

28478

10
28478

Document is
NOT OFFICIAL!

Ralph Mucci
320 Park Ave
New York, N. Y. 10022

This Document is the property of
THE AMERICAN INSTITUTE OF ARCHITECTS
the Lake County Recorder!

STOP

AIA Document A111

**Standard Form of Agreement Between
Owner and Contractor**

where the basis of payment is the
COST OF THE WORK PLUS A FEE

Use only with the latest edition of AIA Document A201, General Conditions of the Contract for Construction.

AGREEMENT

made this 15th day of August in the year of Nineteen
Hundred and Sixty-Nine.

BETWEEN

GULF + WESTERN REALTY CORPORATION (INDIANA) the Owner, and
TRANSNATION CONSTRUCTION CORP. the Contractor.

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD
AUG 20 11 37 AM '69
ANDREW J. MICENKO
RECORDER

The Owner and the Contractor agree as set forth below.

28478

**Document is
NOT OFFICIAL!**

**This Document is the property of
the Lake County Recorder!**

**ARTICLE 1
THE CONTRACT DOCUMENTS**
The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, all Addenda issued prior to execution of this Agreement and all Modifications issued subsequent thereto. These form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein. An enumeration of the Contract Documents appears in Article 17. If anything in the General Conditions is inconsistent with this Agreement, the Agreement shall govern.

ARTICLE 2

THE WORK

The Contractor shall perform all the Work required by the Contract Documents for the construction *(Here insert the caption descriptive of the Work as used on other Contract Documents.)* of a metallurgical laboratory building in Gary, Indiana, more particularly described on Plot Plan No. 0469 dated March 17, 1969, entitled: Office and Research Building prepared by Herbert Fleischer Associates.



**ARTICLE 3
ARCHITECT**

The Architect for this Project is Herbert Fleischer Associates.

ARTICLE 4

THE CONTRACTOR'S DUTIES AND STATUS

The Contractor accepts the relationship of trust and confidence established between him and the Owner by this Agreement. He covenants with the Owner to furnish his best skill and judgment and to cooperate with the Architect in furthering the interests of the Owner. He agrees to furnish efficient business administration and superintendence and to use his best efforts to furnish at all times an adequate supply of workmen and materials, and to perform the Work in the best and soundest way and in the most expeditious and economical manner consistent with the interests of the Owner.

28478

**Document is
NOT OFFICIAL!**

ARTICLE 5

**This Document is the property of
the Lake County Recorder!**

The Work to be performed under this Contract shall be commenced **within five (5) days from the date hereof**

and completed **on or about September 1, 1969.**

(Here insert any special provisions for liquidated damages relating to failure to complete on time.)

STOP



ARTICLE 6

COST OF THE WORK AND GUARANTEED MAXIMUM COST

6.1 The Owner agrees to reimburse the Contractor for the Cost of the Work as defined in Article 9. Such reimbursement shall be in addition to the Contractor's Fee stipulated in Article 7.

6.2 The maximum cost to the Owner, including the Cost of the Work and the Contractor's Fee, is guaranteed not to exceed the sum of

dollars (\$) _____); such Guaranteed Maximum Cost shall be increased or decreased for Changes in the Work as provided in Article 8.

(Here insert any provision for distribution of any savings. Delete Paragraph 6.2 if there is no Guaranteed Maximum Cost.)

28478

Document is
NOT OFFICIAL!

This Document is the property of
the Lake County Recorder!

7.1 In consideration of the performance of the Contract, the Owner agrees to pay the Contractor in current funds as compensation for his services a Contractor's Fee as follows:

A sum equal to five (5%) per cent of the total costs to be reimbursed as defined in Article 9, payable together with each progress payment and the balance, if any, at the time of final payment.

