



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 30 day of August in the year 2024
(In words, indicate day, month, and year.)

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

The City of Mt. Juliet
2425 N Mt. Juliet Road
Mt. Juliet, TN 37087

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

Nabholz Construction Corporation
725 Cool Springs Blvd. Suite 525
Franklin, TN 37067

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

Mt Juliet Fire Station #3
4370 Old Lebanon Dirt Road
Mt. Juliet, TN 37087

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

The Hall Group Architecture
2050 Underwood Road
Mt. Juliet, TN 37122
HGA Project #23014

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

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

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ARTICLE 1 INITIAL INFORMATION

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

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

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

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

The Owner has elected to hire Construction Manager to partner with design professionals detailed in Section 1.1.10 to build the Project using a limited Design Build Method. Construction Manager's design responsibilities are limited to those design services expressly delegated to Construction Manager in this Agreement. Construction Manager will prepare Construction Documents with respect to the design responsibilities expressly delegated to Construction Manager under this Agreement ("Construction Manager's Design Responsibilities"). Owner has a separate contract with Hall Group Architecture ("Architect") for the remaining design services (architectural & structural), deliverables, design drawings, and related specifications ("Architect's Construction Documents").

§ 1.1.2 The Project's physical characteristics:

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

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The new Mt. Juliet Fire Station #3 will be located at 4370 Old Lebanon Dirt Road. This new fire station will be approximately 15,800 sq ft, that will consist of 4 drive thru bays, living quarters, meeting rooms, parking area, and landscaping.

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

The construction services lump sum fee of \$400,000, plus engineering cost of \$142,600 and preconstruction services of \$10,000 is based upon a project budget of \$8.25 Million. Attachment A – Cost proposal outlines all cost which was submitted during the RFP process.

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

- .1 Design phase milestone dates, if any:
Planning Commission Submittal – October 3, 2024
- .2 Construction commencement date:
TBD
- .3 Substantial Completion date or dates:
13 months of construction, substantial completion will be defined in GMP amendment.
- .4 Other milestone dates:

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

N/A

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

Structural infrastructure to add solar panels at sloped roofs in the future

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, upon request of the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, as may be amended by the parties, 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.)

Jeff Hall
The Hall Group Architecture
2050 Underwood Road

Mt. Juliet, TN 37122

§ 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.)

Chief Mark Foulks
The City of Mt. Juliet
2425 N Mt. Juliet Road
Mt. Juliet, TN 37087

§ 1.1.10 The Owner requires the Construction Manager to retain the following consultants and contractors:

(List name, legal status, address, and other contact information.)

.1 Mechanical, Electrical, Plumbing, Fire Protection Engineers:

I.C. Thomasson Associates, Inc (ICT)
2950 Kraft Drive
Nashville, TN 37204

.2 Civil Engineer/Landscape Design:

Civil Site Design Group (CSDG)
2305 Kline Ave.
Nashville, TN 37211

.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.)

Jeff Hall
The Hall Group Architecture
2050 Underwood Road
Mt. Juliet, TN 37122

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:

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

Blake Osteen, Project Executive
Nabholz Construction Corporation
725 Cool Springs Blvd, Suite 525
Franklin, TN 37067

§ 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.)

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N/A

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

As stated throughout this Agreement.

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

As it relates to design responsibilities, Construction Manager shall only be responsible for the civil, landscape, mechanical, electrical, plumbing, and fire protection design services provided by its Consultants and Contractors listed in Section 1.1.10 ("Construction Manager's Design Responsibilities"). Construction Manager shall not be responsible for Architect's or Structural Engineering Construction Documents. When Construction Manager is providing its Construction Manager's Design Responsibilities, the Architect and Structural Engineer shall specify all design parameters and performance criteria, and Architect and Structural Engineer shall be responsible for confirming the specified design parameters and performance criteria meet all applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. Once approved, Architect and Structural Engineer shall incorporate the Construction Manager's Design Responsibilities' portion of design into the overall project design and will update the Contract Documents accordingly.

§ 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.

§ 2.1.1 Construction Manager shall exercise the degree of care, skill and diligence in the performance of the Construction Manager's Work, to assure its Work is performed in a good and workmanlike manner, consistent with construction industry standards for similar projects and circumstances in the same geographic area (hereinafter the "Construction Manager's Standard of Care"). The Construction Manager shall be responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Construction Manager's Work under this Agreement, including all coordination of the duties of all trades, and shall furnish efficient business administration and supervision of the Work.

Except for those design responsibilities in Construction Manager's Design Responsibility, Construction Manager's Standard of Care specifically excludes any design or design-related responsibilities, and any action taken by Construction Manager under this Agreement does not and shall not be construed to approve, represent or warrant the adequacy and suitability of the plans and specifications for the purpose for which they are provided.

