

# 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 (GMP)

**AGREEMENT** made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2025.  
(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:  
(Name, legal status, address, and other information)

CORE Construction Services of Florida, LLC  
8027 Cooper Creek Blvd., Suite 110  
University Park, FL 34201

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

RFQ No. 2024-031, Construction Manager at Risk for Pompey Park Recreation Center  
1101 NW 2nd St, Delray Beach, FL 33444  
City of Delray Beach Project No. 16-102

The Owner's Representative:  
(Name, legal status, address, and other information)

Keith and Associates, Inc.  
301 E. Atlantic Blvd.  
Pompano, FL 33060

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

Justin Architects, P.A.  
2400 E. Commercial Blvd., Suite 201  
Fort Lauderdale, FL 33308

The Owner and Construction Manager agree as follows.

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

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

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

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## TABLE OF ARTICLES

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

## LIST OF EXHIBITS

EXHIBIT A – GUARANTEED MAXIMUM PRICE AMENDMENT (TBD)
EXHIBIT B – INSURANCE AND BONDS
EXHIBIT B.1 – CONSTRUCTION MANAGER INSURANCE
EXHIBIT C – WARRANTY FORMS
EXHIBIT D – HURRICANE PREPAREDNESS PLAN (TBD)
EXHIBIT E – PROJECT SAFETY PLAN (TBD)
EXHIBIT F – PHASE 1 SCOPE OF SERVICES (PRE-CONSTRUCTION)
EXHIBIT G – RFQ NO. 2024-031
EXHIBIT H – QUALITY ASSURANCE PLAN (TBD)
EXHIBIT I – LIEN WAIVER AND RELEASE FORMS

## 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.)*

Refer to information provided in RFQ No. 2024-031, 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.)*

The Project is located at 1101 NW 2nd St, Delray Beach, FL 33444 and encompasses three (3) parcels identified as Property Control Number (PCN) 12434617000003130, 12434617000003140 and 12434617000003160. Refer to information provided in RFQ No. 2024-031, which is attached as Exhibit G.

**§ 1.1.3** The Owner’s budget for the Guaranteed Maximum Price (“GMP”), as defined in Article 6:

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

The Owner’s GMP is 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:

The Project shall have a duration of TBD calendar days to Substantial Completion of the Project from Construction commencement date.

**.4** Other milestone dates:

**§ 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.)*

Refer to information provided in RFQ No. 2024-031, which is attached as Exhibit G.

**§ 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.)*

Refer to information provided in RFQ No. 2024-031, which is attached as Exhibit G.

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

*(List name, address, and other contact information.)*

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Keith and Associates, Inc.  
301 E. Atlantic Blvd.  
Pompano, FL 33060

**§ 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 and/or Owner's Representative

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

**.1** Geotechnical Engineer:

Included as part of A/E Professional and/or Owner's Representative. Refer to information provided in RFQ No. 2024-031, 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. 2024-031, which is attached as Exhibit G.

**.3** Other, if any:

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

N/A

**§ 1.1.11** The A/E Professional's representative:  
*(List name, address, and other contact information.)*

Juan Justiniano, AIA, NCARB, AICP, LEED AP BD+C  
2400 E. Commercial Blvd., Suite 201  
Fort Lauderdale, FL 33308  
Telephone: (954) 771-2724 Ext. 106  
Mobile (954) 643-3224  
Email: [jjustiniano@justinarc.com](mailto:jjustiniano@justinarc.com)

**§ 1.1.12** The Owner's Representative's representative:  
*(List name, address, and other contact information.)*

Dwayne Vaughn, PE  
301 E. Atlantic Blvd.  
Pompano Beach, FL 33060  
Office: (954) 788-3400  
Email: [DVaughn@keithteam.com](mailto:DVaughn@keithteam.com)

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

Ted Cava  
1641 Worthington Rd #405  
West Palm Beach, FL 33409  
Mobile: (941) 650-0533  
Email: [tedcava@coreconstruction.com](mailto:tedcava@coreconstruction.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.)*

Refer to information provided in RFQ No. 2024-031, 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.)*

Refer to information provided in RFQ No. 2024-031, which is attached as Exhibit G.

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

Refer to information provided in RFQ No. 2024-031, which is attached as Exhibit G.

