

DRAFT AIA® Document A133™ - 2019

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 « » day of « » in the year « »
(In words, indicate day, month, and year.)

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

« »« »
« »
« »
« »

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

« »« »
« »
« »
« »

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

« »
« »
« »

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

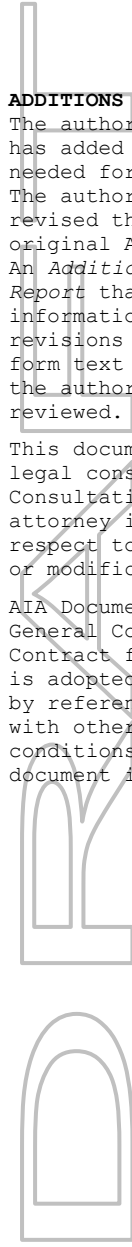
« »« »
« »
« »
« »

The Owner and Construction Manager 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.

AIA Document A201™-2017, 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.



ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 GENERAL PROVISIONS
- 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 4 OWNER'S RESPONSIBILITIES
- 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 7 COST OF THE WORK FOR CONSTRUCTION PHASE
- 8 DISCOUNTS, REBATES, AND REFUNDS
- 9 SUBCONTRACTS AND OTHER AGREEMENTS
- 10 ACCOUNTING RECORDS
- 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 12 DISPUTE RESOLUTION
- 13 TERMINATION OR SUSPENSION
- 14 MISCELLANEOUS PROVISIONS
- 15 SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

« [As set forth in Attachment A – Request for Proposal \(RFP\)](#) »

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

« [As set forth in Attachment A – Request for Proposal \(RFP\)](#) »

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

(Provide total and, if known, a line item breakdown.)

« [As set forth in Attachment A – Request for Proposal \(RFP\)](#) »

§ 1.1.4 The Owner’s anticipated design and construction milestone dates:

- .1 Design phase milestone dates, if any:

« As set forth in Attachment A – Request for Proposal (RFP) »

- .2 Construction commencement date:

« As set forth in Attachment A – Request for Proposal (RFP) »

- .3 Substantial Completion date or dates:

« As set forth in Attachment A – Request for Proposal (RFP) »

- .4 Other milestone dates:

« As set forth in Attachment A – Request for Proposal (RFP) »

§ 1.1.5 The Owner’s requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

« As set forth in Attachment A – Request for Proposal (RFP) »

§ 1.1.6 The Owner’s anticipated Sustainable Objective for the Project:
(Identify and describe the Owner’s Sustainable Objective for the Project, if any.)

« As set forth in Attachment A – Request for Proposal (RFP) »

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner’s Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

« As set forth in Attachment A – Request for Proposal (RFP) »

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

« »
« »
« »
« »
« »
« »

§ 1.1.9 The persons or entities, in addition to the Owner’s representative, who are required to review the Construction Manager’s submittals to the Owner are as follows:
(List name, address and other contact information.)

« »

§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

<< >><< >>
<< >>
<< >>
<< >>
<< >>

.2 Civil Engineer:

<< >><< >>
<< >>
<< >>
<< >>
<< >>

.3 Other, if any:

(List any other consultants retained by the Owner, such as a Project or Program Manager.)

<< >>

§ 1.1.11 The Architect's representative:
(List name, address, and other contact information.)

<< >>
<< >>
<< >>
<< >>
<< >>
<< >>

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

<< >>
<< >>
<< >>
<< >>
<< >>
<< >>

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

<< As set forth in Attachment A – Request for Proposal (RFP) and Attachment B – Construction Manager's Proposal >>

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

<< As set forth in Attachment A – Request for Proposal (RFP) >>

§ 1.1.15 Other Initial Information on which this Agreement is based:

<< As set forth in Attachment A – Request for Proposal (RFP) and Attachment B – Construction Manager's Proposal >>

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, and the Construction Manager's services, and the Construction Manager's compensation. To the extent that the material change results solely from an error by Owner in preparing all or a portion of the Initial Information, the Owner shall consider adjustments to the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information; provided, however, that in such circumstance the Owner may, in its sole discretion, cancel all or a portion of the Project, without costs, in order to meet its budget.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 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. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and/or Owner and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior or contemporaneous negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, then conflicts or discrepancies shall be resolved in the following descending order of priority: (i) Modifications and other approved revisions and addenda of later date take precedence over those of earlier date or original documents; (ii) this Agreement; (iii) the General Conditions; and (iv) Drawings and Specifications, where Drawings govern Specifications for quantity and location and Specifications govern Drawings for quality and performance. If in direct conflict, within the Drawings themselves (a) large scale details shall govern over small scale details and (b) something scheduled or noted shall take precedence over something drawn. In the event of ambiguity in quantity or quality, the greater quantity and the better quality shall govern. The AIA Document A201 2017 as amended and supplemented by Owner and Construction Manager for the Project is referred to in the Contract Documents as "AIA Document A201-2017" or the "General Conditions". This Agreement May be amended only by written instrument signed by both the Owner and Construction Manager. ~~this Agreement shall govern.~~ An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to use the Construction Manager's best efforts to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. Construction Manager shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager and all other persons and entities employed on the Project. Construction Manager hereby represents that it has the expertise and experience required for the Project and handling the bidding, negotiating, scheduling, cost control and contracting procedures in connection with the same. Construction Manager further acknowledges that it has visited the Project site, examined all conditions affecting the Work and is fully familiar with all of the conditions thereon and affecting the same.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term “Contractor” as used in A201–2017 shall mean the Construction Manager.

§ 2.3.3 Construction Manager’s Knowledge, Experience and Resources

The Construction Manager represents that it has the following knowledge, experience and resources to fulfill its obligations under the Contract Documents:

- .1 Knowledge of all laws, statutes, ordinances, rules, standards, regulations and orders of governmental and hospital certification authorities, including permit, building codes and the inspection, approval and issuance process applicable to its performance under the Contract Documents (collectively the “Applicable Law”);
- .2 Experience in supervising and managing projects of a similar size, scope and complexity as the Project;
- .3 Available employees who will devote sufficient time to the Project and have sufficient information technology to provide efficient construction and business administration, management, accounting and supervision to timely build the Project pursuant to the Construction Schedule in a good and workmanlike manner; and

(all of the foregoing, collectively, the “Construction Manager’s Capabilities”).

