

MISSISSIPPI DEPARTMENT OF ARCHIVES & HISTORY
200 North Street
Jackson, Mississippi 39201
601-576-6850

**REQUEST FOR QUALIFICATIONS
CONSTRUCTION MANAGER AT RISK (CMAR) SERVICES
VICKSBURG CIVIL WAR CENTER
RFQ # 3140004133**

PURPOSE

The Mississippi Department of Archives and History (MDAH or Owner) is soliciting qualifications from Construction Management firms, licensed in the State of Mississippi, and capable of providing Construction Manager at Risk (CMAR) services in support of a project to construct a new Civil War center in Vicksburg, Mississippi. The CMAR will be part of the project team and assist both MDAH and the design professional. The CMAR will provide professional preconstruction and construction services for MDAH. The CMAR will work with MDAH and the design professional to establish a schedule and pricing for the planned work as preconstruction services. The CMAR will provide MDAH with a Guaranteed Maximum Price (GMP), manage the bids for construction work, hold all construction contracts, and ensure that construction quality and the construction schedule are maintained. The CMAR will be required to exercise rigorous cost, quality, and schedule control throughout the project. The selected CMAR will contract directly with MDAH.

PROJECT OVERVIEW

MDAH is currently underway with the planning and design of a new Civil War center to be constructed adjacent to the Vicksburg National Military Park (VNMP). MDAH is working with multiple partners and stakeholders on this project, including the Friends of the Vicksburg National Military Park and Campaign and VNMP. The new center will contain museum exhibits, a store, café and food service, facility use areas, education space, and staff offices. The new center is estimated at 63,500 square feet.

MDAH has engaged with the design firm Perkins & Will (P&W) to provide complete architectural design services for the new center. Design work began in the summer of 2024 and is currently in the schematic phase as of the release of this RFQ. MDAH has acquired property adjacent to VNMP for the construction of the new center. The anticipated opening of the new center is summer 2028. The center will be owned and operated by MDAH.

RFQ TIMELINE

February 12, 2025	RFQ issued
February 26, 2025	Questions submitted to VicksburgCMAR@mdah.ms.gov by 5:00 PM CST
March 5, 2025	Answers posted at https://www.mdah.ms.gov/vicksburg-rfq by 5:00 PM CST
March 14, 2025	Submissions due by 5:00 PM CST

March 19, 2025	Shortlist firms announced
March 20–28, 2025	Potential interviews and follow-up with shortlisted firms
April 2, 2025	Notification of top-ranked firm

PREQUALIFICATION AND SELECTION PROCESS

Firms must have prior experience with the construction manager at risk delivery method to qualify for consideration. Any firm submitting a proposal that does not have any such experience will not be considered. Compensation is not a factor in the determination of the ranking of selected firms and interested firms will **NOT SUBMIT** cost proposals as part of their qualifications. Any submission including an estimate of cost, whether written, oral, or otherwise conveyed, will result in that submission’s disqualification.

Evaluation criteria for shortlist selection for this RFQ shall be as follows (100-point scale):

- 1) **Past Record and Experience:** CMAR has done prior work of similar scope, scale, and complexity to the subject project; (25 points)
- 2) **Project Team:** Experience of project personnel and specific abilities of identified team members; (25 points)
- 3) **Construction Quality Control:** CMAR has demonstrated a project planning and quality control process; (20 points)
- 4) **Cost Control:** CMAR has a record of controlling costs and adhering to the agreed-upon GMP; (15 points)
- 5) **Schedule Control** CMAR has a record of keeping projects on track, anticipating and resolving conflicts promptly in the construction phase; (15 points)

MDAH will select no less than three firms to be added to a shortlist. Firms on the shortlist may be contacted for an in-person interview or asked to provide additional information. **Following the evaluation of submitted qualifications and review of any interviews or discussions, the most qualified firm will be contacted to negotiate a contract for services at a fair and reasonable compensation.**

SUBMISSIONS

Any firm desiring to provide CMAR services should submit the following in hard copy and digital format to the Mississippi Department of Archives and History.

- 1) **Letter of Interest:** Each submission must be accompanied by a letter stating interest and include a single contact person with mailing address, e-mail, and phone number for all correspondence.
- 2) **Narratives:** Include narrative(s) that address the aforementioned criteria and any other documentation that will assist the selection committee in their evaluation.
- 3) **Staff:** Include roles and resumes for staff involved in the project.
- 4) **References:** Supply up to three professional references for relevant work previously completed or in progress. Include a point of contact’s name, title, and phone number at minimum. The Owner may check any or all cited References to verify supplied information.

All submissions must be received by 5:00:00 p.m., on Friday, March 14, 2025. Submissions received after this date and time will not be accepted.

Address all submissions to:

MDAH Finance Office
Vicksburg CMAR Services
RFQ# 3140004133
200 North Street
Jackson, Mississippi 39201

OWNER’S RESERVATION OF RIGHTS

MDAH reserves the right to reject any and all proposals or qualifications received. MDAH makes no representations, written or oral, that it will enter into any form of agreement with any respondent to the RFQ for any project and no such representation is intended to be construed by the issuance of this RFQ.

ACCEPTANCE OF EVALUATION METHODOLOGY

By submitting its qualifications in response to this RFQ, CMAR accepts the evaluation process and acknowledges that the owner will need to use subjective professional judgments to determine the "most qualified" firm.

NO REIMBURSEMENT OF COSTS INCURRED

CMAR acknowledges and accepts that any costs incurred from participation in the RFQ shall be at the sole risk and responsibility of the CMAR.

QUESTIONS AND ANSWERS

Questions should be directed to **VicksburgCMAR@mdah.ms.gov** with the subject line: “Questions – Vicksburg CMAR RFQ.” Questions must be received no later than **5:00 PM CST on February 26, 2025**, to ensure a response by MDAH. Responses to questions will be posted to the MDAH procurement page on the website at <https://www.mdah.ms.gov/vicksburg-rfq> and sent to all potential offerors known as an amendment to this RFQ on March 5, 2025, by 5:00 PM CST.

ACKNOWLEDGEMENT OF AMENDMENTS

MDAH reserves the right to amend this RFQ at any time. Should an amendment to the RFQ be issued, it will be posted to the MDAH procurement page on the website at <https://www.mdah.ms.gov/vicksburg-rfq> and sent to all potential offerors known. Offerors must acknowledge receipt of any amendment to the RFQ by signing and returning the amendment. The acknowledgment must be included in the RFQ submission. Please monitor the website for amendments to the RFQ. MDAH responses to questions will be treated as amendments to the RFQ and will require acknowledgment.

IRREGULARITIES

The omission of any information requested on the Request for Qualification may be considered as an informality, or irregularity, by MDAH when, in its opinion, the omitted information does not alter the Qualifications or place other Proposers at a disadvantage.

