

# 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)

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

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

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

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The Landlord:  
(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.

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### EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

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[Additoinal Exhibits to be Referenced as Applicable]

## 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.)*

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§ 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.)*

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§ 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.)*

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

- .1 Design phase milestone dates, if any:

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- .2 Construction commencement date:

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- .3 Substantial Completion date or dates:

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- .4 Other milestone dates:

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§ 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.)*

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§ 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.)*

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§ 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.)*

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

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§ 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.)*

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

.1 Geotechnical Engineer:

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.2 Civil Engineer:

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.3 Other, if any:

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

Land Surveyor

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Environmental Engineer

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

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

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§ 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 required in Exhibit \_\_\_\_ >>

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:

*(List any Owner-specific requirements for subcontractor procurement.)*

«All sub-contractors selected by the Construction Manager shall have experience in performing services on similar projects and are fully licensed in the State the work is being performed. The Construction Manager shall provide the Owner with a list of all sub-contractors and their union or non-union status and identify those sub-contractors that have worked for the Owner on past Projects. »

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

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§ 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, the Construction Manager's services, and the Construction Manager's compensation. The Owner may adjust 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.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior written 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), ARPA Contract Addendum, 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 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 negotiations, representations or agreements, either written or oral. Should any of the Contract Documents conflict with each other, the conflict will be resolved using the following order of precedence:

- (1) Applicable laws and regulations, including those set forth in the ARPA Addendum;
- (2) Modifications, in reverse chronological order;
- (3) this Agreement;
- (4) any Supplementary Conditions;
- (5) A201 General Conditions;
- (6) Exhibits to this Agreement;
- (7) Addenda, if any;
- (8) Drawings;
- (9) Specifications; and
- (10) any other Contract Documents.

## § 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established 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 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.

## § 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, as modified, 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, as modified, 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, as modified, which document is incorporated herein by reference. The term "Contractor" as used in A201-2017, as modified, shall mean the Construction Manager. Initially capitalized terms used and not otherwise defined herein shall have the meanings given to such terms in the General Conditions.

§ 2.3.3 **Standard of Care.** In performing its duties hereunder, Construction Manager shall exercise the degree of care and skill equal in all respects to the standard of care used and reasonably expected of first class construction managers performing work and services for projects of kind and scope comparable to the Project in the Greater Boston, Massachusetts area (the "Standard of Care").

## § 2.4 Contract Time

§ 2.4.1 The Construction Manager shall diligently prosecute the Work and achieve Substantial Completion of the entire Work not later than the Deadline for Substantial Completion and shall achieve Final Completion of the Work not later than the Deadline for Final Completion, subject to authorized adjustments of the Contract Time as provided in the Contract Documents. The Deadline for Substantial Completion is as noted in Section 1.1.4. The Deadline for Final Completion is as noted in Section 1.1.4.

## ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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, as modified, 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 in performing its 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. Except to the extent consistent with the Standard of Care, 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.

§ 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 the Owner and Architect 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 consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.2.1 The Construction Manager shall review progress drawings and specifications developed by the Architect to provide value analysis of construction materials and systems to the Owner and Architect in an attempt to maximize value within Owner's budget. The Construction Manager shall collaborate with the Owner and Architect to identify bidding packages to be distributed by the Construction Manager as required herein.

§ 3.1.3.3 The Construction Manager shall 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, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.3.4 The Construction Manager shall assist the Owner and Architect in gaining the necessary approvals and permits required by governmental authorities. The Construction Manager shall attend public hearings, advise the Owner and Architect as appropriate in the securing of approvals and permits and will actively participate in the seeking of necessary approvals and permits for the Project.

### § 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 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 Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: milestone dates for receipt and approval of pertinent information; submission of the Guaranteed Maximum Price proposal; components of the Work; preparation and processing of shop drawings and samples; times of commencement and substantial completion required of each Subcontractor; ordering and delivery of products, materials and equipment; including those that must be ordered in advance of construction; and the occupancy requirements of the Owner, showing portions of the Project having occupancy priority. If 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 and Owner, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

### § 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.

§ 3.1.6.2 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.

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

§ 3.1.6.4 If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect. Documentation for any of the design phases determined to exceed the allocated budget shall be modified by the Architect as mutually agreed by the Architect, Construction Manager and Owner to establish a revised design and/or construction scope which is within budget constraints. The Construction Manager and Owner will revise their respective construction cost estimates to incorporate the documented revisions and reconcile the estimates until a mutually agreed design and scope has been reached within the allocated budget.