ARTICLE 3 CONSTRUCTION MANAGER’S RESPONSIBILITIES

The Construction Manager shall perform the Work described in this Article or reasonably inferable therefrom as reasonably necessary to produce the intended results. The Construction Manager’s Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager’s Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise the standard of care required hereunder ~~reasonable care~~ in preparing schedules and estimates and performing other Preconstruction Services. ~~The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager.~~ The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require. If Construction Manager fails to comply with this requirement, Construction Manager shall be responsible for the additional costs associated with the nonconformity.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner’s program, schedule and construction budget requirements, each in terms of the other.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise ~~consult with~~ the Owner and Architect and make recommendations on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall initiate

and maintain a value engineering log throughout the Preconstruction phase. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall regularly review the Drawings and Specifications in progress and make recommendations whenever design details adversely affect constructability, cost, or schedules. Construction Manager shall advise Owner and Architect of any conflicts, inconsistencies or discrepancies of which Construction Manager has knowledge of within or among the- such documents.

§ 3.1.3.4 The Construction Manager shall provide an analysis of the types and quantities of labor and materials required for the Project and review the availability of appropriate categories of labor and materials required for critical phases, including specifically identifying any long-lead items. The Construction Manager shall make recommendations for actions designed to minimize adverse effects of labor and material shortages. The Construction Manager shall assist Owner in identifying any possible costs savings which may be realized by direct purchases by Owner.

§ 3.1.3.5 The Construction Manager shall assist the Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by Construction Manager. The Construction Manager shall verify that the Owner has paid applicable fees and assessments. The Construction Manager shall assist the Owner and Architect in connection with the Owner's responsibility for filing documents required for all approvals of governmental authorities having jurisdiction over the Project.

§ 3.1.3.6 The Construction Manager shall identify value-engineering opportunities and present Owner with value-engineering proposals.

§ 3.1.3.7 The Construction Manager shall, at the request of the Owner, assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit or a similar format agreed by the parties, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a preliminary Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the preliminary Project schedule relating to the performance of the Architect's services. The Construction Manager Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities into the preliminary Project schedule; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submission of the Guaranteed Maximum Price proposal; preparation and processing of shop drawings and samples; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; long lead-time procurement; and the occupancy requirements of the Owner and Authorities Having Jurisdiction, and the proposed date(s) of Substantial Completion(s). If preliminary Project Schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

§ 3.1.5 Phased Construction

The Construction Manager ,in consultation with the Architect, shall provide recommendations to the Owner and Architect with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction, including recommendations regarding the phased issuance of Drawings and Specifications. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues including, but not limited to, availability of labor and materials.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.1 When the Owner has identified the Project requirements and the Architect has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual techniques. The Construction Manager shall include with its preliminary cost estimate estimates of recommended alternative designs or materials. Construction Manager shall revise this estimate upon completion of each design phase and upon request by Owner.

~~§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.~~

§ 3.1.6.2 When Schematic Design Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect, and Construction Manager.

~~§ 3.1.6.3 If the Architect or Owner is providing independent cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's or Owner's cost estimates, the Construction Manager and the Architect or Owner shall work together to reconcile the cost estimates.~~

§ 3.1.6.4 When Design Development Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Architect and approval by the Owner. During the preparation of the Construction Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect, and Construction Manager. Upon completion of the Design Development Documents, the Construction Manager shall prepare cost saving recommendations for the Project. The Architect shall incorporate Owner-approved cost-saving recommendations into the Construction Documents.

§ 3.1.6.5 If any cost estimate submitted to the Owner exceeds the previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect to reduce costs via value engineering, use of alternative materials or otherwise.

~~§ 3.1.7 [Intentionally Deleted] As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.~~

~~§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.~~

~~§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.~~

~~§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.~~

§ 3.1.11 Subcontractors and Suppliers

~~§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.~~

~~§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project and establish bidding schedules. The Construction Manager shall submit the list of prospective bidders for the Architect's review and the Owner's approval. The Construction Manager shall identify the documents to be included in bid packages. The Construction Manager, with the assistance of the Architect, shall issue bidding documents to bidders, conduct Prebid conferences with prospective bidders, assist the Architect with regard to questions from bidders and with the issuance of addenda and conduct post bid interviews to insure completeness. Construction Manager shall then prepare bid analyses and make recommendations to the Owner for the award of Subcontracts or rejection of bids, including for suppliers who are to furnish materials or equipment fabricated to a special design. The Owner will reply in writing to the Construction Manager if the Architect or Owner knows of any objection to such Subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object or reject any proposed subcontractor or supplier.~~

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

~~§ 3.1.11.4 Construction Manager will self perform general conditions. For any other Work which the Construction Manager proposes to self perform, the Construction Manager shall obtain at least two other sealed bids from qualified Subcontractors, unless otherwise agreed to by Owner. The sealed bids from those Subcontractors and from Construction Manager (whose bid shall be in the format required of Subcontractors) shall be submitted directly to the Owner for opening and review.~~

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for ~~long lead time items~~ items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of such materials ~~and shall also facilitate Owner direct purchases of any such materials~~ that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, ~~the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price,~~ the Owner shall assign all contracts for these items to the Construction Manager upon execution of the Guaranteed Maximum Price Amendment and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document
(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

<< >>

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 ~~When the Drawings and Specifications are sufficiently complete, or when otherwise requested by Owner At a time to be mutually agreed upon by the Owner and the Construction Manager,~~ the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's ~~and Architect's~~ review, and ~~the Owner's~~ acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, ~~including allowances, the Construction Manager's contingency, set forth in Section 3.2.4;~~ and the Construction Manager's Fee (which shall include all profit and overhead);
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; ~~and~~
- .5 A list of allowances and a statement of their basis; and
- .6 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's ~~exclusive~~ use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