DISQUALIFICATION

The following list of situations may disqualify a Professional from being considered:

- a) Failure to comply with the Request for Qualifications requirements.

- b) Professional, or one or more of his proposed Consultants, is involved in an ongoing dispute related to the Professional's or proposed Consultant's execution, expertise, proficiency, or timely performance of a previous Contract with the State of Mississippi.
- c) Professional, or one or more of his proposed Consultants, is in arrears on existing Contract(s) with the State of Mississippi.
- d) Professional, or one or more of his proposed Consultants, has defaulted on a previous Contract with the State of Mississippi.

SAMPLE CONTRACT

The following is a sample of the contractual agreement that the selected firm will be required to sign. No negotiation of these terms and conditions will be entertained. Changes to these terms and conditions will only be allowed if the selected firm can demonstrate to MDAH's satisfaction that a particular term and/or condition is inapplicable to this project and therefore should be changed or deleted to benefit all parties.

SAMPLE CONTRACT

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 [REDACTED] day of [REDACTED] in the year [REDACTED]
(In words, indicate day, month, and year.)

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

[REDACTED], acting for and on behalf of
the State of Mississippi and for the benefit of the Institution, Agency, or Department for
which the Work under this Contract is being performed

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

[REDACTED]
[REDACTED]
[REDACTED]

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

[REDACTED]
[REDACTED]
[REDACTED]

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

[REDACTED]
[REDACTED]

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. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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.

Init.

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EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

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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.)

§ 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.)

§ 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.)

Init.

[REDACTED]. This is the Owner's preferred budget. Construction Manager shall, to the extent it reasonably can, endeavor to meet the Owner's preferred budget, but has no obligations as to said budget except to the extent Construction Manager commits to same to under the GMP Amendment.

§ 1.1.4 Subject to amendment by the Owner, the Owner's initial anticipated design and construction milestone dates:

.1 Initial anticipated Design phase milestone dates (subject to change), if any:

[REDACTED]

.2 Initial anticipated Construction commencement date (subject to change):

[REDACTED]

.3 Initial anticipated Substantial Completion date or dates (subject to change):

[REDACTED]

.4 Initial anticipated other milestone dates (subject to change):

These are the Owner's preferred milestone dates. Construction Manager shall, to the extent it reasonably can, endeavor to meet these dates, but has no obligations as to said dates except to the extent one or more of same are committed to under the GMP Amendment.

§ 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.)

[REDACTED]

§ 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.)

[REDACTED]

§ 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.)

[REDACTED]

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

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

Init.

██████████

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

.1 Geotechnical Engineer:

.2 Civil Engineer:

████████████████████
████████████████████
████████████████████

.3 Structural Engineer:

████████████████████
████████████████████
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.4 Mechanical Engineer:

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.5 Electrical Engineer:

████████████████████
████████████████████
████████████████████

§ 1.1.11 The Architect's (hereafter referred to as Prime Professional) representative:
(List name, address, and other contact information.)

████████████████████
████████████████████
████████████████████
████████████████████

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

████████████████████

Init.

§ 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.)

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

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

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

§ 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 shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate changes in the Initial Information.

§ 1.3 The Construction Manager's representative shall not be changed without ten days' prior notice to the Owner.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Prime Professional 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. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Prime Professional 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, General Conditions of the Contract for Construction as Modified for the A133 (2019) (also referred to as the "A201"), 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 the A201 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, which document is incorporated herein by reference. The term "Contractor" as used in A201 shall mean the Construction Manager.

Init.

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 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Construction Phase will not commence prior to completion of the Preconstruction Phase. 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 reasonable care in performing its Preconstruction Services. The Owner and Prime Professional shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications prepared by the Prime Professional 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 Prime Professional and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Prime Professional may require. Nevertheless, the Construction Manager shall comply with all building codes applicable to the performance of the Work and shall be responsible for any portion of the Work that does not comply with applicable building codes. However, the Construction Manager will be compensated for any changes required by code officials due to the design errors that are the responsibility of the Prime Professional.

§ 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 Prime Professional 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 Prime Professional on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Prime Professional, 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 Prime Professional regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 At the Owner's discretion, the Construction Manager shall assist the Owner and Prime Professional 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 may provide recommendations about how the design might be changed; it is agreed that with all such recommendations the Construction Manager is not acting as a designer, and that notwithstanding any such recommendations, the Owner shall assure that the Prime Professional determines whether the design is appropriate, with the Owner and Prime Professional always remaining responsible for the design.

§ 3.1.4 Project Schedule

The Construction Manager shall prepare and periodically update a Project schedule for the Prime Professional's review and the Owner's acceptance. The Construction Manager shall obtain the Prime Professional's approval for the portion of the Project schedule relating to the performance of the Prime Professional's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Prime Professional'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(s) shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the

Owner. The final schedule approved by the Owner/Prime Professional shall be included with the Guaranteed Maximum Price proposal.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Prime Professional, 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 final plans and specifications prepared by the Prime Professional, the Construction Manager shall prepare, for the Prime Professional's review and the Owner's approval, preliminary detailed estimates of the Cost of the Work. If the Prime Professional, Owner or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide updated cost evaluations of those alternative materials and systems. All cost estimates will be presented in a CSI format.

§ 3.1.6.2 Following any/all changes agreed to by Owner and incorporated into revised final plans and specifications, the Construction Manager shall prepare and update, a detailed revised 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 Prime Professional's review and the Owner's approval. The Construction Manager shall inform the Owner and Prime Professional in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, make recommendations for corrective action, and provide cost estimating to assist the Prime Professional with any required redesign.

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

§ 3.1.7 As the Prime Professional finalizes any/all changes agreed to by the Owner to the Construction Documents, the Construction Manager shall consult with the Owner and Prime Professional and make recommendations regarding constructability and schedules, for the Prime Professional's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Prime Professional 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 Deleted in its entirety. Section 5.2.1 of the A201 is adopted herein.

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

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Prime Professional'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.

§ 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. However, nothing in this section shall be deemed to task Construction Manager with design responsibility, and this section is subject to section 3.1.1.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 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 (also referred to as the GMP Proposal) for the Owner's and Prime Professional's review, and the Owner's acceptance. Upon issuance of the GMP Proposal to the Owner, the Construction Manager represents that it has determined, to the extent of a reasonable review, that the Plans and Specifications are sufficiently complete to properly perform the Work, except as identified in the GMP Proposal or otherwise. Upon acceptance by the Owner of the GMP Proposal, same shall be incorporated into this Agreement as Exhibit A. The GMP proposal may contain clarifications and assumptions. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development by the Prime Professional, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom, except as identified in the GMP Proposal or otherwise. Any such further development to the design documents prepared by the Prime Professional may be incorporated into the Contract Documents as provided in § 3.2.8, however, such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, or items identified in the GMP proposal or otherwise, all of which, if required, shall be incorporated by Change Order. If an item is not fully developed in design, Construction Manager shall notify Owner and Prime Professional of the same in writing, after which the Construction Manager and Owner shall agree on a reasonable allowance for such item and address the same in the GMP Narrative.