**§ 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 Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate 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) this Agreement; (d) the Modified General Conditions; (e) all Exhibits hereto, as modified; (f) Drawings and Specifications; and (g) the Clarifications and Qualifications Exhibit to the Agreement (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, words that have well-known technical or construction industry meanings are used in the Contract Documents 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.

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## **§ 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, 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, Project planning, and the specific Services described in this Article 3. Construction Manager shall perform Phase 1 Pre-construction Services per the 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 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 investigative services, through ground penetrating radar or potholing, in coordination with the A/E Professional and/or Owner's Representative, as may be 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. The Construction Manager shall advise the Owner and the A/E Professional and/or Owner's Representative on proposed site use and improvements, selection of materials, and building systems and equipment. 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:

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.

**§ 3.1.5 Review of A/E Professional 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 services. Within ten (10) business 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 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 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.

#### **§ 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/or Owner's Representative and represent Owner, if requested, in coordinating appropriately with local utilities, communications, and other related infrastructure issues.

**§ 3.1.9 Review Design Documents.** 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 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 affect 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.

#### **§ 3.1.16 Estimating and Monitoring Costs**

**§ 3.1.16.1 Construction Cost Estimate.** Within sixty (60) days after issuance of the Notice to Proceed for Phase 1 Pre-Construction Services, the Construction Manager shall provide a preliminary estimate (the "Construction Cost Estimate") of the cost of constructing the Project in accordance with the requirements of RFQ No. 2024-031, which is attached as Exhibit G, 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 is 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 a Guaranteed Maximum Price 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.

**§ 3.1.16.2 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.

**§ 3.1.16.3 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.

#### **§ 3.1.17 Bid Solicitation and Award**

**§ 3.1.17.1** 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; (d) furnishing information concerning the Project to prospective bidders; (e) conducting pre-bid conferences; (f) receiving and analyzing bids and making recommendations to Owner regarding bid awards; (g) investigating the acceptability and responsibility of sub-subcontractors or suppliers proposed by any Subcontractor and advising Owner of such evaluations; (h) negotiating with Subcontractors concerning any matter related to the Project; (i) such other services required by Owner with respect to the bidding process; and (j) Subcontractor is required to prepare, for approval, coordination



drawings prior to installation of work if required by Owner and/or A/E Professional and/or Owner's Representative. These costs shall be considered part of the GMP.

**§ 3.1.17.2** 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, subcontract performance, payments to subcontractors and the safety of personnel and property.

**§ 3.1.17.3** 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.

**§ 3.1.17.4 Approval of Subcontractors** Unless waived in writing by the Owner, the Construction Manager must obtain competitive pricing and subcontract, in compliance with the requirements of Section 3.1.17 for one hundred percent (100%) of the Construction Manager's Cost of the Work (Section 3.2.1.A) required under this Agreement.

The Construction Manager shall prepare for the Owner's and Owner's Representative review and approval a list of Subcontractors and suppliers for each bid who meet the Construction Manager's schedule of minimum requirements. The Construction Manager shall publicly advertise and obtain bids from a minimum of three (3) such Subcontractors for each subcontract, when available. Otherwise, the Construction Manager shall provide documentation to the satisfaction of the Owner demonstrating the circumstances where a minimum of three (3) Subcontractors is not available.

After receiving such bids, the Construction Manager shall analyze them and make recommendations to the Owner and Owner's Representative for awards. The Construction Manager shall provide the Owner and Owner's Representative with a copy of each Subcontractor's bid sheet or tabulation and schedule of subcontractor fully burdened labor rates and, when requested, any other documentation in Construction Manager's possession pertaining to such bids. When the Owner and Owner's Representative have approved the award of any such subcontract or purchase order, the Construction Manager shall contract solely in its own name and behalf, and not in the name or behalf of the Owner, with the specified Subcontractor or supplier. Construction Manager shall not share the bids submitted by subcontractors and suppliers with other bidders until such time as the bids can be open to the public pursuant to Florida Statute.

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.

All subcontracts shall contain a schedule of values and fully burdened labor rates, any other applicable information for use in the determination of the cost of changes in the Work.

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.

