



City of Gulf Breeze

Memorandum

To: Samantha D. Abell, City Manager
From: Thomas Lambert, Director of Public Works
Date: October 13, 2021
Subject: Approval of the Construction Manager at Risk Agreement and Pre-Construction Fee of 29,008.70 with Morette Company for the Construction of Police Department and City Services Annex,

REQUEST:

The staff requests the City Council's consideration of the construction manager at-risk agreement and pre-construction fee with Morette Company to construct the new Gulf Breeze Police Department and City Services Annex and authorization for the Mayor to execute the agreement.

BACKGROUND:

The construction of a new building for police services has been identified as a capital need for several years. In late 2017, the Council authorized Sam Marshall Architects to provide plans and specifications and subsequently authorized additional redesign services in February 2020 to include the utility billing and customer service department. The remaining services include final design, bidding/negotiations, and construction administration.

The recommended project delivery method for construction is Construction Management at Risk, in which the construction manager acts as the equivalent of a general contractor during the construction phase and commits to deliver the project within a Guaranteed Maximum Price (GMP). The Construction Manager will be integral in refining the design systems and detailing for constructability, value engineering, and construction methods. Other benefits of this project delivery method include added project management expertise and assisting the City with the Owner's Direct Purchase of materials tax savings option.

City Council authorized an advertisement for the Request for Qualifications for At-Risk Construction Management Services for construction of the Police Department and City Services Annex on February 16, 2021. Staff prepared and advertised a request for qualifications packet on February 21, 2021, and February 28, 2021. The City received seven responses by the required date of March 25, 2021. The selection committee evaluated the qualification packets from the seven contractors on 04-01-21 and selected Ajax Building Company, LLC, Greenhut Construction Company, and Morette Company as the top three companies to give a presentation to the selection committee. On April 15, 2021, the selection committee heard presentations from Ajax Building

850.934.5115 • FAX 850.934.5114

P.O. BOX 640 • 1070 SHORELINE DRIVE • GULF BREEZE, FLORIDA 32562-0640

Company, LLC, Greenhut Construction Company, and Morette Company. The selection committee recommended, and the City Council approved Morette Company as the Construction Manager at Risk

DISCUSSION:

The City Attorney and staff have negotiated the terms of the agreement with Morette Company for construction manager at risk services to construct the facility. The agreement is based on an industry-standard model created by the American Institute of Architects (AIA) with supplemental conditions to address the requirements of Florida statutes for municipal procurement. The draft attached is substantially complete, with only minor details to be added.

The agreement outlines the steps to complete the project. This method of procurement has four major phases. The first is the pre-construction phase, where the manager will work with the City's architect to finalize the plans and specifications for the project. The manager's responsibility is to advise on cost savings, alternate methods of construction, and supply issues with preferred materials. Morette Company has proposed a pre-construction fee not to exceed \$29,008.70.

The second phase is the development of the guaranteed maximum price (GMP) by the manager. Taking the knowledge from the pre-construction phase, the manager will prepare and solicit pricing to develop the GMP. The City Council will then consider for approval the price proposed by the Morette Company to construct the facility. Once approved by both parties, the GMP will not be exceeded unless the City requires a modification of the construction or an unknown condition that could not be reasonably identified interferes with the project.

Upon approval of the GMP by the City Council, the third phase is the construction. The final phase is the reconciliation, where the final costs are evaluated to determine any savings to the City and whether all costs charged are appropriate.

FINANCIAL IMPACT:

This action will obligate the funds for the pre-construction fee of \$29,008.70 for Morette Company to assist the architect with completing the facility design. These funds are available in the FY2022 budget for this project.

RECOMMENDATION:

That the City Council 1. approve the draft construction manager at-risk agreement with Morette Company for the construction of the Police Department and City Services Annex 2. approve the pre-construction fee not to exceed \$29,008.70 3. authorize the Mayor to execute the final agreement upon acceptance by the City Attorney and City Manager.

ATTACHED:

[A133-2019 - Working Draft \(GB PD Annex \(10.15.2021\) - CLEAN Gulf Breeze PD - Morette Co Preconstruction and Fee Proposal](#)

DRAFT 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 « 15 » day of « » in the year « »
(In words, indicate day, month, and year.)

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

City of Gulf Breeze
1070 Shoreline Drive
Gulf Breeze, FL 32561

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

Morette Company
PO Box 13452
Pensacola, FL 32591

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

Gulf Breeze Police Department & Ancillary Services
311 Fairpoint Drive
Gulf Breeze, FL 32561

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

Sam Marshall Architects
325 S. Palafox St
Pensacola, FL 32502

The Owner and Construction Manager agree as follows.

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

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

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

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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 and the Architect have developed the Project Program as is expressed and described in "Attachment I – Preliminary Plans" prepared by Sam Marshall Architects and their Consultants.

§ 1.1.2 The Project's physical characteristics:

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

See "Attachment I – Preliminary Plans" prepared by Sam Marshall Architects and their Consultants.

§ 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.)

«Owner estimates a construction budget of \$3,000,000, however, Owner understands that given the status of the project and the nature of the current construction market a precise budget cannot be developed until such time as Construction Manager is prepared to submit its GMP amendment. If, the GMP, once developed, exceeds the Owner’s budget by 20% then Owner may cancel or terminate this contract for convenience without penalty. »

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

.1 Design phase milestone dates, if any:

«100% drawings to be completed on or before eight (8) weeks subsequent to the effective date of this agreement »

.2 Construction commencement date:

«four (4) weeks after the permits are issued by the local authority necessary to commence construction »

.3 Substantial Completion date or dates:

To be established in the GMP Exhibit

.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.)*

«Not applicable »

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

« »

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner’s Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information: *(Identify special characteristics or needs of the Project not provided elsewhere.)*

« »

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

All legal notices shall be furnished to:

Samantha D. Abell
City Manager
1070 Shoreline Drive

Gulf Breeze, Florida 32561
850.934.5135

With copy to:

Mary Jane Bass
City Attorney
Beggs & Lane, RLLP
501 Commendancia Street
Pensacola, Florida 32502
Main: (850) 432-2451

Further, the City hereby designates the following project manager for the Owner. All notices and communications regarding day to day operations of the construction shall be furnished to:

Stephanie Lindsay, CAPM
Project Manager
City of Gulf Breeze
(850)-203-6038
slindsay@gulfbreezefl.gov
1070 Shoreline Drive
Gulf Breeze, FL 32561

§ 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.)

