

DRAFT AIA® Document A132™ – 2009

Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition

AGREEMENT made as of the 12th day of May in the year 2015
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

Southern Lehigh School District
5775 Main Street
Center Valley, PA 18034

and the Contractor for General Construction:
(Name, legal status, address and other information)

Lobar, Inc.
One Old Mill Rd.
P.O. Box 50
Dillsburg PA 17019

for the following Project:
(Name, location and detailed description)

New Elementary School for Southern Lehigh School District
4625 West Hopewell Road
Center Valley PA 18034

The Construction Manager:
(Name, legal status, address and other information)

D'Huy Engineering, Inc.
One East Broad St., Suite 310
Bethlehem PA 18018
610-865-3000

The Architect:
(Name, legal status, address and other information)

KCBA Architects
8 East Broad Street
Hatfield, PA 19440
215-368-5806

The Owner and Contractor agree as follows.

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.

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

This document is intended to be used in conjunction with AIA Documents A232™-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; B132™-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™-2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

AIA Document A232™-2009 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9. For the purposes of this Agreement, the term General Conditions as used herein shall mean the General Conditions of the Contract for Construction as modified by the Owner.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.
(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

«The commencement date will be fixed in a Notice to Proceed issued by the Construction Manager or the Owner.»

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of each milestone, each phase and the entire Work not later than the dates listed in the Contract Documents.

If Contractor fails to achieve Substantial Completion of the Work as of the dates identified for all project phases, and/or milestones, and/or the entire work, Contractor shall pay or credit (as appropriate) to Owner, liquidated damages in the amount listed in the contract documents per day until Substantial Completion is achieved in accordance with the terms and provisions of the Contract Documents. Owner shall have the right to offset any liquidated damages provided herein against any amounts that may be due and owing from Owner to Contractor for the Work under this Agreement. The parties expressly agree and acknowledge that the provisions set forth in this Article constitute the parties' best estimate of potential damages that could result to Owner as a result of Contractor's failure to achieve Substantial Completion within the times required herein, and that forecasting such damages cannot be done without difficulty. Accordingly, the parties hereby agree and acknowledge that the

liquidated damages set forth herein shall not constitute a penalty for the reasons set forth above. Furthermore, the parties expressly agree and acknowledge that the liquidated damages provided herein are only for purposes of compensating Owner for any delay in Substantial Completion and shall not be the sole and exclusive remedy of Owner in the event of any breach of this Agreement, or any other Contract Documents, by the Contractor.

Liquidated damages for failure to complete on time apply for all project phases, milestones and the entire Work as listed in the Contract Documents.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:

(Check the appropriate box.)

[] Stipulated Sum, in accordance with Section 4.2 below

§ 4.2 Stipulated Sum

§ 4.2.1 The Stipulated Sum shall be Ten Million Four Hundred Forty Eight Thousand Five Hundred Dollars and Zero Cents (\$10,448,500.00), subject to additions and deletions as provided in the Contract Documents.

§ 4.2.2 The Stipulated Sum is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

Alternate 3:	Provide concrete, planters, and related work for the outdoor classroom:	\$35,000.00
Alternate 4:	Provide aluminum framed windows in lieu of fiberglass framed windows:	(\$16,500.00)
Alternate 12:	Delete landscaping at the solar ground array:	(\$ 3,000.00)
Alternate 19:	Reduce amount of tackable wall surface TWS-1:	(\$22,000.00)

§ 4.2.3 Unit prices, if any: See unit prices outlined on Contractors Bid Form attached hereto as Exhibit A and made a part hereof.

(Identify and state the unit prices and quantity allowances, to which the unit price will be applicable.)

§ 4.2.4 Project Material Allowances included in the Stipulated Sum are listed on Contractors Bid Form attached hereto as Exhibit A and made a part hereof.

§ 4.2.4.1 No quantity limitations shall apply to the Project. The allowances shall be solely owned by the Owner and, as such, the Owner shall have the sole discretion relating to the use of these allowances. Furthermore, any unused portion of the allowances shall be deducted from the Contractor's Contract Sum. The Contractor shall receive no compensation on the unused portion of the allowances. The Contractor will be required to furnish documentation to the Owner evidencing the expenditures to be charged to the allowance and the reasons therefor prior to the Owner's approval of expenditures from the allowances.

