

AIA® Document A133® – 2019

Modified Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the [] day of [] in the year 2026
(In words, indicate day, month, and year.)

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

The City of Delray Beach, Florida
A municipal corporation and a political subdivision of the State of Florida, its successors and assigns
100 NW 1st Avenue
Delray Beach, FL 33444

and the **Construction Manager**:

Kiewit Infrastructure South Co.
6301 NW 5th Way Suite 3200
Ft Lauderdale, FL 33309

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

RFQ No. 2025-023
Tropic Isle Neighborhood Improvements Project

The project limits are the Tropic Isle Neighborhood, bound by McCleary St to the north, Florida Blvd to the west, Spanish Cir to the south, and the intracoastal waterway to the east. The neighborhood includes a total of approximately 5.75 miles of roadways.

The project aims to improve the roadway, water, sewer, storm drainage, drainage outfall, and seawall improvements within the Tropic Isle Neighborhood.

The Architect/Engineer (the "A/E Professional"):
(Name, legal status, address, and other information)

Eric Regueiro, PE
Vice President
Kimley-Horn and Associates, Inc.
1920 Wekiva Way
West Palm Beach, FL 33411
(561) 840-0214
eric.regueiro@kimley-horn.com

The Owner's Representative:

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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Michael Cartossa, PE
Project Manager, Sr Associate
Keith and Associates, Inc.
701 Northpoint Parkway, Suite 218
West Palm Beach, FL 33407
(561) 469-0992
mcartossa@keithteam.com

The Owner and Construction Manager agree as follows:

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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.)

See the information provided in RFQ NO. 2025-023, which is attached as Exhibit G .

§ 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.)

See the information provided in RFQ No. 2025-023, which is attached as Exhibit G.

§ 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.)

The Owner's GMP(s) are to be determined during Phase 1 Scope of Services (Pre-Construction).

§ 1.1.4 The Owner's anticipated design and construction Milestone Dates:

.1 Design phase milestone dates, if any:
N/A

.2 Construction commencement date:

Date to be established after approval of the GMP and addendum to this Agreement.

.3 Substantial Completion date or dates:

Date to be established after approval of the GMP and addendum to this Agreement.

Substantial Completion date will be determined during Pre-Construction efforts.

.4 Other Milestone Dates:

N/A

§ 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.)

N/A

§ 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.)

N/A

§ 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.)

See the information provided in RFQ NO [2025-023], which is attached as Exhibit G.

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:

Keith and Associates, Inc.
701 Northpoint Parkway
Suite 218 West Palm Beach Fl, 33407

§ 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.)

A/E Professional, or as applicable, the A/E Professional's consultants

Kimley-Horn and Associates, Inc.
1920 Wekiva Way West Palm Beach, FL 33411

§ 1.1.10 The Owner shall retain the following consultants and contractors:

.1 Geotechnical Engineer:

Included as part of A/E Professional and/or Owner's Representative. Refer to information provided in RFQ No. 2025-023, which is attached as Exhibit G.

.2 Civil Engineer:

Included as part of A/E Professional and/or Owner's Representative. Refer to information provided in RFQ No. 2025-023, which is attached as Exhibit G.

.3 Other, if any:

[N/A]

§ 1.1.11 The A/E Professional's representative:

Eric Regueiro, PE,
Kimley-Horn and Associates, Inc.
1920 Wekiva Way West Palm Beach, FL 3411

§ 1.1.12 The Owner's Representative's representative:

Michael Cartossa,
Keith and Associates, Inc.
1601 Forum Place, Suite 400
West Palm Beach, FL 33401

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

Cody Jensen
Kiewit Infrastructure South Co.
6301 NW 5th Way Suite 3200
Ft Lauderdale, FL 33309
Office: 813-337-5222
Email: Cody.Jensen@kiewit.com

§ 1.1.14 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.)

See the information provided in RFQ NO. 2025-023, which is attached as Exhibit G.

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

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

See the information provided in RFQ NO. 2025-023, which is attached as Exhibit G.

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

[N/A]

§ 1.2 The Owner and Construction Manager may generally rely on the Initial Information, but Construction Manager shall promptly notify Owner of any conflicts or discrepancies Construction Manager discovers or should discover (in its capacity and experience as a general contractor) with respect to 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 Construction 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 Milestone Dates, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten (10) days' prior written notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

§ 2.1.1 The Contract Documents consist of this Agreement, the AIA A201-2017 General Conditions of the Contract as modified (the "Modified General Conditions"), Drawings, Specifications, Addenda issued prior to execution of this Agreement, Exhibits to this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein (the "Contract Documents"). 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 A/E Professional and/or Owner's Representative 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. To the extent any conflict exists between the Contract Documents that cannot be resolved between the parties, interpretations will be based on the following priorities: (a) executed Modifications, if any, with those of a later date having precedence over those of an earlier date; (b) the Clarifications and Qualifications Exhibit to the Agreement to the extent approved by the Owner (c) the Agreement; (d) these Modified General Conditions; (e) all Exhibits hereto; (f) Drawings and Specifications; and (g) any other Contract Documents. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.1.2 Unless otherwise stated in the Contract Documents, when words that have well-known technical or construction industry meanings are used in the Contract Documents, such words are to be interpreted in accordance with such recognized meanings. On the Drawings, given dimensions shall take precedence over scaled measurements and large-scale drawings over small-scale drawings.

§ 2.1.3 Any of the Contract Documents not attached hereto but expressly identified in this Agreement are hereby incorporated by reference and shall be deemed to be of the same force and effect as if actually attached hereto.

§ 2.1.4 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Construction Manager. Performance by the Construction Manager shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 2.1.5 If the Construction Manager discovers any inconsistency, ambiguity, discrepancy or error in the Contract Documents, the Construction Manager shall promptly seek clarification in writing from the Owner.

§ 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 A/E Professional and Owner's Representative 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, materials, and equipment; 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, Modified General Conditions, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2017, Modified General Conditions, which document is incorporated herein by reference. The term "Contractor" as used in A201-2017,

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Modified General Conditions shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017, Modified General Conditions, referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the A/E Professional and/or Owner's Representative for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Phase 1: Pre-construction Services

§ 3.1.1 General. During the Preconstruction Phase of the Project, the Construction Manager will provide preconstruction services where necessary or appropriate to further the interests of the Owner and the Project. Construction Manager shall render services which support the services to be rendered by A/E Professional, including design review in the capacity of a "Contractor," but not a design professional, Project planning, and the specific services described in this Article 3. Construction Manager shall perform Phase 1 Pre-construction services per the Phase 1 Scope of Services, which is attached as Exhibit F, and in accordance with the General Conditions.