The Architect and his Consultants as deemed appropriate by the Owner and Architect.

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

.1 Geotechnical Engineer:

« »« »
« »
« »
« »
« »

.2 Civil Engineer:

« »« »
« »
« »
« »
« »

.3 Other, if any:

« »



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

Mr. David Alsop, President
david@sammarshallarch.com
(850) 433-7842
Sam Marshall Architects
325 S. Palafox St
Pensacola, FL 32502

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

Mr. Michael J. Morette, President
mjm@moretteco.com
(850) 432-4084
Morette Company
PO Box 13452
Pensacola, FL 32591

§ 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.)

The Construction Manager shall provide appropriate staff to provide the requested Preconstruction Services as required.

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

The project shall be competitively bid by the Construction Manager for each trade category / scope of the Work.

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

« »

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

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

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

§ 2.2 Relationship of the Parties

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

§ 2.3 General Conditions

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

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

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is 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, and 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. Construction Manager hereby represents and warrants that it has (or will have) undertaken a detailed and exhaustive constructability and pricing review of the drawings and specifications which are incorporated into this agreement as well as all information furnished to prior to the issuing a GMP. Also, prior to issuing a GMP Construction Manager will be familiar with all contract documents and has considered scheduling requirements and the price and availability of material. Construction Manager further represents that it has (or will) completed its own independent review and investigation of the work required by this agreement as well as the price and verified all information furnished by either the Architect, Construction Manager, and/or others is true and correct to the Construction Manager's satisfaction. There shall be no price adjustment or equitable adjustment to contract time after the GMP is accepted if it is shown that the need for an adjustment in the contract time or price is the result of the Construction Manager's negligence or oversight in conducting preconstruction services or finalizing its GMP. Construction Manager understands that Construction Manager was selected in part based on its considerable skill and experience with similar projects and Owner is relying on Construction Manager to undertake a robust pricing and constructability review.

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

§ 3.1.3 Consultation

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

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

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

§ 3.1.4 Project Schedule

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

§ 3.1.5 Phased Construction

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

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

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

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

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

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

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

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

§ 3.1.11 Subcontractors and Suppliers

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

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

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

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager consistent with the ODP Program outlined in § 3.2.10 of this agreement.

§ 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.)

Construction Manager shall prepare and present budget estimates during the design process based on the currently prepared documents by the Architect, provide value engineering and constructability suggestions, attend, and participate in planning and coordination meetings, and prepare a preliminary overall project construction schedule as Preconstruction Services. Construction Manager shall, in conjunction with its Preconstruction Phase Services, undertake project site review, provide input on value management, review MEP systems, solicit and report on input from all subcontractors regarding the project. All preconstruction phase services are from the standpoint of constructability. Construction Manager shall be compensated for these services as set forth in Article 5.

§ 3.2 Guaranteed Maximum Price Proposal

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

the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

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

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

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

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

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

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

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

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

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

§ 3.2.10 Owner Direct Purchases

§ 3.2.10.1 During the term of this Contract, from time to time, Owner and Construction Manager shall identify specific items and the associated costs for potential Owner Direct Purchases ("ODP"). The Construction Manager shall identify a separate line-item cost for each potential ODP item. Any contingency or allowance amount associated with any ODP line item must be clearly and separately identified by Construction Manager. The Contract

Sum includes the total cost of the Work, including the cost of the ODP items and their associated sales taxes.

§3.2.10.2 Construction Manager shall provide to Owner a list of materials and equipment valued at \$10,000 or more. Such list shall include: (i) an estimate of the value of each such item, (ii) an estimate of the sales/use tax savings on each such item, and (iii) the estimated deadline for ordering each such item, such that the materials can be timely ordered, fabricated, and delivered so as not to delay the prosecution of the Work. Owner shall notify Construction Manager in writing of the materials and equipment to be used or incorporated into the Work that Owner has determined that it will purchase directly. This notice must be provided to Construction Manager before Construction Manager has ordered the materials, and such materials shall be ordered by Owner on or before the date specified in such list.

§3.2.10.3 As ODP items are delivered to the job site, the Construction Manager shall visually inspect all shipments from Manufacturer/Suppliers and approve the vendor's shipping record for material delivered. The Construction Manager shall assure that each delivery of an ODP item is accompanied by the appropriate documentation to adequately identify the purchase order number against which the purchase is made and to confirm that the correct type and quantity of the ODP item has been delivered in the appropriate condition. The Construction Manager's approval will include a legible signature (printed) of the person who inspected the delivered items, dated as of the date of delivery.

§3.2.10.4 All invoices from the Manufacturer/Suppliers must be directed and sent to Owner. It is the responsibility of the Construction Manager to review all such invoices and confirm their correctness before Owner processing and Owner's direct payment to the Manufacturer/Supplier. The Construction Manager shall verify the accuracy of the invoice in relation to the delivery ticket and the ODP items actually delivered and report to the Owner any inconsistencies between items on the invoice or delivery ticket and those items actually delivered. The Construction Manager shall obtain from the Manufacturer/Supplier all releases and other necessary supporting documentation which may be required by Owner and shall insure that all such releases and supporting documentation have been attached to the invoice before forwarding the invoice to Owner for processing and payment. The Construction Manager also is responsible for obtaining from the Manufacturer/Supplier all warranties, operating information and manuals, spare parts and all other items required to be provided by the Manufacturer/Supplier. The Construction Manager shall review all such items for compliance with the requirements of the Contract Documents and shall organize and deliver all such items to Owner as part of its requirements for achieving Substantial Completion of the Work.

§3.2.10.5 Each month the Construction Manager and Owner shall review the ODP's which have been delivered and paid for during that month. Owner shall execute an appropriate Change Order, for Construction Manager's execution, which reduces the Contract Sum by the cost paid by Owner for the ODP's that month, together with the amount of sales tax savings that have been realized as a result of Owner directly purchasing such items. Further, the Change Order shall deduct from the Contract Sum any remaining contingency or allowance balance associated with the subject ODP item.

