



**Request for Qualifications
Evergreen Park & Recreation District
Buchanan Park Recreation Center Aquatics Expansion Project 2025**

Evergreen Park & Recreation District

Request for Qualifications: #03-7121-05

**Construction Manager/General Contractor Services
Buchanan Park Recreation Center Aquatics Expansion**



**Requested By:
Evergreen Park & Recreation District
1521 Bergen Parkway
Evergreen, CO 80439**

April 4, 2025



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Request for Qualifications Construction Manager/General Contractor Services

Invitation

Evergreen Park & Recreation District (“EPRD” or “District”) invites qualified Construction Management/General Contractor firms (“Respondents”) to submit their qualifications to perform pre-construction services, manage the associated construction scope of work, and construct the Buchanan Park Recreation Center Aquatics Expansion, within established budgets. EPRD intends to use a Construction Manager/General Contractor (“CM/GC”) procurement or delivery method for this Project, pursuant to the Integrated Delivery Method as authorized by the Special District Public Improvements Act, Sections 32-1-1801, et seq., C.R.S.

Period and Form of the Contract

EPRD expects that the successful Respondent will be awarded a CM/GC Agreement in early June 2025. The intention is for the planning & design phases of the project to be completed in late 2025 with permitting into 2026. EPRD anticipates construction in 2026-27. Pre-construction services will begin in June 2025 and continue throughout design; construction services will continue through to project close out (anticipated in 2027). The successful Respondent will work closely with EPRD and with the design team through all project phases, to develop pricing, construction phasing, best value input, and construction oversight that will derive the best result for the project.

EPRD proposes a construction contract under the terms of an Agreement between Owner and Construction Manager as Constructor (AIAA133-2019) and General Conditions (AIA A201-2017), along with EPRD modifications to both. Sample contract documents and EPRD modifications are attached at **EXHIBIT D**.

Project Schedule

DATE	MILESTONE
4/4/2025	RFQ Issued on Bidnet and EPRD Website
4/17/2025	Notice of RFQ published in Canyon Courier
4/23/2025	Mandatory Pre-Bid Meeting, Buchanan Park Rec Center 1:00 pm
5/5/2025	Qualifications Due by 10:00 am
5/6-5/9/2025	Review/Shortlist RFQs by District Staff
5/13–5/15/2025	Interview Shortlist firms
5/16/2025	Notification of Recommendation to EPRD Board
5/27/2025	Presentation to the EPRD Board
5/29/2025	Award of Contract to Selected Respondent
6/2-6/6/2025	Begin Contract Execution
6/9/2025	Begin Work

The above dates are subject to change.

Location Where Work Will Be Performed

The location of the construction project is the Buchanan Park Recreation Center, 32003 Ellingwood Trail, Evergreen, CO 80439. Construction Management/General Contractor services shall be provided to EPRD staff housed at EPRD Administrative Offices located at 1521 Bergen Parkway, Evergreen, Colorado 80439. Respondent must be available for periodic in-person meetings at Buchanan Park Recreation Center and EPRD Administrative Offices.

Background of the Construction Project

The requested professional services relate to the construction of the Buchanan Park Recreation Center (BPRC) Aquatics Expansion Project. The EPRD Board and staff have prioritized an expansion of the existing BPRC Aquatics Center based on community feedback and strategic planning in 2023-24. EPRD’s goal is to construct the BPRC Aquatics Expansion project beginning in 2026. The existing BPRC Aquatic Center was completed in 2003 and features a leisure swimming area, a slide, a vortex, and two attached lap lanes. As-Builts available at Pre-Bid Meeting.



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The envisioned Aquatics Expansion will leave the existing leisure pool elements and add adjacent lap lanes using a separate water circulation system. The new lap lanes will be housed in a new natatorium enclosure built onto the south side of the Recreation Center. A proposed floorplan is attached at **EXHIBIT B**. The current project is scoped as follows:

- 7-8 short course (25 yards) training lanes
- Temperature: 78-82 degrees in separate circulation system
- Depth: 4ft – 13ft
- Springboard Diving Area
- Lifeguard/First Aid Station
- Aquatics Expansion Enclosure
- Aquatics Restroom
- Storage Area
- Pool Mechanical Room
- Timing System
- Renovation of Existing Spaces
- Possible Alt Adds as budget allows – steam room, sauna, rock wall, ninja course, outdoor water features, etc.

EPRD has hired EVstudio to be the Aquatic Expansion’s Architect, Engineer, and Designer. Councilman-Hunsaker is also consulting to the project.

Budget of Construction Project and CM/GC Services

The construction project shall be designed to meet available funding. The current anticipated budget for the entire project, including planning & design services, construction and construction management services, and permitting costs, is \$8,000,000-\$10,000,000. Proposals containing creative cost-saving methods and value-engineering concepts, for both the design phase and project construction, will be viewed favorably.

EPRD requests Respondents to submit a preliminary Opinion of Probable Cost with their Proposal, using the format shown on Exhibit B or a comparable template by the Contractor. A spreadsheet template for your use is attached to the project documents on Bidnet Direct. Comments on the exercise and information provided are also welcomed. EPRD will use the information to refine the project’s scope and budget, and also as a non-binding exercise to demonstrate the Respondent’s understanding of the project and experience in the field.

Respondent shall submit a Fee Proposal (attached at **EXHIBIT C**). A proposal matrix with fee categories will be supplied at the Pre-Bid meeting. Please indicate notes and any exceptions on your Fee Proposal.

Scope of Services

The General Contractor’s scope of work will generally consist of the following:

A.) General

- Coordinate and collaborate with EPRD and EV Studio from pre-construction through project completion;
- Regularly attend in person Owner and Design Team meetings during all phases of design and construction. In person attendance and teams may be requested for various meetings, and in-person attendance is expected if requested;
- Prepare a comprehensive list of deliverables and submittals with scheduled submission dates for the pre-construction and construction phases;
- Promote the use of local labor and resources at all available opportunities, within budget constraints, and as permitted by law and EPRD policy;
- Place EPRD’s and the community’s interests at the top of the project priorities; and
- Work with EPRD and EV Studio, as required, to resolve issues that may arise.