§ 3.1.2 Review Project Requirements and Site Data. Construction Manager shall review and study all background data, specifications and other related materials made available by Owner as to requirements, criteria, priorities, feasibility, and physical and financial limitations with regard to the Project and shall review with Owner's Representative and A/E Professional site data (such as access, location of services and utilities, security, surveys, and soils information) and other relevant information.

§ 3.1.3 Verify Site and Working Conditions. Construction Manager shall visit the Project site, review all information related to the Project site and to the conditions under which the Work will be performed. Construction Manager shall notify Owner's Representative in writing of any conditions of which the Construction Manager becomes aware or should have become aware in the exercise of reasonable care, that would adversely affect the progress, quality, or cost of the Work. Construction Manager will recommend means of addressing such conditions, and suggest additional testing or services reasonably required in connection therewith.

§ 3.1.4 Consultation of Design

The Construction Manager shall attend all meetings with the A/E Professional and/or Owner's Representative and Owner, as scheduled by the Owner, to discuss such matters as procedures, progress, coordination, and scheduling of the Work. In the capacity of a "Contractor," but not a design professional, the Construction Manager shall advise the Owner and the A/E Professional on proposed Project site use and improvements, selection of materials, and building systems and equipment. Further, in the capacity of a "Contractor," and not a design professional the Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and A/E Professional and/or Owner's Representative on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, and possible cost reductions. The Construction Manager agrees to be reasonably available to perform the following facets related to the Preconstruction Phase in the capacity of a "Contractor" and not a design professional:

1. reviewing all drawings, permits, approvals, documents, and reports for the Project including, without limitation, the Plans and Specifications;
2. review all permit applications and accompanying documentation;
3. review projected work schedule, timeline and benchmark dates;
4. offer alternatives to plans and proposals, including cost-saving measures and value engineering;
5. interface with subcontractors and vendors that fit specifically to the nature of this project and to the specific scopes of work;
6. develop bid packages and obtain written bids from subcontractors, vendors and or suppliers;
7. provide monthly summaries;

8. provide such other services reasonably agreed to between Owner and Construction Manager and as necessary to the successful development of the Project.
9. Conduct Field Walkthroughs and Workshop Meetings with Owner's Rep or A/E Professional to evaluate design constructability, potential cost savings, or any conflicts with the intent of resolving these items prior to GMP Establishment.
10. Participate in Public Outreach Tasks as requested by Owner and A/E Professional including onsite meetings with Public Stakeholders, Businesses, Property Owners and City Staff. Also participate in an Preconstruction Public Outreach Meetings and provide necessary preliminary information related to job site access, schedule, sequence of work, environmental protection, private property protection measures, and temporary traffic control plans.

§ 3.1.5 Review of A/E Professional's Schedule. Construction Manager shall review and study all schedules and updates thereof submitted by A/E Professional concerning the schedule for performance of A/E Professional's services. Within ten (10) days after receipt of any such schedule or update, Construction Manager shall submit to Owner's Representative a written analysis of same describing any anticipated problems or delays to the Project related to A/E Professional's schedule.

When Project requirements for Construction Phase Services have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the A/E Professional and/or Owner's Representative's review and the Owner's acceptance. The Construction Manager shall obtain the A/E Professional and/or Owner's Representative's approval for the portion of the Project schedule relating to the performance of the A/E Professional's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the A/E Professional and/or Owner's Representative's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule 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 well in advance of construction; and the occupancy requirements of the Owner. The Project schedule, included with the Guaranteed Maximum Price proposal will become the Construction Schedule upon Owner's acceptance of the Guaranteed Maximum Price Amendment.

§ 3.1.6 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 3.1.7 Procurement Guidelines and Plan. Construction Manager shall prepare and submit, for the Owner's approval, procurement guidelines and a procurement plan for the Project. The Construction Manager shall prepare, for the Owner's acceptance, a procurement schedule for long-lead items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Owner shall thereafter accept responsibility for them.

§ 3.1.8 Utilities, Communications and Other Infrastructure Issues. Construction Manager shall advise and assist A/E Professional and represent Owner, if requested, in coordinating appropriately with local utilities, communications, and other related infrastructure issues.

§ 3.1.9 Review Design Documents. In the capacity of a "Contractor," but not as a design professional Construction Manager shall review and study, on a continuing basis through the Design and Construction Phases, all design and construction documents prepared by A/E Professional and shall notify the Owner's Representative and A/E Professional in writing of any errors, omissions, conflicts, inconsistencies, or ambiguities discovered, identify potential value engineering options before the bidding cycle and Construction Phase begin, and recommend alternatives when design details affecting construction feasibility, constructability, quality, or the Project schedule.

§ 3.1.10 Constructability Analyses. When requested by Owner's Representative, Construction Manager shall provide

written constructability analyses of the Project, including items to be addressed with A/E Professional and/or Owner's Representative such as accessibility, construction methods, assembly, installation, materials handling, expandability, phasing and other Construction Phase-related activities. The analysis of constructability issues shall be performed on an ongoing basis during the Design Phase.

§ 3.1.11 Presentations. When requested by Owner's Representative, Construction Manager shall assist Owner and A/E Professional and/or Owner's Representative in making one or more presentations of design concepts, cost studies, site evaluation, and other data developed in relation to the Project.

§ 3.1.12 Value Engineering. Construction Manager shall perform Value Engineering studies and propose to the Owner design, construction and systems alternatives for reducing the cost of the Project, or elements thereof. Construction Manager shall provide Owner with an estimate of the cost of, and the savings that will result from, implementing such Value Engineering alternatives. Construction Manager shall implement any Value Engineering alternatives approved by Owner, and the GMP shall be adjusted prior to issuance of the purchase order, or if the purchase order has been issued then by deductive Change Order to reflect the savings to be achieved by implementing such Value Engineering alternatives.

§ 3.1.13 Estimating and Monitoring Costs

§ 3.1.13.1 Construction Cost Estimate. Within sixty (60) days after issuance of the Notice to Proceed for Phase 1 Pre-Construction Services, the Construction Manager shall prepare a preliminary cost estimate (the "Construction Cost Estimate") of the cost of constructing the Project in accordance with the requirements of the Project and shall provide same to Owner's Representative. The Construction Cost Estimate shall be broken down in such detail as Owner's Representative may require and shall include a recommended contingency for the Work. Construction Manager shall revise the Construction Cost Estimate monthly until the GMP(s) are established and shall provide such revised estimates to Owner's Representative on a monthly basis. As the A/E Professional progresses through the design stages, Construction Manager shall prepare estimates of the Cost of the Work with increasing detail and refinement until such time as the Owner and Construction Manager agree on Guaranteed Maximum Price(s) for the Work. Such estimates shall be provided for the Owner's review and approval. The Construction Manager shall inform the Owner and A/E Professional and/or Owner's Representative when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 3.1.13.2 Monitoring Construction Costs. Throughout the duration of the Project, Construction Manager shall regularly monitor conditions in the construction market to identify factors that will or may affect costs for completing the Project and furnish a written analysis.