§ 3.1.7 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.

§ 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 Pre-Qualifications of Bidding Subcontractors and Suppliers

The Construction Manager shall prepare a list of firms to be recommended for inclusion of bidding on the trade contracts. The Owner and the Architect may direct deletion of any firm they do not wish to have included on the list. The Owner and the Architect may request additional firms to be added to the list subject to agreement by the Construction Manager. Upon receipt of bids, the Construction Manager, with input from the Owner and the Architect, shall confirm the qualifications of low bidders and validate that they have complete scope. The Owner will make the final decision based on recommendations by the Construction Manager and the Architect for the award of trade contracts and material purchases.

#### § 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of 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, to the extent mutually agreed by the Construction Manager and the Owner, the Owner shall assign all contracts



for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

#### **§ 3.1.12.1 Bidding Process for Construction Contracts**

The Construction Manager with the assistance of the Architect, shall issue bidding documents to the prequalified subcontract bidders and conduct pre-bid conferences with the bidders. Bids will be submitted to the Construction Manager and Owner. The Construction Manager shall solicit approximately five bids for each trade or specialty contractor package. A minimum of three bids must be received for each package unless specifically approved otherwise by the Owner. The Construction Manager shall meet with the bidders to review their approach to the work, scope of bid, ability to perform the work and solicit value engineering suggestions. As a result of these meetings, the Construction Manager shall recommend to the Owner that the subcontractor's bid be accepted or rejected for the respective trade packages based on compliance with the bid documents. Prior to recommending the acceptance of any subcontractors bid, the Construction Manager must demonstrate to the Owner and Architect that the scope and price submitted by the bidder is within the parameters of the Control Budget.

#### **§ 3.1.12.2 Rejection of Bids**

If the bids of the construction subcontractors are rejected, the Construction Manager shall provide services as listed in Section 3.1.11.4, 3.1.12 and 3.1.12.1 to rebid the respective packages.

#### **§ 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.)*

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### **§ 3.2 Guaranteed Maximum Price Proposal**

**§ 3.2.1** 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. In the A201, references to the "Contract Sum" shall refer to the Guaranteed Maximum Price upon the Owner's acceptance of the Guaranteed Maximum Price proposal.

**§ 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;
- .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;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price; and

- .6 A list of the Construction Manager's fixed billing rates used to develop the Guaranteed Maximum Price proposal and that are to be used for determining certain categories of Cost of the Work

§ 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 ("Construction Contingency"). The Construction Contingency may be used to cover those unanticipated costs which are reasonable and necessary to complete the Work and which the Construction Manager can demonstrate were not included in the Guaranteed Maximum Price but are considered reimbursable as a Cost of the Work under Article 6, subject to the limitations therein, and are not otherwise the basis for a Change Order. Examples of allowable uses of Construction Contingency include, but are not limited to, scope gaps in buyout of the Work, and errors in the Work not caused by the negligence of the Construction Manager or its Subcontractors. Construction Contingency is not to be used to defray costs for which the Construction Manager is entitled to an increase in the Guaranteed Maximum Price by Change Order, which may include but not be limited to design changes, design corrections or concealed conditions. The Construction Manager may use up to \$\_\_\_\_\_ of Contingency per calendar month without prior approval of the Owner. To the extent the Construction Manager proposes to use more than \$\_\_\_\_\_ of Contingency in any calendar month, Construction Manager shall notify the Owner in advance and Owner's advance written approval shall be required (and not unreasonably withheld). The Construction Manager shall provide backup for all Contingency usage monthly and on the Schedule of Values included with the Contractor's periodic Application for Payment, and all Contingency expenditures shall be subject to the Owner's approval, which approval shall not be unreasonably withheld. When the Construction Manager allocates costs from the Construction Contingency to another line item in the Schedule of Values, the Construction Manager shall submit supporting documentation to the Architect. Unused Construction Contingency shall be deducted from the Cost of the Work using a deductive Change Order and shall accrue 100% to Owner.

§ 3.2.4.1 Costs incurred as a result of the Construction Manager's or a Subcontractor's error(s) in performing the Work or resulting from negligent, defective, or non-compliant work will not be borne by the Owner or paid to Construction Manager from the Construction Contingency and shall be borne exclusively by the Construction Manager.

§ 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, or in the Drawings, Specifications or the Owner's program, 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.