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§ 2.1.2 To the extent the Owner requests that the Construction Manager provide services within its Standard of Care, such as value analysis and/or constructability suggestions or comments with respect to the Drawings and Specifications, Owner acknowledges that such services are advisory only and not professional design services, except to this extent it is within the Construction Manager's Design Responsibilities. The Owner shall refer all suggestions and comments to the Architect or other design professionals for review and evaluation prior to Owner's acceptance thereof. The Owner further acknowledges that the Construction Manager is not responsible for adequacy of the drawings and specifications or for identifying errors or omissions that may exist therein, except to the extent it is within the Construction Manager's Design Responsibilities. The Owner shall cause the Architect or design professional to revise the Drawings and Specifications to reflect all value analysis and constructability suggestions and comments accepted by the Owner without delay or disruption to the timely and orderly progress of the work. The contract sum and contract time may be adjusted upon the Contractor's review and pricing of the revised Drawings and Specifications.

§ 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 and the Construction Manager's Standard of Care. 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. The parties will endeavor to promote harmony, cooperation, and mutual respect among the project team to the fullest extent possible in order to further the success of the Project and to effect prompt and successful completion of the Project within the requirements of the Contract Documents, the Contract Time, and the GMP.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction (as amended), 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; Article 15, Claims and Disputes. The term "Contractor" as used in A201-2017 (as amended) shall mean the Construction Manager.

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

§ 2.4 The Construction Manager shall perform the Preconstruction Services, shall be responsible for construction during the Construction Phase if the GMP Amendment is signed, shall be fully responsible for discharging all of the Construction Manager's obligations under the Contract Documents, and, during the Preconstruction and Construction Phases, shall advise and work with the Project Team to make recommendations for alternate or substitute technologies, construction technologies, methods, and practices based on maintainability and durability as well as cost savings, time saving and/or other related efficiencies. The Owner will be responsible for coordinating the activities of the Project Team during the Preconstruction Phase

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017(as amended) 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 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 perform its Preconstruction Services consistent with the Construction Manager's Standard of Care. 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

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Manager does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. Except to the extent it is within the Construction Manager's Design Responsibilities, 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 on a regular basis during the Design Phase and the Construction Document Phase to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; value analysis; availability of materials and labor; time requirements for procurement, installation and construction; phasing and site work planning; sequencing and scheduling for procurement. Installation, and construction; temporary traffic planning; factors related to construction quality, maintainability and durability; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, value analysis and possible cost reductions.

§ 3.1.3.2 **Design Review.** The Construction Manager shall review the Schematic Design Documents, Design Development Documents, Construction Documents, Drawings, Specifications, and other Contract Documents as they are developed and completed. These documents may be developed at different rates for different components of the Project. The Construction Manager shall promptly report in writing to the Owner and the Architect any errors, inconsistencies, incomplete information or other questions or deficiencies that the Construction Manager has discovered and that need to be resolved for the successful completion of the Work, paying particular attention to coordination issues, and shall recommend changes and alternatives. Design review activities are to be a cooperative and collaborative effort with the Architect and consultants. The Construction Manager's review shall be made in the Construction Manager's capacity as a contractor and not as a licensed design professional.

§ 3.1.3.3 **Constructability.** The Construction Manager shall work with the Owner and Architect to prepare a constructability plan for the project to reduce cost, save time, improve quality, reduce risk and improve the overall process of Project delivery. Key objectives of the constructability plan will include creation and maintenance of a well-planned, safe, effective, cooperative and mutually beneficial work environment for all participants. A primary objective of these efforts will be to assist the Owner to ensure that the final GMP does not exceed the Owner's budget, and the Project is completed on time. The Construction Manager shall perform actions designed to minimize adverse effects on labor or material shortages or delays; time requirements for procurement, installation, and construction completion; and factors related to construction cost. As part of this effort, the Construction Manager shall participate in formal constructability reviews following completion of the Design Development Documents and when the Construction Documents are 90% complete. With time of the essence, the contractor may choose to complete constructability reviews while the drawings have been published to the trade partners for pricing. In this event, an addendum shall be published prior to bidding that will incorporate all comments from the constructability review.

§ 3.1.3.4 **Value Analysis.** The Construction Manager will participate in value analysis on a continuing basis with the Architect. At the completion of each of its reviews, the Construction Manager will provide the Owner and Architect with a formal record of its findings and recommendations. The Architect and the Construction Manager will brief the Owner and answer their questions to determine the advisability of changes. Value analysis will include selecting building systems, with final selection of systems to occur prior to the start of the Construction Documents Phase.

§ 3.1.3.5 **Site Inspections.** The Construction Manager shall perform site investigations as needed to assist in development of the design and planning for construction.

§ 3.1.3.6 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, 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.

§ 3.1.3.7 The Construction Manager shall consult with the Owner and Architect in establishing building information modeling and digital data protocols for the Project 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: completion of various elements of the Architect's work, submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor (or appropriate breakdown of the Work); ordering and delivery of products, including those that must be ordered in advance of construction (if such products are known by or communicated to the Construction Manager) and the occupancy requirements of the Owner. The Construction Manager will be responsible for the Project schedule and Construction schedule.