§ 3.1.13.3 Cash Flow Forecasts. Construction Manager shall prepare a written forecast of projected accumulation of cash payments against the Project. Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments. On a monthly basis, Construction Manager shall provide Owner's Representative with an updated forecast of such projected monthly payments.

§ 3.1.14 Bid Solicitation and Award

§ 3.1.14.1 Construction Manager shall provide all necessary services related to the bidding of subcontracts for the construction of the Project, including but not limited to: (a) preparing appropriate bid documents, including proposed forms of contract and purchase orders; (b) establishing bid schedules; (c) active program of developing bidder interest; (c) furnishing information concerning the Project to prospective bidders; (d) conducting pre-bid conferences; (e) receiving and analyzing bids and making recommendations to Owner regarding bid awards; (f) investigating the acceptability and responsibility of sub- subcontractors or suppliers proposed by any Subcontractor and advising Owner of such evaluations; (g) negotiating with Subcontractors concerning any matter related to the Project; and (h) such other services as reasonably required by Owner with respect to the bidding process; and (i) Subcontractor is required to prepare, for approval, coordination drawings prior to installation of work if required by Owner and/or A/E Professional. These costs shall be considered part of the GMP.

§ 3.1.14.2 Nothing in the Agreement shall be interpreted to relieve the Construction Manager of its responsibilities for the Project including but limited to: preparation and accuracy of subcontract solicitations, selection of qualified subcontractors, subcontractor performance, payments to subcontractors and the safety of personnel and property.

§ 3.1.14.3 In the event that the Construction Manager performs a portion of the Work on the Project, other than construction management, then for that portion of the Work the Construction Manager shall be treated as any other Subcontractor and shall abide by all the Subcontractor requirements identified in this Agreement. Furthermore, the Construction Manager

shall provide transparent cost backup and supporting documentation for the self-performed scope. This documentation must be sufficient to demonstrate to the Owner's and A/E Professional's satisfaction that self-performing the work is in the best financial and operational interest of the Project when compared to the competitive subcontractor market.

§ 3.1.14.4 Approval of Subcontractors. Construction Manager shall not subcontract for any part of the services or Work with any Subcontractor or consultant who is not properly licensed, or against whom Owner has a reasonable objection. As soon as practicable after the bidding process and during development of the Guaranteed Maximum Price, Construction Manager shall furnish in writing to the Owner's Representative the names of persons or entities (including those who are to furnish materials or equipment) proposed for each portion of the Work, the portion of the Work which each such Subcontractor is to perform, and the place of business of such Subcontractor.

The Construction Manager shall not contract with a proposed person or entity which the Owner has made a reasonable objection or that is not in good standing with the Owner. The Owner shall have the right to require the Construction Manager not to award any subcontract to a person, firm or corporation reasonably objected to by the Owner. If the Owner has a reasonable objection to a person or entity proposed by the Construction Manager, the Construction Manager shall propose another with whom the Owner has no objection.

The Construction Manager shall not change a Subcontractor, person or entity previously selected if the Owner makes objection to such change.

The Construction Manager shall be responsible and liable to the Owner for all work performed by the Subcontractors or their employees, agents or contractors, pursuant to this Agreement.

§ 3.1.14.5 The Owner's Representative and/or the A/E Professional shall have the right to attend any bid solicitation and opening meetings for major subcontracts and material purchases.

§ 3.1.14.6 Prior to the solicitation of bids, the Construction Manager shall submit to the Owner and A/E Professional for their review and approval a list of pre-qualified subcontractors and suppliers proposed for the major components of the Work.

§ 3.1.15 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction services. The Owner, Owner's Representative, and A/E 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 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 A/E Professional and/or Owner's Representative and Owner in writing any nonconformity and/or conflicts discovered by or made known to the Construction Manager as a request for information in such form as the A/E Professional and/or Owner's Representative may require.

§ 3.1.16 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 for inclusion in the Contract Documents.

§ 3.1.17 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.)

[See Exhibit F]

§ 3.2 Phase 2: Construction Services, Guaranteed Maximum Price Proposal, and Contract Time

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager,

in consultation with the A/E Professional and Owner's Representative, shall prepare a Guaranteed Maximum Price proposal, supported by all subcontractor and material supplier costing documentation, for the Owner's and A/E Professional and/or Owner's Representative's review and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the contract price elements as follows:

A. Cost of the Work	\$TBD
B. General Conditions	\$TBD
C. Construction Manager's Fee (TBD% of A+B) (described in Section 3.2.1.1)	\$TBD*
A+B+C = Planned Total Cost of the Work	\$TBD
D. Construction Manager's Contingency (described in Section 3.2.1.2)	\$TBD
E. Owner Contingency (described in Section 3.2.1.3)	\$TBD

*Plus any Fee on dollars paid from Construction Manager's (D) and / or Owner (E) Contingency.

A+B+C+D+E = Guaranteed Maximum Price (GMP)	\$TBD
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§ 3.2.1.1 Construction Manager's Fee (C)

The Construction Manager's Fee is the stated amount to be paid to Construction Manager for the services rendered to the Owner pursuant to Section 3.2 of the Agreement. The total amount earned of the Construction Manager's Fee shall be increased in the event of the utilization of the Construction Manager's Contingency. The total amount earned of the Construction Manager's Fee shall be increased in the event of the utilization of the Owner Contingency. The Construction Manager's Fee is a percentage (%) as defined in Section 6.1.2 and 6.1.3.

§ 3.2.1.2 Construction Manager's Contingency (D)

In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that were not part of the Planned Total Cost of the Work. Items that can be utilized from this Contingency will be developed and detailed in the GMP proposal. Notwithstanding the foregoing, before using this contingency the Construction Manager shall notify the Owner of its intent to utilize in writing, describing the intended usage and justification, and including supporting documentation with estimated costs or subcontractor cost proposal(s). This notification must be acknowledged in writing by Owner's Representative.

When the Project achieves Final Completion, any unused amount contained within the Construction Manager's Contingency will be transferred to the Owner by way of Change Order adjusting the GMP.

§ 3.2.1.3 Owner Contingency (E)

These funds may be used to cover costs of additional elements of Work not included in the Planned Total Cost of the Work, including but not limited to: Owner directed changes as well as items developed and detailed in the GMP proposal. Notwithstanding the foregoing, before utilizing this contingency the Construction Manager shall notify the Owner of its intent to utilize in writing, describing the intended usage and justification, and including supporting documentation with estimated costs or subcontractor cost proposal(s). This notification must be acknowledged and approved in writing by Owner prior to utilization.

