

## ORDER NO. \_\_\_\_\_

**AN ORDER OF THE COMMISSIONERS COURT OF CALLAHAN COUNTY, TEXAS: (1) APPROVING THE ISSUANCE AND IMPLEMENTATION OF RFQ NO. 2021-002-ABP-CMAC, SAME BEING THE CALLAHAN COUNTY, TEXAS REQUEST AND GUIDELINES FOR STATEMENTS OF QUALIFICATIONS REGARDING ENGAGEMENT AS CONSTRUCTION MANAGER AS CONSTRUCTOR FOR THE CALLAHAN COUNTY, TEXAS AUXILIARY BUILDINGS PROJECT; AND (2) ESTABLISHING AN EFFECTIVE DATE AND COMPLIANCE WITH THE TEXAS OPEN MEETING ACT.**

**WHEREAS**, Callahan County, Texas (“County”) is a duly organized and operating county of the State of Texas pursuant to the constitution and laws of Texas, and further, the Callahan County Commissioners Court (“Commissioners Court”) is the governing body of the County; and

**WHEREAS**, pursuant to applicable provisions of Article V, Section 18 of the Texas Constitution, Chapter 2269 of the Texas Government Code (“Chapter 2269”), Chapters 271, 291, and 292 of the Texas Local Government Code, and other authority, the County may design, construct, operate, maintain, repair, and restore public works and facilities in the public interest, including but not limited its existing county courthouse and existing or proposed county auxiliary buildings; and

**WHEREAS**, the County is engaged in its **Auxiliary Buildings Project** (“Project”), a public facility and public works project to renovate, expand, and improve for public use as county office and record archive space the **County Annex Building** (generally located at 132 West 4<sup>th</sup> Street, Baird, Texas 79504), **County Calvo Building** (generally located at 109 West 5<sup>th</sup> Street, Baird, Texas 79504), and historic **1877 County Jail Building** (generally located on West 5<sup>th</sup> Street, Baird, Texas 79504), said Project buildings all located in the county seat adjacent to the Callahan County Courthouse (said courthouse generally located at 100 West 4<sup>th</sup> Street, Baird, Texas 79504), as described by the public records of the County Clerk of Callahan County, to which reference is made for all purposes; and

**WHEREAS**, as used in this order: (1) Construction Manager as Constructor (“CMAC”) is synonymous with, shall constitute, and has the same meaning, duties, responsibilities, and rights as, a Construction Manager at Risk described by Chapter 2269, Subchapter F of the Texas Government Code; and (2) “Facilities Committee” shall mean the County Facilities Committee created by the Commissioners Court as allowed by law to assist the Commissioners Court with the planning and implementation of the Project, including (a) conducting and/or attending interviews of prospective CMAC candidates for the Project at the direction of the Commissioners

Court, and (b) providing advisory, nonbinding recommendations to the Commissioners Court regarding Project matters, and further, said committee is comprised of Jan Windham (Callahan County Treasurer), Sandra Rose (Callahan County Auditor), G. Scott Kniffen (Callahan County Judge), Stephen Odom (Callahan County Justice of the Peace, Precinct 3), and Sam Goldsmith; and

**WHEREAS**, pursuant to the lawful authority, discretion, and best business judgment of the Commissioners Court, the County seeks sealed Statements of Qualifications (“SOQs”) from qualified firms or individuals (“Offerors”) for a proposed engagement by the County of a Construction Manager as Constructor for the Project, and as such, performance of the necessary evaluations, designs, reviews, cost estimates, and related functions required for development of project plans, specifications, procurement, review, and construction activities for the Project, as more particularly described in the County’s **RFQ No. 2021-002-ABP-CMAC, its Request and Guidelines for Statements of Qualifications Regarding Engagement as Construction Manager as Constructor for the Callahan County, Texas Auxiliary Buildings Project** (“RFQ”) attached to this order as **Exhibit A**; and

**WHEREAS**, pursuant to sections 2269.253 and 2269.251 of the Texas Government Code, the RFQ states that the (1) CMAC selection process involves a one-step process, and (2) the contract price may be a guaranteed maximum price; and

**WHEREAS**, the Commissioners Court by this order desires to approve the issuance and implementation of the RFQ in the form and scope described in **Exhibit A**, and further, the County shall give public notice of and actions regarding the RFQ in the manner required by law.

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED** by the Commissioners Court of Callahan County, Texas, for and on behalf of said County and in the public interest, as follows:

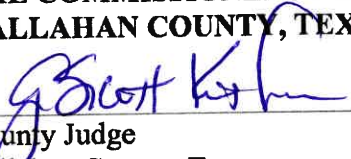
- (1) Unless otherwise designated, the past, present, or future tense shall each include the other, the masculine, feminine, or neuter gender shall each include the other, and the singular and plural number shall each include the other where necessary for a correct meaning.
- (2) All statements made in the caption and preliminary recitals of this order, and all attached documents, are incorporated by reference.
- (3) The Commissioners Court approves the issuance and implementation of the County’s **RFQ No. 2021-002-ABP-CMAC, its Request and Guidelines for Statements of Qualifications Regarding Engagement as Construction Manager as Constructor for the Callahan County, Texas**

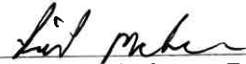
**Auxiliary Buildings Project**, in RFQ form and scope attached as **Exhibit A**, for the engagement by the County of a qualified CMAC for the Project pursuant to the procedure described in the RFQ and this order.