§3.2.10.6 Notwithstanding the fact that Owner may purchase ODP items directly, the Construction Manager acknowledges and agrees that Construction Manager shall remain fully liable to Owner for all such ODP items to the same extent as if Construction Manager had purchased such ODP items directly and all such ODP items shall be included within the definition of "Work" under this Agreement. Accordingly, nothing in these procedures relieves the Construction Manager from its responsibility for the ordering, scheduling, coordinating, insuring, delivery, unloading, storage, installation, operation, and warranty of all ODP items.

§ 3.3 Construction Phase

§ 3.3.1 General

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

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

§ 3.3.2 Administration

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

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

§ 3.3.2.3 Monthly Report

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

§ 3.3.2.4 Daily Logs

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

§ 3.3.2.5 Cost Control

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

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

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

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

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

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

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

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as

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

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

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

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

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

§ 4.3 Architect

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

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

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

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

«Construction Manager shall be paid on an hourly basis at the rates set forth in Art 5.1.2 below, provided however, that the total amount paid for pre-construction services under 3.1 or 3.2 shall not exceed \$29,008.79 as set forth in Exhibit C which is attached hereto and incorporated by reference. Prior to undertaking any work which is not included Exhibit C, and which will be separately billed, Construction Manager shall submit a proposed estimate and obtain written approval from the Owner for the additional services.

»

§ 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.)

For additional services beyond those required in Article 3.1 and § 3.2, the Construction Manager shall request written approval for said additional services which shall prescribe whether the services are to be undertaken on a lump sum or hourly cost basis. If provided on an hourly cost basis the hourly rates for the Construction Manager's staff shall be as follows.

Individual or Position	Rate
Senior Estimator	\$150.00
Project Executive	\$250.00
Project Coordinator / Field Ops Coordinator	\$100.00
Project Manager / Project Superintendent	\$65.00
Project Scheduler	\$50.00
Clerical / Administrative	\$35.00

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

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

§ 5.2 Payments

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

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid twenty five (25) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

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.)

«Cost of the Work plus 9% which includes both profit and overhead. »

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

«Cost plus 9% consistent with Section 6.1.2 »

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

Subcontractor's shall be allowed a combined fifteen percent (15%) for Overhead and Profit for changes in the costs of its portion of the Work.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed eighty-five percent (85 %) 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.)

The parties hereby agree that the damages Owner will sustain as a result of Construction Manager's failure to meet the deadline established for Substantial Completion are difficult or impossible to determine with certainty and therefore,

have in good faith estimated, as fair compensation, the liquidated damages set forth in this section. The contractor shall be liable for and pay one thousand (\$1,000) for each calendar day of delay after a fourteen (14) day grace period following the date established for Substantial Completion until the Work is substantially complete. The Owner shall be entitled to withhold from payment due to the Construction Manager, offset against other obligations due to the Construction Manager, and deduct from retainage due the Construction Manager all liquidated damages due from Construction Manager to Owner

§ 6.1.7 Other:

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

One hundred percent (100%) of cost savings, after final project accounting and reconciliation, shall be returned to the Owner. When the Construction Manager has successfully delivered the project to Final Completion, and prior to the return of any final costs savings and if the final Costs of the Work are less than the Guaranteed Maximum Price, the Construction Manager and Owner shall review and agree to equitable bonuses for the Construction Manager's personnel for their diligence in costs control and successful delivery of the Project. Provided, however, the Bonus shall not exceed the sum of \$30,000 or 1% of Owner's initial budget. Construction Manager understands that the Bonus will be funded exclusively from savings realized on the Project as determined after final completion.

§ 6.2 Guaranteed Maximum Price

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

§ 6.3 Changes in the Work

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

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

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

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

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

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

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

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

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

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

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or working from the Construction Manager's Corporate office to the extent the employee's time is spent working directly on the Project.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, to the extent that they are included within the Construction Manager's GMP amount.

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

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work. All travel time, other than local travel, must be approved by Owner.

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

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

§ 7.3 Subcontract Costs

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

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

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

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8,

shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

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

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

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

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

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

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

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable, and which are not covered by the ODP Program referenced herein.

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

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

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

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

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

§ 7.6.7 Costs of document reproductions and delivery charges.

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

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

§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager’s supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.7 Other Costs and Emergencies

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

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

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

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

§ 7.8 Related Party Transactions

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

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

§ 7.9 Costs Not To Be Reimbursed

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

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

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

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

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

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

ARTICLE 10 ACCOUNTING RECORDS

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

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the last day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the twenty fifth day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty (30) days after the Owner receives the Application for Payment. Construction Manager shall deliver all Applications for Payment by electronic mail to the Architect and Owner, simultaneously. All payments made shall be as provided herein and subject always to the requirements set forth the Florida's Prompt Payment Act and/or the Local Government Prompt Payment Act as codified in Chapter 255 and 218 Florida Statutes.
(Federal, state or local laws may require payment within a certain period of time.)

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

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

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

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

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

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

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

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

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

Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner’s auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

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

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

Retainage shall be withheld at five percent (5%). The retainage shall be reduced to two and one half percent (2.5%) when the project achieves 50% completion.

§ 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.)

Items upon which the Construction Manager cannot withhold retainage such as general conditions, insurance, bonds, rental equipment, and Construction Manager’s fee, shall not be subject to retainage. The Construction Manager shall clearly identify these items within the Schedule of Values as well as the GMP amendment.

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

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

N/A

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8.

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

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

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

§ 11.1.12 In taking action on the Construction Manager’s Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic

verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

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

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

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

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

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

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

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

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

§ 11.3 Interest

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

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

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

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

§ 12.2 Binding Dispute Resolution

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

(Check the appropriate box.)

Arbitration pursuant to Article 15 of AIA Document A201–2017

Litigation in a court of competent jurisdiction

Other: (Specify)

« »

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

ARTICLE 13 TERMINATION OR SUSPENSION

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

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

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

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

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

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

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager’s Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that

- Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

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

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

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

§ 13.2.1 Termination

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

§ 13.2.2 Termination by the Owner for Cause

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

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

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

§ 13.2.3 Termination by the Owner for Convenience

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

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

If, after the establishment and execution of the GMP, the Owner elects to Terminate for Convenience, the Owner shall compensate the Construction Manager for his Costs of Work, including those to “wrap up” and close out the Project,

plus the associated Construction Manager's earned fee. Construction Manager shall not be entitled to profit and overhead on uncompleted work.