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B.) Pre-Construction Services: Shall include, but not be limited to the following:

- Work closely with EPRD and EV Studio to develop a project schedule to meet the scope of services, performance requirements, and occupancy requirements with specific milestone dates for both design and construction phases;
- Include within the project schedule subcontractor requests for qualifications, bidding, GMP preparation, securing of permits, subcontractor contracting, mobilization, each phase and key activity of construction, and demobilization;
- Provide monthly updates to the project schedule as design progression and alterations impact initial planning assumptions;
- Identify and communicate to EPRD any long lead time items, critical path tasks, evaluate site constraints, phasing, regulatory requirements, material and equipment deliveries, and workforce availability that could impact project schedule execution;
- Assist EPRD in securing State of Colorado building permits, Jefferson County planning and zoning permits and any additional permits from applicable government and regulatory agencies;
- Estimate and investigate interim, alternative design approaches to determine the most cost-effective method of Project completion;
- Estimate and investigate designs and approaches for project Add Alternates that EPRD may want to consider;
- Provide cost estimates and updates at 50% SD, 100% SD, 100% DD and 100% CD with the intent of establishing the Initial GMP at 100% DDs for Board Approval;
- Maintain a Design Trend Log throughout design development tracking value engineering, scope change, and Add Alternates costs;
- Final GMP will be confirmed at 100% CD and will be based on Design Development documents prepared by the Design Team in accordance with the Project contract;
- Provide all assumptions, estimated quantities, unit costs, and parametric methods used to estimate major cost components, structural, mechanical, electrical, plumbing, roofing, and other key design components, engaging subcontractors as necessary and including any contingencies added to account for unknown costs;
- Provide constructability, value engineering, and construction cost reviews of at each design package, making formal written recommendations for EPRD and EV Studio consideration, include any recommended alternatives;
- Provide ongoing value engineering guidance to the design team throughout the project;
- At each phase of design, review the documents for constructability and prepare a formal list of comments to be reviewed and coordinated with EPRD and the Design team;
- Evaluate site constraints, phasing, regulatory requirements, material and equipment deliveries, and workforce availability;
- On an on-going basis, make recommendations to the entire team regarding design documentation and detailing; and
- Competitively bid all work on the project following applicable law and EPRD policy; and conduct the GMP process in a fair and transparent manner according to applicable law and EPRD policy.

C.) Construction: Shall include, but not be limited to, the following:

- Work in a safe manner and at all times ensure that all individuals on the Project site are meeting or exceeding all OSHA safety requirements;
- Construct the work according to the construction documents and specifications within the scheduled timeframe agreed to with the Owner;
- Monitor and measure all aspects of the project including schedule control, quality control, cost control, and scope change;
- Develop procurement documents to perform subcontractor qualification evaluations and to bid and award work subject to EPRD's approval;
- Obtain at least three bids from approved vendors and subcontractors where their scope of work is valued at more than \$20,000. Present all received bids to EPRD for review and approval;



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- Ensure that all bonding and insurance requirements are met for the Prime and all subcontractors, and maintain supporting bonding and insurance documentation;
- Develop and submit submittals, requests for information (RFI), requests for substitutions (RFS), and change orders to EPRD and EV Studio for review (substitutions and changes orders require prior written approval);
- Maintain all relevant project records on behalf of the Owner such as meeting minutes after the CD phase, as-built drawings, specifications, submittals, RFI's, schedules, inspection reports, Construction Change Directive pricing, Change Orders, Issue Logs, etc.;
- Prepare pay applications in accordance with contract requirements and break out billings by Division of Work, or per the Owner's request, to accommodate the Owner's payment process;
- On a monthly basis, provide written status reports including narratives of project progress, schedule updates, budget updates, quality control updates, progress photos and any logs which support those narratives. This report shall be submitted in conjunction with the pay application;
- Maintain and be responsible for the project schedule with weekly 5-week updates and monthly Critical Path Method (CMP) updates;
- Be responsible for the construction budget and keeping on budget throughout the project; communicate budget status to the project team with appropriate timeliness given the magnitude of the project to EPRD;
- Be proactive throughout the construction to minimize punch list work at substantial completion;
- Safety of the site and neighboring site will be of high importance to the Owner. At the Owner's request, all personnel working on the project site must provide the Owner with background check information; and
- Deliver a finished project with the highest quality workmanship.

D.) Closeout Services: Shall include, but not be limited to, the following:

- Provide warranty and closeout assistance as commonly required in the AIA contract documents;
- Complete all punch list work prior to the start of the warranty period;
- Assist Owner in closing out Permits and completing other closeout requirements of respective agencies as required;
- Produce Project Closeout Report detailing work performed, expenses incurred, warranty information, and completion of punch list and permit closeouts; and
- Provide comprehensive As-Builts, both hard copy and fully electronic files.

Proposal Content

The Proposal should be concise, well organized and demonstrate the Respondent's qualifications and experience applicable to the scope of services. Please limit your Proposal to 30 pages excluding attachments, resumes may be excluded from the page count. Proposal elements shall include:

- 1. Cover Letter/Statement of Interest** that includes a certification that the information submitted in the Proposal is true and complete to the best knowledge of the signatory.
- 2. Description of Respondent's relevant experience** with projects of similar size and scope, firm size, and years of pool/aquatics experience.
- 3. Examples of Respondent's specific experience** with programming, designing and constructing projects of similar scope and size, and whether the project was delivered on time and on budget. Include project initial and final cost (with explanation of differential). Also include design team, construction team, and client contact.
- 4. All Projects Completed in the last 36 months** of similar size and scope, including all pool/aquatics-related projects. Include project initial and final cost (with explanation of differential), pool square footage and depth, construction subcontractor, description of any project delays, and references and contact numbers for each project.
- 5. Description and Schedule of the project approach** including project tasks, phases, and proposed timeline. Note experience with CM/GC projects and important roles the company took in that process.