When the Project achieves Final Completion, any unused amount contained within the Owner Contingency will be transferred to the Owner by way of Change Order adjusting the GMP.

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

§ 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:

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- .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, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee and General Conditions;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based;
- .5 A date by which the Owner must accept the Guaranteed Maximum Price; and
- .6 A list of the major Subcontracts and purchasing agreements that will be entered into within the first twenty-five (25) days following the Notice to Proceed. A list of all other Subcontracts and purchasing agreements within sixty (60) days thereafter

§ 3.2.4 Construction Manager shall keep and submit to Owner full and detailed records substantiating the Guaranteed Maximum Price proposal, including but not limited to, complete documentation supporting budgeted line items, proposals from Subcontractors and materials suppliers, Subcontracts and contracts with materials suppliers and related parties (as defined herein) and other back up documents, and shall make such records available to Owner, Owner's Representative, A/E Professional and any cost control consultants hired by Owner for inspection, audit and copying during regular business hours and upon reasonable notice.

§ 3.2.5 Omitted.

§ 3.2.6 The Construction Manager shall meet with the Owner and A/E Professional and/or Owner's Representative to review the Guaranteed Maximum Price proposal. In the event that the Owner or A/E Professional and/or Owner's Representative 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.

§ 3.2.7 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 A/E Professional and/or Owner's Representative and a copy of which shall be attached hereto as Exhibit A. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.8 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.

§ 3.2.9 The Owner shall authorize the A/E Professional and/or Owner's Representative to provide revisions, if necessary, to the Drawings and Specifications to incorporate those agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment that differ from the requirements of the Drawings and Specifications. The Owner shall timely furnish those revised Drawings and Specifications, if any, to the Construction Manager as they are revised.

§ 3.2.10 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

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§ 3.3.1 General

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

§ 3.3.1.2 The Construction Phase shall commence upon the Owner’s issuance of a Notice to Proceed within 15 days after Construction Manager’s receipt of the latter of the following (“Commencement Date”) and the Contract Time shall be measured starting from the Commencement Date: TBD

1. Fully executed Agreement including the GMP Amendment
2. Issuance of Purchase Order by the Owner.
3. Issuance of all Permits required to commence Work
4. Reasonable access to the Project site and any off-site Work.

The Construction Manager shall achieve Substantial Completion of the entire Work not later than TBD.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner, Owner’s Representative, and A/E 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 A/E Professional and/or Owner’s Representative a submittal schedule in accordance with Section 3.10 of A201–2017, Modified General Conditions.

§ 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, Owner’s Representative, and A/E Professional, showing percentages of completion and other information required by the Owner. Along with the monthly progress reports, Construction Manager shall provide updates to the Construction Schedule (which will include schedules distributed during the month and for the two weeks following the date of the current monthly progress report), a log of and copies of all lien releases obtained during the month from Subcontractors and suppliers and others required to provide lien releases pursuant to the Contract Documents, a listing of any Change Orders and Construction Change Directives issued during the month, copies of the minutes for the weekly Project team (Owner, A/E Professional, Owner’s Representative, and Construction Manager) meetings that month, a report of all Requests for Information and responses thereto, a report of all submittals, a copy of all completed Daily Logs for the month, all invoices and reasonable back up for all costs and expenses that correspond to the monthly payment application, project cost control measures and status of contingency, and copies of field and aerial photographs of the Project.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner, Owner’s Representative, and A/E Professional, a daily log containing a record for each day of weather, record of deliveries, portions of the Work in progress, number of workers on the Project site, identification of equipment on the Project site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner. All report formats will be in a form approved by Owner.

§ 3.3.2.5 Cost Control

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

ARTICLE 4 OWNER’S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

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

§ 4.1.2 Omitted.

§ 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 A/E Professional and/or Owner's Representative. The Owner and the A/E Professional and/or Owner's Representative, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope, including Cost and Schedule, to the extent applicable.

§ 4.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to generally rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work, including the careful review and field verification of such information, and shall promptly notify Owner of any conflicts or discrepancies Construction Manager discovers or should reasonably discover (in its capacity as a "contractor").

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

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the Project 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 Project 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, upon Construction Manager's reasonable request, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

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

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Article 4 of A201 General Conditions, the A/E 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 A/E Professional

The Owner shall retain an A/E Professional to provide services, duties and responsibilities as described in AIA Document B133™-2019, Standard Form of Agreement Between Owner and A/E Professional, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the

Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the A/E Professional, and any further modifications to the A/E Professional's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as provided in Exhibit "F".

§ 5.1.2 All Preconstruction Phase services includes Lump Sum and Allowance costs listed in Section 5.1.1 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.

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid (21) twenty-one days after the invoice date shall bear interest at the rate entered below:

2% per month

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.)

[TBD %] of the cost of the work and General Conditions

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

For approved changes in the Work, covered by contingencies in the GMP, the rate of the Construction Manager's Fee shall not be adjusted and shall remain equal to Section 6.1.2.

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

In the event Owner approves and executes a Change Order or Construction Change Directive pursuant to the terms and conditions of the Contract Documents, the maximum cumulative mark-up for overhead and profit to all Subcontractors, if any, for such change Work shall in no event exceed [TBD %] of the actual Cost of the Work associated with such Change Order or Construction Change Directive, as the case may be.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall be the Bluebook FHWA rate.

§ 6.1.6 Liquidated damages, if any:

§ 6.1.6.1 Time is of the essence regarding this Agreement and the work contemplated hereunder, and the Owner may suffer financial loss and/or inconvenience if the work is not completed to the satisfaction of the Owner by the time stipulated in the Contract Documents. Therefore, failure to achieve Substantial Completion by the Substantial Completion date provided in the Construction Schedule shall result in the Construction Manager being subject to liquidated damages, but not as penalty, in the amount of \$6,300.00 for each and every calendar day after the Substantial Completion date until Substantial Completion is achieved. As compensation due the Owner for loss of use and for additional costs incurred by the Owner due to such delay in achieving Substantial Completion, the Owner shall have the right to deduct the liquidated

damages from any amount due, or that may become due to the Construction Manager under the Contract Documents, or to invoice the Construction Manager for such damages if the costs incurred exceed the amount due to the Construction Manager. The Construction Manager and the Owner agree that the amount for liquidated damages is not punitive and is intended to compensate the Owner for difficult to quantify losses. Liquidated damages as described herein shall be the Owner's sole and exclusive damages for delay in achieving Substantial Completion. Owner will not assess liquidated damages with regards to delays in reaching Final Completion of the Project.