§ 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 execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the 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 Time is an essential condition of this Contract. Where, in accordance with the Contract Documents, an extended or additional time is allowed for completion of the Work or the performance of any act, the new time established by such extension shall be of the essence of this Contract. Further, wherever a maximum period of time is specified in the Contract Documents for the giving of notice by the Construction Manager of a change in the Work or other claim, or for any grace or cure period, it is agreed that time is of the essence with respect to each period of time so specified.

### § 3.3 Construction Phase

#### § 3.3.1 General

§ 3.3.1.1 The Construction Phase shall commence upon the later of: (i) Owner's execution of the Guaranteed Maximum Price Amendment (ii) date of confirmation of Owner's funding for the Project, if required by the Contract Documents (iii) date of receipt of a valid building permit; (iv) date of receipt of an acceptable builder's risk insurance policy, unless the Contract Documents provide for the Construction Manager to furnish the builder's risk policy; and (v) the date stated in a written notice to proceed from Owner received by the Construction Manager on or prior to such date.

§ 3.3.1.2 The Construction Manager shall furnish only skilled and properly trained staff for the performance of the Work. The key members of the Construction Manager's staff shall be persons agreed upon with the Owner.

§ 3.3.1.3 Such key members of the Construction Manager's staff shall not be changed without the prior written consent of the Owner, unless such person becomes unable to perform any required duties due to death, disability, transfer or termination of employment with the Construction Manager. If a key member is no longer capable of performing in the capacity so agreed, the Owner and the Construction Manager shall agree on a mutually acceptable substitute.

§ 3.3.1.4 During the performance of the Work, the Construction Manager shall keep a competent superintendent at the Project site, fully authorized to act on behalf of the Construction Manager. Notice from the Owner or the Architect to such superintendent/project manager in connection with defective Work and instructions for performance of the Work shall be considered notice of such issues to the Construction Manager.

#### § 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 that delineates a critical path of construction activities for the Work and a submittal schedule in accordance with Section 3.10 of A201-2017, as modified. This construction schedule will serve as the baseline schedule when evaluating time extensions during the course of the Project.

§ 3.3.2.2.1 The Construction Manager shall create and maintain a detailed construction task schedule which tracks actual construction progress against the schedule established in the preconstruction phase of the Project. The Construction Manager shall communicate the schedule to the Subcontractors, the Owner, and the Architect, and take appropriate steps within the Construction Manager's authority to ensure all parties adhere to the schedule.

#### § 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.

#### § 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 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 The Construction Manager is responsible for the coordination and oversight of all construction activities.

§ 3.3.2.7 The Construction Manager shall maintain supervisory and/or management personnel on site at all times when construction or construction related activities are taking place.

§ 3.3.2.8 The Construction Manager shall arrange and conduct a preconstruction conference with the construction subcontractors, the Architect and the Owner to cover the general practices, relationships of the parties, construction site rules, regulations, and procedures and to encourage positive working relationships among all parties.

§ 3.3.2.9 The Construction Manager shall maintain quality control of the construction progress by way of its full-time supervision on the site to ensure work is progressing in accordance with construction documents.

§ 3.3.2.10 The Construction Manager shall maintain job site records including all contracts for construction, construction documents, submittals, materials samples, as-built drawings, or other documentation relevant to the construction of the Project.

§ 3.3.2.11 The Construction Manager shall provide an appropriate onsite job office including space to conduct job meetings. The office will be of temporary construction, trailers or portable enclosures to maintain adequate conditions for its field personnel. The office will be equipped with, as a minimum, adequate heating and cooling, lighting and office equipment, telephone, , copier and supplies.

§ 3.3.2.12 The Construction Manager shall maintain a construction cost accounting system which provides up to date costs for both actual expenses and anticipated costs. The accounting system must also provide comparisons of these costs to the design and construction control budget.

§ 3.3.2.13 The Construction Manager shall record and prepare proposals for change orders. The proposals for change orders shall be submitted to the Owner and the Architect for review, approval or rejection, and change order preparation by the Architect. A record listing all change orders proposed, rejected and approved shall be maintained by the Construction Manager.

§ 3.3.2.14 The Construction Manager shall be the sole source of all questions from subcontractors and suppliers relating to clarifications of the construction documents and changes to the construction contracts. The Construction Manager shall review all such requests for clarification and/or information from the subcontractors and suppliers, as appropriate, and forward these requests to the Architect for clarification with copy to the Owner.

§ 3.3.2.15 The Construction Manager, in cooperation with the Architect, shall prepare a list of required submittals for the Project at the earliest time possible after commencement of the construction phase. The Construction Manager shall prepare a schedule for each required submittal by each construction subcontractor to expedite and coordinate the receipt, review and ordering of materials within the necessary sequence of the construction.