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6. Estimated charges for the work proposed, delineated by tasks/phases described in the Project Approach. Please explain how costs were derived. Include a proposed Firm Fixed Fee for the proposed work using the form attached at **EXHIBIT C**. Fees included are:

- Pre-Construction Services Fee (firm, fixed)
- General Conditions Fee (firm, fixed)
- CM/GC Construction Fee (percent of project)
- Change Order Fee (percent of project)
- Miscellaneous Fees
- Recommended CM/GC Guaranteed Maximum Price (GMP) Construction Contingency Percentage

Also include estimates for Respondent's costs of construction phase work. EPRD and Respondent may amend the CM/GC Agreement and/or execute and enter into a separate contract for construction phase services when a GMP is established.

7. Provide an Opinion of Probable Cost for the Aquatics Expansion Project, using the format shown in **EXHIBIT A** if desired. An excel template will be provided in the Project Documents on BidNet.

8. Proposed staff and relevant experience for Firm and any significant subcontractors who would perform work on the project. Provide anticipated percentage of involvement per phase for key personnel listed. Include an organizational chart for this project, primary point of contact who is expected to remain throughout the project, and years with the company. Proposed staff experience is expected to match Firm project experience and examples.

- EPRD requires that the Subcontractor for the pool construction, as well as its Project Superintendent, have completed at least five public-use pools with individual water surface areas in excess of 4,500 sf and a depth of 11'6" or more within the past 10 years.
- EPRD requires that the Project Superintendent on the project cannot change unless written authorization has been approved by EPRD and Architect.
- EPRD will retain the ability to alter the contract agreement if the percentages of staff are significantly altered.

9. Statement of ability to comply with the terms of the sample CM/GC Agreement, specifically addressing the requirements for insurance, indemnification, and licensure, plus any related comments on the sample CM/GC Agreement and EPRD Modifications provided at **EXHIBIT D**.

10. Sustainable Practices: Respondents are recommended to incorporate sustainable elements into their design and construction plans, such as LEED, EnergySTAR, Fitwel, etc., with consideration to the project budget and timeline. Preference may be given to Respondents that demonstrate how they incorporate these practices into their projects. You may attach your company's sustainability/environmental policy and provide relevant contact information in your Proposal.

Mandatory Pre-Bid Meeting & Site Review

A mandatory, in-person pre-bid meeting for interested Respondents shall occur at the Buchanan Park Recreation Center, 32003 Ellingwood Trail, Evergreen, CO 80439 on Wednesday April 23 at 1 p.m. More detailed information about the project will be provided at the pre-bid meeting and As-Builts will be available. ***Please email bschmitz@eprdco.gov if you plan to attend the Pre-Bid.*** Additional site reviews during the proposal process are encouraged to give Respondents a more complete understanding of the project. The site is accessible with no prior arrangements necessary.

Withdrawal of Proposal

Proposals may be withdrawn by written notice at any time prior to the submission deadline.



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Proposal Evaluation Process

Proposals will be assessed and evaluated by a District-appointed committee on the following factors:

1. Experience with projects of similar size and scope in this region
2. Key team member qualifications and experience
3. Proposed approach and ability to deliver Scope of Services
4. Estimated cost of proposed work
5. Proposed timeline of the project
6. Opinion of Probable Cost for aquatics expansion project
7. Recommendations from aquatics expansion designer and consultant; comments from references
8. Current /projected workloads of Firm and key team members; location/availability of professional resources;
9. Recent and current work for EPRD
10. Information provided regarding Sustainability Practices

A maximum of four (4) candidates with the highest numeric scores may be “shortlisted” and invited to interview at the District facility with the selection committee. Unsuccessful candidates will be notified immediately after the selection process is complete. After the interviews the District will enter negotiations with the selected Respondent. If negotiations are unsuccessful with the selected Respondent, the negotiations will be terminated and EPRD may negotiate with other Respondents until a suitable agreement can be reached.

Depending on the number and quality of submittals received, the District reserves the right to make the selection of the preferred Respondent based on the submittal information alone, and may decline to conduct the interview stage of the selection process.

Proposal Submittal and Point of Contact

Please submit your complete proposal in electronic or hard copy form to the Evergreen Park & Recreation District Administrative Office by 10:00 am on May 5, 2025. Submittals may be sent via mail, hand delivery, or email to:

Evergreen Park & Recreation District

Attn: Bob Schmitz
1521 Bergen Parkway, Evergreen, CO 80439
Email: bschmitz@eprdcogov
Phone: 720-880-1113

For questions regarding this Request for Qualifications, please contact Bob Schmitz, bschmitz@eprdcogov or 720-880-1113.



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EXHIBIT A Estimated Opinion of Probable Cost

Please complete this budget exercise to create a sample Opinion of Probable Cost for an example Aquatics Expansion as described below and for the floorplan shown on **EXHIBIT B**. Please provide costs per quantity and total estimated costs for each element. A sample excel template is provided in the RFQ documents posted on Bidnet Direct. Please share notes and exceptions with your estimate, and your comments are welcomed. EPRD will use the information to refine the project's scope and budget, and also as a non-binding exercise to demonstrate the Respondent's experience in the field.

Example Aquatics Expansion

**Estimated Opinion of Probable Cost
Construction Quantities & Costs for:**

- 8 Lane 25-Yard Lap Pool, 4-13 feet deep
- Lifeguard/First Aid Station
- Storage Area
- Restrooms (4-5 enclosures)
- Pool Mechanical Room
- Springboard Diving Area (1)
- Timing System (1)

Subtotal Construction Costs

Site Construction Costs (parking, utilities permitting/relocation, etc.)