- (4) The Commissioners Court finds and determines that: (a) the Construction Manager as Constructor method (also called Construction Manager at Risk method as noted above), pursuant to Chapter 2269 of the Texas Government Code, provides the best value for the County to successfully implement and complete the Project; and (b) the engagement of a qualified CMAC for the Project shall occur pursuant to the evaluation criteria and procedure described in this order and the RFQ attached as **Exhibit A**.
- (5) The Commissioners Court further orders that: (a) SOQ submitting Offerors determined eligible for further evaluation based on qualifications submitted in response to the RFQ may be given, at the sole discretion of the Commissioners Court, an opportunity to make a presentation and/or interview with the Commissioners Court and/or the County's Facilities Committee; and (b) any such presentation or interview shall be conducted pursuant to Chapter 551 of the Texas Government Code, the Texas Open Meetings Act.
- (6) This order shall take effect immediately from and after its passage.
- (7) This order was considered and approved at a public meeting of the Commissioners Court held in compliance with Chapter 551 of the Texas Government Code, the Texas Open Meetings Act.

**ORDERED, APPROVED, AND ADOPTED** on the 14<sup>th</sup> day of June, 2021.

**THE COMMISSIONERS COURT OF  
CALLAHAN COUNTY, TEXAS**

  
\_\_\_\_\_  
County Judge  
Callahan County, Texas

  
\_\_\_\_\_  
County Commissioner, Precinct 1  
Callahan County, Texas

*[Handwritten Signature]*  
\_\_\_\_\_  
County Commissioner, Precinct 2  
Callahan County, Texas

*[Handwritten Signature]*  
\_\_\_\_\_  
County Commissioner, Precinct 3  
Callahan County, Texas

*[Handwritten Signature]*  
\_\_\_\_\_  
County Commissioner, Precinct 4  
Callahan County, Texas

**ATTEST:**  
*[Handwritten Signature]*  
\_\_\_\_\_  
County Clerk  
Callahan County, Texas



**EXHIBIT A**  
**(RFQ No. 2021-002-ABP-CMAC)**

**CALLAHAN COUNTY, TEXAS:**

**REQUEST AND GUIDELINES FOR STATEMENTS OF QUALIFICATIONS  
REGARDING ENGAGEMENT AS CONSTRUCTION MANAGER AS  
CONSTRUCTOR FOR THE CALLAHAN COUNTY, TEXAS  
AUXILIARY BUILDINGS PROJECT**

**RFQ No. 2021-002-ABP-CMAC**

**Issuance Date: June 14, 2021**

**Properties and Improvements: A-1/County Former Jail Building;  
A-2/County Annex Building; and A-3/County Calvo Building**

**(Involving a One-Step CMAC Selection Process)**

**Introduction and Response Submittal Procedure**

1. **RFQ.** This is a **Request and Guidelines for Statements of Qualifications** (“RFQ”), submitted by **Callahan County, Texas** (“County”), a duly organized and operating Texas county, by and through the approval of the **Commissioners Court of Callahan County, Texas** (“Commissioners Court”), the County’s governing body. The County shall give public notice of this RFQ, and actions regarding this RFQ, in the manner required by law.
  
2. **Definitions and Interpretation.** As used in this RFQ, unless otherwise designated: (a) “**AIA**” shall mean the American Institute of Architects; (b) “**Construction Manager as Constructor**” (“CMAC”) is synonymous with, shall constitute, and has the same meaning, duties, responsibilities, and rights as, a “**Construction Manager at Risk**” (“CMAR”) described by Chapter 2269, Subchapter F of the Texas Government Code; (c) “**Project**” shall mean the pending **Callahan County Auxiliary Buildings Project**, the public works project described in this RFQ to renovate, expand, and improve for public use as county office and record archive space the **County Annex Building** (generally located at 132 West 4<sup>th</sup> Street, Baird, Texas 79504), **County Calvo Building** (generally located at 109 West 5<sup>th</sup> Street, Baird, Texas 79504), and historic **1877 County Jail Building, herein called the County Former Jail Building** (generally located on West 5<sup>th</sup> Street, Baird, Texas 79504), said buildings all being located in Callahan County, Texas adjacent to the **Callahan County Courthouse** (said courthouse being generally located at 100 West 4<sup>th</sup> Street, Baird, Texas 79504); (d) “**Project Buildings**” shall mean the real property and improvements of the aforesaid County Annex Building, County Calvo Building, and County Former Jail Building described in this paragraph 2; and (e) the past, present, or future tense shall each include the other, the masculine, feminine, or neuter gender shall each include the other, and the singular and plural number shall each include the other where necessary for a correct meaning. All attached documents are incorporated by reference.

**Legal Entity** of the Offeror may be considered by the County in terms of risk under its best interests. Joint-Venture (JV) entities; Prime/Sub-contractor; or other formation of firms for

the purposes of providing the County with the optimum CMAC and construction capabilities that enhance the County's project or projects position, such as a single entity submitting for both projects, will be considered. Firms may elect to pursue one or both projects and will be evaluated on the merits and performance of each project type.

