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# **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**

**AGREEMENT** made as of the Third day of February in the year Two Thousand Fifteen.  
*(In words, indicate day, month and year.)*

**BETWEEN** the Owner:  
*(Name, legal status and address)*  
Lutheran Senior Services  
1150 Hanley Industrial Court  
Brentwood, Missouri 63144

and the Construction Manager:  
*(Name, legal status and address)*  
S. M. Wilson & Co.  
2185 Hampton Avenue  
P. O. Box 5210  
St. Louis, Missouri 63139

for the following Project:  
*(Name and address or location)*  
Lutheran Hillside Village – Additions & Renovations  
6901 North Galena Road  
Peoria, Illinois 61614

The Architect:  
*(Name, legal status and address)*  
Perkins Eastman  
351 West Hubbard Street  
Suite 708  
Chicago, Illinois 60654

The Owner's Designated Representative:  
*(Name, address and other information)*  
Mr. David Bald  
Lutheran Senior Services  
1150 Hanley Industrial Court  
Brentwood, Missouri 63144  
(314) 446-2392

The Construction Manager's Designated Representative:  
*(Name, address and other information)*  
Mr. Bill Wagner  
S. M. Wilson & Co.  
2185 Hampton Avenue

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

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

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

#### ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

##### § 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

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

§ 4.1.3 [Reserved]

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

##### § 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable within 20 calendar days from presentation of the Construction Manager's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate provided in Missouri's Prompt Pay Act.  
*(Insert rate of monthly or annual interest agreed upon.)*

#### ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

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

§ 5.1.1 The Construction Manager's Fee:

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)*

Construction Phase Services shall be Three and Three-Quarter Percent (3.75%) of the cost of the work, regardless if the contractual agreement is a Guaranteed Maximum Price of Lump Sum.

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

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

The Construction Manager's Fee for change work, including overhead and profit and General Conditions including subcontractor default program and General Liability Insurance, will be limited to 6%. This percent does not include Builders Risk insurance. If the change of work affects the duration of the project by adding one week or more to the schedule, the Construction Manager may request additional General Conditions from the Owner.

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed One Hundred Percent (100%) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

*(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)*

Item	Units and Limitations	Price per Unit (\$0.00)
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→ § 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

*(Insert specific provisions if the Construction Manager is to participate in any savings.)*

At the completion of the Work, if the sum of the Cost of the Work and the Construction Manager's Fee are less than the Guaranteed Maximum Price, 25% of such savings shall be paid to Construction Manager and 75% of such savings shall be credited to the Owner.

5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

If any Design Contingency remains at the completion of the Bidding Phase, 100% of such Contingency shall be credited to the Owner.

*(Paragraph deleted)*

§ 5.3 Changes in the Work

§ 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 Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time and Contract Sum 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, 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 and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007 shall have the meanings assigned to them in AIA Document A201-2007 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 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.

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

Unless otherwise agreed by Owner, for any changes to the Work Owner directs Construction Manager to perform on a time-and-materials basis, the subcontractor actually performing the Work on such change shall be paid its actual out-of-pocket costs, plus a markup of 10% to compensate such subcontractor for its profit and overhead. If the subcontractor performing such change work does not have a contract directly with Construction Manager, then the subcontractor in line contractually between Construction Manager and the subcontractor actually performing the change work shall receive 5% of the actual costs of such change, to compensate such intermediate-tier subcontractor for its overhead and profit; if more than one level of subcontractor exists contractually between Construction Manager and the subcontractor performing the change work, then all such intermediate-tier subcontractors shall divide pro-rata

without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201-2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager. Owner and Construction Manager agree that this Agreement has been fully and freely negotiated by both parties hereto, and, accordingly, shall not be construed against either party as the drafter hereof.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201-2007, General Conditions of the Contract for Construction
- .3

*(Paragraphs deleted)*

Other documents:

*(List other documents, if any, forming part of the Agreement.)*

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

LUTHERAN SENIOR SERVICES

*(Signature)*  
OWNER *(Signature)*

Mr. Mark Schoedel, Vice President

*(Printed name and title)*

S. M. WILSON & CO.

*(Signature)*  
CONSTRUCTION MANAGER *(Signature)*

Mr. William R. Wagner, Vice President

*(Printed name and title)*

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