§ 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 Cost of the Work established by appropriate proposals from a minimum of two (2) potential subcontractors via private solicitation, organized by trade categories or systems, including a specific list of any allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee; however, nothing in the foregoing shall require Construction Manager to obtain bids under public bidding law, with subcontractor selection being at Construction Manager's discretion (subject to the terms provided for elsewhere herein as to the Owner's rights in relation to selection of subcontractors);
- .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.

§ 3.2.4 If the GMP Proposal includes a Construction Manager's contingency, these funds may only be used by the Construction Manager with Owner's written approval, which approval shall not be unreasonably withheld.

The contingency amount shall be clearly and specifically identified in the GMP Proposal and the GMP Amendment, Exhibit A. The Owner acknowledges that the Construction Manager may use the Construction Manager's contingency to cover any unanticipated costs, such as, but not limited to, the following: estimating errors; unforeseen construction problems; market changes; extreme weather conditions; late deliveries; manpower shortages; coordination of details not shown on Contract Documents but required for completed assembly; Work not fully detailed; conditions that the Construction Manager could not have reasonably known by inspection or information contained in the Contract Documents; cost of punchlist work not the responsibility of any Subcontractors; other costs reasonably incurred; and other costs that the Owner and Construction Manager mutually agree upon in the GMP Amendment . /Subject to the foregoing, the Construction Manager's contingency shall not be used for delays or costs caused in whole or in part by the Construction Manager's negligence or by the negligence of any Subcontractor or other party for whom the Construction Manager or such Subcontractor is responsible. The Construction Manager Contingency will be a separate line on the Schedule of Values and the Construction Manager will provide a contingency log monthly to track the contingency funds, which shall be part of the monthly Application for Payment. Details of what shall be contained in the construction contingency log shall be mutually agreed to by Owner and Construction Manager.

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

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Prime Professional. 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 (Drawings and Specifications) that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents (Drawings and Specifications) to the Construction Manager. The Construction Manager shall notify the Owner and Prime Professional of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents. If there are no inconsistencies, any revised Drawings and Specifications shall be incorporated into the Contract Documents by no dollar Change Order...

§ 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.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of the A201, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

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

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct monthly or more frequent 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 Prime Professional.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Prime Professional a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201. . The Construction Manager's Schedule shall account for the historically average weather conditions including anticipated rainfall as established by NOAA that are present for the time of year and location of the Project.

§ 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 Prime Professional, showing percentages of completion and other information required by the Owner. Not later than the first (1st) day of each month, the Construction Manager shall provide a monthly written report to the Owner and Prime Professional on the progress of the entire Work that may include (collectively, the "Monthly Report"), as required by the Owner:

- Updated Project schedule including the original and current completion date;
- Supplemental instruction and/or RFI log;
- Shop Drawing log;
- Change Order log;
- Original Guaranteed Maximum Price and the Current estimated Guaranteed Maximum Price; (The original GMP and current cost to complete should reconcile with the information shown on the payment application summary sheets.)
- Owner's action items;
- Site photographs.

Such Monthly Reports shall not constitute or satisfy the written notice requirements for a Change Order or Claim as provided herein.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Prime Professional, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site identified for each subcontractor, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, progress of the Work as compared to the Project Schedule, causes of any delay, and other information required by the Owner. Such written daily logs shall not constitute or satisfy the written notice requirements for a Change Order or Claim as provided herein.

§ 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. It is agreed that Construction Manager's standard procedures and systems are sufficient., provided Construction Manager utilizes the accounting systems as previously represented to Owner:Sage CRE 300, Procore, and TimberScan. The Construction Manager shall identify variances between actual and estimated costs and upon request report the variances to the Owner and Prime Professional, and shall provide this information in its monthly reports to the Owner and Prime Professional.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information in its possession with reasonable promptness, regarding requirements for and limitations on the Project, which may include 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 Deleted in its entirety.

§ 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 Prime Professional. The Owner and the Prime Professional, 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. The Owner shall furnish any information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness (and in any event so as to not delay the Work) 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, if any, but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 Other than Special Materials Testing, TAB and third party testing furnished by Owner, all 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 shall be the responsibility of the Construction Manager.

§ 4.1.4.2 The Owner will furnish Surveys in its possession, if requested by Construction Manager in writing, 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 will furnish copies of geotechnical reports in its possession, but only when such services are requested in writing.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness (and in any event so as to not delay the Work). 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 (and in any event so as to not delay the Work) after receiving the Construction Manager's written request for such information or services.

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

§ 4.1.7 Notwithstanding anything herein to the contrary, the Owner shall make all decisions and take all actions (and shall assure that the Architect makes all decisions and takes all actions) so as to not delay the progress of the Work. Intentionally omitted.

§ 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 reasonably promptly and furnish information expeditiously, but in any event so as to avoid delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201, the Prime Professional 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, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 4.3 Prime Professional

The Owner has retained a Prime Professional to provide services, duties and responsibilities as described in Owner's Standard Form of Agreement Between The Owner and The Prime Professional, including any additional services reasonably requested by the Construction Manager in writing prior to execution of this Agreement that are customary and

reasonably necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Prime Professional, and any further modifications to the Prime Professional's scope of services in the agreement, if requested.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

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

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

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

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

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 30 days (1) 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, payment for Preconstruction Phase Work and services shall be as provided in § 5.1.1 above and § 11.1.3.

(Paragraphs deleted)

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

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

§ 6.1.2 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

The Construction Manager's Fee shall be [REDACTED] The Construction Manager's Fee shall be [REDACTED] Deductive Change Orders that result in a lower Contract Sum will result in a pro rata deduction in the Construction Manager's Fee.

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

The Construction Manager's Fee shall be as provided in § 6.1.2 for any changes in the Work.

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

Actual General Conditions, as set forth in the Construction Manager's GMP and agreed to by the Owner.

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§ 6.1.5 With respect to rental of the Construction Manager's own equipment (or equipment which is owned by an affiliate of the Construction Manager), in no event shall such rental rates exceed seventy-five percent (75%) of the current Blue Book charges, without Owner's prior written approval, and in no event shall the total of such rental charges exceed the depreciated fair market value of the equipment when first utilized on the job.