§ 3.1.5 Phased Construction

The Construction Manager 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 and Construction Manager, 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 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 in an effort 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 [Intentionally Omitted]

§ 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 prepare and submit a Subcontracting Plan to the Owner and the Architect for review and approval prior to conclusion of the Design Development phase. The Subcontracting Plan shall identify all Subcontractor bid packages, scopes of work, timing of solicitation of bid packages to meet the Construction schedule, major coordination issues, and means to enhance the opportunity for local businesses to participate in performing the work (e.g. through development of multiple work packages).

(Paragraph deleted)

§ 3.1.11.3 The Construction Manager shall use its best efforts to develop Subcontractor interest in the Project. The Construction Manager shall consider pre-bid determinations of Subcontractor eligibility to the extent permitted by statute and shall furnish to the Owner and Architect for their information a list of possible eligible Subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Owner will promptly reply in writing to the Construction Manager if the Architect or the Owner know of any objection to such Subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed Subcontractors or suppliers, nor shall it or the lack of any objection waive the right of the Owner or Architect to later object or reject any proposed Subcontractor or supplier.

§ 3.1.11.4 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 and the Owner's review and the Owner's acceptance a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions reasonably 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.)

N/A

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, and when the Drawings and Specifications have been at least 90% completed, the Construction Manager shall propose a Guaranteed Maximum Price ("GMP") proposal for the Owner's and Architect's review and the Owner's acceptance. The GMP in the proposal shall be the sum of the Construction Manager's estimated cost of work, Construction manager's contingencies described in Section 3.2.4, and the Construction Manager's Fee as described in Section 6.1.2, and General Conditions. The Construction Manager shall promptly notify the Owner if it does not consider the Drawings to be at least 90% complete and shall not propose a GMP until the drawings are at least 90% complete.

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§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Construction Manager will include an allowance to be identified in the GMP Amendment for 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. A Change in the Work will not be warranted if the relevant portion of the Work was reasonably inferable from or contemplated by the GMP set of construction documents.

§ 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, divided into the proposed subcontractor bid packages, and 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 (any allowance must be limited and pre-approved by the Owner);
- .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.
- .6 The Date of Commencement of the Work shall be within ten (10) days of receipt of 1) Owner's Notice to Proceed, 2) the issuance of all applicable permits, and 3) Proof of adequate financing for the Work by the Owner and/or Owner's lender (in a form suitable to the Construction Manager shall include its), whichever is later.

§ 3.2.4 The GMP shall contain a mutually agreeable and separately identified contingency (the "Construction Contingency") for the sole use by the Construction Manager. The Construction Contingency is not allocated to any particular item of the cost of the Work and is established for the Cost of the Work incurred by the Construction Manager, including mitigation of weather impact, losses, expenses or damages not covered by insurance or bonds, low estimates or deviations from the estimated cost and overly aggressive scheduling, supply chain delays or shortage of properly skilled workforce. It is understood by the Parties that this contingency is not to be allocated to costs due to errors and omissions in the Contract Documents or to remedy, correct or resolve any inconsistencies, ambiguities, errors or omissions contained within the Architect's work product on which the Construction Manager's Guaranteed Maximum Price was based. In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. All contingencies are uncommitted, mutually agreed upon sums of money allocated within the Guaranteed Maximum Price for the purpose of defraying expenses due to unforeseen circumstances relating the Project's construction except for the Owner's Contingency, which may also be used to pay for the Owner changes. Any unused contingency and allowances remain the sole property of the owner at all times during and after completion of the Project.

§ 3.2.5 The Construction Manager shall meet with the Owner 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.

- . 1 Upon acceptance by the Owner of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in the Guaranteed Maximum Price Amendment.

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Guaranteed Maximum Price Amendment will establish the GMP, Contract Time, and liquidated damages associated with the Construction Manager's failure to substantially complete the Work by the Date of Substantial Completion, as adjusted in accordance with the Contract Documents. If required, liquidated damages will be defined by mutual agreement between Owner and Construction Manager prior to trade bidding and will be included in the project manual. Liquidated damages shall not be established after submittal of GMP without an adjustment in the GMP. Performance and Payment Bonds on the Owner's standard forms will be executed simultaneously with the Guaranteed Maximum Price Amendment. The GMP shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

.2 If the Guaranteed Maximum Price proposal is not accepted by the Owner, the Owner shall notify the Construction Manager in writing. The Construction Manager shall then recommend adjustments to the Work through a reasonable, viable value engineering process or cost savings process. The Construction Manager and the Owner, with assistance of the Architect, will discuss and negotiate these recommendations for no longer than 30 calendar days, unless an extension is mutually agreed upon. If an acceptable Guaranteed Maximum Price is not developed, negotiated, and agreed upon, negotiations may be terminated and the Owner may initiate negotiations with another construction management firm.