§ 13.3 Suspension

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

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

§ 14.2 Successors and Assigns

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

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

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

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

§ 14.3.1.1 Commercial General Liability with policy limits of not less than **one million (\$ 1,000,000)** for each occurrence and **two million (\$ 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 not less than **one million (\$ 1,000,000)** 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 not less than **one million (\$ 1,000,000)** each accident, **one million (\$ 1,000,000)** each employee, and **one million (\$ 1,000,000)** policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than **one million (\$ 1,000,000)** per claim and **one million (\$ 1,000,000)** 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

N/A

Limits

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

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

§ 14.3.2 Construction Phase

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

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

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

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

N/A

§ 14.5 Other provisions:

§ 14.5.1 In the event of any dispute arising under this Agreement, whether or not a lawsuit, arbitration, or other proceeding is filed, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs (including those incurred in any related appeals), including attorneys' fees and costs incurred in litigating entitlement to attorneys' fees and costs, as well as in determining or quantifying the amount of the recoverable attorneys' fees and costs. The reasonable costs to which the prevailing party is entitled shall include costs that are taxable under any applicable statute, rule, or guideline, as well as non-taxable costs, including but not limited to, costs of investigation, copying costs, electronic discovery costs, telephone charges, mailing and delivery charges, information technology support charges, consultant and expert witness fees, travel expenses, court reporter fees, and mediator fees, regardless of whether such costs are otherwise taxable.

§ 14.5.2 Any delays in, or failure of, performance by Owner or Construction Manager, other than payment of money, shall not constitute default hereunder if and to the extent such delay or failure of performance arise out of, relate to, or result from occurrences beyond the control of Owner or Construction Manager and which, by the exercise of reasonable diligence, Owner or Construction Manager is unable to prevent. These occurrences shall include but are not limited to: acts of God or a public enemy; expropriation or confiscations of facilities; acts of war; rebellion, or damage resulting therefrom; fires; floods; explosion; earthquakes; riots; epidemic; pandemic (including, but not limited to, the current Coronavirus (COVID-19) pandemic); quarantine or other acts of local, state, or federal government. Any such delay shall herein be defined as a Force Majeure and the parties shall mutually agree to the extent, to which the time and costs for performance shall be extended.

§ 14.5.3 Any cost or schedule impacts due to atypical/severe weather, price escalation, manpower shortages, government ordered shutdowns, public health advisories, travel restrictions, unavailability of materials, or any other any other delay caused by conditions outside the control of Construction Manager shall be processed via change order and Construction Manager shall as promptly as possible notify Owner of the market condition impacting price or time. If a condition arises which Construction Manager believes warrants an equitable adjustment of the contract time Construction

Manager shall notify owner within 72 hours of the event and submit a request for an equitable adjustment of the contract time within seven business days of the event Construction Manager contends warrants the adjustment. Construction Manager waives any claim which is not timely submitted per this agreement. Any material market price increases for labor, services and material from the date Construction Manager submits its GMP and the time orders are placed or delivered may result in additional expense as a result of market escalation. Construction Manager shall budget and include in the GMP a contingency equal to 1.5% of the GMP to cover any unanticipated escalation in price due to market conditions. Construction Manager shall submit a change order or similar documentation advising the Owner when the Construction Manager intends to use the contingency. The contingency shall not be considered in calculating Construction Manager's bonus and the failure to use the cost escalation contingency shall not be considered savings.

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

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

« »

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

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

« »

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

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

“Attachment I – Preliminary Plans” prepared by Sam Marshall Architects and their Consultants
Exhibit C – Pre-Construction Fee Proposal

ARTICLE 16 City of Gulf Breeze Standard Terms and Conditions for Construction Services

16.1 INVESTIGATION AND UTILITIES.

16.1.1 Construction Manager shall have the sole responsibility of satisfying itself concerning the nature and location of the Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, disposal, handling and storage of materials; availability and quality of labor; water and electric power; availability and condition of roads; work area; living facilities; climatic conditions and seasons; physical conditions at the work-site and the Project area as a whole; topography and ground surface conditions; nature and quality of the surface materials to be encountered; equipment and facilities needed preliminary to and during performance of the Work; and all other costs associated with such performance.

16.1.2 Construction Manager shall locate all existing roadways, drainage facilities and utility services above, upon, or under the Project site, said roadway, drainage facilities and utilities being referred to in this Section 2 as the "Utilities." Construction Manager shall contact the owners of all Utilities to determine the necessity for relocating or temporarily interrupting any Utilities during the construction of the Project. Construction Manager shall schedule and coordinate its Work around any such relocation or temporary service interruption. Construction Manager shall be responsible for properly shoring, supporting and protecting all Utilities at all times during the course of the Work.

16.1.3 The Construction Manager shall promptly, and before such conditions are disturbed, except in the event of an emergency, notify Owner, by written notice, of:

16.1.4 Subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents; or

16.1.5 Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents. Owner shall promptly investigate such conditions reported by Construction Manager, and if it is found that such conditions do so materially differ and cause an increase or decrease in the cost of, or in the time required for, performance of the Work, an equitable adjustment shall be made and the Contract Documents shall be modified by a Change Order. Any claim of the Construction Manager for adjustment hereunder shall not be allowed unless the required written notice has been given, or if such notice is not given the Construction Manager shall be deemed to have waived the claim.

16.2 SUBMITTALS AND SUBSTITUTIONS.

16.2.1 Construction Manager shall carefully examine the Contract Documents for all requirements for approval of materials to be submitted such as shop drawings, data, test results, schedules and samples. Construction Manager shall submit such materials at its own expense and in such form as required by the Contract Documents.

16.2.2 Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other suppliers may be accepted by the Owner if sufficient information is submitted by Construction Manager to allow the Owner to determine that the material or equipment proposed is equivalent or equal to that named. Requests for review of substitute items of material and equipment will not be accepted by the Owner from anyone other than Construction Manager and all such requests must be submitted by Construction Manager prior to furnishing its GMP unless good cause exists to submit such a request subsequent to the preparation of the GMP.

16.2.3 If Construction Manager wishes to furnish or use a substitute item of material or equipment, Construction Manager shall make application to the Owner for acceptance thereof, certifying that the proposed substitution shall perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application shall state that the evaluation and acceptance of the proposed substitute will not prejudice Construction Manager's achievement of substantial completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with the Owner for the Project) to adapt the design to the proposed substitute, and whether or not incorporation or use by the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service shall be indicated. The application also shall contain an itemized estimate of all costs that will result directly or indirectly from acceptance of

such substitute, including costs for redesign and claims of other Construction Managers affected by the resulting change, all of which shall be considered by the Owner in evaluating the proposed substitute. The Owner may require Construction Manager to furnish at Construction Manager's expense additional data about the proposed substitute.