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

Time is of the essence in all phases of the Work. It is specifically understood and agreed by and between Owner and Construction Manager that time is of the essence in the Substantial Completion and Final Completion of the Project and Owner shall sustain actual and direct damages as a result of Construction Manager's failure, neglect or refusal to achieve said deadlines. Such actual and direct damages are, and will continue to be, impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute agreement by Owner and Design-Builder that the amounts stated below are the minimum value of the costs and actual and direct damages caused by failure of Construction Manager to complete the Work within the allotted or agreed extended times (if any) of Substantial or Final Completion, that such sums are liquidated direct damages and shall not be construed as a penalty, and that such sums may be deducted from payments due Construction Manager if such delay occurs. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not completed within the agreed time, or within the agreed extended time (if any), otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for personnel, attorney's fees architectural fees, engineering fees, program management fees, inspection fees, storage costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult to exactly ascertain. Failure to complete the Work within the designated or agreed extended (if any) dates of Substantial or Final Completion, shall be construed as a breach of this Agreement.

It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from any Payment made to the Construction Manager a sum equal to [REDACTED] per day for each and every additional calendar day beyond the agreed date of Substantial Completion until Substantial Completion is achieved.

§ 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.)

See Article 11 for the Owner's rights to audit costs.

§ 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 to be exceeded shall be paid by the Construction Manager without reimbursement by 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 and/or Guaranteed Maximum Price as a result of changes in the Work subject to Construction Manager's compliance with Article 7 and/or Article 15 of the A201.

§ 6.3.1.1 The Prime Professional may order minor changes in the Work as provided in Article 7 of the A201.

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§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of the A201. Notwithstanding anything to the contrary contained herein, Construction Manager shall not be entitled to an increase in the Guaranteed Maximum Price or an extension of the Contract Time on account of errors, omissions, inconsistencies, lack of coordination with respect to any of Construction Manager's duties under the Contract Documents.

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

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of the A201 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.

(Paragraph deleted)

§ 6.3.5 The inclusion of Subcontractor terms and conditions in the supporting documentation of a Change Order shall have no bearing on the contract between the Owner and Construction Manager, and shall not change any of the terms and conditions between the Owner and Construction Manager, except to the extent expressly confirmed in the Change Order or Construction Change Directive. Such supporting documentation shall not be construed as creating any expressed or implied contractual obligation of those terms and conditions between Owner and any of the Construction Manager's Subcontractors, suppliers or vendors.

§ 6.3.6 A Change Order may be proposed by the Construction Manager or the Owner. When a Change Order is proposed, the following procedures shall apply:

- .1 If requested by Owner, the Construction Manager shall prepare and submit a detailed proposal, including all cost and time adjustments to which the Construction Manager believes it will be entitled if the change proposed is incorporated into the Contract. Owner shall be under no legal obligation to issue a Change Order for such proposal;
- .2 The parties shall attempt in good faith to reach agreement on the adjustments needed to the Contract to properly incorporate the proposed change(s) into the Work;
- .3 In some instances, it may be necessary for Owner to authorize Work or direct changes in Work for which no final and binding agreement has been reached and for which unit prices are not applicable. In such cases the following shall apply:
 - .1 Upon written request by the Owner through a Construction Change Directive, the Construction Manager shall perform the proposed Work, so long as the estimated value of the Construction Change Directive does not exceed \$10,000
 - .2 The cost of such changes shall not exceed the Construction Change Directive, and be determined in accordance with subparagraph 6.3.8; and
 - .3 In the event agreement cannot be accomplished as contemplated herein, the Owner may authorize the Work to be performed by Owner or to hire others to complete the Work. Such action on the part of the Owner shall not be the basis of a Claim by the Construction Manager for failure to allow it to perform the changed Work. If work by other contractors creates a delay or interference of Construction Manager's Work, Construction Manager shall make a Claim for such extension of Contract Time and/or increase in the Guaranteed Maximum Price.

§ 6.3.7 In the event Work is required due to an emergency, the Construction Manager must request an equitable adjustment as soon as practicable, and in no case later than ten (10) working days of the commencement of such emergency.

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ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

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

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost. The parties shall identify any such costs prior to executing the Guaranteed Maximum Price Amendment, and only such costs as so identified shall require the Owner's prior approval. All such costs shall be specifically defined and included as an exhibit to the GMP Amendment, which shall be reviewed and approved by the Owner prior to execution of the GMP Amendment.

(Paragraph deleted)

§ 7.1.3 [not used].

§ 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. Such costs shall for all purposes be deemed to be per the rates set out in the GMP Amendment for the personnel described therein.

§ 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. Such costs shall for all purposes be deemed to be per the rates set out in [REDACTED] for the personnel described therein. Owner acknowledges that Construction Manager shall have at least one supervisor assigned to the Project (though that supervisor may be changed at Construction Manager's discretion), and that Construction Manager reserves the right to assign additional supervision if needed; all the cost of that supervision shall be charged to the Project. Owner acknowledges that Construction Manager shall have at least one project manager assigned to the Project (though that project manager may be changed at Construction Manager's discretion) and that a pro rata portion of that project manager's cost shall be charged to the Project for all time working on the Project, regardless of whether project manager is working on or off site. The same shall be true for any superintendent, project manager, safety director, accountant, or any other personnel for that portion of their time working directly on the Project, regardless of whether they are working on or off site.

§ 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. Such costs shall for all purposes be deemed to be per the rates set out in [REDACTED] for the personnel described therein. Owner acknowledges that Construction Manager shall have at least one supervisor assigned to the Project (though that supervisor may be changed at Construction Manager's discretion), and that Construction Manager reserves the right to assign additional supervision if needed; all the cost of that supervision shall be charged to the Project. Owner acknowledges that Construction Manager shall have at least one project manager assigned to the Project (though that project manager may be changed at Construction Manager's discretion) and that a pro rata portion of that project manager's cost shall be charged to the Project for all time working on the Project, regardless of whether project manager is working on or off site. The same shall be true for any superintendent, project manager, safety director, accountant, or any other personnel for that portion of their time working directly on the Project, regardless of whether they are working on or off site.

§ 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, but only to the extent of time spent on the Project as reasonably documented by Construction Manager. Such costs shall for all purposes be deemed to be per the rates set out in [REDACTED] for the personnel described therein. Owner acknowledges that Construction Manager shall have at least one supervisor assigned to the Project (though that supervisor may be changed at Construction Manager's discretion), and that Construction Manager reserves the right to assign additional supervision if needed; all the cost of that supervision shall be charged to the Project. Owner acknowledges that Construction Manager shall have at least one project manager assigned to the Project (though that project manager may be changed at Construction Manager's discretion) and that a pro rata

portion of that project manager's cost shall be charged to the Project for all time working on the Project, regardless of whether project manager is working on or off site. The same shall be true for any superintendent, project manager, safety director, accountant, or any other personnel for that portion of their time working directly on the Project, regardless of whether they are working on or off site.