### **§ 3.1.18 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.

**§ 3.1.19 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.

**§ 3.1.20 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.)*

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

**§ 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 with quantities, 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 (Exhibit TBD)	\$TBD
B. General Conditions, including Management Services (Exhibit TBD)	\$TBD
C. Construction Manager's Fee (Not to Exceed TBD% of A+B) (described in Section 3.2.1.1)	\$TBD*
D. Construction Manager's Contingency (described in Section 3.2.1.3)	\$TBD
E. Document Completion/Owner Contingency (described in Section 3.2.1.2)	\$TBD
F. Escalation Contingency(described in Section 3.2.1.5)	\$TBD
G. Construction Manager's Preconstruction Phase Services (Exhibit F)	\$212,371**

*\*Plus any Fee on dollars paid from Document Completion/Owner Contingency upon Owner approval. And excludes Fee on subcontracted Management Services.*

*\*\*Lump Sum amount of \$187,371 plus an Allowance of \$25,000 for GPR investigation and potholing. Owner approval is required for the use of Allowance funds.*

**= Guaranteed Maximum Price (GMP) \$TBD**

**§ 3.2.1.1 Construction Manager's Fee**

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 Construction Manager's Fee shall be increased by the distribution of the Construction Manager's Contingency to other Price Elements within the Guaranteed Maximum Price. The Owner shall increase the Fee when the use of the Document Completion/Owner Contingency increases the scope of the Work, through no fault of Construction Manager, for work unanticipated within the original Guaranteed Maximum Price. All Owner approved increases to the Construction Manager's Fee shall be documented on the same Contract Price Element Adjustment Memorandum (CPEAM)\* prepared for the related transfer of Document Completion Contingency funds to the other Price Elements. Increases to the Construction Manager's Fee shall be limited to TBD% as defined by Section 6.3.5.

*\*Contract Price Element Adjustment Memorandum (CPEAM) is the document issued by the Owner to memorialize the reallocation of sums between contract price elements included in the Contract Sum.*

**§ 3.2.1.2 Document Completion/ Owner Contingency**

These funds may be used to cover costs of additional elements of Work not included in the Construction Manager's construction work, including but not limited to: Owner selected Subcontractors who are not the lowest responsive and responsible bidders for any portion of the Work, Owner directed changes after permitting of the Work, differing site conditions, excusable delays, post-hurricane construction directives, evolution of design via RFI's/ASI's, or errors and omissions in the Contract Documents. In addition, at the time of execution of this Agreement, the Contract Documents

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may not be complete. Therefore, it is understood that the sum shown in Section 3.2.1.D. as the Document Completion/ Owner Contingency is available to cover additional costs arising from the differences between the Pricing Documents and the permitted documents, or from building code interpretation disputes following the permitted drawings from any Agency Having Jurisdiction. A CPEAM will be used to distribute Document Completion/Owner Contingency funds to other contract price elements. When the Project achieves Final Completion, any unused amount contained within the Document Completion/ Owner Contingency will be transferred to the Owner by way of Change Order adjusting the GMP.

### **§ 3.2.1.3 Construction Manager's Contingency**

In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. Notwithstanding the foregoing, before using this contingency the Construction Manager shall notify the Owner of its intent in writing, describing the intended usage and justification, and including supporting documentation with estimated costs or subcontractor cost proposal(s). If the Owner does not object to the merit of Construction Manager's request to use Construction Manager's Contingency in writing within two (2) business days, the Construction Manager's use of such contingency shall be a reimbursable Cost of the Work. Owner shall not unreasonably object to Construction Manager's request. A CPEAM shall be used to distribute Construction Manager's Contingency funds to the Cost of the Work line item (Section 3.2.1.A). 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.

**§ 3.2.1.4** If an overage to any of the line items in 3.2.1.A, 3.2.1.B, 3.2.1.C, 3.2.1.D., or 3.2.1.E is due to **the** Construction Manager's negligence or substandard workmanship and materials, no CPEAM will be **issued**, and all overage costs will be absorbed by the Construction Manager.