16.2.4 DELETED

16.2.5 The Owner shall be allowed a reasonable time within which to evaluate each proposed substitute. The Owner shall be the sole judge of acceptability, and no substitute will be ordered, installed, or utilized without the Owner's prior written acceptance which shall be evidenced by either a Change Order or an approved Shop Drawing. The Owner may require Construction Manager to furnish at Construction Manager's expense a special performance guarantee or other surety with respect to any substitute. The Owner shall charge Construction Manager and may deduct from payments due Construction Manager all expenses incurred by the Owner in connection with review, evaluation and analysis of the proposed substitution, such expenses to include but not be limited to expenses incurred by the Owner for review of the proposed substitute.

16.3 DAILY REPORTS

16.3.1 Unless waived in writing by the Owner, during the Construction Phase the Construction Manager shall complete and submit to the Owner on a weekly basis a daily log of the Construction Manager's work for the preceding week in a format approved by the Owner. The daily log shall document all activities of Construction Manager at the Project site including, but not limited to, the following:

16.3.2 Weather conditions showing the high and low temperatures during work hours, the amount of precipitation received on the Project site, and any other weather conditions which adversely affect the Work;

16.3.3 Site or weather conditions which adversely affect the Work;

16.3.4 The hours of operation by Construction Manager's and Subcontractors' personnel;

16.3.5 The number of Construction Manager's and Subcontractors' personnel present and working at the Project site, by subcontract and trade;

16.3.6 Description of Work being performed at the Project site;

16.3.7 Any unusual or special occurrences at the Project site; and

16.3.8 A general description by category of materials received at the Project site;

16.3.9 The daily log shall not constitute nor take the place of any notice required to be given by Construction Manager to Owner pursuant to the Contract Documents.

16.3.12 Construction Manager shall maintain in a safe place at the Project site one record copy of the Contract Documents, as well as all Shop Drawings and other Construction Manager submittals and all written interpretations and clarifications issued by the Owner, in good order and annotated to show all changes made during the construction. The annotated drawings shall be continuously updated by the Construction Manager throughout the prosecution of the Work to accurately reflect all filed changes that are made to adapt the Work to field conditions, changes resulting from Change Orders, Work Directive Changes and Field Orders, and all concealed and buried installations of piping, conduit, and utility services. All buried and concealed items, both inside and outside the Project site, shall be accurately located on the annotated drawings as to depth and in relationship to not less than two (2) permanent features. The annotated drawings shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in a contrasting color. The As-Built record documents, together with all approved samples and a counterpart of all approved shop drawings shall be available to Owner for reference. Upon completion of the Work, and as a condition precedent to Construction Manager's entitlement to final payment, these As-Built record documents, samples, and shop drawings shall be delivered to Owner by Construction Manager for the Owner's use and possession.

An electronic copy of any of the items described herein is acceptable to Owner.

16.4 PUBLIC RECORDS

16.4.1 Construction Manager shall comply with Florida's public records laws, Chapter 119, Florida Statutes, and satisfy Construction Manager's duties thereunder as follows:

16.4.2 Keep and maintain public records required by the Owner and/or related to performance of the service.

16.4.3 Upon request from the Owner's custodian of public records, provide the Owner with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

16.4.4 Upon completion of the contract, transfer, at no cost, to the Owner all public records in possession of Construction Manager or keep and maintain public records required by the Owner and/or related to performance of the service. If Construction Manager keeps and maintains public records upon completion of the contract, Construction Manager shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Owner, upon request from the Owner's custodian of public records, in a format that is compatible with the information technology systems of the Owner.

16.4.5 IF CONSTRUCTION MANAGER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSTRUCTION MANAGER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, CITY OF GULF BREEZE, (850) 934-5115, Leslie Guyer <lguyer@gulfbreezefl.gov>.

16.4.6 Failure of Construction Manager to comply with requests for public records in accordance with the following procedures shall be deemed noncompliance:

A request to inspect or copy public records relating to a City contract for services must be made directly to the Owner. If the Owner does not possess the requested records, the Owner shall immediately notify the Construction Manager of the request, and the Construction Manager must provide the records to the Owner or allow the records to be inspected or copied within a reasonable time.

If a Construction Manager does not comply with the Owner's request for records, the Owner shall enforce these contract provisions in accordance with the contract.

A Construction Manager who fails to provide the public records to the Owner within a reasonable time may be subject to penalties under s. 119.10.

16.4.7 Indemnity – The parties understand that the Owner is bound by public records laws, and as such, all of the terms of this Contract are subject to and conditioned on the provisions of Florida's Public Records Law. Construction Manager acknowledges that documents generated through the course of this project may be subject to disclosure. Construction manager is obligated to assist the Owner in retaining and producing records that are subject to Florida Public Records Law, and that the failure to do so shall constitute a material breach of this Contract. Construction Manager hereby agrees to indemnify, defend and hold the Owner harmless from liability under the law for or against any loss, claim or damages related to Construction Manager's failure to maintain appropriate records.

16.5 OTHER WORK.

16.5.1 The Owner may perform other work related to the Project at the site by Owner's own forces, have work performed by utility owners or let other direct contracts. If the fact that such other work is to be performed is not noted in the Contract Documents, notice thereof will be given to Construction Manager. If Construction Manager believes that such performance will involve additional expense to Construction Manager or require additional time, Construction Manager shall send written notice of that fact to the Owner within forty-eight (48) hours of being notified of the other work. If the Construction Manager fails to send the above required forty-eight (48) hour notice, the Construction Manager will be deemed to have waived any rights it otherwise may have had to seek an extension to the Contract Time, an adjustment to the Contract Amount, or other modification of the Contract Documents.

16.5.2 Construction Manager shall afford each utility owner and other Construction Manager (or Owner, if Owner is performing the additional work with Owner's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work and shall properly connect and coordinate its Work with theirs.

16.5.3 If any part of the Construction Manager's Work depends for proper execution or results upon the work of any other Construction Manager or utility owner (or Owner), Construction Manager shall inspect and promptly report to Owner in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results.