Furniture, Fixtures & Equipment

Subtotal Additional Project Costs

Planning & Design Services

Construction Management Services (this proposal)

Contingency (please describe)

Escalation Allowance (please describe)

Other (please describe)

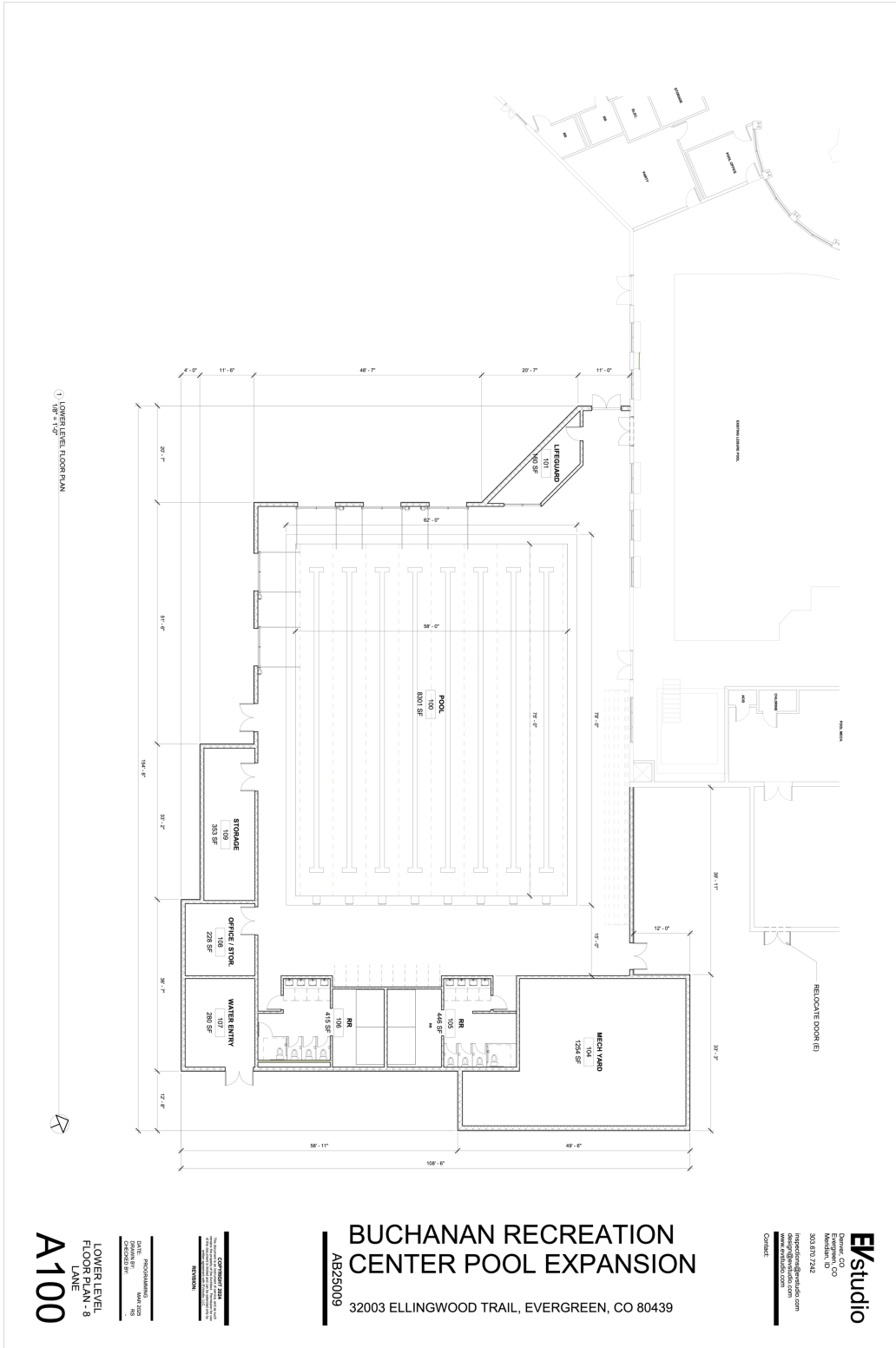
Subtotal Miscellaneous Additional Costs

TOTAL ESTIMATED OPINION OF PROBABLE COST



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EXHIBIT B
Sample Floorplan



1 LOWER LEVEL FLOOR PLAN

A100

LOWER LEVEL FLOOR PLAN - 8 LANE

DATE: PROJECT/DATE: 10/2025
 DRAWN BY: RJS
 CHECKED BY: RJS
 APPROVED BY: RJS

BUCHANAN RECREATION CENTER POOL EXPANSION
 AB25009
 32003 ELLINGWOOD TRAIL, EVERGREEN, CO 80439

E!studio
 3200 ELLINGWOOD TRAIL
 EVERGREEN, CO 80439
 303.870.7342
 evergreen@e!studio.com
 www.e!studio.com
 CONTACT



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EXHIBIT C

CM/GC Fee Proposal

Please provide fee proposals in the following order:

1. Pre-Construction Services Fee

Provide a Firm Fixed Fee for Pre-Construction Services. This fee is to include all indirect, direct, traceable costs, overhead, profit, etc. Respondents shall also provide hourly rates for extended contract time under Pre-Construction Services.

Pre-Construction Services Fee: _____

2. CM/GC Construction Fee

Identify the construction fee as a percentage of the cost of work as defined in the contract documents for the scope established by the 100% design documents. Assume no contingency for this fee; all contract changes will be addressed through change order or amendment process.

Construction Fee as a % of the Cost of Work: _____

3. General Conditions Fee

Identify a fixed general conditions fee as separate cost item identified in the "General Conditions" section of the CM/GC proposal matrix (available at Pre-Bid meeting).

General Conditions Fee: _____

4. Change Order Fee

Identify the change order fee as a percentage markup to subcontractor's, supplier's, and self-performed costs of work for additional work approved after the agreed upon GMP (construction fee plus the cost of work).

Change Order Fee as a % of the Additional Cost of Work: _____

5. Miscellaneous Fees (Optional)

Identify miscellaneous insurance, bond, and other fees for each facility that the company proposes as part of the GMP, but subject to a different percentage fee other than the construction fee percentage. (List miscellaneous fees as a pass-through cost, percentage markup, or fixed amount.)

6. Recommended CM/GC GMP Construction Contingency percentage

Contingency: _____ *Percentage:* _____



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**EXHIBIT D
Sample Contract Documents & EPRD Modifications**

1. Agreement between Owner and Construction Manager as Constructor (AIAA133-2019)
2. EPRD Modifications to Agreement
3. General Conditions (AIAA201-2017) *NOT ATTACHED*
4. EPRD Supplementary Conditions to Standard General Conditions (AIAA201-2017)

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- 15 SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

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

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

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

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

§ 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.)



AIA[®] Document A133[™] – 2019

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

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

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

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

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

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

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.

The Owner and Construction Manager agree as follows.

Init.

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EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

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

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

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

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

§ 1.1.2 The Project's physical characteristics:

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

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:
(Provide total and, if known, a line item breakdown.)