### **§ 3.2.1.5 Cost Escalation Contingency**

A Cost Escalation Contingency shall be established in the GMP Amendment for economic factors which may result in price escalation greater than 5% for materials, equipment, and/or products during the Project through no fault of the Owner nor the Construction Manager or Subcontractor. Construction Manager shall give Owner written notice and documentation in the event of such increased costs in advance for Owner's review and approval in the event of such excessive increase in costs are encountered. Subcontractor must supply reasonable documentation of proof of tariff and/or duties increase and cost impact between the date of the Subcontract and the date of said cost increase. In the event such Cost Escalation Contingency is fully expended, additional funding will be incorporated by CPEAM as needed. A CPEAM will be used to distribute Escalation Contingency funds to other contract price elements. When the Project achieves Final Completion, any unused amount contained within the Escalation Contingency shall be transferred to the Owner by way of Change Order adjusting the GMP. In the event no additional funding is available via CPEAM, additional funding will be incorporated by Change Order.

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

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

- .1** A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2** A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, 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 3.2.1.3; 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 construction 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** 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.

**§ 3.2.6** If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the 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.

**§ 3.2.7** The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

**§ 3.2.8** The Owner shall authorize 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.

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

### **§ 3.3 Construction Phase**

#### **§ 3.3.1 General**

**§ 3.3.1.1** For purposes of Section 8.1.2 of 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 Owner's issuance of a Notice to Proceed upon the Owner's 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:

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 and maintain progress without delaying the critical path of the Project.
4. Owner's Notice to Proceed with Construction.
6. 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 construction schedule for the Work and 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 updated project Schedules (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 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 site, identification of equipment on 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 site requirements.

**§ 4.1.2** 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 and quality.

**§ 4.1.3 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 discover (in its capacity and experience as a general contractor).

**§ 4.1.4** 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.

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

**§ 4.1.4.2** 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 A201-2017, Modified 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 follows:

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

Lump Sum amount of \$187,371 plus an Allowance of \$25,000 for GPR investigation and potholing (See Exhibit F).  
Owner approval is required for the use of Allowance funds.

**§ 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 thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

(Insert rate of monthly or annual interest agreed upon.)

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, the rate of the Construction Manager's Fee shall not be adjusted and shall remain equal to [TBD%] of the Cost of the Work directly attributable to any such change that is incurred or paid by the Construction Manager during performance of the Work, plus increases in insurance costs and bond costs (if any) based on the stipulated rates set forth in Article 7, below. Consequently, the total amount earned by the Construction Manager as the Construction Manager's Fee may increase, but the basis of the Construction Manager's Fee shall always remain [TBD%] of the Cost of the Work that is actually incurred by the Construction Manager. A deductive Change Order shall reduce the GMP by the Cost of the Work for the Change in the Work, but any deductions associated with Owner's direct purchases of materials or equipment shall not reduce the basis to which Construction Manager's fee, insurance, and bond percentage are applied.

**§ 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 not exceed [TBD%] of the standard rental rate paid at the place of the Project.

**§ 6.1.6 Liquidated damages, if any:**

**§ 6.1.6.1** The parties agree that time is of the essence in the performance of this Agreement. In the event Construction Manager has not substantially completed the Work within the phased milestone durations set forth in the GMP Amendment, subject to any adjustment of the Contract Time as provided in the Contract Documents, the Owner shall be entitled to collect Liquidated Damages as set forth herein.

As set forth in the Contract Documents, at the time of executing the GMP Amendment, the parties will agree to a Project Schedule that will include milestone durations for each phase of the Project (the "Interim Milestones") as well as a Substantial Completion date for the Work as a whole (the "Substantial Completion Date"). Construction Manager and Owner agree that, because of the nature of the Work, the inability of the parties to precisely calculate actual damages for delay, and the impossibility of determining these damages, and in lieu of actual delay damages, the Parties agree that the sum of Four Thousand Dollars (\$4,000.00) shall be assessed for every calendar day of Construction Manager's delay in achieving Substantial Completion of the Interim Milestones and Project Substantial Completion subject to the following:

1. Interim Milestones shall proceed sequentially. As a result, delays pertaining to Interim Milestones shall be calculated independently of each other. For example, a delay to one Interim Milestone will not create an automatic delay to the subsequent Interim Milestone.

2. To the extent any Interim Milestones are concurrently delayed, Liquidated Damages shall not be duplicated as to each Interim Milestone.
3. To the extent Construction Manager achieves Substantial Completion of the Work as a whole by the Substantial Completion Date set forth in the Project Schedule, any Liquidated Damages previously assessed with respect to Interim Milestones shall be remitted.