16.6 INDEMNIFICATION AND INSURANCE.

16.6.1 Construction Manager agrees to save harmless, indemnify, and defend the Owner and its agents, officers, and employees from any and all claims, losses, penalties, interests, demands, judgments and costs of suit, including attorneys' fees and paralegals' fees, for any expense, damage or liability incurred by any of them, whether for personal injury, death, property damage, direct or consequential damages, or economic loss, including environmental impairment, arising directly or indirectly on account of or in connection with the Work done by Construction Manager under this Agreement or by any person, firm or corporation to whom any portion of the Work is subcontracted by Construction Manager or resulting from the use by Construction Manager, or by any one for whom Construction Manager is legally liable of any materials, tools, machinery or other property of the Owner. Owner and Construction Manager agree that the first \$100.00 of the Contract Amount paid by the Owner to Construction Manager shall be given as separate consideration for this indemnification, and any other indemnification of Owner by Construction Manager provided for within the Contract Documents, the sufficiency of such separate consideration being acknowledged by Construction Manager by Construction Manager's acceptance and execution of the Agreement. The Construction Manager's obligation shall not be limited by, or in any way to, any insurance coverage or by any provision in or exclusion or omission from any policy of insurance.

16.6.2 Construction Manager shall obtain and carry, at all times during its performance under the Contract Documents, insurance of the types and in the amounts set forth in Exhibit "B" to the Agreement and Section 14.3. All insurance policies shall be from responsible companies duly authorized to do business in the State of Florida and/or responsible risk retention group insurance companies or trusts which are registered with the State of Florida. Foreign or off-shore insurance carriers are not acceptable for work under this contract unless admitted to the State of Florida. All commercial insurance carriers providing the Construction Manager with required insurance shall be "A" (excellent) rated with a minimum financial size category of "IX," according to the A.M. Best Key Rating Guide, latest edition. Within ten (10) calendar days after Notice of Award is received by Construction Manager and prior to the commencement of work, Construction Manager shall provide Owner with properly executed Certificates of Insurance to evidence Construction Manager's compliance with the insurance requirements of the Contract Documents. Said Certificates of Insurance shall be on forms approved by the Owner, such as "Acord Form 25." The Certificates of Insurance shall be signed by the authorized representatives of the insurance company/companies shown on the Certificates of Insurance, with proof that they are authorized representatives thereof. Certificates of Insurance shall be mailed or delivered to the Owner in care of the City Manager. In addition, certified, true and exact copies of all insurance policies required hereunder shall be provided to the Owner, on a timely basis, when requested by the Owner.

16.6.3 The Certificates of Insurance and required insurance policies shall contain provisions that thirty (30) days prior written notice by registered or certified mail shall be given to the Owner of any cancellation, intent not to renew, or reduction in the policies or coverages.

16.6.4 All insurance coverages of the Construction Manager shall be primary to any insurance or self-insurance program carried by the Owner applicable to this Project. The acceptance by Owner of any Certificate of Insurance does not constitute approval or agreement by the Owner that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate of Insurance is in compliance with the requirements of the Contract Documents. No work shall commence at the Project site unless and until the required Certificates of Insurance are received by the Owner.

16.6.5 Construction Manager shall require each of its Subcontractor to procure and maintain, until the completion of the Subcontractor's work, insurance of the types and to the limits specified in Exhibit "B" and Section 14.3 unless such insurance requirements for the Subcontractor are expressly waived in writing by the Owner. All liability insurance

policies, other than professional liability, worker's compensation and employer's liability policies, obtained by Construction Manager to meet the requirements of the Contract Documents shall name the Owner of Gulf Breeze as an additional insured and shall contain severability of interest provisions. The Owner shall also be designated as certificate holder with the address of 1070 Shoreline Drive, Gulf Breeze, Florida 32561. If any insurance provided pursuant to the Contract Documents expires prior to the completion of the Work, renewal Certificates of Insurance and, if requested by the Owner, certified, true copies of the renewal policies, shall be furnished by Construction Manager within thirty (30) days prior to the date of expiration. Upon expiration of an insurance policy term during the course of Work under the Agreement, succeeding insurance policies shall be consecutive to the expiring policy.

16.6.6 All liability policies shall be underwritten on the "occurrence" basis, unless otherwise approved in writing by the Owner. "Claims made" policies, if approved by the Owner, and subsequent insurance certificates shall provide a "retro-date" which shall include the effective date of the Agreement. "Claims-made" renewals or carrier and policy replacements shall reflect the original "retro-date."

16.6.7 Should at any time the Construction Manager not maintain the insurance coverage required herein, the Owner may terminate the Agreement or at its sole discretion shall be authorized to purchase such coverage and charge the Construction Manager for such coverage purchased. The Owner shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the Owner to purchase such insurance coverages shall in no way be construed to be a waiver of any of its rights under the Contract Documents.

16.7 WARRANTY

16.7.1 Construction Manager shall obtain and assign to the Owner all express warranties given to Construction Manager or any Subcontractors by any materialmen supplying materials, equipment or fixtures to be incorporated into the Project. Construction Manager warrants to the Owner that any materials and equipment furnished under the Contract Documents shall be new unless otherwise specified, and that all Work shall be of good quality, free from all defects and in conformance with the Contract Documents. Construction Manager further warrants to the Owner that all materials and equipment furnished under the Contract Documents shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturers, fabricators, suppliers or processors except as otherwise provided for in the Contract Documents. If, within one (1) year after final completion, any Work is found to be defective or not in conformance with the Contract Documents, Construction Manager shall correct it promptly after receipt of written notice from the Owner. Construction Manager shall also be responsible for and pay for replacement or repair of adjacent materials or Work which may be damaged as a result of such replacement or repair. These warranties are in addition to those implied warranties to which Owner is entitled as a matter of law.

16.8 DEFECTIVE WORK.

16.8.1 Work not conforming to the requirements of the Contract Documents shall be deemed defective Work. If required by Owner, Construction Manager shall, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the defective Work has been rejected by the Owner, remove it from the site and replace it with undefective Work.

16.8.2 If Owner considers it necessary or advisable that covered Work be observed by the Owner or inspected or tested by others, Construction Manager, at Owner's request, shall uncover, expose or otherwise make available for observation, inspection, or tests as the Owner may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, Construction Manager shall bear all direct, costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction. If, however, such Work is not found to be defective, Construction Manager shall be allowed an increase in the Contract Amount and/or an extension of the Contract Time, if any, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction.