3. **SOQ Solicitation.** The County hereby solicits sealed **Statements of Qualifications** ("SOQs") from qualified firms or individuals ("Offerors") for a proposed engagement by the County of a Construction Manager as Constructor (CMAC) for the County's pending Auxiliary Buildings Project, and as such, performance of the necessary evaluations, designs, reviews, cost estimates, and related functions required for development of project plans, specifications, procurement, review, and construction activities for the Project.
4. **Attachments to RFQ.** The following documents are attached to this RFQ as exhibits:
  - **EXHIBIT 1** -- Offeror's Proposal Form (with Attachments A-1 through A-5);
  - **EXHIBIT 2** -- AIA Document A305-2020/Contractor's Qualification Statement (with attached AIA Documents: Exhibit A/General Information Form; Exhibit B/Financial and Performance Information Form; Exhibit C/Project Specific Information Form; Exhibit D/Contractor's Past Project Experience Form; and Exhibit E/Contractor's Past Project Experience, Continued Form); and
  - **EXHIBIT 3** -- AIA Document A133-2019/Standard Form of Agreement between Owner and Construction Manager as Constructor (with attached AIA Documents: Exhibit A/Guaranteed Maximum Price Amendment; and Exhibit B/Insurance and Bonds).
5. **RFQ Inspection and Copies.** This RFQ may be inspected, and copies obtained from the following County public official: **Jan Windham, Callahan County Treasurer, Callahan County Courthouse, 100 West 4<sup>th</sup> Street, Suite 100, Baird, Texas 79504.** Proposed Offerors may obtain a copy of this RFQ by: (a) calling the Callahan County Treasurer at (325) 854-5840; (b) making their request for an RFQ copy by email to the Callahan County Treasurer at [Jan.Windham@callahancounty.org](mailto:Jan.Windham@callahancounty.org); or (c) downloading the RFQ from the County's internet website at [www.co.callahan.tx.us](http://www.co.callahan.tx.us). **A mandatory return e-mail acknowledgement is required for accessing the RFQ documents as a form of transmittal and for the County's List of Interested Parties.** Offerors are advised to check the County's internet website frequently for any additional postings or information regarding the Project, including but not limited to updated construction plan addenda, drawings, and/or specifications for the Project.

**Note: This County Auxiliary Buildings Project is currently at a pre-design 10% scope description level. For CMAC Services information to be submitted, only the Pre-construction CMAC fee information and the Construction phase CMAC fee information using the County provided construction cost, are required at this time. Guaranteed Maximum Price (GMP) information is not required at this stage.**

6. **Deadline to Submit Written Questions.** Questions regarding this RFQ must be submitted in writing to the **Callahan County Treasurer** (by US mail, courier, hand-delivery, facsimile, or e-mail delivery to her office address and contact information provided above in this RFQ), **on or before July 5, 2021 at 3:00 p.m. County local time.** The instructions contained in this RFQ are provided for the preparation and timely submission of a SOQ. The County will try to answer written questions concerning this RFQ, but shall not be obligated to do so. Answers to written questions may be delivered by the County by email; therefore, written inquiries must contain the name and email address of the person to whom the County reply should be made. The foregoing shall not limit the County's right to issue addenda to the scope of work, or any other RFQ matter, prior to the opening of RFQ responses, or to delay the date and time of said opening, in order to ensure that all potential Offerors are aware of and have had sufficient time to consider the addenda.
7. **Pre-Proposal Meeting and Tour of Project Sites.** A non-mandatory (but encouraged) pre-proposal meeting and tour of the Project sites will occur **at 9:30 a.m. County local time on June 24, 2021, at the Callahan County Courthouse, District Courtroom, 100 West 4th Street, Suite 301, Baird, Texas 79504.**
8. **Deadline to Submit SOQs.** Sealed SOQs will be accepted by the County **until 3:00 p.m. County local time on July 8, 2021.** The submitted SOQ must be timely delivered by mail, courier, or hand-delivery to the following County public official: **Jan Windham, Callahan County Treasurer, Callahan County Courthouse, 100 West 4<sup>th</sup> Street, Suite 100, Baird, Texas 79504.** Any SOQ received by the County after that deadline will be returned unopened. The submitted SOQ, must be appropriately marked on the outside mailing envelope or package as follows: **"Statement of Qualifications of \*\*\*\*\* (insert Offeror Name) – CMAC – Callahan County Auxiliary Buildings Project."**
9. **Opening and Review of SOQs.** The SOQs timely delivered to the County will be opened at a **public meeting of the Commissioners Court, said meeting to occur on July 12, 2021 at 9:30 a.m. County local time, at the Callahan County Courthouse, District Courtroom, 100 West 4th Street, Suite 301, Baird, Texas 79504.** Review of the SOQs will thereafter begin by the Commissioners Court, County staff, and the Callahan County Facilities Committee. The SOQs will be reviewed, discussed, deliberated, and formally ranked by the Commissioners Court at the aforesaid or a subsequent public meeting date as allowed by law. The Commissioners Court, using its lawful authority, discretion, and best business judgment, may choose to forego the interview procedure and open negotiations with the highest or top-ranked Offeror without an interview.