Owner will not assess liquidated damages with regard 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 or Subcontractor Default Insurance (if applicable), 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.)*

N/A

**§ 6.1.7.1 Buyout Savings.** Construction Manager may be able to generate buyout savings through the subcontractor buyout process (the "Buyout Savings"). As each portion of the Work is procured by the Construction Manager, the Construction Manager shall determine whether Buyout Savings, if any, exist, which shall be evaluated on a line-item basis for each line item on account of which the Construction Manager procures the Work for more or less than the amount carried on the Schedule of Values therefor. Buyout Savings shall be evaluated on an aggregate basis, meaning that savings from the favorable buy-out of one line item can be used to offset buy-out losses on another line item before the overall calculation of Buyout Savings is performed. Construction Manager shall include in its Schedule of Values, a line item for Buyout Savings which will show all net Buyout Savings. Upon completion of ninety percent (90%) of the Work by count of the Subcontractor buyouts, Construction Manager shall prepare and submit a Subcontractor Buyout Report for Owner's review and approval that lists and summarizes all Subcontractor buyouts to date. For each subcontract awarded, the report shall include a list of all trade line items included in the award and compare the total GMP amount for those line items to the actual award value for the subcontract to calculate the "buyout variance" for each subcontract and then tally these to determine if there is an overall net buyout "savings" or "overrun" at that point. Construction Manager shall continue to buyout the balance of the Project and maintain the aggregate balance of Buyout Savings during the entire Project. When the Project achieves Final Completion, any Buyout Savings achieved, as demonstrated in the Subcontractor Buyout Report, will be split by Owner and Construction Manager with Owner receiving seventy percent (70%) and Construction Manager receiving thirty percent (30%) by way of Change Order adjusting the GMP.

## **§ 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, Document Completion Contingency/Owner Contingency, Construction Manager's Contingency, and Escalation 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 (Cost of the Work line item) shall be identified on an exhibit attached to the Guaranteed Maximum Price Amendment. 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 represents to Owner that Construction Manager and its subcontractors, material and equipment suppliers have compared and reviewed all general and specific details on the Drawings and Specifications and that conflicts, discrepancies, errors and omissions, which are within the commonly accepted knowledge base of a licensed general contractor, subcontractor, trades persons, manufacturers or other parties required to carry out the work involved in the GMP Amendment have been corrected or clarified prior to execution of the GMP Amendment, and therefore Construction Manager warrants that 1) the GMP includes, without limitation, the cost of correcting all conflicts, discrepancies, errors, or omissions which Construction Manager identified, or should have identified through the exercise of reasonable skill and care of a general contractor, during the pre-construction phase of this Agreement; 2) that Construction Manager's review and comparison of all drawings and specifications has taken into consideration the total and complete functioning of all systems and therefore the Construction Manager represents that the Guaranteed Maximum Price Amendment represents the total cost for complete and functional systems; and 3) that Construction Manager can complete the Project in the time set forth in the GMP Amendment and the approved Project Schedule.

**§ 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 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.

**§ 6.3.5** The Owner shall be authorized to issue a Contract Price Element Adjustment Memorandum (CPEAM) which is agreed to by the Construction Manager and the Owner to memorialize the reallocation of sums among the contract price elements within the Contract Sum. In no event, shall the Contract Sum be modified except by appropriate Change Order. Agreement on any CPEAM shall constitute a final settlement on all items affected therein, including without limitation any adjustment in the contract price elements, subject to performance thereof and payment therefore pursuant to the terms of this Agreement and CPEAM. The cost of any Work authorized by a CPEAM shall be determined in accordance with this Agreement, except that Construction Manager shall not be entitled to additional General Conditions unless contract time is extended by the Owner, as approved by the Owner.

## **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.

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

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

**§ 7.1.4** 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.

## **§ 7.2 Labor Costs**

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

**§ 7.2.2** Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

**§ 7.2.2.1** Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, with the Owner's prior approval. Approval of such supervisory and administrative personnel with labor breakdown shall be deemed granted if Owner accepts Construction Manager's GMP proposal listing those supervisory and administrative roles.

**§ 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, with the Owner's prior approval. Approval of such supervisory and administrative personnel with labor breakdown shall be deemed granted if Owner accepts Construction Manager's GMP proposal listing those supervisory and administrative roles.