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

- .1 Design phase milestone dates, if any:
- .2 Construction commencement date:
- .3 Substantial Completion date or dates:
- .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.)

§ 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.)

§ 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.)

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

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

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

.1 Geotechnical Engineer:

.2 Civil Engineer:

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

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

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

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

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

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

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

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

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

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 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

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

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

§ 3.1.3 Consultation

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

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

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

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

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the

cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

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

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

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

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

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

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

§ 3.1.11 Subcontractors and Suppliers

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

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.

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

§ 3.1.12 Procurement

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

§ 3.1.13 Compliance with Laws

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

§ 3.1.14 Other Preconstruction Services

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

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

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

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

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

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

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

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

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

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

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

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

§ 3.3 Construction Phase

§ 3.3.1 General

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

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

§ 3.3.2 Administration

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

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

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

§ 3.3.2.5 Cost Control

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

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

§ 4.1.3 The Owner shall establish and periodically update the Owner’s budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner’s other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner’s budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project’s scope and quality.

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

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

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

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

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents 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 Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

§ 4.3 Architect

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

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

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

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

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Individual or Position

Rate

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

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

§ 5.2 Payments

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

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid _____ (___) 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.)

_____ % _____

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.)

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

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

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

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

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

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

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

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

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

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

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager’s Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager’s Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

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

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

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

§ 7.2 Labor Costs

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

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

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

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

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

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

§ 7.3 Subcontract Costs

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

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

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

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, 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 that can be directly attributed to this Contract.

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

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

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

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

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

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

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

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

§ 7.6.7 Costs of document reproductions and delivery charges.

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

§ 7.6.9 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, with the Owner's prior approval.

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

§ 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.

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

§ 7.8 Related Party Transactions

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

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

§ 7.9 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

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

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

ARTICLE 10 ACCOUNTING RECORDS

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

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

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

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the _____ day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the _____ day of the _____ month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than _____ (___) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

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

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

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

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

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

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

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

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;

- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 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.)

§ 11.1.8.1.1 The following items are not subject to retainage:

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

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

(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.)

§ 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.)

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

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

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

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

§ 11.2 Final Payment

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

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, 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 Architect in accordance with Section 11.2.2.2.

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

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

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

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

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

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

§ 11.3 Interest

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

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

_____ % _____

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. 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 Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 12.2 Binding Dispute Resolution

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

(Check the appropriate box.)

- Arbitration pursuant to Article 15 of AIA Document A201–2017
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 13 TERMINATION OR SUSPENSION

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

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

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

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

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

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

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

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

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

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

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

§ 13.2.1 Termination

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

§ 13.2.2 Termination by the Owner for Cause

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

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

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

§ 13.2.3 Termination by the Owner for Convenience

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

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

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term “profit” shall be understood to mean the Construction Manager’s Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

§ 14.2 Successors and Assigns

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

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

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

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

§ 14.3.1.1 Commercial General Liability with policy limits of not less than _____ (\$ ___) for each occurrence and _____ (\$ ___) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than _____ (\$ ___) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers’ Compensation at statutory limits and Employers Liability with policy limits not less than _____ (\$ ___) each accident, _____ (\$ ___) each employee, and _____ (\$ ___) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than _____ (\$ ___) per claim and _____ (\$ ___) in the aggregate

§ 14.3.1.6 Other Insurance

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

Coverage

Limits

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

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

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

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

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

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

§ 14.5 Other provisions:

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™-2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .5 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)
- .6 Other Exhibits:
(Check all boxes that apply.)

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

[] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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.7 Other documents, if any, listed below:

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

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

OWNER *(Signature)*

CONSTRUCTION MANAGER *(Signature)*

(Printed name and title)

(Printed name and title)

Init.

**ATTACHMENT 1
TO AIA DOCUMENT A133-2019,
STANDARD FORM OF AGREEMENT BETWEEN OWNER
AND CONSTRUCTION MANAGER AS CONSTRUCTOR**

The following terms of this Attachment 1 modifies and amends AIA Document A133-2019, Standard Form of Agreement between Owner and Construction Manager and Constructor and the Exhibits attached thereto (collectively, the “Contract” or “Contract Documents”). Where a portion of the Contract is modified or deleted by the terms herein, the unaltered portions of the Contract shall remain in effect.

The terms used in this Attachment 1 have the meanings stated or as specifically defined in the Contract Documents. Additional terms used in this Attachment 1 have the meanings stated below, which are applicable to both the singular and plural thereof.

**A133-2019 Standard Form of Agreement Between
Owner and Construction Manager as Constructor**

§ 3.2 GUARANTEED MAXIMUM PRICE PROPOSAL

At the end of **Section 3.2.9**, insert the following: “, except as otherwise provided in § 3.6 of the General Conditions.”

§ 6.1 CONTRACT SUM

Insert the following in **Section 6.1.6**:

Liquidated Damages. The Construction Manager and the Owner recognize that time is of the essence and that the Owner will suffer financial loss if the Work is not completed within the times specified in the Agreement (collectively, the “Performance Deadlines”), plus any extensions thereof allowed in accordance with the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or dispute resolution proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, the Owner and the Construction Manager agree that as liquidated damages for delay (but not as a penalty), the Construction Manager shall pay the Owner \$ _____ for each day that expires after the time specified in the Contract or in the Guaranteed Maximum Price Amendment for Substantial Completion until the Work is substantially complete. After Substantial Completion, if the Construction Manager shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by the Owner, the Construction Manager shall pay the Owner \$ _____ for each day that expires after the time specified for Final Completion.