§ 3.2.7 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, with the exception of reimbursable costs associated with Preconstruction Services, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

§ 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 of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents, provided the Architect clouds all changes to the Drawings and Specifications on which the Guaranteed Maximum Price was based.

§ 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 at the time the Guaranteed Maximum Price Amendment is executed.

§ 3.2.10 The GMP will be calculated based on current prices for component building materials. Contractor will use commercially reasonable diligence with respect to the selection and management of material suppliers and supply chains in an effort to minimize the risk of price increases or schedule disruptions; however, due to volatile market conditions, Contractor cannot warrant material prices or the timely performance of material suppliers. Should there be a significant price increase in the prices of the specified materials that are purchased after execution of the GMP Amendment, the Owner agrees that the GMP will be adjusted. A significant price increase means a change in price from the date of establishment of the GMP to the date of purchasing the materials by an amount exceeding five percent (5%). Such price increases shall be documented by available vendor quotes, estimates, invoices, catalogs, receipts or other documentation.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017 (as amended), 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 acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs first. Prior to acceptance of the Guaranteed Maximum Price proposal, the Construction Phase shall commence only 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. Contract time shall commence upon issuance of notice to proceed or building permit, whichever occurs later.

§ 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 (as amended) and other contract documents.

§ 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.

- .1 Include information concerning both the entire project and each subcontractors bid package;
- .2 If delays exist, Identify variances between scheduled and probable completion dates and recommend action required to meeting scheduled completion dates;
- .3 Review the Construction Schedule for portion of the Project not started or incomplete and recommend to the Owner alternate procedures or adjustments to meet the scheduled completion dates;
- .4 Provide summary reports for each Construction Schedule update;
- .5 Document all significant changes in the Construction Schedule, whether the Owner approves of the change, and the reasons therefor;
- .6 Record in writing and by photographs the progress of the Project;
- .7 If delays exist, Identify significant problems in scheduling together with recommended corrective action;
- .8 Document any outstanding RFIs and any risks associated with delayed responses;
- .9 List outstanding submittals and risks associated with delayed responses; and
- .10 Report status of permits that the Construction Manager is required to obtain or assist in obtaining.

§ 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 report to the Owner, in accordance with Section 3.3.2.3 above.

§ 3.3.2.6 The Construction Manager shall review and inspect the Work of the Subcontractors on a regular basis for defects and deficiencies in their Work and for conformance with the Drawings, specifications, and other Contract Documents, and shall stop the work of Subcontractors if necessary. The Construction Manager shall provide notification at regularly scheduled progress meetings of any major defects or deficiencies and recommend remedial action.

§ 3.3.2.7 Construction Manger shall review the safety programs developed by each Subcontractor for purposes of coordinating the safety programs on-site. The Construction Manager's responsibilities for coordinating of safety programs shall not exceed to direct control over or charge of the acts or omission of the Subcontractors, agents, or employees of Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

§ 3.3.2.8 The Construction Manager will maintain exclusively for the Project the level of staff as agreed upon in the approved Guaranteed Maximum Price proposal at the Project site to coordinate and direct the progress or the Work. All of the Construction Manager's on-site management and supervisory personnel shall be consistent with the interview presentation made to the Owner by the Construction Manager and shall not be removed or replaced without the Owner's prior written consent. The Owner shall have the right to direct the Construction Manager to remove or replace, within

reason, any on-site personnel whose performance becomes unsatisfactory to the Owner. In such event the Construction Manager shall promptly replace such personnel."

§ 3.3.2.9 The Construction Manager will provide to Architect all necessary information to assist in the preparation of record drawing and project manual in digital format for the Project. This information shall include, but not be limited to, changes made to the Project by Change Orders, Construction Change Directives and information provided by the Subcontractors. The Construction Manager shall be responsible for providing to the Owner one set of the documents in PDF format. Architect will provide a clean PDF set of project documents upon substantial completion that includes all changed documents to date. Contractor will mark changes on the set for record purposes. Contractor shall keep record set at jobsite at all times for review of Architect.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information in a timely manner, 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 Owner shall provide reasonable evidence in a form satisfactory to Construction Manager that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 (as amended) 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 in a timely manner so as not to delay the Project schedule. 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 designate in writing 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, to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017 (as amended), the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. Any decisions and approval involving a change in the scope of the work, in the Guaranteed Maximum Price, the Contract Time, or involving modification or waiver of the terms of the Contract document must be approved in writing by the Owner representative, and unless specifically so stated in the written approval, the approval of the Board of Commissioners.