§ 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 Notwithstanding any other provisions in this § 7.2, the Construction Manager shall prepare and provide a predefined listing of the personnel/staff by position titles for which it intends to charge Owner as Cost of the Work under § 7.2. These rates are subject to Owner's written approval (which will be confirmed by acceptance of the Guaranteed Maximum Price proposal) and must be guaranteed through completion of the Project. The agreed rates shall be basis for review and payment of costs for such personnel. Said agreed rates shall for all purposes be deemed to be actual costs for the personnel, equipment, and other items covered by said rates.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors or earned by 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, 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.

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

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

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

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval and compliance with Section 9.3.2 of the A201.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Such premiums shall be the net cost to Construction Manager and shall include any trade

discounts, volume discounts, dividends, bond premium rebates, other rebates, modifiers and other such adjustments. Where [REDACTED] or Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents. the GMP Proposal provides that same shall be per rate, such rates shall control for all purposes.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager.

§ 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.

§ 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, provided, however, that the cost of such permits and fees shall not be included in the calculation of the Construction Manager's Fee.

§ 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 the A201 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.

(Paragraph deleted)

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work, located at the site and that is not part of the items that are required by the Construction Manager as part of their normal everyday tools/equipment, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

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

(Paragraph deleted)

§ 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.

§ 7.7 Other Costs and Emergencies

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

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

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, or intentional misconduct, the Construction Manager or its lower tier contractors, subcontracts, suppliers or vendors, 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, and the Construction Manager demonstrates why they are not recoverable. This provision is subject to § 7.9.

(Paragraph deleted)

§ 7.7.4 Costs performing punch-lists, warranty work, and any maintenance items (except where those costs are covered by lumpsum subcontracts).

§ 7.7.5 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work unless such costs are specifically excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

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

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

§ 7.9 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific 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, 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 making good damage to property not forming part of the Work;
- .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; and
- .9 Costs for services incurred during the Preconstruction Phase
- .10 Bonuses or other discretionary compensation not specifically approved in writing in advance by Owner; and
- .11 All Costs, including attorneys' fees, related to negotiations of this Agreement, and costs incurred by Design-Builder prior to the date of this Agreement unless agreed to in writing by Owner.

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,

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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 will not perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Construction Manager shall obtain proposals from a minimum of two (2) potential subcontractors via private solicitation, 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 Prime Professional and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Prime Professional and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Prime Professional, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

If the Construction Manager recommends a specific bidder that may be considered a "related party" according to § 7.8, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction as provided in § 7.8.

§ 9.1.1 Consistent with S.B. 2724, Construction Manager is exempt from the public purchasing requirements of Sections 31-7-13 and 31-7-13.2. Notwithstanding same, Construction Manager shall obtain proposals as set forth in §§ 3.2.3.3 and 9.1.

§ 9.1.2 If Construction Manager intends to submit a proposal for any work it wishes to self-perform, it shall notify Owner in writing prior to soliciting proposals. For any work that the Construction Manager wishes to self-perform, the Construction Manager shall advertise and solicit either competitive bids or competitive sealed proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in General Conditions. Unless otherwise approved in writing by the Owner, the Construction Manager shall endeavor to obtain 3 additional bids for the portion of work the Construction Manager seeks to self-perform. The Construction Manager shall submit its bid or proposal for those portions of the Work it wishes to self-perform in the same manner as all other trade contractors or subcontractors, however, Construction Manager's bid or proposal shall be delivered to the Owner at least 3 days prior to Construction Manager's receipt of such bids or proposals from trade contractors or subcontractors. Construction Manager and Owner shall receive and open all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal prior to the this selection process. The Owner shall determine which bid proposal provides the best value for the Owner. Determination of best value shall be in Owner's sole opinion. Owner's determination in such matters is final.

§ 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.

§ 9.3 Nothing in this Agreement, nor anything in any other portion of the Contract Documents, nor the terms of any bonds, shall alter or limit Construction Manager's right to make payment by the Owner for the Work in question a condition precedent to the entitlement to payment for any subcontractor, supplier, or other vendor to Construction Manager.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep reasonably detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred on a generally recognized accounting basis. The accounting and control systems shall be satisfactory to the

Owner, but with it agreed that Construction Manager's regular procedures and accounting system are acceptable as set forth in § 3.3.2.5 above.. 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 subject to audit, 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, Electronic Data for the Cost Report (or Cost Ledger), Payroll and Accounts Payable and other data relating to this Contract. The Construction Manager shall submit all Applications for Payment to Owner in excel (or other similar format) as requested by Owner. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law. All records and accounts subject to audit shall be available during normal business hours for examination by the Owner, Owner's authorized representative or applicable regulatory agency on reasonable notice.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect 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. Notwithstanding anything herein or in any of the other Contract Documents to the contrary, the amounts earned each month for payment to the Construction Manager shall be determined solely on the basis of percentage of completion per the schedule of values; any issues as to later determinations of over-payments and under-payments based upon costs actually incurred shall be resolved later as a deduction or credit, as appropriate, against subsequent payment applications or if there are no further payments applications by payment from and to the appropriate party.

§ 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:

The end of the month, with estimates for the gap period between the date of submission and the end of the month being acceptable.

§ 11.1.3 At least ten days before the date established for each progress payment, the Construction Manager shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. The form of Application for Payment will be AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet, or a computer generated form containing similar data.

The allocation of the Guaranteed Maximum Price under line items in the schedule of values or in any other breakdown in any other document shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values or other document. There is no line item Guaranteed Maximum Price. The only Guaranteed Maximum Price is the overall Guaranteed Maximum Price.

§ 11.1.3.1 In accordance with the A201 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.3.1.1 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 Project Professional determines, in the Project Professional's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work.

§ 11.1.3.1.2 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 Project Professional has previously withheld a Certificate for Payment as provided in Article 9 of the A201;
- .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 because Construction Manager incurred costs with others who should be paid for the work in question;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Project Professional may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of the A201;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.7 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 11.1.3.3.

§ 11.1.3.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Construction Manager does not intend to pay a Sub or supplier, unless such Work has been performed by others whom the Construction Manager intends to pay.

§ 11.1.3.3 On any contract as described herein, of which the total amount is Two Hundred Fifty Thousand Dollars (\$250,000.00) or greater, or on any contract with a subcontractor, regardless of amount, five percent (5%) shall be retained until the Work is at least fifty percent (50%) complete, on schedule and satisfactory in the Prime Professional's opinion, at which time fifty percent (50%) of the retainage held to date shall be returned, subject to consent of surety, to the prime contractor for distribution to the appropriate subcontractors and suppliers; provided, however, that future retainage shall be withheld at the rate of two and one-half percent (2 1/2%). When submitting request for reduction in retainage, the Construction Manager will include, with the application, a Consent of Surety to Reduction which is AIA Form G707A, and a Power of Attorney. (Code 31-5-33).