The liquidated damages described in this Section are based upon Owner’s evaluation of its likely losses in the event the Performance Deadlines are not met. The liquidated damages herein established are agreed to by Construction Manager after full discussion of the implication of this Section. The failure to perform the work and complete the Project by the Performance Deadlines will cause significant damage to Owner. Owner and Construction Manager agree that such actual damages caused by Construction Manager’s failure to meet the Performance Deadlines would reasonably likely include, without limitation, the costs for additional construction management and other Owner representative/employee time; the costs for third-party consultants’ time; inefficiency and inconvenience damages to Owner’s business operations; damages to Owner’s reputation with third-parties (including governmental entities with regulatory jurisdiction over Owner), as well as other potential actual damages to Owner reasonably associated with the subject matter of this Agreement. The liquidated damages established herein are intended to be and are cumulative and shall be in addition to any other remedy enforceable at law under this Agreement. Liquidated damages do not include any sums

of money to reimburse Owner for extra costs which Owner may become obligated to pay on other contracts, which are delayed or extended because of Owner's failure to perform the work and complete the Project by the Performance Deadlines. Should Owner incur such other additional costs because of delays or extensions to other contracts resulting from Owner's unexcused failure or delay in performance, Owner will assess any such extra costs against Owner in addition to the liquidated damages provided for herein.

§ 7.6 MISCELLANEOUS COSTS

At the end of **Section 7.6.2**, insert the following: “, except as otherwise provided in § 3.6 of the General Conditions.”

§ 11.1 PROGRESS PAYMENTS

Add the following to **Section 11.1.8.1**:

In accordance with § 24-91-103, C.R.S., the amount of the retainage in all instances shall be five percent (5%). Notwithstanding any other provision contained in the Contract Documents to the contrary, such retainage of the Contract Sum shall be held by the Owner until the Project is completed and finally accepted by the Owner in accordance with the provisions hereof. The Owner shall pay the full amount of such retainage to the Construction Manager within sixty (60) days of Final Completion and acceptance, except to the extent of any claims filed pursuant to Section 38-26-107, C.R.S. Any release of retainage to the Construction Manager or another contractor or subcontractor prior to final payment shall, among other matters, require written approval from the surety furnishing bonds pursuant to and under the terms of this Contract.

§ 11.2 FINAL PAYMENT

Delete **Section 11.2.1** in its entirety and replace with the following:

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager in accordance with Section 38-26-107, C.R.S. Accordingly, the Owner shall cause Notice of Final Payment to be delivered to the Owner's legal newspaper within ten (10) days of acceptance of the Construction Manager's (i) notice that the Work is ready for final inspection and acceptance and (ii) final Application for Payment. Owner shall cause final payment to be made within ten (10) days after second publication of such Notice, subject to any verified claims or actions. Final payment shall proceed as follows:

Owner shall set the date and time for final settlement and advertise the same by two publications of notice thereof, the last publication appearing at least ten (10) days prior to the time of final settlement. Final payment and settlement will be made on the date of final settlement as advertised, or as soon thereafter as practicable. If any claim for unpaid labor, materials, supplies or equipment is filed with the Owner by a subcontractor or supplier before payment in full of all sums due to the Construction Manager, the Owner shall withhold from the Construction Manager an amount equal to 150% of said claim unless otherwise secured to ensure the payment of such claim, until the same shall have been paid or withdrawn, such payment or withdrawal to be

evidenced by filing with the Owner a receipt in full or an order for withdrawal signed by the claimant or its duly authorized agent or assignee. However, as provided by statute, such funds shall not be withheld longer than ninety (90) days following the date fixed for final settlement with the Construction Manager as set forth in the published notice, unless a legal action has been commenced within that time to enforce such claim and a notice of lis pendens has been filed with the Owner. At the expiration of such ninety (90) day period, the Owner shall pay the Construction Manager all funds due under the Contract Documents that are not subject to such action and shall retain thereafter, subject to the final outcome thereof, only sufficient funds to ensure the payment of such judgment as may result from such action. If any claim of a subcontractor or supplier for labor, materials, supplies or equipment remains unsatisfied after all payments are made by the Owner to the Construction Manager, the Construction Manager shall refund to the Owner all sums which the latter may for any reason be legally compelled to pay to satisfy such claim, including all costs and attorney's fees incurred by the Owner as a result of the Construction Manager's failure to pay.

§ 14.5 OTHER PROVISIONS

Add the following new Sections:

§ 14.5.A. Appropriations. The Owner represents that it has appropriated money equal to or in excess of the Contract Sum for the Work.

§ 14.5.B. Colorado Labor. If appropriation or expenditure for the Project exceeds \$500,000 for any fiscal year pursuant to §§ 8-17-101(2)(b), 24-103-908(1)(a), and 24-92-102(8), Colorado labor shall be employed to perform at least eighty percent (80%) of the work, unless such requirement is waived by the Owner in accordance with Section 8-17-101(1), C.R.S. "Colorado labor" means any person who is a resident of the State at the time of the Project. A "resident of the State" is a person who can provide a valid Colorado driver's license, a valid State-issued photo identification, or documentation that he or she has resided in Colorado for the last thirty (30) days.

§ 14.5.D. Participation in Certified Apprentice Training Program. By execution of the Agreement Construction Manager represents, warrants, and agrees that the Construction Manager shall comply with the provisions of Section 32-1-1805(3), C.R.S., relating to access to apprentice training programs certified by the U.S. Department of Labor or a comparable alternative. If the Contract Price is two hundred fifty thousand dollars or more, Construction Manager represents, warrants, and agrees that all subcontractors, at any tier, have similar access to either a certified program or comparable alternative.

§ 14.5.E. Counterparts, Electronic Signatures and Electronic Records. This Agreement may be executed in two counterparts, each of which shall be an original, but all of which, together, shall constitute one and the same instrument. The Parties consent to the use of electronic signatures and agree that the transaction may be conducted electronically pursuant to the Uniform Electronic Transactions Act, § 24-71.3-101, et seq., C.R.S. The Agreement and any other documents requiring a signature may be signed electronically by either Party. The Parties agree not to deny the legal effect or enforceability of the Agreement, solely because it is in

electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Contract in the form of an electronic record, a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature on the grounds that it is an electronic record or an electronic signature or that it is not in its original form or is not an original.