§ 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, the Owner shall compensate the Construction Manager as follows:

The fee for preconstruction services shall be a lump sum of **Ten Thousand** Dollars (\$10,000). Any miscellaneous costs associated with the delivery of preconstruction services (printing, advertising, travel, etc.) shall be invoiced at direct cost of the item without mark-up or profit for the Construction Manager. Preconstruction Services will be invoiced on a pro-rata monthly basis for the term of the preconstruction services as identified in Article 5.1.2.

§ 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.)

Compensation for Preconstruction Phase Services shall be equitably adjusted if such services extend beyond (180) days from the date of this Agreement or if the originally contemplated scope of services is significantly modified. If preconstruction services extend past the time frame identified, the following rates shall apply and will be billed on a timecard basis for those individuals working on this project:

Individual or Position	Rate
Preconstruction Manager	\$150.00/hr
Chief Estimator	\$125.00/hr
Senior Project Manager	\$125.00/hr
Constructability/Value Analysis Professional	\$90.00/hr
Project Manager	\$100.00/hr
General Superintendent	\$150.00/hr
Project Coordinator	\$75.00/hr
Clerical	\$45.00/hr
Model Integrator	\$75.00/hr

Owner acknowledges that the Charging Rates noted in this 5.1.2 are confidential and competitive to Construction Manager and shall not be disclosed to any third-party without advance written authorization of Construction Manager's Operations President, to the extent permitted by Tennessee law for municipal governments. Should the date of

commencement, as defined in the initial solicitation, be delayed through no fault of the Construction Manager, the Construction Manager reserves the right to substitute project team members from those originally proposed or be entitled to compensation for those team members per the rate schedule list above.

§ 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, retirement plans, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 [Intentionally Omitted]

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services will be in accordance with 5.1.1.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice without retainer. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the *(Paragraphs deleted)* maximum rate allowed by applicable law.

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.)

At the time of GMP, a lump sum fee of \$400,000 will be applied. After execution of the Guaranteed Maximum Price Amendment, The Construction Manager's Fee shall be adjusted for changes in the work by zero percent (0%) for deductive changes and four percent (4%) for additive changes.

§ 6.1.3 [Intentionally Omitted]

§ 6.1.4 [Intentionally Omitted]

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed One Hundred percent (100 %) 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.)

N/A The parties hereto recognize that the Owner will suffer financial loss if the Project is not fully complete within the period of time set forth in the Guaranteed Maximum Price Proposal executed by the Parties, plus any extensions thereof allowed in accordance with the Contract Documents. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Project is not complete on time. Accordingly, instead of requiring any such proof, the Owner and the Construction Manager agree that as liquidated damages for delay (but not for penalty), the Construction Manager shall pay the Owner Five Hundred Dollars (\$500.00) per day, for each consecutive day that expires after the time specified for completion until the Project is complete.

§ 6.1.7 Other:

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

N/A

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§ 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 or additional compensation by the Owner.

All cost savings from the not-to-exceed value of the Guaranteed Maximum Price shall be returned to the Owner as part of the net aggregate savings established when final accounting is submitted upon Final Completion of the Work, or at such earlier time as the Owner and the Construction Manager agree. "Cost savings" is the net difference obtained by deducting from the Guaranteed Maximum Price (as amended by any Change Orders signed by the Owner) the documented Construction Manager's Fee, the expended portions of the Construction Manager's contingency allowance, and the actual expenditures representing the Cost of the Work. Liquidated damages, if any, are different from and are not a part of this calculation.

§ 6.2.1 [Intentionally Omitted]

§ 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 to Construction Manager in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time and or contract sum as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017 (as amended), 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 (as amended), 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 amended), 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 (as amended) 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 Included in the Guaranteed Maximum Price

§ 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.

§ 7.1.1.1 The sum for General Conditions will be billed as a lump sum and paid in monthly installments commencing with the next calendar month following the date of commencement of construction of the Project and concluding on the date of completion of the Work. Payments will be pro-rated for part of a calendar month at the commencement of construction and the calendar month in which Final Completion occurs.

§ 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.

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§ 7.1.3 [Intentionally Omitted]

§ 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 at off-site locations or workshops.

§ 7.2.2 Wages and salaries of the Construction Manager's supervisory, project/operations management, executive, safety and administrative personnel only when engaged in execution of the Work, whether at the site with the Owner's prior approval, at the Construction Manager's principal office or offices other than the site office. These person costs will be charged on an hourly basis and will be included in an agreed upon General Conditions costs.

§ 7.2.2.1

(Paragraphs deleted)
[Intentionally Omitted]

§ 7.2.3 [Intentionally Omitted]

§ 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, collectively referred to as "Labor Burden", shall be charged at a flat rate of 49% of base wage, provided such costs are based on wages and salaries included in the Cost of the Work under Section 7.2.1 through 7.2.2. To the extent permitted by Tennessee law for municipal governments, Owner acknowledges that the Labor Burden rate set in this 7.2.4 is confidential and competitive to Construction Manager and shall not be disclosed to any third-party without advance written authorization of Construction Manager's Operations President.