10. **Sealed and Complete SOQ Documents.** All submitted SOQs must be completed, sealed prior to delivery, and timely submitted to the County as specified in this RFQ. An Offeror interested in responding to this RFQ must submit to the County one (1) original signature/executed SOQ, plus eleven (11) additional copies of the fully executed SOQ, for a total of twelve (12) submitted SOQ instruments. Should the forms supplied by this RFQ for the SOQ submission be inadequate or space restricted, the Offeror also may submit additional pages of information in the SOQ to provide the County with a full and complete RFQ response.
11. **County's Reserved Rights.** The rights to accept or reject any or all submitted SOQs, and/or to waive all formalities regarding this RFQ, are hereby reserved by the County pursuant to all applicable authority. The County further reserves the right to (a) negotiate, under applicable guidelines, the procurement of professional and construction services with one or any and all qualified Offerors having met the submittal requirements, or (b) cancel in whole or in part this RFQ, if it is in the best interest of the County to do so. All SOQs shall become the property of the County upon submission. The County will not reimburse responding Offerors for their SOQ submission expenses, or any subsequently incurred costs associated with the submission of any additional information, the appearance at an interview or presentation, or with the negotiation or procurement of a contract.
12. **Evaluation of Offerors.** Offerors determined eligible for further evaluation based on qualifications submitted in response to this RFQ may be given, at the sole discretion of the Commissioners Court, an opportunity to make a presentation and/or interview with the Commissioners Court and/or the County's Facilities Committee. The SOQ submitting Offerors will be ranked in order by the Commissioners Court, **on or before forty-five (45) days from the opening of the SOQs**, pursuant to the procedure required by Chapter 2269 of the Texas Government Code and other authority, and according to the selection criteria described in this RFQ. Following the ranking of Offerors, contract negotiations will begin with the top ranked Offeror as required by law. Should negotiations with the highest ranked Offeror fail to yield a contract award, or if the selected Offeror is unable to execute a contract, negotiations will formally end -- and then, negotiations will commence with the second highest ranked Offeror in the manner required by law. However, notwithstanding anything to the contrary stated in this RFQ, the Commissioners Court, using its lawful authority, discretion, and best business judgment, may: (a) choose to forego the aforesaid interview procedure and open negotiations with the highest or top-ranked Offeror; or (b) direct a contract award from its score evaluation of the highest ranked Offeror, without interviews, if deemed in the best interest of the County. The County shall select the Offeror that timely submits a SOQ offering the best value for the County based on the selection criteria described in this RFQ and the evaluation ranking of Offerors conducted by the Commissioners Court.
13. **Confidential Information.** Upon written request to the Callahan County Treasurer, the County will provide a list of all Offerors who timely submitted a SOQ to the County for the Project. No disclosure of submitted SOQ contents will occur to competing Offerors, and

all submitted SOQ's will be kept confidential by the County, during the SOQ evaluation, selection, and negotiation process, subject to the requirements of Chapter 2269 of the Texas Government Code, Chapter 551 of the Texas Government Code (the Texas Open Meetings Act), and Chapter 552 of the Texas Government Code (the Texas Public Information Act). Except for trade secrets and confidential information identified in the SOQ as proprietary or confidential, all SOQ's will be open for public inspection after a contract award is made by the County, subject to the requirements of said statutes.

### Project Description

14. **Proposed CMAC Engagement.** The County seeks to engage a Construction Manager as Constructor for the Project, as described in this RFQ. Please note the following: (a) the Project involves a **One-Step RFQ selection process** pursuant in part to section 2269.253 of the Texas Government Code for the selection of a Construction Manager as Contractor (CMAC) (also called Construction Manager at Risk or CMAR in this RFQ) for the Project; and (b) the contracted price for the CMAC engagement for the Project may be a **guaranteed maximum price** pursuant to section 2269.251 of the Texas Government Code. The selected Offeror must: (a) execute with the County an AIA Owner-Construction Manager As Constructor Document A133-2019 and A133-2019 Exhibits A and B, and other submitted information as requested prior to final award of the CMAC contract; and (b) upon final award of said contract for the County's Project, timely and successfully perform all duties, tasks, and matters specified for performance by the Construction Manager as Constructor (CMAC) in said contract, and specified for a Constructor Manager at Risk in Chapter 2269 of the Texas Government Code.
15. **Scope of Project Improvements.** The County's scope for improvements for the Project consists of retrofit, renovation, replacement, expansion, addition, and/or other actions required to renovate, expand, improve, and make fully functional for public use as County office and record archive space, the Project Buildings located in Baird, Callahan County, Texas. The Project's design and construction will be compliant with authorities having jurisdiction, to include but not be limited to the requirements of the County, the Texas Historical Commission ("THC"), and other entities recognized at the local, state, or national building code and life safety authority levels.

### Scope of Work

16. The County seeks to engage a proactive CMAC involved for the full duration of the Project program(s), including a post-occupancy 1-year warranty inspection, to include but not be limited to the following services and activities: AE design development; contract documents; bidding; negotiations and contract preparation; construction; and as required Beneficial Occupancy and Final Completion; and 1-year warranty period and inspection. Specific work items will include:

- Pre-construction services and commitments including:

- Schematic, 60% estimates; Guaranteed Maximum Price (GMP) to County at 90% Construction Documents (with copies of said documents available for review and copying: (a) at the office of the Callahan County Treasurer, at her office address and contact information described in paragraph 5; and (b) by downloading said documents from the County's internet website at [www.co.callahan.tx.us](http://www.co.callahan.tx.us). Offerors are advised to check the County's internet website frequently for any additional postings or information regarding the Project, including but not limited to updated construction plan addenda, drawings, and/or specifications for the Project.
- Review of plans and specification for constructability and cost-value
- Overall coordination of CMAC's sub-contractors during plan reviews;
- Provide CMAC services during construction;
- Provide consistent on-site and office support for the project and to the County and AE team;
- Attend and document monthly Owner Architect Contractor (OAC) meetings;
- Attend other scheduled meetings at the County's request (monthly report at a designated regularly scheduled Commissioners Court session; and
- Provide all final project documents to the County.