§ 3.3.2.16 The Construction Manager shall endeavor to minimize or prevent construction activities from negatively affecting the ongoing working environment of the Owner.

§ 3.3.2.17 The Construction Manager shall create and maintain a construction site safety program to ensure all personnel in and around the construction areas are reasonably protected at a minimum to the requirements of the law. The Construction Manager shall monitor all activities on the site to promote safe and secure conditions.

§ 3.3.2.18 The Construction Manager shall develop a project close-out program including the assembling for transmittal to the Owner all operations and maintenance manuals, warranties, as-built drawings, approved materials submittals and any other records for delivery to the Owner.

§ 3.3.2.19 The Construction Manager shall arrange for Certificate of Occupancy as required by local jurisdictions.

§ 3.3.2.20 The Construction Manager shall attend or otherwise assist with public meetings, meetings with the Owner's employees or governmental conferences deemed necessary in the execution of the Project.

§ 3.3.2.21 The Construction Manager shall coordinate the start up, testing and training of Owner personnel as required under the construction documents. The Construction Manager shall also cooperate with the Commissioning Agent engaged directly by the Owner and shall manage and coordinate any necessary corrective work discovered during the commissioning process. The Construction Manager shall also arrange for and coordinate any warranty work until the date one year after the date of substantial completion.

§ 3.3.2.22 The Construction Manager shall clean the construction area in the building and on the site and maintain these areas in an orderly and well-kept condition. All trash resulting from the construction activities, shall be properly and lawfully disposed of by the Construction Manager throughout the duration of the Project.

§ 3.3.2.23 The Construction Manager shall provide final cleaning of all areas prior to their being occupied by the Owner either temporarily or permanently.

§ 3.3.2.24 The Construction Manager shall be responsible to the Owner for the compliance by the Construction Manager and by each Subcontractor with the requirements of all of the applicable provisions of the Contract Documents and of all Laws.

§ 3.3.2.25 Prior to commencing Work, the Construction Manager shall provide the Owner with a list of the names and addresses of all Subcontractors, employed or used in completion of the Work, and shall update such list in a timely manner as may be appropriate to keep the Owner and the Architect informed.

#### ARTICLE 4 OWNER'S RESPONSIBILITIES

##### § 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information within the time period, if any, specified in the Contract Documents or else 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 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, as modified, Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update 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) 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.

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 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 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 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 required of the Owner by the Contract Documents within the time period, if any, specified in the Contract Documents or else 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, and the parties have agreed to include the AIA E234-2019 as part of the Agreement, the Owner shall fulfill its responsibilities as required in the agreed AIA Document E234™-2019.

## § 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. 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 A201-2017, as modified, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 **Legal Requirements.** The Owner shall furnish all legal 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 of a the Architect of record, that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner may 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 agreed fixed 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.)

« »

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 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.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid «forty-five» ( «45» ) days after the invoice date 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.)

« » % «per annum»

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.

LUMP SUM FIXED GENERAL CONDITIONS	\$
TOTAL FIXED FEE (lump sum based on % of the Project budget estimate at GMP Amendment)	\$
GENERAL CONTRACTOR'S PAYMENT & PERFORMANCE BOND (if required)	
GENERAL LIABILITY INSURANCE	

§ 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.)

« Lump sum, fixed fee of \$ \_\_\_\_\_ »

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

« Equitable adjustment to be mutually agreed by the parties »

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

« »

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed « » percent ( « » %) of the standard rental rate paid at the place of the Project.

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

«Liquidated damages for failure to complete the construction as defined in the General Conditions will be assessed to the Construction Manager for each calendar day after the date for Substantial Completion identified in Paragraph 1.3 until Substantial Completion is actually achieved.

If the Construction Manager does not achieve Substantial Completion of the work in accordance with the Contract Times set forth above, the Construction Manager shall pay the Owner, as liquidated damages and not as a penalty, five thousand dollars (\$5,000) per calendar day by which the actual date of Substantial Completion exceeds the adjusted Contract Time. The parties agree that the Owner's actual damages for such delay would be difficult or impossible to ascertain in such event and that such liquidated damages constitute a fair and reasonable amount of damages in the circumstances. The Owner may deduct liquidated damages from any unpaid amounts then or thereafter due the Construction Manager under this Agreement. Any liquidated damages not so deducted shall be payable to the Owner, at the demand of Owner, together with interest from the date of the demand.

»

§ 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.)