§ 11.1.4 The Construction Manager must submit each month with this Application for Payment a separate letter stating that he is requesting an extension of time or that he had no need for an extension for that period of time. No payment on a monthly application will be considered due and payable until the letter is received. Complete justification such as weather reports or other pertinent correspondence must be included for each day's request for extension. A Contractor's letter, or statement, will not be considered as adequate justification. The receipt of this request and data by the Owner will not be considered as approval of the Owner or Prime Professional in any way

§ 11.1.4.1 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Construction Manager with the requirement that it holds clear title to all property of every description which serves as the basis for the Application for Payment. Construction Manager warrants that title to any such property is being transferred to the Owner free and clear of all liens. If requested by the Architect or Owner, the Construction Manager shall produce satisfactory evidence of transfer of title from suppliers and Subcontractors to the Contractor, without reservation, or with adequate waiver of lien. These payments may include any fabricated or manufactured materials and components specified, previously paid for by Construction Manager and delivered to the site, properly stored, and suitable for incorporation into the Work embraced in the Contract. The Construction Manager shall identify the method of storage for such materials. Proper evidence of insurance shall be presented to protect the interest of the Owner. If payment is intended to be requested for any off-site storage items, such items shall be listed as separate lines in the request and certification for payment, cost breakdown. Architect or Owner, upon their request, shall be allowed to verify such materials and equipment no matter the location stored and located.

§ 11.1.4.1.1 Payment in an amount not greater than the documented cost paid by the Construction Manager for on materials stored at some location other than the Project site, may be approved by the Prime Professional and the Owner after the Construction Manager has submitted the following items:

1. An acceptable Lease Agreement between the General Construction Manager and the owner of the land, or building, where the materials are stored covering the specific area where the materials are located.

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2. Consent of Surety, or other acceptable Bond, to cover the materials stored off-site.
3. All Perils Insurance coverage for the full value of the materials stored off-site.
4. A Bill of Sale from the Manufacturer to the General Construction Manager for the stored materials.
5. A complete list and inventory of materials manufactured, stored and delivered to the storage site and of materials removed from the storage site and delivered to the job site.
6. A review by the Prime Professional of the materials stored off-site prior to release of payment. Where the storage location is greater than 50 miles of the building site, the Construction Manager shall pay or reimburse reasonable travel costs of the Prime Professional and/or his Consultants for such review.
7. Guarantee no storage costs, additional delivery fees, or subsequent costs to the Owner.

§ 11.1.4.2 The Construction Manager warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Construction Manager further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Construction Manager's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Construction Manager, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. The Construction Manager shall have the sole responsibility for obtaining proper insurance on, as well as the responsibility for the care and protection of materials and Work upon which payments have been made. The Construction Manager shall be responsible for the restoration of any damaged Work. Nothing herein shall operate as a waiver of the rights of the Owner to require fulfillment of all of the terms of the Contract.

§ 11.1.5 On a monthly basis the Construction Manager shall submit cost summaries, compilations and other reasonable back-up for the previous billing period to demonstrate the Cost of Work incurred. This information may be submitted separately from the application for payment, and, determinations of the amounts earned shall be made based upon the percentage of completion as against the schedule of values, with any adjustments based upon overpayments and underpayments made later.

(Paragraphs deleted)

§ 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 Construction Manager shall be continually allowed to adjust the schedule of values so as to allow the Construction Manager to receive timely payments for Work despite any and all issues with previous estimates and/or schedules of values. All revisions to the schedules of values shall be subject to Owner approval, which shall not be unreasonably withheld.

(Paragraphs deleted)

§ 11.1.7. Although the Construction Manager shall invoice on a percentage-of-completion basis according to a Schedule of Values for the current billing period, the Construction Manager shall also provide to the Owner on a monthly basis as referenced above cost summaries, compilations, and other back-up for the previous billing period. The Owner shall review such cost summaries, compilations, and back-up in a timely manner and shall advise the Construction Manager within thirty (30) calendar days after receipt of same if there are any costs which the Owner considers to be non-reimbursable under the Contract. All issues as to the allowability of costs will be resolved on a monthly basis between the Construction Manager and Owner so as to prevent material prejudice to both parties caused by continuing incurrence of costs which may be subject to dispute. The results of the monthly reviews shall be conclusive as regards the allowability of each of the costs submitted.

Additionally, Construction Manager shall submit its final accounting prior to Final Payment. Owner shall review the final accounting within 45 days of submission of that final accounting. and if any amounts are in dispute, the Owner shall submit a written report to the Prime Professional detailing the disputed amounts. Within seven days after receipt of the written report, or receipt of notice that the Owner does not dispute any amounts in the final accounting, the Prime Professional 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 Prime Professional's reasons for withholding a certificate. Amounts not in dispute shall be paid immediately. The Prime Professional is not responsible for verifying the accuracy of the Construction Manager's final accounting.

[REDACTED]

Nothing in this paragraph prohibits or restricts the right of the Mississippi Department of Finance and Administration, the Office of the State Auditor, or any other entity acting on behalf of the State of Mississippi to audit this contract or to recover any payments made in excess of the contractually agreed upon amounts.

§ 11.2 Certificates for Payment

§ 11.2.1

(Paragraphs deleted)

The Prime Professional will, within seven days after receipt of the Construction Manager 's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Construction Manager ; or (2) issue to the Owner a Certificate for Payment for such amount as the Prime Professional determines is properly due, and notify the Construction Manager and Owner of the Prime Professional's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Construction Manager and Owner of the Prime Professional's reason for withholding certification in whole as provided in Section 9.5.1.

§ 11.4.2 The issuance of a Certificate for Payment will constitute a representation by the Prime Professional to the Owner, based on the Prime Professional's evaluation of the Work and the data in the Application for Payment, that, to the best of the Prime Professional's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Construction Manager is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Prime Professional. However, the issuance of a Certificate for Payment will not be a representation that the Prime Professional has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Construction Manager 's right to payment; or (4) made examination to ascertain how or for what purpose the Construction Manager has used money previously paid on account of the Contract Sum.

§ 11.5 Decisions to Withhold Certification

§ 11.5.1 The Prime Professional may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Prime Professional's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Prime Professional is unable to certify payment in the amount of the Application, the Prime Professional will notify the Construction Manager and Owner as provided in Section 9.4.1. If the Construction Manager and Prime Professional cannot agree on a revised amount, the Prime Professional will promptly issue a Certificate for Payment for the amount for which the Prime Professional is able to make such representations to the Owner. The Prime Professional may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Prime Professional's opinion to protect the Owner from loss for which the Construction Manager is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Construction Manager (with it agreed that a payment bond is acceptable);
- .3 failure of the Construction Manager to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Construction Manager ;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 failure to carry out the Work in accordance with the Contract Documents.

