

AMENDMENT No. 2-M
TO AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER

CONSTRUCTION SERVICES AMENDMENT

Pursuant to Section 1.3 of the Agreement, dated February 14, 2007 between City of Durham (Owner) and Skanska USA Building (the Construction Manager), for Arts Council Upgrade Phase II (the Project), the Owner and Construction Manager hereby identify the Subproject Name, Owner's Subproject Number, and Amendment No. 2-M for this Subproject, and establish for the Subproject the Construction Manager's Fee, the Construction Contingency, the Contract Compliance Costs, the Guaranteed Maximum Subproject Price, the Subproject Contract Time for the Work, and the Liquidated Damages, as set forth below:

ARTICLE I IDENTIFICATION OF SUBPROJECT NAME, OWNER'S SUBPROJECT NUMBER, AND IDENTIFYING LETTER

Subproject Name	Owner's Subproject Number	Letter
Arts Council Upgrade Phase II		2-M

ARTICLE II CONSTRUCTION MANAGER'S FEE

- A. Pursuant to Section 5.1.1 of the Agreement, the Owner and the Construction Manager hereby agree that the Construction Manager's Fee for this Subproject shall be calculated at 2.25 percent (%) of the sum of the Original Cost of the Work for the Subproject plus the Contract Compliance Costs stipulated sum set forth in Article IV below. For the purposes of determining the Construction Manager's Fee the "Original Cost of the Work" shall not include the Construction Contingency defined in Section 6.1.8 of the Agreement and Article III of this Amendment No. 2.
- B. In the event of Changes in the Work that justify a change in the Cost of the Work or in the Guaranteed Maximum Price for this Subproject, as defined by Article 7 of the General Conditions, the Construction Manager's Fee shall be adjusted as follows:
1. The Construction Manager's Fee shall not be increased until and unless the aggregate of all changes to the Cost of the Work, net of any deductive Changes in the Work, exceed Five percent (5 %) of the original Cost of the Work for the Subproject.
 2. After the aggregate of all changes in the Cost of the Work exceeds the amount identified in the previous subparagraph, the Construction Manager's Fee shall be adjusted by an amount equal to the original fee percentage identified in Paragraph A of this Article times the amount by which the aggregate increase in the Cost of the Work exceeds the amount identified in the previous subparagraph.

(State a lump sum, percentage of actual Cost of the Work or other provision for determining the Construction Manager's Fee, and explain how the Construction Manager's Fee is to be adjusted for changes in the Work.)

ARTICLE III CONSTRUCTION CONTINGENCY

Pursuant to Section 6.1.8 of the Agreement, the Construction Manager and the Owner hereby agree that the construction contingency for this Subproject shall be fixed at the stipulated sum of zero (\$00.00).

ARTICLE IV CONTRACT COMPLIANCE COSTS

Pursuant to Section 6.2 of the Agreement, the Construction Manager and the Owner hereby agree that the Contract Compliance Costs shall be an amount not to exceed zero (\$00.00).

ARTICLE V GUARANTEED MAXIMUM SUBPROJECT PRICE

The Construction Manager's Guaranteed Maximum Subproject Price for the Work on this Subproject, including the estimated Cost of the Work as defined in Sections 6.1.1 through 6.1.7 of the Agreement, the Contract Compliance Costs as defined in Section 6.2 of the Agreement, the Construction Manager's Fee as set forth in Article II above, and the Construction Contingency as defined in Section 6.1.8 is (\$00.00). This Guaranteed Maximum Subcontract Price is for the performance of the Work on this Subproject in accordance with the Contract Documents listed and attached to this Amendment and marked Exhibits A through B, as follows:

- Exhibit A GMP Proposal dated TBD, 2010, as attached hereto, and all contract documents identified therein.
- Exhibit B Notice on Reimbursement for Sales and Use Tax, ST-1-ST-4
- Exhibit C Compliance Costs Clarifications and Staff Rates

ARTICLE VI CONTRACT TIME

The date of Substantial Completion of this Subproject is November 30, 2011.

ARTICLE VII LIQUIDATED DAMAGES

- A. For this Subproject, Construction Manager shall pay Owner the amount of five hundred dollars (\$500.00) per day for every calendar day of unexcused delay in achieving Substantial Completion beyond the Substantial Completion Date, pursuant to Section 7.3.2 of the Agreement.
- B. If Construction Manager fails to achieve Final Completion within sixty (60) days after Substantial Completion, Construction Manager shall pay Owner the amount of two hundred and fifty dollars (\$250.00) per day for each and every calendar day of unexcused delay in achieving Final Completion in excess of 60 days, pursuant to Section 7.3.3 of the Agreement

ARTICLE VIII OWNER'S REPRESENTATIVE

Pursuant to Section 2.1 of the General Conditions, the City Manager hereby designates the Director of General Services and Donna Maskill (Project Manager) to act on the Owner's behalf under or in connection with the Contract.