«At the completion of the Project, if the Total Cost of the Work including the Construction Manager's Fee is less than the Guaranteed Maximum Price as adjusted by Change Orders, the remaining funds shall be deemed to be savings. All of the savings shall be returned to the Owner.»

## § 6.2 Guaranteed Maximum Price

The 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 (as adjusted only as permitted under the Contract Documents) to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.2.1 All proposed expenditures against allowances within the Guaranteed Maximum Price shall be reviewed with the Architect and Owner for approval prior to inclusion within any Application for Payment. The use of allowances within the Guaranteed Maximum Price for other than the specific purpose listed in the Guaranteed Maximum Price will not be permitted without specific approval from 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 only as reflected on the applicable Change Order.

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

§ 6.3.3 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 AIA Document A201–2017, as modified, General Conditions of the Contract for Construction. In the event of the parties' failure to agree upon a Guaranteed Maximum Price, this Agreement shall terminate in accordance with Paragraph 13.1.5.



§ 6.3.4 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as modified, 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.

§ 6.3.5 In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in Article 7 of AIA Document A201–2017, as modified, 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.

§ 6.3.6 If no specific provision is made in Article 6 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 Article 6 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 Article 7 or as may be otherwise stipulated in the amendment of this Agreement.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner’s prior approval, 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, per rates set forth in prevailing wage rates schedule for the Project.

§ 7.2.2 Wages 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.

§ 7.2.2.1 Wages 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.)*

« »

§ 7.2.3 Wages 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, as approved in writing, by the Owner in advance.

§ 7.2.4 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.

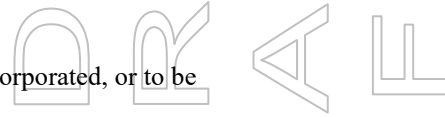
§ 7.2.6 No labor costs shall be reimbursed to the Construction Manager for Construction Manager's own personnel unless specifically authorized in writing by the Owner in advance.

### § 7.3 Subcontract Costs

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

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

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.



§ 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 for which the Owner has paid, 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 (as determined by the Equipment Watch Fair Market Value).

§ 7.5.2 Reasonable 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 The Cost of the Work includes costs of the Construction Manager's insurance and bonds, if bonds are required by the Owner, for the Project at the agreed fixed rates in the GMP Amendment. The Cost of the Work for the Construction Manager's insurance and bonds for the base scope of Work shall be included in the next Application for Payment after the Guaranteed Maximum Price is agreed.

§ 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, if applicable.

§ 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, as modified, 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 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, as modified. 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 are not separately reimbursable but are included within the Construction Manager's labor rates..

§ 7.6.7 Costs of document reproductions for large quantities such as bid specifications and bid drawings 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 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, and other than those between Construction Manager and its subcontractors, suppliers, and/or consultants, 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. All legal issues should be immediately brought to the Owner's attention. **RESUME HERE**

§ 7.6.10 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, as approved by the Owner, in writing in advance, other than to and from the Project site or Construction Manger's office.

§ 7.6.11.1 Costs associated with out-of-town travel except to or from project site or the Construction Manager's office.

#### § 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 AIA Document A201–2017, as modified.

§ 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 Construction Manager, 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. Notwithstanding anything to the contrary herein, in no event shall the Cost of the Work include the costs to repair or correct defective Work or Work not in accordance with the Contract Documents, and provided further that the Construction Manager shall use commercially reasonable efforts to recover for the benefit of the Owner costs incurred due to the negligence of any Subcontractor or due to the breach by any Subcontractor of any of its obligations under its Subcontract or any applicable surety or insurer.

§ 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 AIA Document A201–2017, as modified, 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 (including, without limitation, in house computer costs and other costs of doing business, services and related expenses to maintain such offices);
- .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 responsibility of the Contract 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;
- .9 Costs for services incurred during the Preconstruction Phase;
- .10 Costs to repair or correct defective Work or Work not in accordance with the Contract Documents;
- .11 Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal to the extent arising from any negligent act or omission or failure to comply with a requirement of the Contract Documents;
- .12 Costs of accelerating the Work to the extent caused by the fault of the Construction Manager;
- .13 Costs resulting from the failure of the Construction Manager or any Subcontractor of any tier to procure and maintain insurance as required by the Contract Documents;
- .14 Overtime required to the extent caused by the negligence or failure to comply with a requirement of the Contract Documents of the Construction Manager;
- .15 Project incentive bonuses, except as approved in advance by the Owner in writing or as otherwise provided in this Agreement;
- .16 Cost of bonding or securing liens or defending claims filed by Subcontractors at any tier unless such lien is due to a default by the Owner in making progress payments to the Construction Manager hereunder;
- .16 Losses or expenses for which the Construction Manager is compensated by insurance;
- .17 Costs associated with any corrective or remedial work, except as set forth in Section 6.7 above;
- .18 Travel costs, legal fees and other expenses incurred in connection with the preparation, negotiation and interpretation of this Contract;
- .19 Hourly charges in excess of forty (40) hours per week for salaried employees;
- .20 All costs of training and educational expenses of employees, other than Project specific training approved in advance by the Owner in writing, or if required under a collective bargaining agreement; and
- .21 Costs incurred or paid for recruiting employees (whether to a third party recruiters or to employees) and severance or similar payments made on account of terminated employment; and .22 Except as otherwise provided in this Agreement, costs due to the fault, negligence, or failure to fulfill a specific responsibility