§ 3.2.4.1 The "Construction Manager's Contingency" shall cover costs resulting from (a) further development of the Drawings and Specifications by the Architect consistent with the Contract Documents and reasonably inferable therefrom and consistent with industry standards, (b) unfavorable bidding from Subcontractors, vendors or suppliers, (c) Subcontractor defaults or incorrect performance, (d) labor disputes, and (e) any other reimbursable Costs of the Work for which a Change Order is not explicitly permitted hereunder, provided however, the Construction Manager's Contingency does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order. The Construction Manager shall provide advance written notice to the Owner of any use of the Construction Manager's Contingency and the reason therefor. The Construction Manager's Contingency shall be for the exclusive use of the Construction Manager for the above purposes, but all unused amounts shall be returned to the Owner.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 3.2.7 ~~The~~ Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, which shall commence in accordance with a Notice to Proceed by the Owner, execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize the Architect to provide the preparation of revisions to the Drawings and Specifications to -Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those such revised Drawings and Specifications to the Contract Documents to the Construction Manager so as to not cause delay to the Project schedule agreed by the Owner. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications, agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

~~§ 3.2.10 The Owner represents that it is a non-profit entity holding a Wisconsin Sales and Use Tax Exemption Certificate. In reliance on this representation, the Construction Manager will purchase materials and equipment exceeding \$5,000 in the aggregate that will become a component of the Project on a sales tax exempt basis as permitted by Wis. Stats. §77.54(9m) currently in effect, as the same may be amended or renumbered from time to time ("Tax-Exempt Items"). The Owner agrees to defend, indemnify and hold the Construction Manager harmless from and against any claim, loss, cost, penalty or expense arising out of the assessment or imposition of any such sales tax assessed against Construction Manager in reliance on Owner's representation. At its sole option, the Owner may dispute, contest or otherwise resist this imposition or assessment of any such sales tax at no expense to Construction Manager. The Construction Manager shall promptly notify the Owner of any actual or threatened imposition or assessment of a sales tax. Contractor shall be exempted from state sales tax under the following conditions: "The sales price [of a normally taxable item] sold to a construction contractor who, in fulfillment of a real property construction activity, transfers the [item] to [a government entity, including Milwaukee County], if such [item] becomes a component of a facility in the State of Wisconsin that is owned by Milwaukee County. In this subsection, 'facility' means any building, shelter, parking lot, parking garage, athletic field, athletic park, storm sewer, water supply system, or sewerage and wastewater treatment facility, but does not include a highway, street or road. Contractor shall apply for the sales tax exemption and provide Owner with State sales tax exemption documentation.~~

~~§ 3.2.11 The Owner is not obligated to accept the Guaranteed Maximum Price or to engage Construction Manager to provide any of the Construction Phase Services.~~

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of ~~A201-2017~~ the General Conditions, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence in accordance with the noticed to proceed signed by the Owner upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.1.3 The Construction Manager shall have the control over and shall be responsible for construction means, methods, techniques, sequences and procedures, and the safety precautions and programs in connection with the Work. The Construction Manager shall be responsible for its and its Subcontractor's failure to carry out the Work in accordance with the Contract Documents. The Construction Manager shall coordinate the sequence of the construction and the responsibilities of the Subcontractors and be responsible for the acts and omissions of the Subcontractors and their agents and employees.

§ 3.3.1.4 Construction Manager shall maintain a competent staff acceptable to Owner at the Project Site to coordinate and direct the Work and facilitate progress of the Subcontractors, and suppliers on the Project.

§ 3.3.1.5 The Construction Manager shall establish procedures acceptable to Owner for coordination among the Architect, Contractors, Subcontractors and suppliers, and the Construction Manager with respect to all aspects of the Project and shall implement such procedures.

§ 3.3.1.6 The Construction Manager shall review the adequacy of the Subcontractors' and suppliers' personnel and equipment and the availability of materials and supplies to meet the schedule on a daily basis. The Construction Manager shall take prompt remedial action when requirements of a contract are not being met.

§ 3.3.1.7 The Construction Manager shall provide temporary construction office and other temporary facilities requested for use by Owner, Architect, and Construction Manager at the Project site.

§ 3.3.1.8 The Construction Manager shall manage the mobilization of Subcontractors.

§ 3.3.1.9 The Construction Manager shall arrange for the delivery, storage, protection, and security of Owner-purchased materials, systems, and equipment.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of ~~the General Conditions A201-2017~~. ~~The Construction Manager shall maintain a value engineering log through the Construction Phase.~~

§ 3.3.2.3 Monthly Report

~~The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Contractor shall provide to the Owner a comprehensive written report each month during which Work is performed. The project report shall include the following:~~

- ~~.1 Construction progress report in terms of percentage of completion;~~
- ~~.2 Project cost summaries, including allowance and contingency expenditures and cash-flow projections;~~
- ~~.3 Progress of works (current month);~~
- ~~.4 Planned works (upcoming month);~~
- ~~.5 Updated Project schedule, in hardcopy and its native electronic file, including a written explanation of any major proposed changes to the Project Schedule;~~
- ~~.6 Key stakeholder management activities;~~
- ~~.7 Environmental, health & safety;~~
- ~~.8 Quality;~~
- ~~.9 Change order requests and change order summary, including internal Contractor changes;~~
- ~~.10 Request for Information (RFI) logs;~~
- ~~.11 Submittal logs;~~
- ~~.12 An executive summary; and~~
- ~~.13 All other information reasonably requested by the Owner.~~

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and develop and maintain a commitment report, shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

§ 3.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, Promptly after the Owner's execution of this Agreement, the Construction Manager shall prepare and submit to the Owner for approval, and Architect for review, a construction schedule for the Work and submittal schedule, both as a hard copy and in its native electronic format, in accordance with Section 3.10 of the General Conditions. Such proposed schedule shall be in a detailed precedence-style critical path method ("CPM") format satisfactory to the Owner and shall also: (i) provides a graphic representation of all activities and events that will occur during performance of the Work; (ii) identifies each phase of construction and occupancy; (iii) sets forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents; and (iv) reflects

- .1 local weather conditions, including an appropriate number of weather days included in the schedule based upon the 10-year monthly averages for temperature, wind and precipitation for the Project's location as determined by the National Oceanic and Atmospheric Administration;
- .2 local jurisdictional or other restrictions;
- .3 time for needed approvals by the Owner, Architect or other agency or authority;
- .4 Owner, Architect or other agency or authority inspections and/or tests when required by the Contract Documents; and
- .5 the work of separate contractors retained by the Owner, if any.