7.2 For Changes in the Work, the Contractor's Fee shall be adjusted as follows:

~~7.3 The Contractor shall be paid _____ per cent (____%) of the proportionate amount of his Fee with each progress payment, and the balance of his Fee shall be paid at the time of final payment.~~

ARTICLE 8

CHANGES IN THE WORK

8.1 The Owner may make Changes in the Work in accordance with Article 12 of the General Conditions insofar as such Article is consistent with this Agreement. The Contractor shall be reimbursed for Changes in the Work on the basis of Cost of the Work as defined in Article 9.

8.2 The Contractor's Fee for Changes in the Work shall be as set forth in Paragraph 7.2, or in the absence of specific provisions therein, shall be adjusted by negotiation on the basis of the Fee established for the original Work.

ARTICLE 9

COSTS TO BE REIMBURSED

9.1 The term Cost of the Work shall mean costs necessarily incurred in the proper performance of the Work and paid by the Contractor. Such costs shall be at rates not higher than the standard paid in the locality of the Work except with prior consent of the Owner, and shall include the items set forth below in this Article 9.

9.1.1 Wages paid for labor in the direct employ of the Contractor in the performance of the Work under applicable collective bargaining agreements, or under a salary or wage schedule agreed upon by the Owner and Contractor, and including such welfare or other benefits, if any, as may be payable with respect thereto.

9.1.2 Salaries of Contractor's employees when stationed at the field office, in whatever capacity employed. Employees engaged, at shops or on the road, in expediting the production or transportation of materials or equipment, shall be considered as stationed at the field office and their salaries paid for that portion of their time spent on this Work.

28478

Document is
NOT OFFICIAL!

9.1.3 Cost of contributions, assessments or taxes for such items as unemployment compensation and social security, insofar as such cost is based on wages, salaries, or other remuneration paid to employees of the Contractor and included in the Cost of the Work under Subparagraphs 9.1.1 and 9.1.2.

9.1.4 The proportion of reasonable transportation and travel expenses of the Contractor or of his officers or employees incurred in discharge of duties connected with the Work.

9.1.5 Cost of all materials, supplies and equipment incorporated in the Work, including costs of transportation thereof.

9.1.6 Payments made by the Contractor to Subcontractors for Work performed pursuant to subcontracts under this Agreement.

9.1.7 Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen, which are consumed in the performance of the Work, and cost less salvage value on such items used but not consumed which remain the property of the Contractor.

9.1.8 Rental charges of all necessary machinery and equipment, exclusive of hand tools, used at the site of the Work, whether rented from the Contractor or others, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery costs thereof, at rental charges consistent with those prevailing in the area.

9.1.9 Cost of premiums for all bonds and insurance which the Contractor is required by the Contract Documents to purchase and maintain.

9.1.10 Sales, use or similar taxes related to the Work and for which the Contractor is liable imposed by any governmental authority.

9.1.11 Permit fees, royalties, damages for infringement of patents and costs of defending suits therefor, and deposits lost for causes other than the Contractor's negligence.

9.1.12 Losses and expenses, not compensated by insurance or otherwise, sustained by the Contractor in connection with the Work, provided they have resulted from causes other than the fault or neglect of the Contractor. Such losses shall include settlements made with the written consent and approval of the Owner. No such losses and expenses shall be included in the Cost of the Work for the purpose of determining the Contractor's Fee. If, however, such loss requires reconstruction and the Contractor is placed in charge thereof, he shall be paid for his services a Fee proportionate to that stated in Paragraph 7.1.

9.1.13 Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage, and similar petty cash items in connection with the Work.

