner as an additional insured on the Contractor’s Commercial General Liability and excess or umbrella liability policy or policies. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

**§ 8.2.2 Deductibles and Self-Insured Retentions.** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

**§ 8.2.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect’s consultants as additional insureds for claims caused in whole or in part by the Contractor’s negligent acts or omissions during the Contractor’s operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor’s negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner’s general liability insurance policies and shall apply to both ongoing and completed operations, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect’s consultants, CG 20 32 07 04.

**§ 8.2.4** A failure by the Owner to either (i) demand a certificate of insurance or written endorsement required by Section 8.2, or (ii) reject a certificate or endorsement on the grounds that it fails to comply with Section 8.2, shall not be considered a waiver of Contractor's obligations to obtain the required insurance.

**§ 8.2.5 Contractor’s Required Insurance Coverage**

**§ 8.2.5.1**  The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, for such other period for maintenance of completed operations coverage as specified in the Contract Documents, or unless a different duration is stated below:

*(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

**§ 8.2.5.2 Commercial General Liability**

**§ 8.2.5.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than $1,000,000 each occurrence, $1,000,000 general aggregate, $1,000,000 aggregate for products-completed operations hazard, $1,000,000 personal and advertising injury, $50,000 fire damage (any one fire), and $5,000 medical expense (any one person) providing coverage for claims including

**.1** damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;

**.2** personal injury and advertising injury;

**.3** damages because of physical damage to or destruction of tangible property, including the loss of use of such property;

**.4** bodily injury or property damage arising out of completed operations; and

**.5** the Contractor’s indemnity obligations under Section 3.18 of the General Conditions.

**§ 8.2.5.2.2** The Contractor’s Commercial General Liability policy under this Section 8.2.5.2.2 shall not contain an exclusion or restriction of coverage for the following:

**.1** Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.

**.2** Claims for property damage to the Contractor’s Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.

**.3** Claims for bodily injury other than to employees of the insured.

**.4** Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.

**.5** Claims or loss excluded under a prior work endorsement or other similar exclusionary language.

**.6** Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.

**.7** Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.

**.8** Claims related to roofing, if the Work involves roofing.

**.9** Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.

**.10** Claims related to earth subsidence or movement, where the Work involves such hazards.

**.11** Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

**§ 8.2.5.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than $1,000,000 per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

**§ 8.2.5.4** The Contractor may achieve the required limits and coverage for Commercial General Liability, Employers Liability, and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section 8.2.5.2 and 8.2.5.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. The umbrella policy limits shall not be less than $3,000,000.

**§ 8.2.5.5** Workers’ Compensation at statutory limits.

**§ 8.2.5.6** Employers’ Liability with policy limits not less than $100,000 each accident, $100,000 each employee, and $500,000 policy limit for claims, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed.

**§ 8.2.5.7**  Jones Act, and the Longshore & Harbor Workers’ Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks.

**§ 8.2.5.8** Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than       ($       ) per claim and       ($       ) in the aggregate.

**§ 8.2.5.9** Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than       ($      ) per claim and       ($       ) in the aggregate.

**§ 8.2.6 Required Property Insurance**

**§ 8.2.6.1** The Contractor shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk “all-risks” completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Contractor’s property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section 8.2.6.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds.

**.1** **Causes of Loss.** The insurance required by this Section 8.2.6.1 shall provide coverage for direct physical loss or damage and shall include the risks of fire (with extended coverage), explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, workmanship, or materials.

*(Indicate below the cause of loss and any applicable sub-limit.)*

|  |  |
| --- | --- |
| **Causes of Loss** | **Sub-Limit** |
|  |  |

**.2 Specific Required Coverages.** The insurance required by this Section 8.2.6.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect’s and Contractor’s services and expenses required as a result of such insured loss, including claim preparation expenses. (Indicate below the cause of loss and any applicable sub-limit.)

|  |  |
| --- | --- |
| **Causes of Loss** | **Sub-Limit** |
|  |  |

**.3** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall replace the insurance policy required under Section 8.2.6.1 with property insurance written for the total value of the Project.

**.4 Deductibles and Self-Insured Retentions.** If the insurance required by this Section 8.2.6 is subject to deductibles or self-insured retentions, the Contractor shall be responsible for all loss not covered because of such deductibles or retentions.

**§ 8.2.6.2 Occupancy or Use Prior to Substantial Completion.** The Owner’s occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section 8.2.6.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

**§ 8.2.6.3**  If the Owner requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Contractor shall, if possible, include such insurance, and the cost thereof shall be charged to the Owner by appropriate Change Order.

**§ 8.2.6.4**  Before an exposure to loss may occur, the Contractor shall file with the Owner a copy of each policy that includes insurance coverages required by this Section 8.2.6. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project.

**§ 8.2.7 Contractor’s Other Insurance Coverage**

**§ 8.2.7.1** Insurance selected and described in this Section 8.2.7 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*

**§ 8.2.7.2** The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section 8.2.7.1.

*(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)*

**[ ]  .1**  Insurance for physical damage to property while it is in storage and in transit to the construction site on an “all-risk” completed value form.

**[ ]  .2** Property insurance on an “all-risk” completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.

**[ ]  .3 Boiler and Machinery Insurance**

The Contractor shall purchase and maintain boiler and machinery insurance as required, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

**§ 8.2.8 Performance Bond and Payment Bond**

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

*(Specify type and penal sum of bonds.)*

|  |  |
| --- | --- |
| **Type** | **Penal Sum ($0.00)** |
| Payment Bond |       |
| Performance Bond |       |

**§ 8.2.8.1** Before commencing any services hereunder, the Contractor shall provide the Owner with Performance and Payment Bonds, each in an amount not less than the Contract Price set forth in Exhibit A of the Agreement. The Surety shall have, at a minimum, a ''Best Rating'' of ''A'' as stated in the most current publication of ''Best's Key Rating Guide, Property-Casualty''. In addition, the Surety shall have a minimum ''Best Financial Strength Category'' of ''Class V", and in no case less than five (5) times the contract amount. The Performance Bond shall be written on Form SE-355, ''Performance Bond'' and the Payment Bond shall be written on Form SE-357, ''Labor and Material Payment Bond'', and both shall be made payable to the Owner.

**§ 8.2.8.2** The Performance and Labor and Material Payment Bonds shall:

**.1** be issued by a surety company licensed to do business in South Carolina;

**.2** be accompanied by a current power of attorney and certified by the attorney-in-fact who executes the bond on the behalf of the surety company; and

**.3** remain in effect for a period not less than one (1) year following the date of Substantial Completion or the time required to resolve any items of incomplete Work and the payment of any disputed amounts, whichever time period is longer.

**§ 8.2.8.3** Any bonds required by this Contract shall meet the requirements of the South Carolina Code of Laws and Regulations, as amended.

1. *Add the following to Section 12.2.5:*

Standard Modifications to the AIA A133-2009, SCOSE Version

SE-470, Notice of Intent to Award CM-R Contract

Certificate of Procurement Authority issued by the State Fiscal Accountability Authority