The Construction Manager shall update the Project schedule monthly or more frequently when requested by Owner.

§ 3.3.2.7 The Construction Manager shall schedule and conduct meetings to at which the Owner, Architect, Construction Manager and appropriate Subcontractors can discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 3.3.2.8 The Construction Manager shall receive, review, and approve all certificates of insurance, lien waivers and similar information obtained from each Subcontractor and supplier for compliance with the requirements of this Agreement and the applicable subcontract or supply agreement and shall forward copies, to the Owner.

§ 3.3.2.9 In collaboration with the Architect, the Construction Manager shall establish and implement procedures for expediting the processing and approval of shop drawings and samples.

§ 3.3.2.10 The Construction Manager shall secure and transmit to the Owner all required Project close-out documentation and turn over to the Owner all keys, manuals, record drawings, maintenance stocks and other documentation required in the Contract Documents. The Construction Manager shall coordinate the collection of the Subcontractor field-annotated record drawings and shall mark up a consolidated print for the Architect's use.

§ 3.3.2.11 The Construction Manager shall prepare and deliver to the Owner a final accounting for all cost incurred prior to final payment.

§ 3.3.2.12 The Construction Manager acknowledges the high importance that the Owner places on safety. The Construction Manager shall create a safety program for the Project (the "CM's Safety Program"). The CM's Safety Program shall be acceptable to the Owner, the insurers of the Project, and any other entities that have jurisdiction or are material to its preparation, provided that the acceptance by the foregoing parties may not be relied upon by the Construction Manager, who shall be solely responsible for the CM's Safety Program. The safety programs of the Subcontractors shall at minimum comply with the standards of the CM's Safety Program. The Construction Manager shall be responsible to monitor, supervise and enforce the implementation of the CM's Safety Program, shall coordinate, monitor, audit and supervise the implementation of the Subcontractors' safety programs, and shall require all other entities or persons who are on the Project site to abide by the CM's Safety Program. The Construction Manager and its Subcontractors of any tier shall be individually responsible to implement and monitor their respective safety programs in connection with their own employees and their Subcontractors of any tier. All employees, workers, contractors and Subcontractors shall be responsible to cooperate with the Construction Manager to timely resolve any unsafe conditions.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide program information for the Project that sets information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

~~§ 4.1.2 [Intentionally Deleted] Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.~~

§ 4.1.3 The Owner shall establish and periodically update, as Owner's deems appropriate, the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) if

~~desired reasonable~~ contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services ~~with reasonable promptness. The Owner shall also furnish any other information or services~~ under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. ~~Except to the extent that the Construction Manager knows of, or reasonably should have known of any inaccuracy in such information or services.~~ The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 To the extent relevant to the Work. ~~The~~ Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 To the extent relevant to the Work. ~~The~~ Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. ~~All the information on the survey shall be referenced to a Project benchmark.~~

§ 4.1.4.3 The Owner, when such services are ~~reasonably required by the scope of the Project and are requested by the Construction Manager and approved by the Owner requested,~~ shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services ~~reasonably~~ required of the Owner by the Contract Documents with reasonable promptness. ~~The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness~~ after receiving the Construction Manager's written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. ~~Notwithstanding anything herein to the contrary, Owner's representative shall not have authority to bind the Owner to any decisions or course of action on the Project. All communications between Owner and Construction Manager, except for notices required to be given pursuant to Section 14.2.3 shall be through Owner's representative. Accordingly, whenever an action or decision is requested by Construction Manager from the Owner, Construction Manager shall make such request to Owner's representative, who shall present the request to Owner for review. Unless Construction Manager specifies to Owner when requesting such a decision or information the date upon which the same is needed to avoid delay, Construction Manager shall not be entitled to an extension of the Contract Time or Contract Sum as the result of any delay alleged to be caused by Owner's failure to provide a decision or information in a timely manner. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager.~~ Except as otherwise provided in Section 4.2.1 of ~~the General Conditions A201–2017~~, the Architect does not have such authority. ~~The term "Owner" means the Owner or the Owner's authorized representative.~~

§ 4.2.1 Legal Requirements. ~~[Intentionally Deleted] The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.~~

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, ~~as modified, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.~~

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

« »

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

« As set forth in Attachment B – Construction Manager Proposal »

Individual or Position

Rate

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 ~~[Intentionally Deleted] If the Preconstruction Phase services covered by this Agreement have not been completed within « » (« ») months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.~~

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed as set forth in Attachment C – Required Invoice Format. Owner will make payments to the Construction Manager within thirty (30) days of invoice approval on the basis of monthly billings prepared by the Construction Manager and approved by the Owner based on the hourly, not-to-exceed (NTE) rates established in Attachment D – Manpower, Direct Salary Rate and Overhead & Profit Factor Schedule. Payments will be made on the basis of ninety five percent (95%) of the approved statement. No retainage, however, shall be withheld for reimbursable expenses. Reimbursable expenses shall be billed per Attachment E – Guidelines for Reimbursable Expenses and shall not exceed the amount established in Attachment B – Construction Manager's Proposal.

§ 5.2.2 Payments are due and ~~payable upon presentation of the Construction Manager's invoice. Amounts (« ») days after the invoice date payable unpaid « thirty (30) » days from the date the Construction Manager's Pay Application is approved by the Owner. Amounts unpaid after « thirtyfourty five (3045) » days from the Owner's approval of the Construction Manager's Pay Application shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager. (Insert rate of monthly or annual interest agreed upon.)~~

« Payment due and unpaid under Contract Documents shall bear interest at rate specified in Wisconsin Statutes 71.82 (1) (a) compounded monthly. One (1) % « per month » »

§ 5.2.3 Payments may be withheld from Construction Manager in accordance with Section 9.5.1 of the General Conditions.

§ 5.2.4 In addition any other requirement contained in the Contract Documents, in exchange for final payment under this Agreement, Construction Manager shall convey full and final lien waivers for its work under this Agreement and from itself and all of its consultants, Subcontractors and suppliers.