16.8.3 If any portion of the Work is defective, or Construction Manager fails to supply sufficient skilled workers with suitable materials or equipment, or fails to finish or perform the Work in such a way that the completed Work will conform to the Contract Documents, the Owner may order Construction Manager to stop the Work, or any portion

thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of Construction Manager or any other party.

16.8.4 Should the Owner determine, at its sole option, it is in the Owner's best interest to accept defective Work, the Owner may do so. If such determination is rendered prior to final payment, a Change Order shall be executed evidencing such acceptance of such defective Work, incorporating the necessary revisions in the Contract Documents and reflecting an appropriate decrease in the Contract Amount. If the Owner accepts such defective Work after final payment, Construction Manager shall promptly pay to the Owner an appropriate amount to adequately compensate the Owner for its acceptance of the defective Work.

16.8.5 If Construction Manager fails, within a reasonable time (which under most circumstances will be ten (10) days or less, but under no circumstance shall be greater than thirty (30) days) after the written notice from the Owner, to correct the defective Work or to remove and replace rejected defective Work as required by Owner, or if Construction Manager fails to perform the Work in accordance with the Contract Documents, or if Construction Manager fails to comply with any of the material provisions of the Contract Documents, the Owner may, after seven (7) days' written notice to Construction Manager, correct and remedy any such deficiency. To the extent necessary to complete corrective and remedial action, the Owner may exclude Construction Manager from any or all of the Project site, take possession of all or any part of the Work, and suspend Construction Manager's services related thereto. Owner may incorporate in the Work all materials and equipment stored at the Project site or for which the Owner has paid Construction Manager but which are stored elsewhere. Construction Manager shall allow the Owner, and its representatives, agents, and employees such access to the Project site as may be necessary to enable the Owner to exercise the rights and remedies under this Section. Construction Manager shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by the Owner of the Owner's rights and remedies hereunder.

16.9 SUPERVISION AND SUPERINTENDENTS.

16.9.1 Construction Manager shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Construction Manager shall be responsible to see that the Work and the finished Work complies accurately with the Contract Documents. Construction Manager shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without prior written notice to the Owner except under extraordinary circumstances. The superintendent shall be Construction Manager's representative at the Project site and shall have authority to act on behalf of Construction Manager. All communications given to the superintendent shall be as binding as if given to the Construction Manager. The Owner shall have the right to direct Construction Manager to remove and replace its Project superintendent, with cause.

16.10 PROTECTION OF WORK.

16.10.1 Construction Manager shall fully protect the Work from loss or damage and shall bear the cost of any such loss or damage until final payment has been made. If Construction Manager, or any one for whom Construction Manager is legally liable, is responsible for any loss or damage to the Work, or other work or materials of the Owner or the Owner's separate Construction Managers, Construction Manager shall be charged with the same, and any monies necessary to replace such loss or damage shall be deducted from any amounts due Construction Manager.

16.10.2 Construction Manager shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Construction Manager subject any part of the Work or adjacent property to stress or pressures that will endanger it.

16.10.3 The Construction Manager shall at all times during construction activity control turbidity caused by construction related acts, by the placement of contamination curtains, haybales or suitable temporary erosion control barriers. The pumping and discharge of trench water shall be in accordance with all local, state and federal agencies which control such activities. Any permits for such activities shall be obtained by the Construction Manager.

16.11 DELETED

16.12 WEATHER DELAYS

16.12.1 The Construction Manager has assumed (or will assume) in the schedule that the Work will not be performed on certain days during a work week due to weather events based on NOAA 10-year averages for Gulf Breeze.

16.12.2 If Construction Manager cannot perform Work during the work week due to Weather Events in excess of the number of weather days specified by the NOAA 10-year averages for Gulf Breeze for any particular month, Contractor shall be entitled to an extension of the Contract Time equal to the number of days in excess of the NOAA 10-year averages for Gulf Breeze. The extension of the contract time shall be considered excusable but non-compensable.

16.12.3 Weather Events are defined as those days when Construction Manager cannot proceed with Work on the critical path for more than four (4) consecutive hours in a day.

16.12.4 An extension for weather delays shall be granted only for weather delays beyond those that could be reasonably anticipated based on the average number of rain days in a given monthly period based on the NOAA 10-year average for Gulf Breeze. Adverse weather conditions and days lost will be addressed monthly in OAC meetings. An accounting of the total lost days will be kept on a monthly "weather log," comparing the actual weather days to the 10-year historic average, and rights reserved for extension(s) of time based on the number of days lost above the baseline average each month.

16.12.4 Construction Manager shall make a claim for Weather Event delays consistent with Section 14.5.3. Failure to submit a request within the time set forth in Section 14.5.3 shall result in a waiver of such claim. The claim must include a description of the Weather Event, the impact on the critical path, and the duration of the event.

16.13 PUNCH LIST PROTOCOL

16.13.1 No later than thirty (30) days prior to substantial completion of the Work, Construction Manager shall submit in accordance with Section 218.735(7), Florida Statutes, a single list of items required to render the Work complete, satisfactory, and acceptable. The list shall be subject to the approval by the Architect and by the Owner. Contractor shall modify as necessary to obtain approval and adjust the completion date to allow sufficient for satisfactory and acceptable completion of the Work. Included with the list Construction Manager shall provide Owner with the estimated cost to correct/address the issues and time necessary to do so.

16.13.2 As soon as practicable, and within three (3) days after the project achieves Substantial Completion Owner and its representatives shall review the project with Construction Manager and identify additional items, if any, required to render the Work complete, satisfactory, and acceptable.

16.13.3 Within three (3) days Construction Manager shall provide Owner a schedule to complete the items identified on the list referenced above.

16.13.4 Notwithstanding anything in the Contract documents to the contrary, for each uncorrected Punch List item, a sum of 150% of the estimated cost to correct or complete such item, as determined by the Owner, shall be withheld from payment to the Construction Manager until the item(s) are corrected.