to the Owner as set forth in this Agreement of the Construction Manager, Subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to costs for the correction of damaged, defective or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and repairing damage to property not forming part of the Work. It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

**§ 7.9.2.** Cost of Work authorized or performed by the Construction Manager as described in Sections 7.9.1.1 through 7.9.1.10, not authorized in advance by the Owner, will not be reimbursed unless such work is within the approved Guaranteed Maximum Price.

## **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, 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**

**§ 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. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. 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 recommends accepting. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. . The Owner 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.

**§ 9.1.1** When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without unreasonable 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 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 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**

The Construction Manager shall keep full and detailed records and accounts related to the Preconstruction Phase compensation and 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, provided that if the Owner desires the Construction Manager to use accounting methods or controls or supporting documentation that are different from the Construction Manager's normal business practices, Owner's requirements shall be provided prior to the first Application for Payment. 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 six years after final payment, or for such longer period as may be required by law. The Owner shall require the accountants and auditors to keep the Construction Manager's records, books and other documents confidential.

§ 10.1 All records shall be maintained in accordance with generally accepted accounting procedures, consistently applied. Subcontractors retained by the Construction Manager shall have the same obligations to retain records and permit audits as required of the Construction Manager.

§ 10.2 If requested by the Owner, the Construction Manager shall promptly, within 30 days, deliver to the Owner copies of all correspondence, estimates, budgets, breakdowns, accounting data, bid proposals, cost control information and any other documents relating to the Project, in a form acceptable to the Owner.

§ 10.3 Without limitation of the foregoing, the Owner shall have the right, at any time and from time to time, upon notice to the Construction Manager, to audit the Construction Manager's books and records in connection with the Work at the Construction Manager's offices. The Construction Manager shall facilitate any such audit by making necessary facilities available to the Owner and its representatives.

§ 10.4 If any inspection by the Owner of the Construction Manager's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and any other data relating to the Contract Documents reveals an overcharge, including, without limitation, any untimely request for payment as described in \_\_\_\_\_, the Construction Manager shall pay the Owner upon demand, when the overage is in excess of 0.25% of the Work, all the overcharged amount along with the complete cost of the administrative expenses incurred in determining the overage. The requirements of this Paragraph 10.4 shall not apply to any portion of an overcharge which is the subject of a good faith dispute between the Owner and the Construction Manager.

## ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

### § 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect and Owner by the Construction Manager, and Certificates for Payment issued by the Architect, 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 Based on the billings from subcontractors, vendors, and Construction Manager received by the 30th of the month, the Construction Manager will submit an Application for Payment to the Owner and Architect by the 1st day of the following month. Each Application will include all supporting documentation as required by this Contract. The Owner and Architect will complete their review and the Construction Manager will make changes (if required) by the 5th day of the month. The Owner shall make payment to the Construction Manager by forty-five (45) days following the date the Architect approved Application for Payment is received by the Owner. Construction Manager shall make payments to subcontractors and vendors within five (5) business days of receipt of payment from the Owner. Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate of interest in subparagraph 5.2.2 from and after the date when interest begins to accrue.

«»«»«» «»«»

*(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 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 payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 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. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (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) the Construction Manager's Fee (with the Construction Contingency and Construction Manager's Fee being shown as separate items).

§ 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 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 for approval before allocation.

§ 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 AIA Document A201–2017, as modified, 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 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;
- .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 or Owner determines, in the Architect's or Owner's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's stipulated-sum Fee, in an amount that bears the same ratio to that stipulated-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to the estimate of the entire Cost of the Work in the Guaranteed Maximum Price.