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A133-2019 Exhibit B
Insurance and Bonds

Article B.4 SPECIAL TERMS AND CONDITIONS

Add the following new Sections:

B.4.1. Prior to commencement of Construction Phase Work, the Construction Manager shall provide to the Owner a general performance and payment bond executed by the Construction Manager and an acceptable corporate surety, or authorized collateral approved by the Owner, in the full amount of the Contract Sum identified in the approved Guaranteed Maximum Price Proposal, including provisions for any adjustment of the Contract Sum in accordance with the terms of this Agreement. Such bond shall expressly guarantee: (i) faithful performance of the Contract Documents and completion of the Project in complete compliance with the Contract Documents; and (ii) payment to all persons performing labor and furnishing materials, supplies, tools and equipment in connection with the Project. The Construction Manager shall obtain such bond on the Owner's behalf separate and apart from any similar bond or surety or warranty agreement entered into independently between the Owner and any manufacturer or supplier. The Owner may, in its discretion, require that the bond guaranteeing payment to all persons performing labor and furnishing materials, supplies, tools and equipment in connection with the Project be separate from the bond guaranteeing performance of the work. Notwithstanding anything contained within the bonds to the contrary, such bonds are required, in part, to comply with the minimum requirements of Section 38-26-106, C.R.S.

B.4.2. The Owner shall give notice of any Claim that the Owner might assert against the Construction Manager on the performance bond or the payment bond to the Surety thereunder, unless waived in writing by the Surety. The Owner's act of giving such notice or failure to give such notice shall not affect the Owner's right to seek or pursue any remedy provided for in such bonds or under any other provisions of the Contract Documents. This provision does not modify any obligation the Construction Manager has to provide notification to the Surety under the General Conditions.

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**SUPPLEMENTARY CONDITIONS
TO AIA DOCUMENT A201-2017,
STANDARD GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION**

The following supplements modify AIA Document A201–2017, General Conditions of the Contract for Construction. Where a portion of the General Conditions is modified or deleted by these Supplementary Conditions, the unaltered portions of the General Conditions shall remain in effect.

ARTICLE 1

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

Add the following new Subsection:

§ 1.2.4 In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

- .1 Modifications.
- .2 Attachment 1 to the Agreement.
- .3 Agreement.
- .4 Addenda, with those of later date having precedence over those of earlier date.
- .5 Supplementary Conditions.
- .6 General Conditions of the Contract for Construction.
- .7 Division 1 of the Specifications.
- .8 Drawings and Divisions 2–49 of the Specifications.
- .9 Other documents specifically enumerated in the Agreement as part of the Contract Documents.

In the case of conflicts or discrepancies between the Drawings and Divisions 2–49 of the Specifications and not clarified by Addendum, the better quality or greater quantity of Work shall be provided in accordance with the Architect’s interpretation.

ARTICLE 2

§ 2.2 EVIDENCE OF THE OWNER’S FINANCIAL ARRANGMENETS

The last sentence of **Section 2.2.2** is deleted in its entirety and replaced with the following: “If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately.”

§ 2.4 OWNER’S RIGHT TO STOP THE WORK

At the beginning of **Section 2.4**, insert “If the Owner observes a substantial violation of Sections 10.2.1 through 10.2.4 or Section 10.2.7, or...

ARTICLE 3

§ 3.6 TAXES

Add the following new Subsection:

§ 3.6.1 The Owner is exempt from payment of sales and compensating use taxes of the State of Colorado and of municipalities and counties thereof on all materials to be incorporated into the Work.

.1 The Owner will, upon request, furnish the required certificates of tax exemption to the Contractor for use in the purchase of supplies and materials to be incorporated into the Work.

.2 The Owner’s exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by the Contractor, or to supplies or materials not incorporated into the Work.

.3 The Owner will not reimburse the Contractor for any sales or use taxes paid to the State or any county or municipality from which Owner or the Project are exempt.

§ 3.9 SUPERINTENDENT

Add the following new Subsection:

§ 3.9.4 The Owner reserves the right to revoke its acceptance of the superintendent at any time on the basis of a reasonable objection. Upon such revocation, the Contractor shall submit an acceptable replacement for the rejected superintendent. No acceptance by the Owner of any superintendent, whether initially or as a replacement, shall constitute a waiver of any right of the Owner or the Architect to reject defective Work.

§ 3.18 INDEMNIFICATION

Delete **Section 3.18.1** in its entirety and insert the following:

§ 3.18.1 Subject to Sections 13-21-111.5(6) and 13-50.5-102, C.R.S., to the extent applicable, Contractor shall indemnify, defend and hold the Owner, and its officers,

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Evergreen Park and Recreation District
BUCHANAN PARK RECREATION CENTER AQUATICS EXPANSION
Supplementary Conditions

directors, employees, agents, architects and attorneys, harmless from and against all costs, claims, damages, judgments, losses and expenses of every nature, including reasonable attorneys' fees, arising at any time from any act or omission of the Contractor, its employees, subcontractors and their employees, and all other persons directly or indirectly involved in or performing work for the Contractor (other than the Owner and any other third party while under the control or supervision of the Owner) on the Project. The obligations of the indemnifications extended by Contractor hereunder shall survive termination or expiration of the Contract. Contractor's indemnification, defense, and insurance obligations shall be to the fullest extent permitted by law. Contractor shall not be liable for any claim, loss, damage, injury, or liability arising out of the negligence of Owner, its directors, employees, agents, and consultants, and nothing in the Contract Documents shall be construed as requiring Contractor to defend in litigation, indemnify, or insure Owner against liability for damage arising out of the death or bodily injury to persons or damage to property caused by the negligence or fault of Owner or any third party under the control or supervision of Owner.

Add the following new Subsection:

§ 3.18.3 To the extent any provision in the Contract Documents provides for the Owner's indemnification of the Contractor or any other party, such provision is hereby severed from the text within which it is located and deleted. Owner does not agree to indemnify any person.

ARTICLE 5

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

Add the following new Subsection:

§ 5.2.5 The Owner reserves the right to revoke its acceptance of any Subcontractor at any time on the basis of a reasonable objection. Upon such revocation, the Contractor shall submit an acceptable replacement for the rejected Subcontractor. No acceptance by the Owner of any Subcontractor, whether initially or as a replacement, shall constitute a waiver of any right of the Owner or the Architect to reject defective Work.