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

OWNER (Signature)

<><>

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

Michael J. Morette, President

(Printed name and title)

TEL
BY
D



October 7, 2021

Via E-mail

Mr. Thomas Lambert, P.E.
Development Services Manager
City of Gulf Breeze, FL
1070 Shoreline Drive
Gulf Breeze, FL 32561

RE: Gulf Breeze Police Department and City Services Annex – Preconstruction and Fee Proposal

Mr. Lambert:

It was a pleasure speaking with you this week, and I look forward to meeting with you and the project team Friday to finalize the AIA Contract for the project. As discussed, below and attached you will find the requested, proposed preconstruction fee and project fee for the project. As we have not had the opportunity to discuss the services the City anticipates, nor the duration for the preconstruction phase in specific detail, we have created a preconstruction estimate (attached) based on our previous experience with projects of this size, scope, and complexity. We also propose that the preconstruction fee be treated as a Not to Exceed amount, that shall only be adjusted with the prior written approval of the City. Work will be completed and invoiced on an actual cost incurred basis which will be billed monthly. Attached is the breakdown of the preconstruction services cost estimate which we have prepared for this project.

As we are working to complete the AIA A-133 agreement for the project, Morette Co. has considered the market conditions, the size and complexity of this project, the current level of design, and based on our previous experiences and Construction Manager at Risk project deliveries for local public entities, propose a fee as described in Article § 6.1.2 of the A-133 agreement of nine percent (9%). We believe this fee to be equitable based on our experiences on similarly sized projects, current market conditions and the specifics of the City's project.

We are very proud to call the City of Gulf Breeze a client and look forward to working collaboratively with the City and the rest of the Project Team to ensure the Police Department and City Annex project is a complete success. We look forward to meeting with you and the rest of the project team Friday and discussing this proposal further. We are honored by the confidence that has been entrusted to our Team with our selection as your Construction Manager and stand prepared to deliver this project at the highest levels of safety, quality and value for the City.

Respectfully,

A handwritten signature in blue ink, appearing to read "Michael J. Morette", is written over a light blue circular stamp.

Michael J. Morette
President

Cc File



Project: Gulf Breeze Police Dept.. & City Annex
 Owner: Cit of Gulf Breeze
 Location: 311 Fairpoint Drive
 Estimate Date: 10/7/2021

Bid Date: N/A
 Bid Place: N/A
 Duration: 0
 Revised:

1.00 FIRST FLOOR
 0 SECOND FLOOR

FL CG-C 1517904

1.00

CODE	DESCRIPTION	QTY	UNIT	LABOR UNIT RATE	TOTAL LABOR	MATERIAL UNIT RATE	TOTAL MATERIAL	SUB UNIT RATE	TOTAL SUB	TOTAL UNIT RATE	LINE TOTAL	SUBCONTRACTOR/COMMENTS	
1000	PRECONSTRUCTION ESTIMATE												
01-0101	Project Executive	8	HRS	\$ 250.00	\$ 2,000.00	\$ -	\$ -	\$ -	\$ -	\$ 250.00	\$ 2,000.00		
01-0102	Project Coordinator / Field Ops. Director	16	HRS	\$ 100.00	\$ 1,600.00	\$ -	\$ -	\$ -	\$ -	\$ 100.00	\$ 1,600.00		
01-0103	Chief Estimator	60	HRS	\$ 150.00	\$ 9,000.00	\$ -	\$ -	\$ -	\$ -	\$ 150.00	\$ 9,000.00		
01-0104	Asst. Estimator / Constructability Coordinator	20	HRS	\$ 100.00	\$ 2,000.00	\$ -	\$ -	\$ -	\$ -	\$ 100.00	\$ 2,000.00		
01-0105	Project Management	20	HRS	\$ 75.00	\$ 1,500.00	\$ -	\$ -	\$ -	\$ -	\$ 75.00	\$ 1,500.00		
01-0106	Superintendent - Constructability, Scheduling and Planning	16	HRS	\$ 75.00	\$ 1,200.00	\$ -	\$ -	\$ -	\$ -	\$ 75.00	\$ 1,200.00		
01-0107	Clerical and Document Control	16	HRS	\$ 50.00	\$ 800.00	\$ -	\$ -	\$ -	\$ -	\$ 50.00	\$ 800.00		
01-0108	Scheduling Consultant	8	HRS	\$ -	\$ -	\$ -	\$ -	\$ 150.00	\$ 1,200.00	\$ 150.00	\$ 1,200.00	For precon and bidding schedules	
01-0109	Envelope Plans Review and Coordination	1	LSUM	\$ -	\$ -	\$ -	\$ -	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00		
01-0110	Morette Co. Software and Bidding Site Fees	1	LSUM	\$ -	\$ -	\$ 1,500.00	\$ 1,500.00	\$ -	\$ -	\$ 1,500.00	\$ 1,500.00		
01-0111	Office Supplies	1	LSUM	\$ -	\$ -	\$ 250.00	\$ 250.00	\$ -	\$ -	\$ 250.00	\$ 250.00		
01-0112	Plans Reproduction	1	LSUM	\$ -	\$ -	\$ 750.00	\$ 750.00	\$ -	\$ -	\$ 750.00	\$ 750.00		
01-0113	Ground Penetrating Radar and As-Builts of Utilities	1	LSUM	\$ -	\$ -	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 3,000.00	\$ 3,000.00		
01-0114	Surveying and layout coordination	1	LSUM	\$ -	\$ -	\$ -	\$ -	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00		
	OTHER			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
	DIVISION TOTALS:			\$	18,100.00	\$	4,000.00	\$	6,200.00	\$	28,300.00	\$	28,300.00
	DIVISION TOTALS				\$	18,100.00	\$	4,000.00	\$	6,200.00	\$	28,300.00	

NOTES:

This estimate has been compiled as an overall budget estimate based on 4 months of preconstruction services and an assumption of what services and items will be necessary and required. This estimate is to be considered as an overall allowance for preconstruction, and shall also be treated as a not to exceed (NTE) amount. Should additional services or preconstruction duration be requested or required, the Construction Manager shall first provide the Owner a written estimate for the additional costs and receive written authorization by the Owner for the additional costs.

TOTAL LABOR	\$ 18,100.00
TOTAL MATERIAL	\$ 4,000.00
SALES TAX 7.0%	\$ 280.00
TOTAL SUB	\$ 6,200.00
SUBTOTAL	\$ 28,580.00
BUILDERS RISK	N/A
INSURANCE	\$ 428.70
TOTAL	\$ 29,008.70

TOTAL PRECON NTE BUDGET: \$ 29,008.70