§ 6.1.6.2 Construction Manager hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty, which the parties agree represents a fair and reasonable estimate of Owner's actual damages at the time of contracting if Construction Manager fails to substantially complete the Work in a timely manner.

§ 6.1.6.3 The amount of Liquidated Damages, if any, shall be deducted by the Owner from Final Payment otherwise due the Construction Manager. In the event the amount of total Liquidated Damages exceeds the Final Payment, the Owner shall withhold Final Payment and Construction Manager shall promptly pay to Owner the balance owed.

§ 6.1.6.4 The aforesaid provisions shall not affect the Owner's right to terminate this Agreement as provided in the Contract Documents nor limit any of the other remedies available to the Owner as hereinabove provided, and as provided in the Contract Documents. The Owner's exercise of its right to terminate this Agreement shall not release the Construction Manager from its obligation to pay liquidated damages as set forth herein nor shall it release Construction Manager of its obligations to diligently pursue the appropriate claim against its culpable Subcontractors, suppliers, manufacturers for the benefit of Owner.

§ 6.1.7 Other:

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

§ 6.1.7.1 **GMP Shared Savings.** To the extent that the final amount expended for the Cost of the Work, General Conditions, and Construction Manager's Fee (A+B+C) is less than the Planned Total Cost of the Work the savings shall be split by Owner and Construction Manager with Owner receiving fifty percent (50%), and Construction Manager receiving fifty percent (50%).

100% of any unused amounts remaining within the Construction Manager's Contingency, Owner Contingency, designated in the GMP shall solely remain the Owner's per Sections 3.2.1.2 and 3.2.1.3.

§ 6.2 Guaranteed Maximum Price

§ 6.2.1 The Construction Manager guarantees that the Contract Sum (including Construction Manager's Fee, Construction Manager's General Conditions, and Contingency) 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.

§ 6.2.2 Allowances, if any, which will be included in the Guaranteed Maximum Price shall be identified on an exhibit attached to the Guaranteed Maximum Price Amendment. Allowances are items that are difficult to fully quantify but will be made part of the GMP (cost of the work). These will be outlined in the GMP proposal with separated line items and qualifications of what they represent. Once an allowance item is fully purchased by Construction Manager, including all associated Subcontractor Work, and approved by Owner as set forth in the Contract Documents, the price will be included within the GMP and the former allowance Work will then be removed from the Allowance list. Change Orders concluding the full Allowance scope in this Agreement shall recite that the affected Allowance is closed as an Allowance and included in the GMP.

§ 6.2.3 By submitting the GMP Amendment, Construction Manager confirms that 1) the GMP accounts for the risk of any conflicts, discrepancies, errors, or omissions, identified, or should have identified, by the Construction Manager (through the exercise of reasonable skill and care of a general contractor), during the pre-construction phase of this Agreement; it being acknowledged by the Owner that Construction Manager is not a design professional; and 2) that the Contract Time is a reasonable period for performing the Work. Construction Manager can complete the Project in the time set forth in the GMP Amendment (subject always to the Construction Manager's right to seek a time extension under the terms of the Agreement).

§ 6.2.4 If Owner and Construction Manager are unable to reach an agreement on a Final GMP Amendment, Owner shall be permitted to terminate this Agreement for Convenience, in accordance with the provision set forth in Article 14 of the Modified General Conditions.

§ 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 Contract Sum as a result of changes in the Work, provided same are approved by a written Change Order signed by Owner.

§ 6.3.1.1 The A/E Professional and/or Owner's Representative may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, Modified General Conditions.

§ 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 AIA Document A201–2017, Modified General Conditions.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, Modified General Conditions, 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 (if any) 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 AIA Document A201–2017, Modified General Conditions, 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.

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. For costs expressly included in the GMP Proposal, approval is understood to occur with the written acceptance of the GMP Proposal.

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

§ 7.1.4 The Construction Manager shall use reasonable efforts to provide a minimum of three (3) bids/proposals for all Work included in Cost of the Work for the Owner's review and consideration, prior to the Construction Manager procuring the Work for same. The Construction Manager shall consult with the Owner before awarding the subcontract and shall provide the Owner with a copy of each Subcontractor bid and proposed subcontract for the Owner's review. The recommendation of the bids, proposals, and Subcontractors for the Work included in the Cost of the Work shall be made solely by the Construction Manager, with the Owner providing final approval of the Construction Manager's recommendations in accordance with this Agreement. Upon Owner's request, the Construction Manager shall provide Owner with a complete copy of each subcontract agreement.

§ 7.1.5 There shall be zero (\$00.00) mark-up on any reimbursable expenses or Cost of the Work as all mark-up is captured in either Construction Manager's Fee or Construction Manager's General Conditions as set forth in this Agreement.

§ 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 Project site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work at no increase to the GMP.

§ 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.

§ 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 The above agreed burden rates for labor costs, in lieu of actual costs, shall remain unchanged throughout the duration of this Agreement.

§ 7.2.6 Construction Manager shall provide a Manpower Staffing Plan showing all anticipated salaried and hourly staff positions as part of the GMP Proposal.

§ 7.3 Subcontract Costs

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

§ 7.3.2 Timely and valid claims made by Subcontractors to Construction Manager may only be considered legitimate Subcontractor costs under this Article 7 to the extent that the entitlement and quantum of each Subcontractor claim have been researched and validated as to amount and that the claim is consistent with this Agreement, the costs are reimbursable pursuant to the Agreement, and the Construction Manager concurs in writing with the Subcontractor's position based upon the Subcontractor's documented representations.

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

§ 7.4.1 Costs, including transportation and storage at the Project site, of materials and equipment incorporated, or to be incorporated, in the completed construction. Owner must approve in writing all advance payments for Subcontractors' deposits and advances for Work deemed "long lead items," or "special order items" or other selected items pertaining to the Work. If the storage of materials or equipment to be incorporated into the Project is required due, in whole or in part, to the failure of Construction Manager to have the applicable portion of the Project ready for incorporation of such materials or equipment in accordance with the Construction Schedule, then such transportation and storage costs shall not be included in the Cost of Work but, instead, shall be at the sole cost of the Construction Manager.

§ 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 Project 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 Project site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, costs shall be reimbursed utilizing Bluebook FHWA rates specific to each piece of equipment. Rates of equipment rented by, and not owned by the Construction Manager, shall be per the rental invoice plus the Operating cost of the Bluebook FHWA rates specific to each piece of equipment. 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 Project site and its proper and legal disposal.