17. **Regulatory Compliance.** All Project submissions and work shall conform to all federal, state, and local laws, ordinances, requirements, and building codes, and shall be in accordance with local design standards, details and specifications. Furthermore, the Offeror must timely submit to the County any and all documents showing compliance with: (a) Chapter 176 of the Texas Local Government Code regarding vendor disclosure of conflicts of interest; (b) Chapter 2271 of the Texas Government Code showing that Offeror does not boycott Israel and will not boycott Israel during the term of an awarded CMAC contract; and (c) section 2252.908 of the Texas Government Code showing timely Offeror submission of a Form 1295/Texas Ethics Commission Certificate of Interested Parties.

18. **Construction Schedule Priority and Comments.** Please note the following:

- (a) In order to restore the 1929 historic Callahan County Courthouse, the County must provide interim facilities for displaced functions while the Courthouse is vacated for construction over 24-36 months. This urgent timing requires that the County Former Jail Building (not to be confused with the existing operational historic Jail directly behind the Courthouse – not in contract), and County Calvo Building, be retrofitted and renovated for assigned purposes as soon as possible. The County Annex Building (formerly the County Hospital and located adjacent to the Courthouse, facing West 4<sup>th</sup> Street) work is anticipated to: (i) commence when construction documents are completed, and in coordination with the initiation of Courthouse restoration; but (ii) be completed before the Courthouse and be available to

relocate displaced county functions pursuant to the final program designated department occupancy plan.

- (b) Each project has different funding mechanisms provided by the County and each must have separate documents, construction expense, materials and supplies, accounting, construction placement, and contracts. A THC state funds grant applies only to the Courthouse restoration. The County Courthouse restoration project, and the County Auxiliary Buildings project, are separate general obligation bond funded projects.
- (c) A-1 Property/County Former Jail Building – The CMAC scope is for site work (including parking lots), including finish grading and related surface drainage improvements and adjustments to existing grade, Exterior Soffit repair, miscellaneous roof repair, stone repointing, and exterior openings – including window shutters and new security rated doors. The County is pursuing self-performing/job order work regarding other scope items for the County Former Jail Building.
- (d) A-2 Property/County Annex Building – This 1939 Works Progress Administration building has THC overview, and the AE team has addressed their preliminary design input (but this building has no THC grant funding). The existing approximately 8,000sf, more or less, building has poured-in-place concrete floor, walls, and columns construction; however, the roof structural system is an original wood truss system with an applied built-up roof system. A new approximately 5,400sf, more or less, infill addition is proposed as a similarly hardened structure (reinforced filled CMU construction with a concrete ceiling roof structure – to accommodate critical and essential services functions, i.e., Sheriff’s Office Dispatch, EOC, and other operations). The AE documents are at a Conceptual Programming allocation phase, requiring completion of the design process, and construction documents with the CMAC and County. Cost value comparison of retaining the existing roof versus a new hardened ceiling roof structure by the CMAC is part of the pre-construction phase services. Similar to the County Former Jail Building IT Hub Conversion, the County’s vendor will address the IT infrastructure needs to the building as Owner Provided/Owner Installed, except for the building penetrations and equipment hook-up power coordination. This building requires an Emergency Generator for operation of the entire facility during power outages. The County Annex Building and the Callahan County Courthouse are each to be provided with separate Geothermal HVAC systems, using a shared but separate cost allocation for the thermal wells field arrayed on both separate project sites, all included in this Scope of Work. This and all other Site Work are also separate to each building’s construction cost, accounting, and separate allocations for shared infrastructure and other common or shared elements by specific cost allocation or by pro-rated share

(to be determined from final or GMP documents) if dedicated separate costs are not identifiable or available.

- (e) A-3 Property/County Calvo Building – The CMAC scope is for: site work (including parking lot), including finish grading and related surface drainage improvements adjustments to existing grade; and miscellaneous roof repair, exterior weatherproofing, and minor interior finish out work. The County is pursuing self-performing/job order work regarding other scope items for the Calvo Building.

### Statement of Qualifications

19. **Evaluation Criteria.** The criteria response information described below shall be included by the Offeror in the SOQ timely submitted to the County for the Project, and said information shall be evaluated by the County:
- (a) Acceptance of AIA Documents A305-2020 and A133-2019 or as Submitted with Deviations is required;
  - (b) Submittal of Statement of Qualifications pursuant to the Offeror’s Proposal Form requirements or AIA Document A305-2020 and all Exhibits is required;
  - (c) The competence and qualifications of the individuals who will be directly responsible for the proposed work, based upon education and experience pertinent to the work considered, must be described in the SOQ, and further, the SOQ should demonstrate and describe CMAC team experience in historic preservation projects;
  - (d) The SOQ shall describe the technical adequacy of the personnel to be utilized for the proposed work based upon qualifications and experience pertinent to the work considered;
  - (e) Demonstrated experience of the prime firm, based upon previous work similar to that of these project types, must be described in the SOQ;
  - (f) The SOQ must describe the typical pre-construction services provide, with the fees for services to be included within this section;
  - (g) The SOQ must demonstrate Offeror’s understanding of the CMAC/CMAR delivery method and describe the firm’s approach to delivery.
  - (h) The SOQ must demonstrate the Offeror’s history of accuracy of cost estimates and ability to perform within budget guidelines and constraints;