§ 5.2.5 Provided that Owner has made payments of the amounts due to Construction Manager under this Agreement, Construction Manager shall keep the Project Site free from any liens by Construction Manager or any person or entity retained by Construction Manager, or their respective assigns. If any mechanic's or other lien, encumbrance or order is filed against Owner or the Project Site for a cause other than failure of Owner to make payments due hereunder, Construction Manager shall, at Construction Manager's own cost and expense, cause the same to be canceled, bonded-over and discharged of record within seven (7) days after receiving notice thereof, and shall indemnify, defend and hold Owner harmless from and against all costs, expenses, claims, losses or damages, including reasonable attorneys' fees, resulting there from or by reason thereof. If Construction Manager fails to cause the lien or other encumbrance to be removed within such time period, Owner may take whatever action Owner deems appropriate to cause the encumbrance to be removed from the Project site and deduct the costs thereof, including attorneys' fees, from the Contract Sum.

§ 5.2.6 Construction Manager is required to conform to all TBE/DBE Requirements set forth in Attachment A – Request for Proposal. Upon notification from Owner to the Construction Manager that the obligations under this Agreement have been completed, the Construction Manager shall within thirty (30) calendar days submit for payment a final invoice for any remaining unpaid charges. Should the Construction Manager fail to respond within the thirty (30) days, the Owner will assume no additional charges have been incurred. Owner will transmit to Construction Manager notice of termination of this Agreement with a check for any remaining retainage.

§ 5.2.7 Adherence with prompt payment requirements is monitored through information entered into the Diversity Management and Compliance System, utilizing B2GNow software. Construction Manager is required to report payments received from the Owner and amounts paid to sub-consultants. Sub-consultants will receive an automated email requesting them to confirm the amounts and whether the terms of the prompt payment policy were complied with. There is no cost to the Construction Manager or any sub-consultant, the only requirement is to become a registered user and complete the one hour webinar training. The Owner will enter the Construction Manager's contract, and the Construction Manager will enter all sub-consultants, including both TBE/DBE and non-TBE/DBE firms.

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 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.)

« As set forth in Attachment B – Construction Manager's Proposal »

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

« As defined in Article 7 of General Conditions »

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

« As defined in Article 7 of General Conditions »

§ 6.1.5 Rental rates for Construction Manager-owned equipment used on the project shall not exceed « » percent (« » %) of the rental rates listed in the latest edition of the Associated Equipment Distributors "green book" (a/k/a AED Green Book) of nationally averaged rates Charges for equipment rented from third parties shall be the actual rental rates, but shall not exceed local market rates. standard rental rate paid at the place of the Project.

§ 6.1.5.1 Cost of equipment used for the Work at the rates defined in Attachment B – Construction Manager’s Proposals or as agreed in the GMP are attached hereto as Exhibit F.

§ 6.1.6 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

<< >>

§ 6.1.7 Other:
(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

<< >>

§ 6.2 Guaranteed Maximum Price

The sum of the Cost of the Work and the Construction Manager’s Fee are guaranteed by the Construction Manager not to exceed the Guaranteed Maximum Price (referred to herein as the “Guaranteed Maximum Price” or “GMP”) as Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. If, upon completion of the Project, the actual Cost of the Work plus the Construction Manager’s Fee is less than the Guaranteed Maximum Price, as set forth herein and as adjusted by Change Order, the difference will remain with the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 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 Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.~~

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 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 Article 7 of the General Conditions and any other applicable terms. ~~of AIA Document A201–2017, General Conditions of the Contract for Construction.~~

§ 6.3.3 Adjustments to subcontracts ~~awarded on the basis of a stipulated sum~~ shall be determined in accordance with Article 7 of A201–2017, as they refer to “cost” and “fee,” and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in Article 7 of the General Conditions AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term “fee” shall mean the Construction Manager’s Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 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 6.1.3 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.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval in writing, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Actual cost of Wwages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval. Applicable hours expended are to be billed at the rates as set forth in Attachment B – Construction Manager's Proposal, which include all payroll taxes, fringe benefits and worker's compensation insurance. Only approved supervisory labor positions and costs that are included with the approved general conditions costs are allowed as a direct project cost. Only forty (40) hours a week may be billed for supervisory and managerial personnel. The rates referred to in this Section 7.2.2 shall be annually adjusted, if approved by the Owner in writing, in accordance with normal salary review practices of the Construction Manager but shall not exceed the rate of increase in the Consumer Price Index for the previous year.

§ 7.2.2.1 Actual cost of Wwages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:
(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

« As set forth in Attachment B – Construction Managers Proposal »

§ 7.2.3 Actual cost of Wwages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Intentionally Deleted ~~Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.~~

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of this Agreement and the applicable the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation, loading, unloading, and storage ~~at the site,~~ of materials and equipment, incorporated or to be incorporated, in the completed construction. Equipment purchased by the Owner for use in the building will not be considered a Cost of Work unless specifically identified in the GMP Amendment.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are

provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value. Small Tools (under Purchase Value) will be charged percent (%) of the craft labor.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable and actually pays.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims asserted against Construction Manager for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 ~~[Intentionally Deleted] Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.~~

§ 7.6.10 ~~[Intentionally Deleted] Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.~~

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work: which have been approved by the Owner, if not already included in the GMP.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of the General Conditions, AIA Document A201-2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility of by, the Construction Manager or anyone whose acts Construction Manager is responsible, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of the General Conditions, AIA Document A201-2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;

- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific ~~obligation~~responsibility of the Contract Documents by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded in which case the Construction Manager shall pay all such costs and indemnify and hold harmless Owner therefrom; and
- .9 Costs for services incurred during the Preconstruction Phase.
- .10 Rental costs of machinery and equipment, except as specifically provided herein;
- .11 Costs in excess of the normal costs for permits and licenses to the extent such costs resulted from Construction Manager's or Subcontractor's failure to timely obtain permits and licenses required to be obtained by Construction Manager or Subcontractor;
- .12 Costs of additional services or Work (including any necessary tests or inspections) required in connection with repairs, removal or replacements necessitated by defects in materials and workmanship for which Construction Manager is responsible, whether occurring before or after Substantial Completion;
- .13 Fines and penalties, including interest thereon, assessed against Owner, the Project or Construction Manager due to Construction Manager's failure to comply or cause its Subcontractor's to comply with the laws or orders of any federal, state or local government or quasi-governmental authorities and;
- .14 The cost of bonus and incentive plans for Contractor's executives.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, recycling credits, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS; COMPLIANCE WITH PUBLIC BIDDING STATUTES AND OTHER APPLICABLE LAWS