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

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

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents including but not limited to the Construction Manager's Performance and Payment Bond, General Liability Insurance, Business Automotive Liability, Workers Compensation, Builders Risk Insurance, and Subcontractor Default Insurance (SDI), all at the rates stipulated in the GMP Amendment.

§ 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.

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

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

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

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

§ 7.6.7 Costs of document reproductions and delivery charges.

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

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

§ 7.6.10 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, if and to the extent approved in advance by the Owner.

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

§ 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, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 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 in writing 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 Project site office, except while providing Preconstruction Phase services and 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, or other special labor charges not included in Section 7.2;
- .3 Expenses of the Construction Manager’s principal office and offices other than the Project 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 Costs of the Work due to the fault or negligence of the Construction Manager, its Subcontractors, or any other person or entity employed by the Construction Manager or Subcontractors, or under contract with them or performing work on the Project on behalf of them or under their supervision, or for whose acts the Construction Manager or its Subcontractors may be liable, including, but not limited to the costs of correcting damaged, defective or non-conforming work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and repairing damage to property not forming part of the Work. The Construction Manager specifically agrees that it shall receive no compensation, and the Cost of Work shall not include, any costs incurred by the Construction Manager in repairing or correcting, or supervising the correction or repair of, defective or non-conforming Work performed or supplied by any Subcontractor, material supplier, or any other person or entity employed by the Construction Manager, under contract with the Construction Manager, or performing Work on the Project on behalf of or under the supervision of the Construction Manager or Construction Manager’s personnel and that the Construction Manager’s sole remedy with respect to the recovery of such costs shall be whatever remedies are contained in the Construction Manager’s subcontract agreements with its Subcontractors, suppliers and other persons or entities providing Work on the Project, with the benefit of any such remedy accruing solely to the Construction Manager;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7, unless it has been previously reviewed and approved by the Owner;

- .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.

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. To the extent applicable to the Project, trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner.

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager as set forth in Section 3.1.17 of this Agreement. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. Any advice of the A/E Professional or Owner's Representative, 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.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

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

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be reasonably satisfactory to the Owner. Apart from the composition of any agreed to unit prices, fixed fees, or established rates, the Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of four (4) years after Final Payment, or for such longer period as may be required by law. Such right of access may be exercised during the Work or after Substantial Completion of the Work, with respect to records pertaining to contract performance, change orders, Claims, or payment audits including a final payment audit. Such right of access may also be exercised post termination if the Contract is terminated for default or convenience. This Section is applicable to all Change Orders or Claims by or against the Construction Manager and or a Subcontractor of any tier whether or not they affect the GMP. The Construction Manager agrees to include the provisions of this Section in all its contracts and all tier subcontracts with regard to any audits of payments received by the Construction Manager to verify that such payments were made and that such payments were made for the use required by the Project. Audits conducted under this Section shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing audit agency. The Construction Manager agrees to the disclosure of all information and reports resulting from access to records under this Section to the Owner, provided that the Construction Manager is afforded the

opportunity for an audit exit conference. If the Owner audits the Construction Manager's books and records and discovers actual costs or an error in the Construction Manager's favor by more than three percent (3%) of the Cost of the Work to date, the Construction Manager shall reimburse the Owner for the cost of such audit and the Construction Manager shall promptly refund the amount overpaid to the Owner.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

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

The Last Saturday of the Month will be the Pay application Cut-off date.

§ 11.1.3 Owner/Owner's Representative, Construction Manager and A/E Professional shall meet at the Project site between the 25th and 28th day of each month to review Construction Manager's "Pencil Draw" for that month's Application for Payment (which shall include all amounts through the cut-off date), which shall be a preliminary draft of the Application for Payment prepared by Construction Manager. After that meeting, Construction Manager shall revise the Pencil Draw in accordance with any reasonable objection or recommendation of the Owner/Owner's Representative or A/E Professional that is consistent with the requirements of the Contract Documents. Such revised Pencil Draw shall be resubmitted by Construction Manager as the Application for Payment. The Owner and Owner's Representative shall approve and certify, if correct, the Application for Payment by the seventh (7th) calendar day upon receipt and the Owner shall make payment of the certified amount to the Construction Manager not later than the twenty-first (21st) day from receipt of the Application for Payment as required by section 255.073(2), Florida Statutes. If errors are found in the revised Application for Payment, it shall be revised and resubmitted for review in accordance with this Section.

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence reasonably required by the Owner or Owner's Representative to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager. In addition, as a further condition to payment of each progress payment, Construction Manager shall submit to Owner: (i) a sworn and certified Progress Payment Affidavit, which recites that all laborers, material suppliers and Subcontractors dealing with the Construction Manager have been paid in full through the date of the prior application for payment which has been received by Construction Manager from Owner, with the exception of disputed payments and, if applicable, retainage for material suppliers and Subcontractors; (ii) a partial release of lien conditioned upon payment from Construction Manager for the current Application for Payment, (iii) partial releases of lien from all lienors providing Work on the applicable Application for Payment through the date of the last payment made, (iv) any evidence of payment of any indebtedness incurred with respect to the Work of Construction Manager, as may be required by Owner and/or Owner's Representative under the Agreement, and (v) where required by any manufacturers for extended warranties, inspection certificates or other acceptable documentation confirming the acceptable completion of any and all required inspections for the Work performed for which payment is being made.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager with the Final GMP Amendment unless subsequently amended by Change Order in accordance with the Contract Documents. If the Schedule of Values is subsequently amended by Change Order in accordance with the Contract Documents, then each subsequent Application for Payment shall be based on the Amended Schedule of Values. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The Construction Manager's General Conditions shall be shown as a separate line item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner's Representative may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

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

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§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Owner's Representative.

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

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

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

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the Project site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the Project site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Owner's Representative determines, in the Owner's Representative's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Owner's Representative has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017, Modified General Conditions;
- .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 including itself;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Owner's Representative may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017, Modified General Conditions;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

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

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

Owner shall withhold Five Percent (5%) retainage on all amounts due Construction Manager for each Application.

§ 11.1.8.1.1 The following items are not subject to retainage:

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

N/a

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

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

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

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

Once Contractor has achieved Substantial Completion and provides lien releases for that phase, the retainage that was withheld on that portion (Phase) of the Project will be released to Construction Manager.

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

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

NA

§ 11.1.9 Omitted.