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§ 11.5.2 When either party disputes the Prime Professional's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with the A201. The Owner shall not be deemed in breach by virtue of withholding payment pursuant to the Prime Professional's failure to certify under Subparagraph 11.5.1 and 11.5.2, but the Construction Manager shall have the rights allowed under the A201 in the event the Prime Professional fails to issue a Certificate for Payment. The Construction Manager shall continue to perform the Work even though it disputes the Prime Professional's decision under Paragraph 11.5.

§ 11.5.3 If the Prime Professional withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Construction Manager and to any Subcontractor or supplier to whom the Construction Manager failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Prime Professional and the Construction Manager shall reflect such payment on its next Application for Payment.

§ 11.6 Progress Payments

§ 11.6.1 After the Prime Professional has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Prime Professional.

§ 11.6.2 The Construction Manager shall pay each Sub-Contractor and material supplier, in accordance with Section 31-5-27 of the Mississippi Code 1972, Annotated, in proportion to the percentage of work completed by each less applicable retainage. The Construction Manager shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 11.6.3 The Prime Professional will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Construction Manager and action taken thereon by the Prime Professional and Owner on account of portions of the Work done by such Subcontractor.

§ 11.6.4 The Owner has the right to request written evidence from the Construction Manager that the Construction Manager has properly paid Subcontractors and suppliers amounts paid by the Owner to the Construction Manager for subcontracted Work. If the Construction Manager fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Prime Professional shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 11.6.5 The Construction Manager's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 11.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

(Paragraph deleted)

§ 11.6.7 Unless the Construction Manager provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Construction Manager for Work properly performed by Subcontractors or provided by suppliers shall be held by the Construction Manager for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Construction Manager for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Construction Manager, create any fiduciary liability or tort liability on the part of the Construction Manager for breach of trust, or entitle any person or entity to an award of punitive damages against the Construction Manager for breach of the requirements of this provision.

(Paragraph deleted)

§ 11.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Construction Manager shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Construction Manager. If approved by the applicable court, when required, the Construction Manager may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

(Paragraph deleted)

§ 11.6.9 The amount retained by the Construction Manager from each payment to each Sub-Contractor and material supplier shall not exceed the percentage retained by the Owner from the Contractor.

§ 11.6.9.1 The Construction Manager shall submit monthly certification, in accordance with Section 31-5-25 of the Mississippi Code 1972, Annotated, on Owner's "Affidavit Certifying Payment to All Subcontractors" form, to the Prime Professional indicating payments to subcontractors on prior payment request.

§ 11.6.10 The Owner agrees to make payment in accordance with Mississippi Law on "Time for full and final payment to contractors; exemptions; monthly submission by contractors of proof of payment to subcontractors", Section 31-5-25 of the Mississippi Code of 1972, Annotated, which generally provides for payment of undisputed amounts within forty-five (45) days of when they are due and payable. Payments by state agencies using the statewide electronic payment and remittance vehicle shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of the Construction Manager's choice. Construction Manager understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency. No payment, including final payment, shall be construed as acceptance of defective or incomplete work, and the Construction Manager shall remain responsible and liable for full performance.

§ 11.7 Failure of Payment

The Construction Manager and the Owner shall be subject to the remedies as prescribed in Section 31-5-25 of the Mississippi Code 1972, Annotated.

§ 11.8 Substantial Completion

§ 11.8.1 In order to be considered occupiable or utilizable by the Owner, all life safety systems must be operable and tested and the commissioning requirements for the Work or designated portion thereof must be complete except for thermographs of electrical systems, trend log monitoring, seasonal testing, near-warranty end activities and verification of training sessions.

§ 11.8.2 When the Construction Manager considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Construction Manager shall prepare and submit to the Prime Professional a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents.

§ 11.8.3 Upon receipt of the Construction Manager's list, the Prime Professional will promptly visit the site to determine whether the Work or designated portion thereof is substantially complete. If, in the opinion of the Prime Professional, the Work or designated portion thereof is not substantially complete, the Prime Professional will not proceed with inspection and the Prime Professional will report the reasons for such determination to the Construction Manager. In such case, the Construction Manager shall then submit a revised list and request for inspection when these reasons have been resolved.

§ 11.8.4 When the Work or designated portion thereof is substantially complete and affirmed by the Owner, the Prime Professional will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Construction Manager for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Construction Manager shall finish all items on the punch list accompanying the Certificate. Unless otherwise provided in the Contract Documents, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 11.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Construction Manager for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 11.9 Partial Occupancy or Use

§ 11.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Construction Manager, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use

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may commence whether or not the portion is substantially complete, provided the Owner and Construction Manager have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Construction Manager considers a portion substantially complete, the Construction Manager shall prepare and submit a list to the Prime Professional as provided under Section 9.8.2. Consent of the Construction Manager to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Construction Manager or, if no agreement is reached, by decision of the Prime Professional. The Construction Manager shall not be entitled to any damages or compensation as a result of Owner partially occupying the work under this Section 11.9.1. This waiver of damages and compensation applies to any losses for any delay or delays resulting from the occupancy, provided Owner's occupancy does not interfere with Construction Manager's remaining Work.

§ 11.9.2 Immediately prior to such partial occupancy or use, the Owner, Construction Manager, and Prime Professional shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 11.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents. The Construction Manager will prepare a list of items of Work remaining to be performed or corrected on those portions of the Project that the Owner intends to take possession of or use.

§ 11.10 Final Completion and Final Payment

§ 11.10.1 When, in the opinion of the Construction Manager, the Work is ready for final inspection and acceptance by the Owner, the Construction Manager shall make such notice to the Prime Professional.

1. Upon receipt of the Construction Manager's notice that the Work is ready for final inspection and acceptance by the Owner, the Prime Professional will promptly visit the site and assess the state of the Work to determine if it is ready for final inspection by the Owner. If, in the Prime Professional's judgment, the Work is not ready for final inspection, the Prime Professional will report the reasons for such determination to the Construction Manager. In such case, the Construction Manager shall then submit a revised request for final inspection when these reasons have been resolved.
2. Once the Prime determines the Work is ready for final inspection, the Prime Professional will call for final inspection of the Work with the Owner for the purpose of determining whether the Work is acceptable under the Contract Documents.
3. The final inspection shall be conducted in the presence of the Owner and a list of defects or discrepancies, if any, will be compiled into a final punch list furnished to all parties.
4. Once corrections of all final punch list items have been confirmed by the Prime Professional, the Prime Professional will provide a letter recommending final acceptance of the Work to the Owner.