9.1.14 Cost of removal of all debris.

9.1.15 Costs incurred due to an emergency affecting the safety of persons and property.

9.1.16 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

28478

**Document is
NOT OFFICIAL!**

**ARTICLE 10
This Document is the property of
COSTS NOT TO BE REIMBURSED
the Lake County Recorder!**

- 10.1 The term Cost of the Work shall not include any of the items set forth below in this Article 10.
- 10.1.1 Salaries or other compensation of the Contractor's officers, executives, general managers, estimators, auditors, accountants, purchasing and contracting agents and other employees at the Contractor's principal office and branch offices, except employees of the Contractor when engaged at shops or on the road in expediting the production or transportation of materials or equipment for the Work.
- 10.1.2 Expenses of the Contractor's Principal and Branch Offices other than the Field Office.
- 10.1.3 Any part of the Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.
- 10.1.4 Overhead or general expenses of any kind, except as may be expressly included in Article 9.
- 10.1.5 Costs due to the negligence of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to the correction of defective Work, disposal of materials and equipment wrongly supplied, or making good any damage to property.
- 10.1.6 The cost of any item not specifically and expressly included in the items described in Article 9.
- 10.1.7 Costs in excess of the Guaranteed Maximum Cost, if any, as set forth in Article 6 and adjusted pursuant to Article 8.

**ARTICLE 11
DISCOUNTS, REBATES AND REFUNDS**

All cash discounts shall accrue to the Contractor unless the Owner deposits funds with the Contractor with which to make payments, in which case the cash discounts shall accrue to the Owner. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be secured.

(Here insert any provisions relating to deposits by the Owner to permit the Contractor to obtain cash discounts.)

Upon request, Owner shall advance any sums requested by the Contractor to enable it to make all such payments within time to take advantage of cash discounts. In the event the Contractor takes advantage of such cash discounts, its fee shall not be reduced thereby but the Owner shall be credited therewith.

ARTICLE 12

SUBCONTRACTS

- 12.1 All portions of the Work that the Contractor's organization has not been accustomed to perform shall be performed under subcontracts. The Contractor shall request bids from subcontractors and shall deliver such bids to the Architect. *The Architect will then determine, with the advice of the Contractor and subject to the approval of the Owner, which bids will be accepted.
- 12.2 All Subcontracts shall conform to the requirements of Paragraph 5.3 of the General Conditions. Subcontracts awarded on the basis of the cost of such work plus a fee shall also be subject to the provisions of this Agreement insofar as applicable.

* Owner

28478

Document is
NOT OFFICIAL!

This Document is the property of
the Lake County Recorder!

The Contractor shall check all materials, equipment and labor entering into the Work and shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement, and the system shall be satisfactory to the Owner. The Owner shall be afforded access to all the Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Contract, and the Contractor shall preserve all such records for a period of three years after the final payment.

STOP

ARTICLE 14

APPLICATIONS FOR PAYMENT

The Contractor shall, at least ten days before each progress payment falls due, deliver to the ^{Owner} ~~Architect~~ a statement, sworn to if required, showing in complete detail all moneys paid out or costs incurred by him on account of the Cost of the Work during the previous month for which he is to be reimbursed under Article 6 and the amount of the Contractor's Fee due as provided in Article 7, together with payrolls for all labor and all receipted bills for which payment has been received.



ARTICLE 15

PAYMENTS TO THE CONTRACTOR

^{Owner} ~~Contractor~~ will review the Contractor's statement of moneys due as provided in Article 14 and will promptly issue a Certificate for Payment ~~to the Owner for such amount as he approves,~~ which Certificate shall be payable on or about the **last** day of the month.

15.2 Final payment, constituting the unpaid balance of the Cost of the Work and of the Contractor's Fee, shall be paid by the Owner to the Contractor when the Work has been completed, the Contract fully performed and a final Certificate for Payment has been issued ~~by the Architect~~. Final payment shall be due **sixty (60)** days after the date of issuance of the final Certificate for Payment.