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

§ 11.1.10 In taking action on the Construction Manager's Applications for Payment the Owner's Representative shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Owner's Representative has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Owner's Representative has made exhaustive or continuous on-site inspections; or (3) that the Owner's Representative has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.1.11 In the event of any material breach or default by the Construction Manager under the Contract Documents that is not cured within the time limits set forth in the Contract Documents, Owner may withhold any payment or part of any payment in the amount of the costs and damages incurred by Owner to correct, remedy and/or mitigate any of Construction Manager's material breaches or defaults, including actual delay damages, reasonably estimated to be incurred to correct, remedy and/or mitigate any Construction Manager defaults including, but not limited to: (1) defective Work not remedied; (2) claims or liens filed, unless bonded off; (3) failure of the Construction Manager to make payments properly to Subcontractors or for labor, materials, or equipment; (4) failure to provide waivers of lien for all lienors giving notices; (5) damage to the Owner's property caused by Contractor, its Subcontractors or anyone working for Construction Manager; (6) failure of the Work to progress satisfactorily according to the most recent approved Construction Schedule's Substantial Completion dates.

§ 11.1.12 It is understood that each Application for Payment shall constitute a representation by the Construction Manager to the Owner that: (i) the construction has progressed to the point indicated; (ii) the quality of the Work covered by the application is in accordance with the Contract Documents; (iii) there are no liens or claims outstanding or known to exist at the date of the application, which have not been previously made known to the Owner by Contractor; (iv) all due and payable bills with respect to the Work have been paid in accordance with the respective contract; (v) duly executed waivers and releases have been obtained from all Subcontractors for work done and materials furnished through the date of

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payment for all undisputed payments; (vi) the Construction Manager is entitled to payment in the amount requested; (vii) such Application for Payment represents a reasonable estimate of cost reimbursable to Construction Manager under the terms of the Contract Documents, (viii) such Application for Payment has not been front-end-loaded by Construction Manager; and (ix) that Construction Manager has not adjusted line items in the Schedule of Values without Owner's prior written consent.

§ 11.2 Final Payment

§ 11.2.1 Subject to the requirements of Section 9.10 of the Modified General Conditions, final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

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

Construction Manager understands and agrees that its final application for Final Payment will constitute a further representation that the conditions precedent to Construction Manager's being entitled to Final Payment have been fulfilled.

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

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Owner's Representative.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Owner's Representative 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 Owner's Representative's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017, Modified General Conditions. The Owner's Representative is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of the AIA Document A201–2017, Modified General Conditions. A request for mediation shall be made by the Construction Manager within 45 days after the Construction Manager's receipt of a copy of the Owner's Representative's final Certificate for Payment. Failure to request mediation within this 45-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Owner's Representative's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Owner's Representative's final Certificate for Payment and Construction Manager's full compliance with all conditions precedent to final payment contained throughout Section 9.10 of the Modified General Conditions and throughout the Contract Documents.

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

§ 11.3 Interest

Undisputed payments which are due under the Contract Documents and unpaid for a period of thirty additional days shall bear interest from the date payment is due at the rate stated below.

(Insert rate of interest agreed upon, if any.)

[2] % per month

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

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

§ 12.1.2 The Owner’s Representative will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, Modified General Conditions, for Claims arising from or relating to the Construction Manager’s Construction Phase services.

§ 12.2 Binding Dispute Resolution

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

(Check the appropriate box.)

Arbitration pursuant to Article 15 of AIA Document A201–2017

Litigation in a court of competent jurisdiction

Other: *(Specify)*

« »

§ 12.3 WAIVER OF TRIAL BY JURY

IN THE EVENT OF LITIGATION, BOTH PARTIES HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT EITHER PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING, CLAIM, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE BREACH THEREOF, OR IN CONNECTION WITH THE WORK OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ANY ACTIONS OR INACTIONS OF EITHER PARTY.

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 (7) days’ written notice to the Construction Manager.

§ 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.

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

§ 13.2.1 Termination

The Contract may be terminated or suspended by the Owner or the Construction Manager only as provided in Article 14 of AIA Document A201–2017, Modified General Conditions.

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, Modified General Conditions, 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.

§ 14.3 Insurance and Bonds

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance as set forth in Article 11 of the Modified General Conditions.

§ 14.4 Other provisions:

§ 14.4.1 Attorneys' Fees/Prevailing Party.

In the event that any litigation arises out of or under this Agreement, then the prevailing party in such litigation shall be entitled to recover from the non-prevailing party, all reasonable costs of such action, including but not limited to reasonable expert fees, attorneys' fees and paralegal fees for all trial and appellate levels. In any suit, action, or other proceeding, including bankruptcy, arising out of or in any manner relating to the Contract Documents, including without limitation, (i) the enforcement or interpretation of a party's rights or obligations under the Contract Documents (whether in contract, tort, or both), or (ii) the declaration of any rights or obligations under the Contract Documents, the successful or prevailing party, as determined by the court, shall be entitled to recover from the losing party, as determined by the court, reasonable attorneys' fees, paralegal fees, and disbursements (including disbursements which would not otherwise be taxable as cost in the proceeding) and expert witness fees. All references in the Contract Documents to attorneys' fees shall be deemed to include all attorney and paralegal fees and costs incurred pre-litigation as well as through all post-judgment and appellate levels and in connection with collection, and bankruptcy proceedings. In addition to the above, the prevailing party shall be entitled to recover from the non-prevailing party, all litigation costs associated with discovery and production of Electronically Stored Information (ESI).

§ 14.4.2 Severability.

If any term or provision of the Contract, or the application thereof to any person or circumstances, shall be invalid or unenforceable to any extent, the remainder of the Contract or the application of the Contract to persons or circumstances other than those against whom or which such term or provision is invalid or unenforceable, shall not be affected thereby, and each term and provision of the Contract shall be valid and enforceable to the fullest extent permissible by law.

§ 14.4.3 Signatures.

The Contract may be executed in multiple counterparts, each of which will be deemed an original agreement and all of which together will constitute one agreement.

§ 14.4.4 Time.

Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined. By executing the GMP Admendment, the Construction Manager confirms that the Contract Time is a reasonable period for performing the Work. Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Construction Manager confirms that the Contract Time is a reasonable period for performing the Work.

§ 14.4.5 Headings.

The headings contained in the Contract are inserted only for convenience and reference are not meant to define, limit or describe the scope or intent of the Contract Documents or in any way to affect the terms and provisions set forth herein.

§ 14.4.6 No Third Party Beneficiaries.

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third

party against either the Owner or Construction Manager.

§ 14.4.7 Flow Down.

Construction Manager shall cause this Contract to be incorporated by reference in all agreements entered into between it and its Subcontractors, such that the terms and conditions of the Contract flow down to and bind all Subcontractors, whether specifically required or not by any provision of the Contract Documents. Notwithstanding the foregoing, any terms of this Contract with respect to the Construction Manager's Fee are specifically excluded from the flow down provisions of this Contract. Notwithstanding the foregoing, no provisions of the Subcontracts shall flow up or apply to Owner.

§ 14.4.8 Materials Procurement.