§ 7.2.4.1 The Contract Sum is based upon the Project not being subject to State and Federal Prevailing Wage Law. In the event that this Project becomes subject to State or Federal Prevailing Wage Law, the Contract Sum will be adjusted accordingly.

§ 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. The Construction Manager shall maintain a procedure for the review, processing, and payment of applications by the Subcontractors for progress and final payments, all in accord with the terms and conditions of the Contract Documents. The Construction Manager shall verify the completeness of all applications for payment and assemble and check all supporting documentation required by the Contract Document or by the subcontracts with respect to each Application for Payment, including all lien waivers and releases.

§ 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 or returned by the Construction Manager. Any amounts realized from such sales or returns 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 Except as provided herein, 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

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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 the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Equipment owned by the Construction manager shall be rented at a rate not to exceed the standard rental rate or purchase price in the geographical area in which the project is located. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 7.5.3 Costs of removal of debris and/or costs associated with diverting waste to a waste recycling center 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 That portion of insurance including deductibles and bond premiums that can be directly attributed to this Contract and expenses for Subcontractor and Supplier Surety shall be reimbursed at the following rate: 1) Contractor's Subcontractor Supplier Default Insurance (SSDI) at one and a quarter percent (1.25%) of the Subcontractor/Supplier value; or 2) Contractor's actual premium cost for other Payment and Performance Bonds from the Subcontractors. At the Construction Manager's option, a combination of the above may be used. Application of SDI or surety bond shall be at the sole discretion of the Construction Manager.

The Construction Manager's insurance program shall be reimbursed at the rate of \$9.50 per thousand dollars of Contract Sum. Rates shall be subject to adjustment on the first day of each calendar year if required by the Construction Manager.

Builders Risk Insurance maintained by the Construction Manager at the rate of \$0.10 per thousand of Contract Sum per month to insure the components of the Project while under construction. If the construction type for the project classifies as wood frame or jointed masonry, different rates may apply.

To the extent permitted by Tennessee law for municipal governments, Owner acknowledges that the information provided in this Section 7.6.1 is trade secret, proprietary, or otherwise confidential and competitive to Construction Manager, and shall not be disclosed to any third-party without advance written authorization of Construction Manager's Operations President.

§ 7.6.1.1 Fees 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 Fees 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 (as amended) 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.

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§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017 (as amended). 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, data lines, telephone service, electronic equipment, and software, directly related to the Work and located at the site.

§ 7.6.7 Costs of document reproductions, postage, 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 and expert consultant 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, provided the legal or mediation costs are not the result of the construction Manager's negligence, willful misconduct, breach of contract, or malfeasance, and with the Owner's prior approval, which shall not be unreasonably withheld. The provisions of this paragraph apply only to the extent permissible by Tennessee law.

§ 7.6.10 Subject to the Owner's prior approval, 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.

§ 7.6.11 Subject to the Owner's prior approval, 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, including travel expenses, lodging, and meals.

§ 7.7 Other Costs and Emergencies

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

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

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors of any tier, 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 (as amended) 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.

§ 7.7.5 **Warranty Reserve (CM at Risk).** A warranty reserve in the amount of a quarter percent (0.25%) of the Cost of the Work will be established and included in the GMP Amendment(s) to cover the Construction Manager's cost for providing the warranty as outlined in the Contract Documents. The warranty reserve shall be deemed a Cost of the Work. In order to facilitate the final payment process, set forth in Article 11.2, the Construction Manager will bill the Owner a lump sum amount for the full warranty reserve at the time of final payment. Construction Manager shall maintain accurate records of warranty related expenses and resolutions of defects.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of Section 7.8, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 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, 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 Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, 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 Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 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; and
- .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 Data processing, software, hardware or computer-related costs incurred at off-site locations or otherwise not included in the Specified General Conditions; and
- .10 Penalties and/or fines imposed by a governmental entity, unless levied beyond contractor's control; and
- .11 Liquidated damages.

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. The Construction Manager shall notify the owner in a timely manner of the opportunity for any cash discounts, and of any trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment.

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Unless otherwise authorized by the Owner, all Work shall be performed under subcontracts held by the Construction Manager. The Owner is not a party to the Subcontracts, but is a third-party beneficiary of the Subcontracts, and the Construction Manager agrees to include a provision to such effect in each subcontract. The Construction Manager agrees that any Subcontract with a Subcontractor shall permit termination of the subcontract as one remedy for a material breach

of the Subcontract. 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 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 Construction Manager and Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any 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. Upon Construction Manager's request, the Owner shall sign an acknowledgement of approval for the subcontractors submitted by the Construction Manager and approved by the Owner.

. 1 The Construction Manager may self-perform work on the Project but only in accordance with the bidding requirements of Tennessee law (including, but not necessarily limited to Tenn. Code Ann. §12-4-107, as may be amended). If necessary, Construction Manager shall prepare a Self-Performance Work Package. All self-performed work will be at cost-plus labor burden and an agreed-upon fixed fee.