- (i) The SOQ must include the AIA Document A133-2019 attachment regarding contract issues or exceptions that the firm would request if selected to provide the services listed herein;
  - (j) The SOQ must describe the CMAC fees – see Offeror’s Proposal Form Attachment;
  - (k) The SOQ must contain an acknowledgment that to obtain best value, the County may consider one or more Offerors for one or all projects;
  - (l) Pursuant sections 2269.055, 2269.253-.254 of the Texas Government Code and other authority, the SOQ must contain sufficient descriptions and documentation regarding: (i) the proposed price of the CMAC engagement; (ii) the Offeror’s experience, reputation, quality of goods and services, safety record, and proposed personnel; (iii) the Offeror’s financial capability to perform as the CMAC for the Project, in view of the Project’s size and scope; (iv) the ability of the Offeror through CMAC performance to provide the best value to the County for the Project; and (v) the ability of the Offeror to successfully perform for the Project all duties, tasks, and matters specified for performance by a Construction Manager at Risk (CMAR) by Chapter 2269 of the Texas Government Code; and
  - (m) The SOQ shall contain and describe compliance with any other criteria for evaluation or SOQ requirement described in this RFQ for the Project.
20. **Scoring Criteria.** After receipt of the timely submitted SOQs, the County will use the following weighted scoring criteria in the Offeror ranking process:
- Personnel team and subcontractor 20%
  - Experience and past performance 20%
  - CMAC support services 15%
  - Understanding and Project approach 10%
  - Prior budget and estimate 15%
  - CMAC fees as best value to County 15%
  - References 5%

Total	100%
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#### **Format Requirements**

21. **Organization and Copies.** The SOQ format response shall: (a) be organized in order regarding the evaluation criteria listed in paragraph 19 above; and (b) preferably not exceed 30 double-sided pages in length (exclusive of cover letter, references, and resumes); and (c) contain one (1) executed original SOQ, and eleven (11) copies of the fully executed

original SOQ.

22. **Criteria Identified.** SOQs shall be clearly identified and conform to the evaluation criteria listed in paragraph 19 above.
23. **Project Time-Line.** A proposed Project schedule, identifying the beginning and ending of each phase of the work from 90% GMP acceptance through Final Completion shall be required to be included in the SOQ.
24. **Client Reference List.** The Offeror shall submit a completed Client Reference List for a minimum of three and up to five (3-5) [AIA Document A305 requires 5 references] from recent (within 10 years) clients of similar size projects, or projects of similar size and scope, using the following content:

Client Name and Contact: \_\_\_\_\_  
 Project: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 E-Mail (if available): \_\_\_\_\_

25. **Insurance and Fee Information. PLEASE COMPLETE THIS INFORMATION AND ATTACH TO THE SUBMITTED SOQ. Place a check mark next to the insurance coverage that applies to your firm. Complete the same for each of your consultants/major sub-contractors:**

**PROPOSED INSURANCE:**

\_\_\_\_\_ Minimum Statutory Workers' Compensation Insurance, with Employers' Liability Insurance in the amount of \$ \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

\_\_\_\_\_ Minimum Commercial General Liability Insurance of \$ \_\_\_\_\_ each occurrence

\_\_\_\_\_ Minimum Business Automobile Liability Insurance of \$ \_\_\_\_\_ each occurrence on all vehicles used in connection with the contract, whether owned, non-owned or hired

\_\_\_\_\_ Minimum Professional Liability Insurance of \$ \_\_\_\_\_ each occurrence

**PROPOSED CMAC FEES: Use forms provided, as attached to this RFQ**

\_\_\_\_\_ Proposed General Conditions \_\_\_\_\_ include form

\_\_\_\_\_ Proposed CMAC Fee \_\_\_\_\_ include form

[END OF RFQ]

**RFQ No. 2021-002-ABP-CMAC:**

**EXHIBIT 1**

**(Offeror's Proposal Form -- with Attachments  
A-1 through A-5)**



**EXHIBIT 1****OFFEROR'S PROPOSAL FORM**

For: Construction-Manager-As Constructor ("CMAC")  
 Callahan County Auxiliary Buildings Project  
 Komatsu Architecture Project No. 2020.128

This Offeror's Proposal Form is to be submitted with the Offeror's SOQ in response to **Callahan County, Texas RFQ No. 2021-002-ABP-CMAC**.

This Offeror's Proposal Form contains the following documents, the contents of which are incorporated by reference: Attachment A-1/Qualifications Questionnaire; Attachment A-2/General Condition Chart; Attachment A-3/Insurance Requirements; Attachment A-4/Bond Requirements; and Attachment A-5/Prevailing Wage Rate Requirements.

Pursuant to the above described RFQ for the engagement of a Construction Manager as Constructor for the Callahan County Auxiliary Buildings Project, the undersigned Offeror agrees to provide:

- Preconstruction Phase Services: Perform the preconstruction phase services as described in the RFQ; and submit a Guaranteed Maximum Price ("GMP") proposal to Owner TBD; and
- Construction Phase Services: If Owner accepts the GMP, perform the construction phase services as described in the RFQ and in accordance with the contract terms.