§ 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 has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017, as modified;
- .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 may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017, as modified;

- .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 The payment or partial payment of any Application for Payment by the Owner, including the final Application for Payment shall not constitute approval or acceptance of any Work or cost in such Application.

§ 11.1.7.4 Any provision to the contrary notwithstanding, Owner shall not be obligated to make any payment to Construction Manager if any one or more of the following conditions exist.

- .1 defective Work not remedied;
- .2 reasonable evidence that the Work will not be completed within the Contract Time and/or established milestone dates and that the unpaid balance would not be adequate to cover actual or the anticipated delay;
- .3 reasonable evidence that the Work will not be completed for the unpaid balance of the Guaranteed Maximum Price;
- .4 failure to carry out the Work in accordance with the Contract Documents;
- .5 reasonable evidence that Construction Manager has failed to pay subcontractors and/or suppliers; or
- .6 Construction Manager becomes insolvent or files for bankruptcy.

**§ 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.)*

«Five percent (5%)»

§ 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.)*

« »

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

As required by applicable law and corresponding provisions of the General Conditions.

« »

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, 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:

**TBD**

« »

**§ 11.1.9**

§ 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.

## § 11.2 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, as modified, 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;
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2;
- .4 all governmental inspections have been conducted and all certificates and permits for which the Construction Manager is responsible have been issued;
- .5 the Construction Manager has delivered to the Architect and Owner the Project's "as-built" drawings, records and data in a form acceptable to the Architect and Owner as required in Article 10 of A201–2017;
- .6 delivery of the Final Certification from the Owner certifying that all of the Work has been performed in accordance with the Contract Documents and Applicable Laws; and
- .7 all other conditions precedent to final payment set forth in the Contract Documents, including, without limitation, all conditions set forth in Section 9.10.2 of the General Conditions have been satisfied.

§ 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 audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 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 an 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, as modified. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017, as modified. 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, as modified. 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 and the auditor's report. 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, or as follows:

On or before 30 days after Substantial Completion, execution of outstanding Change Orders, and completion of the punch list in accordance with this Article 11, the Construction Manager shall submit the final Application for Payment. If the aggregate amount due on account of the Contract Sum is greater than the total of previous payments, subject to the Guaranteed Maximum Price, the Owner will pay the balance due within the time stated above. If the final Contract Sum is less than the total of previous payments by Owner, the Construction Manager will remit the amount due to the Owner with the final Application for Payment.

§ 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 accrue interest as provided in Section 13.6 of the A201 General Conditions.

## ARTICLE 12 DISPUTE RESOLUTION

### § 12.1

Any Claim not involving the enforcement of lien rights between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A20 General Conditions.

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### § 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by direct negotiation or mediation pursuant to Article 12 of the A201 General Conditions, as modified, the method of binding dispute resolution shall be as follows (and as further set forth in such Article 12):

*(Check the appropriate box.)*

At owner's sole election, Arbitration pursuant to Article 15 of AIA Document A201–2017, as modified, otherwise litigation as set forth below.

Litigation in the Massachusetts Superior Court for Bristol County at Owner's sole election, otherwise mandatory binding arbitration. The parties waive all respective rights to a jury trial.

Other: *(Specify)*

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 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, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 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 Article 14.4 of the A201 General Conditions, as modified..

§ 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 14.4 of A201–2017, as modified.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination in accordance with Article 14.4 of the A201 General Conditions, as modified.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.1 or 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 13.1.2 or Section 13.1.:

- .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 stipulated sum in the Guaranteed Maximum Price Amendment, an amount that bears the same ratio to that stipulated-sum Fee as the Cost of the Work at the time of termination bears to the estimate of the entire Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services;
- .4 Subtract amounts, if any, for liquidated damages due to the Owner under the Contract Documents; and
- .5 Subtract the amount incurred by the Owner for additional architectural services to the extent such additional services are caused by the Construction Manager's failure to perform the Work in accordance with the Project Schedule or are otherwise caused by the acts or omissions of the Construction Manager or any Subcontractor.

§ 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, as modified.

### § 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, as modified, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017, as modified, 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 stipulated sum in the Guaranteed Maximum Price Amendment, an amount that bears the same ratio to that stipulated-sum Fee as the Cost of the Work at the time of termination bears to the estimate of the entire 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, as modified.

§ 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, as modified, 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.)*

« TBD »

### § 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017, as modified; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, as modified, except that the term “overhead and 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 A201–2017, as modified. Where reference is made in this Agreement to a provision of AIA Document A201–2017, as modified, 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, as modified, 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, the assignment shall be void and 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.