ARTICLE IX PROGRESS PAYMENTS AND PROMPT PAYMENT TO SUBCONTRACTORS

The prompt payment to subcontractors provision of Section 9.6.2.2 of the General Conditions is modified as follows:

Delete the words "not to exceed 10%" at the end of Section 9.6.2.2 and replace with "consistent with same terms as those between the Contractor and the Owner."

ARTICLE X RETAINAGE OF PROGRESS PAYMENTS FOR CONSTRUCTION PHASE

The retainage provisions of Section 7.1.7 of the Agreement are modified as follows:

- A. If after the project is deemed fifty percent (50%) complete based upon the Contractor's gross project invoices, excluding the value of materials stored off-site, except that the value of the materials stored on-site shall not exceed 20% of the Contractor's gross project invoices for the purpose of determining the percent completion of the Project, and the Contractor provides Owner and the Architect the following:
 - 1. Written verification evidencing 50% completion of the Project; and,
 - 2. Written consent of the surety named in the project performance and payment bonds agreeing that the Owner shall not retain any further retainage from periodic payments due to the Contractor;

the Owner shall cease holding retainage from future periodic payments if the Owner finds that the Contractor is performing satisfactorily, and any nonconforming work identified in writing by the Architect or owner (prior to the point of 50% project completion) has been corrected by the Contractor and accepted by the Architect or Owner, whoever provided such prior notice of nonconforming work. If, however, the Owner determines the Contractor's performance is unsatisfactory, the Owner may reinstate the specified retainage for each subsequent periodic payment. Notwithstanding anything to the contrary, Owner may assess retainage after 50% project completion, even if the Contractor has complied with Paragraphs A(1) and A(2) (above) and continues to perform satisfactorily as necessary to retain two and one-half percentage (2.5%) total retainage through the completion of the Project.

- B.** If by or before the Project is deemed 50% complete and one hundred percent (100%) performance has been completed for the following "early" finishing trades: (1) structural steel; (2) piling; (3) caisson; or (4) demolition; and after receipt by the Owner of an approval or certificate from the Architect that such early finishing work is acceptable and in accordance with the Contract Documents, and after the Contractor provides Owner and the Architect the following:
1. The early finishing trade subcontractor's written request for such payment; and,
 2. Written consent of the surety named in the project performance and payment bonds agreeing that the Owner shall make such early finishing trade payment; the Owner shall make full payment to the Contractor for said 100% completed early finishing trade work less retainage of five-tenths percent (0.5%)(of the early finishing trade contract) upon the later occurrence of (1) 60 days receipt of said early finishing trade subcontractor's written request, or (2) immediately upon receipt of said written consent of the surety.
- C.** Notwithstanding any of the retainage provisions described herein, there shall be no retainage on periodic or final payments for contracts having a total project cost less than \$100,000.00, and, in addition to any retainage amounts allowed to be held by the Owner, the Owner shall also retain all rights allowed under this Agreement to withhold payment to the Contractor for unsatisfactory job progress, defective or nonconforming construction not remedied, disputed work, or third-party claims filed against the Owner or reasonable evidence that a third-party claim will be filed.

ARTICLE XI RETAINAGE OF PROGRESS PAYMENTS OF SUBCONTRACTORS

The provisions of Section 7.1.8 of the Agreement are modified as follows:

Delete the words "of not less than five percent (5%)" at the end of the first sentence of Section 7.1.8 and replace with "consistent with the percentage of retainage on payments made by the Owner to the Contractor."

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

Preaudit Certificate:

ATTEST:

CITY OF DURHAM

SKANSKA USA BUILDING, INC.

(Please affix corporate seal here.)

By: _____
Title of Officer: _____

STATE OF _____ CORPORATION ACKNOWLEDGMENT

COUNTY OF _____

I, _____, a notary public in and for said

county and state, certify that _____
personally appeared before me this day and acknowledged that he or she is (~~strike through the~~
inapplicable:) chairperson/ president / chief executive officer / vice-president / assistant vice-president/
treasurer/ chief financial officer of Skanska USA Building, Inc., a Delaware corporation, authorized to do
business in North Carolina, and that by authority duly given and as the act of the corporation, he or she
signed the foregoing contract with the City of Durham and the corporate seal was affixed thereto.

This the ____ day of _____, 20____.

My commission expires:

Notary Public