§ 9.1 ~~Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager in accordance with Section 3.1.11.~~ The Owner maintains a list of bidders qualified under Chapter 43 of the Milwaukee County Code of Ordinances ("MCO") and may designate from such list specific persons from whom, or entities from which, the Construction Manager shall obtain bids. Unless otherwise directed by the Owner, the Construction Manager shall solicit bids on behalf the Owner and manage the bidding process, which management shall include, without limitation, the following activities: (a) separating the Work into appropriate bid packages approved by Owner that conform to Owner's specifications and applicable law and include, at a minimum, the requirement to comply with Milwaukee County's Targeted Business Enterprise (TBE) requirements under MCO §42.07, residency requirements under MCO §44.17 and DBE requirements as outlined in Attachment A – Request for Proposal (if applicable); (b) developing and delivering for Owner's approval a list of bidders qualified under MCO Chapter 43 or which will become qualified prior to submitting a bid; (c) distributing bidding documents; (d) conducting all pre-bid conferences; and (e) directing all bidders to deliver their sealed bids directly to the Owner. Unless otherwise directed or permitted by the Owner, the Construction Manager shall obtain at least three (3) bids for each division or package. The Owner may reject all bids and require that portion of the Work to be rebid. The Owner shall have sole control over the selection of the lowest responsible bidder for each bid package that meets all the qualification requirements. Provided that the Construction Manager meets the qualifications required of all bidders, the Construction Manager may submit its own sealed bid for each bid package. The Owner shall have the right to receive and audit all records of the Construction Manager related to the Project, including without limitation all communications between the Construction Manager and any contractors the Construction Manager has consulted with during the Preconstruction Phase in its development of the

bid packages. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection. The Construction Manager shall be responsible for the proper and complete performance of the Work in accordance with the terms and provisions of the Contract Documents, whether performed by the Construction Manager or by the Subcontractors.

~~§ 9.1.1 [Intentionally Deleted] If the Guaranteed Maximum Price (or "GMP") has been established and when a specific bidder subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is Construction Manager has demonstrated to Owner's satisfaction that such Subcontractor is qualified to perform that portion of the Work; and (3) that Subcontractor has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.~~

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

ARTICLE 10 ACCOUNTING RECORDS RIGHT TO AUDIT

~~The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.~~

~~§ 10.1.1 For a period of four (4) years following final completion of the Work, the Construction Manager shall keep full and detailed records and accounts, in accordance with generally accepted accounting principles and practices consistently applied, related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract to substantiate all costs incurred. The accounting and control system shall be satisfactory to the Owner. County Rights of Access and Audit. The Contractor, Lessee, or other party to the contract, its officers, directors, agents, partners and employees shall allow the County Audit Services Division and department contract administrators (collectively referred to as Designated Personnel) and any other party the Designated Personnel may name, with or without notice, to audit, examine and make copies of any and all records of the Contractor, Lessee, or other party to the contract, related to the terms and performance of the Contract for a period of up to three years following the date of last payment, the end date of this contract, or activity under this contract, whichever is later. Any subcontractors or other parties performing work on this Contract will be bound by the same terms and responsibilities as the Contractor. All subcontracts or other agreements for work performed on this Contract will include written notice that the subcontractors or other parties understand and will comply with the terms and responsibilities. The Contractor, Lessee, or other party to the contract, and any subcontractors understand and will abide by the requirements of Section 34.09 (Audit) and Section 34.095 (Investigations Concerning Fraud, Waste, and Abuse) of the Milwaukee County Code of General Ordinances.~~

~~§ 10.1.2 Owner shall have the right to examine and/or audit, either directly or through its authorized representatives or agents, during business hours and for a reasonable period of time, all records, accounts, subcontracts, purchase orders,~~

~~change orders, correspondence, instructions, specifications, plans, drawings, receipts, manuals, memoranda and other data relating to the Project.~~

§ 10.1.23 Access shall be granted Owner to all of Construction Manager's internal audit information relating to this Agreement, including reports of corrective actions taken as a result of such audit, but access shall not be granted to (i) general financial records not related to this Agreement except as may be solely necessary to verify the audit; or (ii) documents or other items protected in good faith by Attorney-Client or Attorney Work Product privileges provided such claim of Attorney-Client or Attorney Work Product privilege is not made for purposes of thwarting the intent of this Section.

§ 10.1.34 Regardless of the time when the audit is conducted, in the ~~threefour~~ year audit period, if the audit determines overcharges by Construction Manager, Construction Manager shall repay Owner the amount of said overcharges and reimburse Owner for the cost of the audit, as well as any attorneys' fees associated with recovered any of the foregoing sums.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect ~~and/or Owner~~ by the Construction Manager, and Certificates for Payment issued by the Architect ~~and agreed by the Owner~~, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

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

« »

§ 11.1.3 Provided that an Application for Payment is received by the Architect ~~and Owner~~ not later than the « ~~tenth~~ (10th) » day of a month, ~~and provided that Construction Manager has satisfied all other conditions precedent to payment required in the Contract Documents,~~ the Owner shall make payment of the amount certified to the Construction Manager not later than the « ~~thirtieth~~ (30th) » day of the « ~~next~~ » month. If an Application for Payment is received by the Architect after the application date fixed above, payment ~~of the amount certified~~ shall be made by the Owner not later than « ~~thirty~~ » (« ~~30~~ ») days after the ~~Owner/Architect~~ receives the ~~Certificate/Application~~ for Payment ~~and Construction Manager has satisfied all other conditions precedent to payment required in the Contract Documents.~~ (Federal, state or local laws may require payment within a certain period of time.)