**DESCRIPTION OF COST ITEMS UNDER CMAC AGREEMENT**

**A. Offeror Firm Information:**

Name of Firm:

Address:

Phone No.:

Alternate Phone No.:

Primary Contact:

Contractor's Qualifications Statement:

Key Project Personnel Organizational Chart:

**B. Fees:**

1. Phase I, Preconstruction Services \$ \_\_\_\_\_.

(To include personnel expenses, project estimates, preliminary project schedule, value engineering, constructability reviews, pre-planning, overhead and profit, and other services, through design phase portion of the project.) The following items are to be included in your "Fee" percentage rather than in General Conditions:

- Safety Supervisor inspections
- Personal computers/computer charges
- Mobile or two-way communication devices
- Vehicle rental, repair, insurance and maintenance
- Project scheduling services (except for time of field office staff)

2. Phase II, Proposed Construction Services \$ \_\_\_\_\_.  
 (To include overhead, profit, direct, and indirect costs for the management and construction of the project.)

C. Based on the estimated construction price of \$6,000,000.00, fill in the following information regarding your standard structure and your understanding of the project:

General Conditions Expenses (as described in Attachment A-2 )		\$ _____
Construction Contingency		\$ _____
Owner's Contingency (not included in CMAC fees)		
Expected Cost of Performance and Payment Bonds (included)	____%	\$ _____
Expected Cost of Insurance (included)	____%	\$ _____
Other Costs Not Included above (attach a description of these items)		\$ _____
Total of Combined CMAC Fees (inclusive of B above)	____%	\$ _____

D. Savings: All savings accrue to the Owner. Consideration will be given under "best value" if the same CMAC is selected for both Projects and can offer a combined savings to the County for General Conditions and other CMAC fees. \_\_\_\_% \$ \_\_\_\_\_

E. The undersigned agrees to complete the Construction Work within \_\_\_\_\_ calendar days after the date of Owner's Written Notice to Proceed with Construction.

Owner reserves the right to accept or reject any and all proposals or any combination thereof proposed for the work.

Upon acceptance of this proposal by the Commissioners Court, the CMAC will be required to execute a contract and provide the insurance and bonds as set out in the RFQ.

F. The person signing this response on behalf of the Offeror represents to the Owner (the County) and Architect that:

1. The information provided herein is true, complete and accurate to the best of the knowledge and belief of the undersigned;

2. The undersigned has full authority to execute this response on behalf of Offeror respondent;
3. The Offeror has thoroughly read, understands, and will comply with all aspects and requirements of this Offeror's Proposal Form (including its Attachments A-1 through A-5, inclusive) and the requirements of the above described RFQ.
4. The following documents are included with this Offeror's Proposal Form: (a) a Proposal Bond in the amount of 5% the Construction Budget; and (b) the information and/or responses required by the Qualifications Questionnaire/Attachment A-1, General Condition Chart/Attachment A-2, Insurance Requirements/Attachment A-3, Bond Requirements/Attachment A-4, and Prevailing Wage Rate Requirements/Attachment A-5.
5. Offeror understands and acknowledges that: (a) the Project involves a One-Step RFQ selection process pursuant in part to section 2269.253 of the Texas Government Code for the selection of a Construction Manager as Contractor (CMAC) (also called Construction Manager at Risk or CMAR in the RFQ) for the Project; and (b) the contracted price for the CMAC engagement for the Project may be a guaranteed maximum price pursuant to section 2269.251 of the Texas Government Code.

Receipt is acknowledged of the following addenda, if any:

Addendum No. 1: \_\_\_\_\_  
(date)

Addendum No. 2: \_\_\_\_\_  
(date)

Addendum No. 3: \_\_\_\_\_  
(date)

**WAIVER OF CLAIMS: THE RESPONDENT BY SUBMISSION OF ITS SOQ PROPOSAL WAIVES ANY CLAIMS IT HAS OR MAY HAVE AGAINST THE ARCHITECT, ITS CONSULTING ENGINEERS, OR ANY OTHER CONSULTANTS, AND THEIR RESPECTIVE EMPLOYEES, OFFICERS, MEMBERS, DIRECTORS AND PARTNERS, AND AGAINST THE COUNTY, ITS ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, OFFICERS, AGENTS, AND REPRESENTATIVES, INCLUDING THE MEMBERS OF THE COUNTY'S GOVERNING BODY, CONNECTED WITH OR ARISING OUT OF THE RFQ, SOQ PROPOSAL, SOQ PROPOSAL ADMINISTRATION, SOQ PROPOSAL EVALUATION, SOQ PROPOSAL RECOMMENDATION, AWARD OF THE CONTRACT, AND/OR THE REJECTION OF ANY OR ALL SOQ PROPOSALS. SUBMISSION OF THIS SOQ PROPOSAL INDICATES THE OFFEROR RESPONDENT'S ACCEPTANCE OF THE EVALUATION TECHNIQUE AND RESPONDENT'S RECOGNITION THAT SOME SUBJECTIVE JUDGMENTS MUST BE MADE BY THE COUNTY DURING THE DETERMINATION OF QUALIFICATIONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE OFFEROR RESPONDENT ACKNOWLEDGES THAT THE EVALUATIONS AND SELECTION SHALL BE MADE ON THE BASIS OF BEST VALUE AND THE QUALIFICATIONS OF THE OFFEROR RESPONDENT, WHICH**

**MUST BE MADE PUBLIC, AND WAIVES ANY CLAIM IT HAS OR MAY HAVE AGAINST THE ABOVE-NAMED PERSONS OR PARTIES, DUE TO INFORMATION CONTAINED IN SUCH EVALUATIONS.**

**EXCECUTION**

Respectfully submitted,

\_\_\_\_\_  
Offeror Name

By:

\_\_\_\_\_  
Signature of Authorized Offeror Representative

\_\_\_\_\_  
Printed Name Title

Address:

\_\_\_\_\_  
Street or P.O. Box

\_\_\_\_\_  
City Zip Code

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

**Attachment A-1 to Offeror's Proposal Form:**

**QUALIFICATIONS QUESTIONNAIRE**

Provide the following information and responses as part of your proposal. You may attach additional pages to answer questions.