. 2 The Construction Manager may organize and solicit bids for the subcontract work in whatever combinations or packages it chooses, provided however, the Construction Manager may not use alternates without the Owner approval.

.3 The Construction Manager shall bid out Subcontractor bid packages in accordance with its approved Subcontracting Plan, including the work to be submitted in the Self- Performance Work Package. The Construction Manager shall document and report monthly to the Owner on its procurement process. The Owner's written approval is required for changes to the Subcontracting Plan.

. 4 Before initially soliciting bids for the first Subcontractor bid package, the Construction Manager shall submit, and the Owner shall approve, final bid package estimates for all Subcontractor bid packages in the Subcontracting Plan.

. 5 When in the best interests of the Project and critical to the successful completion of a Subcontractor bid package, the Owner and the Construction Manager may make a pre-bid determination of Subcontractor eligibility.

§ 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 prior consent of the Owner. If the Subcontract is awarded on a cost plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in article 10.

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

ARTICLE 10 ACCOUNTING RECORDS

§ 10.1 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 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

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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. Pursuant to the foregoing general right to audit and copy, the Owner, at its option, may conduct a complete post-construction audit to ascertain the accuracy of all sums invoiced by the construction Manager for the Work. If any such audit reveals that the Owner has overpaid or paid improperly for any portion of the Work, the Construction Manager will reimburse the Owner for any such overpayment or improper payment, after having the opportunity to confirm and agree to the overpayment.

§ 10.2 The Contractor shall not be obligated to provide any services, information or documentation relating to its Work to auditors working on a contingency fee basis (auditor's fees calculated as a percentage of the client's net recovery), nor shall any reimbursement obligation otherwise required by the Contract Documents be applicable to Contractor when an auditor is hired by Owner on a contingency fee basis.

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. Application for Payment must be submitted in compliance with the Contract Documents and constitutes a certification that the Work is current based on the Construction Schedule unless specifically noted on the Application.

§ 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 1st day of the month, the Owner shall make payment of the certified amount to the Construction Manager not later than the 21st day of the **same** month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than 30 days after the Architect received the Application for Payment. Owner and Construction Manager agree that the terms outlined in 5.2.2 shall apply to this Article 11.1.3. An Application for Payment shall be deemed certified 14 days after submittal unless the Owner or Architect objects to all or part of the Application for Payment within 14 days of submittal.

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit a detailed cost transaction report generated from the Construction Manager's accounting system, and upon request by the Owner or Architect, shall provide any other evidence reasonably required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager, less (2) that portion of those payments attributable to the Construction Manager's Fee, plus (3) payrolls for the period covered by the present Application for Payment.

§ 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. Owner acknowledges that the Guaranteed Maximum Price applies in the aggregate to all categories and line items of the Cost of the Work

§ 11.1.5.3 [Intentionally Omitted]

§ 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. The Architect will, within seven days after receipt of the Construction Manager's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Construction Manager, or notify the Construction manager and the Owner in writing of the Architect's reason for withholding certification in whole or in part as provided in Section 9.5.1 of the A201-2007.

§ 11.1.7 In accordance with AIA Document A201–2017 (as amended) 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 (as amended);
- .3 [Intentionally Omitted];
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017 (as amended);
- .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.)

Five percent (5%)

§ 11.1.8.1.1 The following items are not subject to retainage:

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

General Conditions and General Requirements

§ 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 (as amended).

§ 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 stored at the site.

§ 11.1.11 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreement.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect and the Owner 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 or the Owner has made exhaustive or continuous on-site inspections; or (3) that the Architect or the Owner 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. Payment by the Owner shall not constitute final approval of the Work done or the amount due.

§ 11.1.13 The receipt by Construction Manager of a partial payment of any amount due to Construction Manager endorsed as payment in full will be deemed to be a part payment only, and any endorsements or statements on a check or other form of commercial paper, or any other document accompanying the payment, shall not be deemed an accord and/or satisfaction, notwithstanding such endorsements.

§ 11.2 Final Payment

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

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017 (as amended), and the satisfy other requirements, if any, which extend beyond the final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment;
- .3 final completion has been achieved and a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2; and
- .4 the requirements for Final Acceptance in Document A201–2017(as amended) general conditions are met.

§ 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.

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

§ 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 proceed in accordance with Article 12 without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017 (as amended) provided the Construction Manager commences to proceed within 30 days after the Construction Manager's receipt of a copy of the final Certificate for Payment. Failure to commence proceedings 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 undisputed amount in the final application 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 30 days after the invoice date shall bear interest at the rate of 12% per annum or the maximum rate allowed by applicable law, whichever is less.

(Paragraph deleted)

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 (as amended). 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

(Paragraphs deleted)

proceeding in accordance with this Article 9 or with Article 15 of A201–2017 (as amended).