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit: (a) payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager, ~~plus payrolls for the period covered by the present Application for Payment,~~ less (2) that portion of the progress payments attributable to the Construction Manager's Fee, ~~plus (3) payrolls for the period covered by the present Application for Payment;~~ (b) a sworn statement executed by Construction Manager naming each and every Subcontractor and supplier retained by Construction Manager to perform a portion of the Work, the amount paid to such entity to date and the remaining amount owed under the applicable subcontract or purchase order (c) a conditional waiver of mechanic's lien covering all materials and labor provided by the Construction Manager for the period covered by such Application for Payment and an unconditional waivers of mechanic's liens from all Subcontractors and suppliers for the period covered by the preceding Application for Payment; (d) an Affidavit of Payment from the Construction Manager with respect to the payment requested in such Application for Payment and (e) any other documentation requested by Owner or its lender.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents ~~and approved by Owner~~. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1)-the various portions of the Work, ~~except that the fee, general conditions, and insurance will be shown as individual line items;~~ (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) ~~Separate line items for~~ the Construction Manager's Fee, ~~General Conditions and Insurance.~~

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect and/or Owner may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect and/or Owner.

§ 11.1.6 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. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with General Conditions AIA Document A201-2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of the General Conditions. Construction Manager shall provide accounting documentation as proof of costs incurred for that portion of the Work that the Construction Manager self-performs and for all material/equipment expenses. For subcontracts that were competitively bid, the Guaranteed Maximum Price shall be determined by the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work. For subcontracts that were not competitively bid, accounting documentation shall be provided as proof of costs incurred for that portion of the Work;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect and Owner determines, in the Architect's and Owner's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect and Owner has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect and Owner may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201-2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.7.3 Adherence with prompt payment requirements is monitored through information entered into the Diversity Management and Compliance System, utilizing B2GNow software. Construction Manager is required to report payments received from the Owner and amounts paid to sub-consultants. Sub-consultants will receive an automated email requesting them to confirm the amounts and whether the terms of the prompt payment policy were complied with. There is no cost to the Construction Manager or any sub-consultant, the only requirement is to become a registered user and complete the one hour webinar training. The Owner will enter the Construction Manager's contract, and the Construction Manager will enter all sub-consultants, including both TBE/DBE and non-TBE/DBE firms.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

« Until Work is 50 percent complete, Owner shall pay 95 percent of amount due Construction Manager on account of progress payments, less amount of notice of liens under laws of State of Wisconsin. At time Work is 50 percent complete and thereafter, and if head of department having jurisdiction over contract determines Construction Manager's performance and progress are satisfactory, and with consent of Construction Manager's Surety, Owner will authorize remaining partial payments be paid in full. At 50 percent completion or any time thereafter when the progress of the work is not satisfactory, additional amounts may be retained but in no event shall the total retainage be more than 10 percent of the value of the work completed. Upon substantial completion of the work, an amount retained may be paid to the contractor. For the purposes of this section, estimates may include any fabricated or manufactured materials and components specified, previously paid for by Construction Manager, and delivered to the Work or properly stored and suitable for incorporation in the Work embraced in the contract. »

§ 11.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

« N/A »

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

« See 11.1.8.1 »

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, with the consent of the Architect and Owner, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

« »

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201-2017.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, ~~and the percentage of retainage held on Subcontracts~~, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic

verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.1.13 No payment under this Agreement, either final or progress, shall release the Construction Manager from any obligation under the Contract Documents.

§ 11.1.14 The Owner reserves the right to withhold the whole or any part of any payment which would otherwise be due under this Agreement, to such extent as (a) the Owner may have any claim or offset against the Construction Manager and/or (b) the Owner, in its reasonable opinion, shall consider necessary to protect itself from loss because of any of the items enumerated in Section 9.5.1 of the General Conditions.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of ~~AIA Document A201-2017~~ the General Conditions, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment, ~~which documents have been reviewed by Owner's representative~~ and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 11.2.1.1 The amount of the final payment shall be calculated as follows:

- .1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the Guaranteed Maximum Price.
- .2 Subtract amounts, if any, for which the Owner ~~Architect~~ withholds, in whole or in part, a final Certificate for Payment as provided in Section 9.5 of the General Conditions or other provisions of the Contract Documents.
- .3 Subtract the aggregate of previous payments made by the Owner.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an evaluation~~audit~~ of the Cost of the Work or notify the Architect that it will not conduct an evaluation~~audit~~.

§ 11.2.2.1 The Owner's ~~auditors~~ will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's ~~auditors~~ report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 11.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's ~~auditors~~, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the General Conditions. The time periods stated in this Section supersede those stated in Section 9.4.1 of the General Conditions. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting. If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct a Cost of the Work evaluation~~audit~~, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201-2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201-2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's ~~auditors'~~ report ~~concludes that~~ the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount ~~without seeking an initial decision pursuant to Article 15 of AIA Document A201-2017~~. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment provided that all other applicable terms of the Contract Documents have been satisfied and,~~or~~ as follows:

« Construction Manager is required to conform to all TBE/DBE Requirements set forth in Attachment A – Request for Proposal (RFP). Upon notification from Owner to the Construction Manager that the obligations under this Agreement have been completed, the Construction Manager shall within thirty (30) calendar days submit for payment a final invoice for any remaining unpaid charges. Should the Construction Manager fail to respond within the thirty (30) days, the Owner will assume no additional charges have been incurred. Owner will transmit to Construction Manager notice of termination of this Agreement with a check for any remaining retainage »

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. *(Insert rate of interest agreed upon, if any.)*

« Payment due and unpaid under Contract Documents shall bear interest at rate specified in Wisconsin Statutes 71.82 (1) (a) compounded monthly. » % «-»

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of ~~the General Conditions A201-2017~~. ~~However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.~~

§ 12.1.2 ~~[Intentionally Deleted] The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker. (If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)~~

« »
« »
« »
« »

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of ~~the General Conditions AIA Document A201-2017~~, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

Arbitration pursuant to Article 15 of AIA Document A201–2017

Litigation in the Circuit Court of Milwaukee County, WI ~~a court of competent jurisdiction~~

Other: (Specify)

« Litigation or arbitration as decided by Owner, acting in its sole and absolute discretion, when the dispute arises. If chosen, litigation to be held in the Circuit Court of Milwaukee County, WI -»

~~If the Owner and Construction Manager do not select a method of binding dispute resolution, 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.~~

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

~~§ 13.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price,~~ the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice and opportunity to cure to the Owner, for the reasons set forth in Section 14.1.1 of the General Conditions.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager’s Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner’s convenience.)