ARTICLE 16

TERMINATION OF THE CONTRACT

16.1 The Contract may be terminated by the Contractor as provided in Article 14 of the General Conditions.

16.2 If the Owner terminates the Contract as provided in Article 14 of the General Conditions, he shall reimburse the Contractor for any unpaid Cost of the Work due him under Article 6, plus (1) the unpaid balance of the Fee computed upon the Cost of the Work to the date of termination at the rate of the percentage named in Article 7, or (2) if the Contractor's Fee be stated as a fixed sum, such an amount as will increase the payments on account of his Fee to a sum which bears the same ratio to the said fixed sum as the Cost of the Work at the time of termination bears to the adjusted Guaranteed Maximum Cost, if any, otherwise to a reasonable estimated Cost of the Work when completed. The Owner shall also pay to the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment retained. In case of such termination of the Contract the Owner shall further assume and become liable for obligations, commitments and unsettled claims that the Contractor has previously undertaken or incurred in good faith in connection with said Work. The Contractor shall, as a condition of receiving the payments referred to in this Article 16, execute and deliver all such papers and take all such steps, including the legal assignment of his contractual rights, as the Owner may require for the purpose of fully vesting in him the rights and benefits of the Contractor under such obligations or commitments.

28478

**Document is
NOT OFFICIAL!**

**ARTICLE 17
This Document is the property of
MISCELLANEOUS PROVISIONS
the Lake County Recorder!**

17.1 Terms used in this Agreement which are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.

17.2 The Contract Documents, which constitute the entire agreement between the Owner and the Contractor, are listed in Article 1 and, except for Modifications issued after execution of this Agreement, are enumerated as follows:

(List below the Agreement, Conditions of the Contract, (General, Supplementary, other Conditions), Drawings, Specifications, Addenda and accepted Alternates, showing page or sheet numbers in all cases and dates where applicable.)

- (1) Standard Form of Agreement between Owner and Contractor, dated May , 1969 - AIA Document A111
- (2) General Conditions of the Contract for Construction - AIA Document A201
- (3) Plot Plan No. 0469, dated March 17, 1969, prepared by Herbert Fleischer Associates.

It is further expressly agreed between the parties hereto, in consideration of the payments hereinabove provided for, and the mutual covenants and agreements of the parties herein, that the contractor agrees to waive and does hereby waive and relinquish all right to a lien upon the real estate hereinabove described, and the building to be erected thereon in accordance with the terms of this contract; and the contractor expressly agrees that no lien shall attach to the real estate, building, structure, or any other improvement of the owner, either on behalf of the contractor herein, or in behalf of the subcontractors, mechanics, journeymen, laborers, materialmen, or person performing labor upon or furnishing materials and machinery for such property or improvement of said owner, and the said contractor does hereby expressly waive all right to any such lien under the laws of the State of Indiana for and on behalf of himself and all other such persons furnishing labor and materials as aforesaid in any form or manner whatsoever for the erection, construction, and completion of said building; and it is further agreed that this contract may be filed and recorded in the Recorder's Office of said Lake County, Indiana, and that the filing and recording of same shall be constructive notice of its contents and of this waiver of said lien to all parties or persons whomsoever.

28478

Document is NOT OFFICIAL!

This Document is the property of the Lake County Recorder!

State of New York)
County of New York)

Before me, *Elsie L. Magee*, a Notary Public, personally appeared Gulf & Western Realty Corporation (Indiana), by Irving R. Horowitz and Newton W. Mandel its Executive Vice President and Assistant Secretary (Owner herein) who acknowledge the execution of the foregoing Contract for and on behalf of said Owner.

WITNESS my hand and seal this 15th day of August 1969



Elsie L. Magee
Notary Public

ELSIE L. MAGEE
NOTARY PUBLIC, State of New York
No. 03-7661950
Qualified in Bronx County
Commission Expires March 30, 1970

State of New York)
County of New York) ss.:

Before me, *Elsie L. Magee*

a Notary Public, personally appeared Transnation Construction Corp., by George Yarbenet and Ralph S. Mucci its Vice President and Assistant Secretary (Contractor) herein) who acknowledged the execution of the foregoing Contract for and on behalf of said Contractor.

WITNESS my hand and seal this 15th day of August 1969.

Elsie L. Magee
Notary Public

ELSIE L. MAGEE
NOTARY PUBLIC, State of New York
No. 03-7661950
Qualified in Bronx County
Commission Expires March 30, 1970

This instrument prepared by:

Ralph S. Mucci, Attorney at Law
320 Park Avenue
New York, N.Y. 10022