### § 14.3 Insurance and Bonds

#### § 14.3.1

The Construction Manager shall maintain insurance for the duration of the services performed under this Agreement as set forth in Exhibit B to this A133 Agreement, and otherwise in compliance with the terms of this Article 14 and Article 11 of the A201 General Conditions, as modified.

#### § 14.3.1.1 Not used

#### § 14.3.1.2 Not used

§ 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 required by Exhibit B and this Section 14.3. 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 Not used.

§ 14.3.1.5 Not used.

§ 14.3.1.6 Not used.

§ 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 and Landlord as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions in performing the Work. 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 Not used.

§ 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 Not used.

§ 14.5 Other provisions:

§ 14.5.1 **Other Conditions and Services**

§ 14.5.1.1 Within seven (7) days of execution of any Amendment to this Agreement, Contractor shall provide Owner with a notarized list of the names and addresses of any entity or individual who or which have been engaged or will be engaged as a subcontractor or supplier to Contractor on the Project, as well as identifying the type of materials, service, equipment or labor to be supplied by them. Contractor shall provide the Owner with the names and addresses of any additional subcontractors or suppliers involved in the Work, along with the requested information, within five (5) days of engaging same. Failure to submit such information to the Owner shall serve as a basis for withholding payment to the Contractor. Contractor shall likewise require each of its subcontractors to provide it with similar information from its lower tier subcontractors and suppliers as a pre-condition to payment.

§ 14.5.1.2 In addition to other required items, each Application for Payment shall be accompanied by the following, all in a form and substance satisfactory to the Owner and in compliance with applicable laws in the state in which the Project is located.

- .1 A current sworn statement from the Contractor setting forth all Subcontractors and any material suppliers with whom the Contractor has contracted, the amount of each such contract, the amount requested for the Application for Payment, and the amount to be paid to the Contractor from such progress payment, together with a current, duly executed waiver of mechanics' and material suppliers' liens from Contractor establishing receipt of payment or satisfaction of the payment requested in the current Application for Payment.
- .2 Commencing with the second Application for Payment submitted by Contractor, duly executed waivers of mechanics' and material suppliers' liens from all Subcontractors, material suppliers, and, where appropriate, lower tier subcontractors, establishing receipt of payment or satisfaction of payment of all amounts requested on behalf of such entities or disbursed prior to submittal by Contractor of the current Application for Payment.
- .3 Such other information or documentation as the Owner or Architect may reasonably require to verify payment or performance.

§ 14.5.1.3 In connection with Contractor's Final Application for Payment, Contractor shall provide a notarized Final Waiver of Liens as provided by the Owner. Contractor shall also submit the following, or similar documentation, with respect to amounts paid and/or owed by the Contractor to its Subcontractors, suppliers or any other entity with whom the Contractor has contracted for the Project: (1) AIA Form G706-Affidavit of Payment of Debts; (2) AIA Form G706A – Affidavit of Release of Liens; (3) unconditional Final Waivers from all Subcontractors, suppliers, sub-subcontractors

and others who have already been paid by the Contractor and its Subcontractors for their work, materials and/or equipment provided to the Project; and (4) conditional Final Waivers from all Subcontractors, suppliers, sub-subcontractors and others who have not yet been fully paid by the Contractor or Subcontractor for their work, materials and/or equipment provided to the Project. The Contractor further agrees that final payment from the Owner to the Contractor or portions thereof, may be distributed by the Owner in the form of joint checks to satisfy the final payment amounts owed by Contractor to some or all of its Subcontractors, suppliers or others with whom the Contractor has contracted on the Project, or the Contractor shall provide other assurance, in a form satisfactory to the Owner, that upon release of final payment to the Contractor, all of these debts will be promptly and fully paid. The Contractor shall acknowledge, in writing, full and final payment upon the release of all remaining funds (whether paid directly to Contractor or, in whole or in part, by joint checks) and shall obtain unconditional Final Waivers from all Subcontractors, suppliers and others as those funds are promptly distributed.

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## 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, as modified, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if and when executed
- .3 ARPA Addendum (Federal requirements for ARPA-funded contracts)
- .3 AIA Document A133™-2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™-2017, as modified, General Conditions of the Contract for Construction
- .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.)*

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- .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.)*

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- .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, as modified, 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.)*

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

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**OWNER** *(Signature)*

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*(Printed name and title)*

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**CONSTRUCTION MANAGER** *(Signature)*

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*(Printed name and title)*