**§ 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 fixed labor rates by position, inclusive of labor burden (labor burden as set forth in Exhibit F), 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 Key Personnel.

## **§ 7.3 Subcontract Costs**

**§ 7.3.1** Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the 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 cost 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 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 site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

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

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

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

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

#### **§ 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, Builder’s 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

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suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the 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 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 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 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 party 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 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Any cost not specifically and expressly described in Sections 7.1 to 7.6, unless it has been previously reviewed and approved by Owner.

## **ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS**

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

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

## **ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS**

**§ 9.1** Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager 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 and/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 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 satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of 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 one percent (1%) 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:

Owner/Owner's Representative, Construction Manager and A/E Professional shall meet at the Project site between the 25<sup>th</sup> and 28<sup>th</sup> 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 end of the month), 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 on or by the first (1st) day of a month. The Owner and Owner's Representative shall approve, if correct, and the Owner's Representative shall certify, if correct, the Application for Payment by the seventh (7th) of the month and the Owner shall make payment of the certified amount to the Construction Manager within twenty-one days of receipt of the Application for Payment as required by section 255.073(2), Florida Statutes. If errors are found in the revised Pencil Draw, 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 the cost of labor based on the fixed rates set forth in the GMP Amendment, receipted invoices, and any other evidence 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, plus the cost of labor based on the fixed rates set forth in the GMP amendment for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee. In addition, as a further condition to payment of each progress payment,

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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; (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 as collected via Textura platform, (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 and such other evidence that they may reasonably require substantiating that all Work which is the subject of each such Application for Payment has been performed, 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 separate items. As individual subcontracts are executed, the actual subcontract value will be identified separately in the Schedule of Values in place of the estimates that made up the original Final GMP, with any remaining portion of the line item carried in the same scope of Work, to complete the Work in any particular division, as long as the Final GMP is not increased. 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.

**§ 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 site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3** That portion of Construction Change Directives that the 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;
- .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.)*

N/A

**§ 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.)*

N/A

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

**§ 11.1.9.1** 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 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 breach or default by the Construction Manager under 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 Construction Manager defaults or the amount costs of damages, 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, which Construction Manager may accomplish by recording a Notice of Bond; (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 Contactor, its Subcontractors or anyone working for Construction Manager; (6) failure of the Work to progress satisfactorily or according to schedule; and (7) failure to carry out the Work in accordance with the Contract Documents.

**§ 11.1.12** It is understood that each Application for Payment shall constitute a certification and 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; (iv) all due and payable bills with respect to the Work have been paid to date or included in the amount requested in the previous application, and there is no known basis for the filing of any construction liens or claims or any other lien or claim on the Work; (v) duly executed waivers and releases have been obtained from all Subcontractors for work done and materials furnished through the date of payment; (vi) the Construction Manager is entitled to payment in the amount requested; (vii) such Application for Payment represents a just 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 either by Construction Manager or by any of its Subcontractors 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 AIA Document A201–2017, Modified General Conditions. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Owner's Representative's final Certificate for Payment.

Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the 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 strict and 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 request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

### **§ 11.3 Interest**

Payments due and unpaid for thirty (30) days under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

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

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

[ X ] 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.

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#### **§ 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. 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) best 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) best 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 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

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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 B.1, 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 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.)*

Exhibit A.1 – Accepted GMP Schedule (To be agreed upon in the GMP Amendment)

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

Exhibit A.3 – Construction Manager's Key Personnel (To be included in the GMP Amendment)

Exhibit B – Insurance and Bonds

Exhibit B.1 – Construction Manager Insurance

Exhibit C – Warranty Forms

Exhibit D – Hurricane Preparedness Plan (To be included in the GMP Amendment)

Exhibit E – Project Safety Plan (To be included in the GMP Amendment)

Exhibit F – Phase I Scope of Services (Preconstruction)

Exhibit G – RFQ No. 2024-031

Exhibit H – Quality Assurance Plan (To be included in the GMP Amendment)  
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: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

(SEAL)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ (name of person), as \_\_\_\_\_ (type of authority) for \_\_\_\_\_ (name of party on behalf of whom instrument was executed).

Personally known \_\_\_ OR Produced Identification  
Type of Identification Produced \_\_\_\_\_

\_\_\_\_\_  
Notary Public – State of \_\_\_\_\_