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and upon certification of the Project Application and Project Certificate for Payment or Application for Payment and Certificate for Payment by the Construction Manager and Architect and issuance by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

«Except as set forth elsewhere in the Contract Documents, payments to the Contractor will be made monthly for work completed as of the last calendar day of the month or during a period of one calendar month ending on a day mutually agreed to by the Owner and the Contractor provided that all requirements of the Contract Documents have been and are complied with by the Contractor. »

§ 5.1.3 Provided that an Application for Payment is received by the Construction Manager not later than the «twenty-fifth » day of a month, the Owner shall make payment of the certified amount in the Application for Payment to the Contractor not later than the last day of the «following» month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment shall be made by the Owner not later than «sixty (60)» days after the Construction Manager receives the Application for Payment. The Contractor hereby expressly waives any rights to penalties, interest and attorney's fees that the Contractor has or may have under the Pennsylvania Prompt Pay Act, 62 Pa.C.S.A. § 3931, et seq. as amended from time to time. Contractor further hereby expressly waives any rights to penalties, interest and attorney's fees that the Contractor has or may have under the Pennsylvania Contractor and Subcontractor Payment Act, 73 P.S. Sec. 501, et seq., as amended from time to time. *(Federal, state or local laws may require payment within a certain period of time.)*

§ 5.1.4 Progress Payments Where the Contract Sum is Based on a Stipulated Sum

§ 5.1.4.1 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager and Architect may require. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.4.2 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.4.3 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the schedule of values, less the retainage. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 7.3.9 of the General Conditions;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less the retainage;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Construction Manager or Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the General Conditions.

§ 5.1.4.4 The progress payment amount determined in accordance with Section 5.1.4.3 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Construction Manager recommends and the Architect determines for incomplete Work, retainage applicable to such work and unsettled claims; and
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of the General Conditions.

§ 5.1.4.5 Reduction or limitation of retainage, if any, shall be as set forth in the General Conditions and elsewhere in the Contract Documents.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor as set forth in the General Conditions and when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2 of AIA Document A232-2009, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 a final Certificate for Payment or Project Certificate for Payment has been issued by the Construction Manager and Architect; and
- .3 the Contractor has completed all Work in compliance with all applicable codes, laws, ordinances and regulations which affect the Project and the Work has passed all inspections.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of the amended AIA Document A232-2009.

§ 6.2 Binding Dispute Resolution

For any Claim involving the Contractor and Owner, the method of binding dispute resolution shall be as follows: *(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania. The Owner and Contractor hereby consent to the personal jurisdiction and venue of the Court of Common Pleas of Lehigh County, Pennsylvania, and further agree that all disputes arising from this Agreement shall be exclusively decided by the Court of Common Pleas of Lehigh County, Pennsylvania. The Owner and Contractor further agree that such court shall have the exclusive venue and jurisdiction over the parties to this Agreement, and also consent to service of process by any means authorized by Pennsylvania law.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 Where the Contract Sum is a Stipulated Sum

§ 7.1.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of the amended AIA Document A232-2009.

§ 7.1.2 The Work may be suspended by the Owner as provided in Article 14 of the amended AIA Document A232-2009.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of the amended AIA Document A232-2009 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Except as otherwise set forth in the Contract Documents, payments due and unpaid under the Contract shall bear interest at a rate of three percent (3%) simple interest per annum from the date payment is due.

§ 8.3 The Owner's representative:
(Name, address and other information)

Jeremy Melber, Director of Business Services
Southern Lehigh School District
5775 Main Street
Center Valley, PA 18034

§ 8.4 The Contractor's representative:
(Name, address and other information)

Frank Eichelberger
Lobar, Inc.
One Old Mill Rd.
P.O. Box 50
Dillsburg PA 17019

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

§ 8.6 Other provisions:

§ 8.6.1 As between Architect, Construction Manager and Contractor, it is understood that the Architect and Construction Manager shall not be held responsible to Contractor for any errors or omissions on the part of Contractor, including, but not limited to, the Contractor's failure to adhere to the plans and specifications, regardless of whether or not the Architect or Construction Manager is performing observation services.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in Article 1.1.1 of the General Conditions, and include, without limitation, the following:

§ 9.1.1 The Agreement is this executed AIA Document A132–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, as amended/modified.

§ 9.1.2 The General Conditions are, AIA Document A232–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as amended by the Owner.

§ 9.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual issued by KCBA Architects. Refer to Table of Contents; shall be deemed to include additions and deletions, if any, made by addenda.

§ 9.1.4 The Specifications are those contained in the Project manual issued by KCBA Architects . Refer to Table of Contents attached hereto as Exhibit B and made a part hereof.

§ 9.1.5 The Drawings issued by KCBA Architects as listed in drawing index on drawing cover sheet(s); shall be deemed to include additions and deletions, if any, made by addenda.

§ 9.1.6 The Addenda, if any:

Number	Date
No. 1	April 17, 2015
No. 2	April 24, 2015
No. 3	April 30, 2015

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents are:

- .1 Refer to the attached Exhibit B, Table of Contents, all of which are to be a part of the Contract Documents.

ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of the amended AIA Document A232–2009, and elsewhere in the Contract Documents.

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

OWNER (Signature)

« »« »

(Printed name and title)

CONTRACTOR (Signature)

« »« »

(Printed name and title)