Construction Manager, in accordance with its fiduciary duties to Owner, shall use its (and shall cause its Subcontractors to use their) reasonable efforts to limit Owner's exposure to increases in the cost of materials for the Work by locking in prices for same with applicable suppliers and vendors in a timely and prudent manner and to avoid increased and unnecessary costs to the Owner. However, to the extent that a price has been locked in with a supplier for materials and the market for such materials later decreases prior to the time such materials are delivered and installed at the Project site, Construction Manager shall use its (and shall cause its Subcontractors to use their) reasonable efforts to reduce the price of such materials.

§ 14.4.9 Excess Materials.

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. Any materials provided to Owner in accordance with this Section shall be specifically listed by Construction Manager in a written inventory provided to the Owner detailing the material, material source, and location of the Project for which the material was originally obtained.

§ 14.4.10 Scrutinized Companies

§ 14.4.10.1 Construction Manager certifies that it and its subconsultants are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the Owner may immediately terminate this Agreement at its sole option if the Construction Manager or its subconsultants are found to have submitted a false certification; or if Construction Manager, or its subconsultants are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.

§ 14.4.10.2 If this Agreement is for more than one million dollars, Construction Manager certifies that it and its subconsultants are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the Owner may immediately terminate this Agreement at its sole option if Construction Manager, its affiliates, or its subconsultants are found to have submitted a false certification; or if Construction Manager, its affiliates, or its subconsultants are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

§ 14.4.10.3 Construction Manager agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

§ 14.4.10.4 As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

§ 14.4.11 Sovereign Immunity.

Nothing in this Agreement shall be construed as a waiver of the Owner's sovereign immunity. This Agreement shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the Owner. The failure to enforce, or any delay in the enforcement of, any privileges, rights, defenses, remedies, or immunities available to the Owner under the Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. Owner does not waive any privileges, rights, defenses, or immunities available to Owner by entering into the Agreement or by its conduct prior to or subsequent to entering into the Agreement.

§ 14.4.12 Public Records.

Owner is a public agency subject to Chapter 119, Florida Statutes. To the extent that Construction Manager is acting on
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behalf of Owner pursuant to Section 119.0701, Florida Statutes, Construction Manager shall:

- (i) Keep and maintain public records required by the Owner to perform the services.
- (ii) Upon request from the Owner's custodian of public records, provide the Owner with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statute or as otherwise provided by law.
- (iii) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Construction Manager does not transfer the records to the Owner.
- (iv) Upon completion of the Agreement, transfer, at no cost, to the Owner all public records in possession of the Construction Manager or keep and maintain public records required by the Owner to perform the services. If the Construction Manager transfers all public records to the Owner upon completion of the Agreement, the Construction Manager shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Construction Manager keeps and maintains public records upon completion of the Agreement, the Construction Manager shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Owner, upon request from the Owner's custodian of public records, in a format that is compatible with the information technology systems of the Owner.
- (v) If the Construction Manager does not comply with this section, the Owner shall enforce the Contract provisions in accordance with the Contract Documents and may unilaterally cancel this Contract in accordance with state law.

IF THE CONSTRUCTION MANAGER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSTRUCTION MANAGER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF DELRAY BEACH, CITY CLERK, 100 N.W. 1ST AVE., DELRAY BEACH FLORIDA. THE CITY CLERK'S OFFICE MAY BE CONTACTED BY PHONE AT 561-243-7050 OR VIA EMAIL AT CITYCLERK@MYDELRAYBEACH.COM.

§ 14.4.13 Inspector General.

Construction Manager is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this Contract and may demand and obtain records and testimony from Construction Manager and its subcontractors and lower tier subcontractors. Construction Manager understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Construction Manager or its subcontractors and lower tier subcontractors to fully cooperate with the Inspector General when requested may be deemed by the Owner to be a material breach of this Agreement justifying its termination.

§ 14.4.14 E-Verify.

By entering into this Agreement Construction Manager acknowledges its obligation to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." Construction Manager affirms and represents it is registered with the E-Verify system, utilizing same, and will continue to utilize same as required by law. Compliance with this section includes, but is not limited to, utilization of the E-Verify System to verify the work authorization status of all newly hired employees and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply with this section will result in the termination of this Agreement, or if your subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If terminated for a violation of the statute by Construction Manager, the Construction Manager may be prohibited from conducting future business with the Owner or awarded a solicitation or contract for a period of 1 year after the date of termination. All costs incurred to initiate and sustain the aforementioned programs shall be the responsibility of the Construction Manager.

§14.4.15 Use of Coercion for Labor and Services

Pursuant to Florida Statute §787.06(13), Contractor has provided to the City an affidavit executed by an officer or representative of the nongovernmental entity under penalty of perjury attesting that Contractor does not use coercion for labor or services as defined in the statute.”

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, Modified Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™-2019, Exhibit B, Insurance and Bonds
- .4 Exhibit B1, Construction Manager Provided Insurance
- .5 AIA Document A201™-2017, Modified General Conditions of the Contract for Construction
- .6 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below, if applicable
- .7 Other Exhibits: [Omitted]
- .8 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

ExhibitA.1 – Initial Construction Schedule (To be agreed upon in the GMP Amendment)

Exhibit A.2 – Initial Schedule of Values (To be agreed upon in the GMP Amendment)

ExhibitA.3– Construction Manager’s Key Personnel (To be agreed upon in the GMP Amendment)

Exhibit B – Insurance and Bonds

Exhibit B.1 – Construction Manager Insurance

Exhibit C – Warranty Forms

Exhibit D – Quality Control Plan (To be developed in Pre-Construction)

Exhibit E – Hurricane Preparedness Plan (To be developed in Pre-Construction)

Exhibit F – Phase 1 Scope of Services (Pre-Construction)

Exhibit G – RFQ No. 2025-023

Exhibit H – (Not Used)

Exhibit I – Lien Waiver and Release Forms

IN WITNESS WHEREOF, the Owner and the Construction Manager executed this Agreement as of the day and year first above written.

ATTEST:

OWNER/CITY OF DELRAY BEACH

Alexis Givings, City Clerk

By: _____
Thomas F. Carney, Jr., Mayor

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney

Construction Manager

By: Timothy J. Cleary

Print Name: Timothy J. Cleary

Title: Sr. vice President

(SEAL)

STATE OF Georgia

COUNTY OF Fayette

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this April 20th day of 2026, by Timothy J. Cleary (name of person), as Sr. vice President (type of authority) for Kiewit Infrastructure South Co. (name of party on behalf of whom instrument was executed).

Personally known OR Produced Identification
Type of Identification Produced _____

Jessica Wolfe
Notary Public – State of Georgia