§ 5.3 SUBCONTRACTUAL RELATIONS

At the end of **Section 5.3**, insert the following:

Without limiting the generality of this Section 5.3, the Contractor shall be responsible and held liable for any bonding, insurance, warranties, indemnities, progress payments and completion of performance of or to such Subcontractors. Upon receipt of progress and final payments from the Owner, the Contractor shall disburse the same immediately to Subcontractors without any requirement of the Owner to supervise the same.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

In **Section 5.4.1**, delete “for cause” and insert “or Section 14.4” after “Section 14.2”

ARTICLE 7

§ 7.2 CHANGE ORDERS

Add the following new Subsections:

§ 7.2.2 A fully executed Change Order represents full and final settlement for all costs (including all impact costs) and time relating to the work included in the change order. The following language shall be typed on the face of the Change Order:

THIS CHANGE ORDER CONSTITUTES FULL AND FINAL SETTLEMENT FOR ALL COSTS AND TIME ASSOCIATED WITH THE WORK DESCRIBED HEREIN. COSTS ARE DEFINED TO INCLUDE ALL DIRECT AND INDIRECT LABOR COSTS RELATED TO, AND/OR OCCASIONED BY THE WORK DESCRIBED HEREIN; ALL MATERIAL AND EQUIPMENT COSTS RELATED HERETO; ANY AND ALL IMPACT COSTS RELATED TO AND/OR OCCASIONED BY THE PERFORMANCE OF THIS WORK; AS WELL AS ALL APPLICABLE TAXES, INSURANCE, BONDS, AND PROFIT. ALL OTHER TERMS AND CONDITIONS OF THIS CONTRACT REMAIN IN FULL FORCE AND EFFECT.

§ 7.2.3 The Contract Documents are subject to Section 24-91-103.6, C.R.S., and in accordance therewith:

.1 The Owner shall not issue any Change Order or other directive (other than a clarification) requiring additional compensable Work to be performed that will cause the aggregate amount payable under the Agreement to exceed the amount appropriated for the original Contract Sum and any subsequent appropriations, unless:

A. The Contractor is given written assurance by the Owner that lawful appropriations to cover the costs of the additional Work have been made and are available prior to performance of the additional Work; or

B. The additional Work is covered by the following remedy-granting provision: Contractor may request, in writing, a letter from the Owner explaining the expected sources of funding for the additional Work. In the event the Owner does not provide such written assurance reasonably satisfactory to the Contractor within five (5) days of the Contractor's request, the Contractor may stop Work until such time as the Owner provides satisfactory assurances. The Contractor's acceptance of a Change Order in accordance with any assurances provided under this Paragraph shall not limit or restrict the Contractor from making a Claim under the Contract Documents for an adjustment in the Contract Sum or Contract Times or otherwise for expenses or damages directly attributable to the Contractor's stoppage of the Work as permitted hereunder.

.2 For any Change Order or other directive (other than a clarification) that requires additional compensable Work to be performed, the Owner shall reimburse the Contractor for the Contractor's costs on the periodic basis set forth in the Contract Documents for all additional directed Work performed until the Change Order is finalized. In no instance shall the periodic reimbursement be required before the Contractor has submitted an estimate of cost to the Owner for the additional compensable Work to be performed.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

At the end of **Section 7.3.1**, insert "Construction Change Directives are subject to the requirements set forth in Section 7.2.3."

ARTICLE 9

§ 9.8 SUBSTANTIAL COMPLETION

Delete the last two sentences of **Section 9.8.5**.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

At the beginning of the second sentence of **Section 9.10.1**, delete "When the Architect finds the Work acceptable" and insert "When the Architect and the Owner find the Work acceptable"

At the end of the second sentence of **Section 9.10.1**, insert “, subject to the final payment procedures set forth in Section 8.7.A-4 of Attachment 1 to the Agreement.”

At the beginning of the first sentence of **Section 9.10.2**, insert “Subject to the final payment procedures set forth in Section 8.7.A-1 of Attachment 1 to the Agreement,”

Delete **Section 9.10.3** in its entirety.

ARTICLE 10

§ 10.2 SAFETY OF PERSONS AND PROPERTY

Add the following new Subsection:

§ 10.2.8 As provided in Section 2.4, the Owner may stop the Work if the Owner observes a substantial violation of Section 10.2.1 through Section 10.2.4 or Section 10.2.7.

§ 10.3 HAZARDOUS MATERIALS AND SUBSTANCES

In Section 10.3.5, replace the word “reimburse” with “indemnify”.

ARTICLE 12

§ 12.2 CORRECTION OF WORK

In **Section 12.2.2**, all references to “one year” and “one-year” are changed to “two years” and “two-year,” respectively.

ARTICLE 14

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

In **Sections 14.2.1.1** and **14.2.1.3**, delete “repeatedly”

Add the following new Subsection to **Section 14.2.1**:

.5 fails to prosecute the Work to completion in a diligent and timely manner and in strict accordance with the provisions of the Contract Documents (including the

required dates for Substantial Completion and Final Completion or any interim completion dates).

In **Section 14.2.2**, delete “upon certification by the Architect that sufficient cause exists to justify such action”

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

At the end of **Section 14.4.3**, insert the following:

The Contractor waives all claims for damages, including loss of anticipated overhead recovery or profits, on account of such termination. The payments provided for herein shall be the Contractor’s sole rights and remedy in the event of termination for convenience. Provisions of the Contract Documents that by their nature survive final acceptance of the Work shall remain in full force and effect after such termination to the extent therein provided.

ARTICLE 15

§ 15.1 CLAIMS

Under **Section 15.1.2**, add the following new Subsection

§ 15.1.2.1 Any claim or action at law or in equity upon or arising out of the Contract Documents or the Work performed thereunder (except for a state action based in tort, which shall be subject to the Colorado Governmental Immunity Act, § 24-10-101 et seq., C.R.S.) which is asserted by Contractor against Owner shall be commenced within two (2) years from the date when such claim or action accrued pursuant to Section 13-80-102(1)(h), C.R.S., or such claim or action shall thereafter be barred.

Add the following new Section:

§ 15.5 MEDIATION AND ARBITRATION ARE VOLUNTARY

§ 15.5 Any mediation or arbitration provision in the Contract Documents shall be optional and subject to the mutual agreement of the Owner and the Contractor, each in its sole discretion. Compliance with any mediation or arbitration procedure shall not be a pre-requisite to seeking any lawful remedy.