<< >>

§ 13.23 Suspension

The Work may be suspended by the Owner as provided in Article 14 of [the General Conditions-AIA Document A201–2017](#); ~~In~~ In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of [the General Conditions, AIA Document A201–2017](#), ~~except that the term “Contract Sum” in that Section shall be understood to mean the cost of work and except that~~ the term “profit” shall be understood to mean the Construction Manager’s Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in [the General Conditions A201–2017](#). Where reference is made in this Agreement to a provision of [the General Conditions AIA Document A201–2017](#) or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.2.3 All notices or other communications required or permitted to be given or made hereunder to either Party shall be deemed to be so given or made when in writing via email, with a delivery confirmation, and delivered in person (with evidence of receipt) such as overnight courier services or sent by United States Registered or Certified Mail, Postage prepaid, or by Federal Express or other service providing proof of delivery, directed to the parties at the following addresses or to such other addresses as they may from time to time designate in writing:

If to the Owner:

« »

If to Construction Manager:

« »

Any change to the notice address listed above must be given to the other party in the same manner as described in this section. The date of notice shall be the date of delivery if the notice is personally delivered, the date of mailing if the notice is sent by United States certified mail or the date of transmission if the notice is sent by email. Each party agrees to maintain evidence of the respective notice method utilized.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than « One Million Dollars » (\$ « \$1,000,000 ») for each occurrence and « Two Million Dollars » (\$ « 2,000,000 ») in the aggregate for bodily injury and property damage.

§ 14.3.1.1.1 Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis., against claims for:

1. damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees,
2. damages insured by reasonably available personal injury liability coverage, and
3. damages because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.

§ 14.3.1.1.2 Contractor's commercial liability policy must be written on a 1996 (or later) Insurance Services Organization, Inc. (ISO) commercial general liability form (occurrence form) and include the following coverages and endorsements:

1. Products and completed operations coverage.
 - a. Such insurance must be maintained for three years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
2. Blanket contractual liability coverage, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.

3. Severability of interests and no insured-versus-insured or cross-liability exclusions.
4. Underground, explosion, and collapse coverage.
5. Personal injury coverage.
6. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
7. For design professional additional insureds, ISO Endorsement CG 20 32 07 04 “Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured” or its equivalent.

§ 14.3.1.1.3 The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, must not include any of the following:

1. Any modification of the standard definition of “insured contract” (except to delete the railroad protective liability exclusion if Contractor is required to indemnify a railroad or others with respect to Work within 50 feet of railroad property).
2. Any exclusion for water intrusion or water damage.
3. Any provisions resulting in the erosion of insurance limits by defense costs other than those already incorporated in ISO form CG 00 01.
4. Any exclusion of coverage relating to earth subsidence or movement.
5. Any exclusion for the insured’s vicarious liability, strict liability, or statutory liability (other than worker’s compensation).
6. Any limitation or exclusion based on the nature of Contractor’s work.
7. Any professional liability exclusion broader in effect than the most recent edition of ISO form CG 22 79.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than « One Million Dollar » (\$ « 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. Contractor shall purchase and maintain automobile liability insurance for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy must be written on an occurrence basis.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, 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.

§ 14.3.1.4 Workers’ Compensation at statutory limits and Employers Liability with policy limits not less than « One Hundred Thousand Dollars » (\$ « 100,000 ») each accident, « Fire Hundred Thousand Dollars » (\$ « 500,000 ») each employee, and « One Hundred Thousand Dollars » (\$ « 100,000 ») policy limit. Contractor shall purchase and maintain workers’ compensation and employer’s liability insurance, including, as applicable

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than « One Million Dollars » (\$ « 1,000,000 ») per claim and « Two Million Dollars » (\$ « 2,000,000 ») in the aggregate. If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance must cover negligent acts, errors, or omissions in the performance of professional design or related services by the insured or others for whom the insured is legally liable. The insurance must be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. The retroactive date on the policy must pre-date the commencement of furnishing services on the Project.

§ 14.3.1.6 Other Insurance

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

Coverage

Pollution Liability, if applicable

Each Occurrence/Claim

General Aggregate

Limits

One Million Dollars (\$1,000,000)

Two Million Dollars (\$2,000,000)

For all civil and site construction projects of any kind, including any excavation, Contractor's Pollution Liability is required. Contractor shall purchase and maintain a policy covering third-party injury and property damage, including cleanup costs, as a result of pollution conditions arising from Contractor's operations and completed operations. This insurance must be maintained for no less than three years after final completion. If Contractor's Pollution Coverage is required, Contractor may provide evidence that Contractor's Professional Liability policy includes coverage for Pollution Liability within specified limits.

§ 14.3.1.7 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™-2019, 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, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™-2019 Exhibit B, and elsewhere in the Contract Documents.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203-2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

« »

§ 14.5 Other provisions:

« »

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 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.

§ 15.2 The following documents comprise the Agreement:

- 1** AIA Document A133™-2019, 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, as modified herein
- 2** AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed, as modified
- 3** AIA Document A133™-2019, Exhibit B, Insurance and Bonds, as modified in the form attached hereto
- 4** AIA Document A201™-2017, General Conditions of the Contract for Construction, as modified in the form attached hereto

- .5 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

« »

- .6 Other Exhibits:
(Check all boxes that apply.)

[] AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
(Insert the date of the E234-2019 incorporated into this Agreement.)

« »

[] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

- .7 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

- « Attachment A – Request for Proposal (RFP) »
- « Attachment B – Construction Manager’s Proposal »
- « Attachment C – Required Invoice Format for Preconstruction Services »
- « Attachment D – Manpower, Direct Salary Rate and Overhead & Profit Factor Schedule »
- « Attachment E – Guidelines for Reimbursable Expenses »
- « Attachment F – Construction Manager’s Certificate of Insurance »

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

OWNER (Signature)

« »« »

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

« »« »

(Printed name and title)