§ 12.1.2 [Intentionally Omitted]

§ 12.2 Binding Dispute Resolution

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

(Check the appropriate box.)

Arbitration pursuant to Article 15 of AIA Document A201–2017 (as amended)

Litigation in a court of competent jurisdiction

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[] 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 (as amended).

§ 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. 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

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terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

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

§ 13.2.1 Termination

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

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017 (as amended), the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 (as amended) 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 (as amended).

§ 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 with the consent of Construction Manager and that is not otherwise included in the Cost of the Work.. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017 (as amended), 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.)

All costs incurred, reasonable demobilization costs, reasonable reassignment costs, and the lump sum fee as described in 6.1.2.

§ 13.3 Termination by Construction Manager

If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Document A201–2017 shall not exceed the amount the Construction Manager would otherwise have received under Sections 13.1.2 and 13.1.5 above.

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017 (as amended); in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017 (as amended), 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 (as amended). Where reference is made in this Agreement to a provision of AIA Document A201–2017 (as amended) or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017 (as amended), 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 Owner shall provide Construction Manager with advance written notice of such assignment. The Construction Manager shall execute all consents reasonably required to facilitate the assignment and acceptable to Construction Manager.

§ 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 Two million dollars (\$ 2,000,000) for each occurrence and two million dollars (\$ 2,000,000) 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 two million dollars (\$ 2,000,000) 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 of one million dollars (\$ 1,000,000) each accident for bodily injury, one million dollars (\$ 1,000,000) each employee for bodily injury by disease, and one million dollars (\$ 1,000,000) policy limit for bodily injury by disease.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of two million dollars (\$ 2,000,000) per claim and two million dollars (\$ 2,000,000) 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.

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§ 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 if required 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 (as amended), 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:

§ 14.5.1 Owner acknowledges that Contractor is an independent contractor and the Owner has no ownership or control over Contractor, a private entity. Contractor has not agreed to act as a custodian of public records for the Owner subject to the provisions of the Tennessee Public Records Act. The Owner, as a Tennessee Municipal Corporation is subject to the Tennessee Open Records Act, set out in T.C.A. §10-7-503 et seq; therefore, this Agreement and all documents or materials, in any format, including, but not limited to paper, electronic or virtual, that are public records pursuant to law, are not confidential and are subject to disclosure, without regard to any provision contained in the Agreement declaring information confidential. The City will respond to all proper Open Records Requests in the time allowed by law, without any requirement to disclose such request to Vendor or provide Vendor with notice or the time to obtain a protective order. The City does not have the burden of establishing that information is not confidential information or that its release is authorized to release the records. This section serves to meet such burden and authorization of disclosure.

§14.5.2 If Drawings are revised after the Drawings referenced in the Contract, the Owner shall have the Architect re-date all revised sheets and clearly identify all changes by bubble and delta number or other means acceptable to the Construction Manager and Owner. The Owner and Construction Manager acknowledge that it is difficult to determine and implement changes that are not so identified.

§ 14.5.3 This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the same agreement or document, and will be effective when counterparts have been signed by each of the parties and delivered to the other parties. Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Delivery of a copy of this Agreement bearing an original manual or electronic signature, or through the use of electronic signature software, will have the same effect as physical delivery of the paper document bearing an original signature.

§ 14.5.4 Owner and Construction Manager acknowledge and agree that the Guaranteed Maximum Price and Contract Time does not fully account for all cost impacts or schedule impacts (collectively "Impacts") associated with COVID-19, any other virus, disease, epidemic, pandemic, or public health crisis ("Epidemic"). Construction Manager cannot reasonably foresee or carry all necessary costs or contingencies for such Impacts. Therefore, if Construction Manager's work is delayed, suspended, disrupted, or otherwise adversely impacted, directly or indirectly, by an Epidemic, including but not limited to the following impacts: (1) material or equipment supply chain disruptions; (2) illness and related costs; (3) unavailability of labor or increased labor costs, including, but not limited to any labor shortage or increased labor costs resulting from loss of labor productivity, strike, labor force reduction required or created by the CDC or OSHA guidelines, regulations, or governmental order; (4) government orders, closures, changes in the law, or other directives or restrictions that impact the work or the Project site, including without limitation vaccine or testing mandates; or (5) fulfillment of Construction Manager's contractual obligations regarding safety specific to COVID-19, any Epidemic, or both, then Construction Manager shall be entitled to an equitable increase in the Guaranteed Maximum Price and Contract Time for all such Impacts.

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User Notes:

(1901611311)

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 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 (as amended)
- .5 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203-2013 incorporated into this Agreement.)

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

Exhibit C – Nabholz Cost Proposal
Exhibit D – The Hall Group Conceptual Documents Dated 7/24/24

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

OWNER *(Signature)*
James Maness Mayor
(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*
John Strack Executive Vice President
(Printed name and title)

NabModel Version 12.06.2023