§ 11.10.2 Neither final payment nor any remaining retained percentage shall become due until the Construction Manager submits to the Prime Professional (1) final application for payment, (2) consent of surety to final payment, (3) power of attorney, (4) Construction Manager's affidavit of release of liens, (5) Construction Manager's affidavit of payment of debts and claims, (6) Construction Manager's guarantee of work, (7) Project Record Documents and (8) certificates, warranties, guarantees, bonds or documents as called for in the individual sections of the Project Manual. The final payment will be reduced by the value of any amounts assessed to the Construction Manager per Section 2.5 Owner's Right to Carry Out the Work, Section 6.3 Owner's Right to Clean Up, or Section 9.11 Liquidated Damages where such amounts have not been reconciled by a Change Order per Section 7.2 prior to final acceptance unless such amounts have been resolved via separate agreement(s) between the Owner and the Construction Manager.

§11.10.2.1 As a condition precedent to final payment, all corrective actions to remedy deficiencies in the Work required by Contract Documents and Work identified in the punch list must have been completed. In addition, where required by Contract Documents, all training of the Owner's staff in the operation and maintenance of the Work shall have been completed, Operating and Maintenance Manuals and Instructions as well as drawings marked up to reflect "as built" conditions must have been transmitted to Owner and all warranty certificates signed and presented for Owner acceptance.

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§ 11.10.2.2 When to the satisfaction of Owner and Prime Professional the Work has been completed, and is of the quality required by the Contract Documents, Owner may authorize payment of all sums then due the Construction Manager. Acceptance of the final payment, as provided for herein, shall constitute a waiver of any and all claims against the Owner arising out of or related to the Work performed under the Contract.

Additionally, Construction Manager shall submit its final accounting prior to Final Payment. Owner shall review the final accounting within 45 days of submission of that final accounting, and if any amounts are in dispute, the Owner shall submit a written report to the Prime Professional detailing the disputed amounts. Within seven days after receipt of the written report, or receipt of notice that the Owner does not dispute any amounts in the final accounting, the Prime Professional 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 Prime Professional's reasons for withholding a certificate. Amounts not in dispute shall be paid immediately. The Prime Professional is not responsible for verifying the accuracy of the Construction Manager's final accounting.

[REDACTED]

Nothing in this paragraph prohibits or restricts the right of the Mississippi Department of Finance and Administration, the Office of the State Auditor, or any other entity acting on behalf of the State of Mississippi to audit this contract or to recover any payments made in excess of the contractually agreed upon amounts.

§ 11.2.2.3 Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Prime Professional's final Certificate for Payment.

(Paragraphs deleted)

§ 11.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Construction Manager or by issuance of Change Orders affecting final completion, and the Prime Professional or Owner so confirms, the Owner shall, upon application by the Construction Manager and certification by the Prime Professional, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Construction Manager to the Prime Professional prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 11.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment

§ 11.10.5 Acceptance of final payment by the Construction Manager, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

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

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§ 12.1.2 The Prime Professional will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.
(Paragraphs deleted)

§ 12.2 Binding Dispute Resolution

(Paragraphs deleted)

Deleted in its entirety.

(Paragraphs deleted)

§ 12.3 **Attorney’s Fees; Prevailing Party.** In the event of a dispute, claim, or controversy arising between the parties to this Agreement arising out of or related to the Work performed under this Agreement, such claim shall be decided by Article 15 of the A201, including any award of fees and expenses.. The prevailing party in such dispute, claim, or controversy shall be entitled to receive from the non-prevailing party all of its reasonable costs and expenses incurred in connection with such litigation, arbitration, or other binding dispute resolution procedure, including reasonable attorneys’ fees, filing fees, expert witness fees, discovery expenses, and any other reasonable costs incurred in prosecuting or defending such dispute, claim, or controversy.

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 Section 5.1.

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

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

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

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

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such

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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. The Construction Manager shall endeavor to include a termination for convenience provision in its subcontracts, purchase orders and rental agreements that shall allow it to terminate said agreements without incurring any termination costs or penalty whatsoever if the Agreement is terminated prior to commencement of the Construction Phase by each subcontractor or supplier.

§ 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 the A201.

§ 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 the A201, the amount, if any, to be paid to the Construction Manager under Article 14 of the A201 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

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

§ 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 the A201 AIA Document A201-2017, then the Owner shall pay the Construction Manager a termination fee as follows:

(Paragraphs deleted)

50 % of the Construction Manager's remaining Construction Manager Fee on the amount of Work unperformed. This is Construction Manager's sole remedy for lost home office extended overhead and profit on the Project.

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of the A201; in such case, the Guaranteed Maximum Price and Contract Time shall be equitably adjusted as provided in Article 14 of the A201.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in the A201. Where reference is made in this Agreement to a provision of the A201 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

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§ 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 the A201, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 14.2.3 Priority of Documents. In the event of any ambiguities or inconsistencies in or between the Contract Documents, the following priority shall apply:

- .1 Change Orders and other Modifications.
- .2 The GMP Amendment)
- .3 This Agreement
- .4 Exhibits to this Agreement
- .5 Specifications
- .6 Drawings
- .7 Other Contract Documents
- .8 Large-scale detail drawings take precedence over small-scale drawings; and
- .9 Schedules take precedence over other data on the plans.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

Insurance shall be maintained by Construction Manager as set for in Article 11 of the A201.

§ 14.3.1.1 Insurance shall be maintained by Construction Manager as set for in Article 11 of the A201.

§ 14.3.1.2 Insurance shall be maintained by Construction Manager as set for in Article 11 of the A201.

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§ 14.3.1.4 Insurance shall be maintained by Construction Manager as set for in Article 11 of the A201.

§ 14.3.1.5 Insurance shall be maintained by Construction Manager as set for in Article 11 of the A201.

§ 14.3.1.6 Other Insurance

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

Coverage

Limits

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

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

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§ 14.3.2 Construction Phase

Insurance shall be maintained by Construction Manager as set for in Article 11 of the A201.

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

§ 14.4 Notice in electronic format, pursuant to Article 1 of the A201, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below: *(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

§ 14.5 Other provisions:

Communications by e-mail (whether by the Construction Manager, Owner, or Prime Professional, and whether to the Construction Manager, Owner, or Prime Professional, shall suffice as written communication for all purposes, including but not limited to for the purposes of notice.

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as amended
- .2 AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, as amended, if executed
- .3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds
- .4 A201, General Conditions of the Contract for Construction, as amended
- .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.)

N/A

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

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

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
[REDACTED]			

.7 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. the A201 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.)

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

OWNER (Signature)

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

(Printed name and title)

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