- A. A fully completed, signed and notarized AIA Document A133-2019
- B. A comprehensive list of all team members/key individuals to be assigned to the project together with short resume for each; resume to include brief description of
1. Education
  2. Professional experience; indicate years in different areas of the industry
  3. Professional Memberships and Certifications,
  4. Overview of Recent Projects Completed.
  5. Statement of current project/workload commitment.
- C. Similar Experience by the Firm – Construction Manager-At-Risk, Construction Manager As Constructor, Competitive Sealed Proposal, Design-Bid-Build Projects  
Where the experience in this area may be that of the key individuals that will be assigned to the project, clarify if individual or firm experience is reported for each project listed.
1. Provide a brief summary of each project including:
    - a. Project Title
    - b. Location
    - c. Brief Listed Description of the Project, including:
      - 1) Basic scope,:
      - 2) SF area
      - 3) Project value (final cost)
      - 4) Start date, completion date,
      - 5) Owner
      - 6) Owner reference including
        - a) Name of Contact,
        - b) Address of contact,
        - c) Telephone number, fax number
      - 7) Architect reference including
        - a) Name of Contact,
        - b) Address of contact,
        - c) Telephone number, fax number
      - 8) Paragraph addressing a more comprehensive description of the project detailing scope and any specialized operations. Explain requirements of the Owner that had an impact on the Project.
      - 9) Photograph of the Project (overall exterior)
- D. Would you propose to do any work with your own forces or to bid all work to subcontractors? List the categories of work and percentage of the overall contract that your firm would normally perform with its own forces.

- E. At what point in the project would you be willing to furnish the GMP per Project?
- F. An audited/completed current Financial Statement for 2020 and Year to Date 2021
- G. Provide the name of your bonding company, including the name and address of your agent and your bonding capacity.
- H. Provide a response and details, if applicable to the following:
1. Has your firm ever failed to complete any work awarded to it?
  2. Has your firm filed any lawsuits or requested arbitration with regards to construction contracts within the last five years?
  3. Is your firm now or has it been involved with any litigations, mediations, or other settlement procedures within the last five years?
- I. The Offeror Proposer shall provide as attached exhibits to the SOQ submittal:
1. Exhibit A: a listing of current major project in Progress; this list to indicate workload levels for the firm during the anticipated construction period for the Courts Annex project (Courts Annex project Mercantile Project and Former Jail IT Hub have anticipated start date in second quarter (May or June) 2021 with a projected (proposed by Offeror) day performance period). Listing to include:
    - a. Project Title
    - b. Project Location
    - c. One line description
    - d. Area SF
    - e. Project Value
    - f. Percent complete
    - g. Anticipated Start Date (if within Courts Annex Project timeframe)
    - h. Anticipated Completion Date
    - i. Owner, including references similar to those required in section C above
    - j. Architect, including references similar to those required in section C above.
    - k. Selection method.
    - l. Optional: photograph or graphic of the project (design rendering or model)
  2. Exhibit B: A list of major projects during the past five years with emphasis on work with similar procedural requirements as those indicated for the Callahan County Courts Annex Projects.
  3. Exhibit C: List the key individuals of the Firm and their present commitment levels. Indicate length of years of experience for each individual.
  4. Exhibit D: List trade references including
    - a. Name of Firm,
    - b. Address of Firm
    - c. Contact information including position in the firm and current
    - d. Telephone number.

**Attachment A-2 to Offeror's Proposal Form****GENERAL CONDITION CHART**

General Conditions					
	Description	Qty	Unit	Cost \$/Unit Including all Burden, Insurance, Etc.	Total
	<b>On Site Project Management</b>		Mo.		
	Project Executive		Mo.		
	Project Manager		Mo.		
	Superintendent(s)		Mo.		
	Assistant Superintendent(s)		Mo.		
	Office Engineer(s)		Mo.		
	Project Expeditor		Mo.		
	Scheduler		Mo.		
	Project Support Staff		Mo.		
	Cost Engineer		Mo.		
	<b>Temporary Project Construction &amp; Utilities for CM Staff</b>				
	Dumpsters for CM Staff		Mo.		
	Monthly Telephone Service		Mo.		
	Project Water		Mo.		
	Temporary Toilets		Mo.		
	Temporary Fire Protection		Mo.		
	Telephone System Installation		LS		
	Electricity		Mo.		
	<b>Field Offices &amp; Office Supplies for CM Staff</b>				
	Partnering Costs		LS		
	Job Photos & Videos		Mo.		
	CM Project Specific Signage		LS		
	Postage & Deliveries		Mo.		
	Mobilization for Office Trailers		Mo.		
	Monthly Office Rental Costs		Mo.		
	Storage Trailers		Mo.		
	Field Office Equipment		Mo.		
	Vehicles including fuel, maintenance & insurance		Mo.		
	Safety Equipment		Mo.		
	First Aid Supplies		Mo.		
	Job Office Supplies		Mo.		
	Janitorial Services		Mo.		
	Project Computers & Software		Mo.		
	Field Office Furniture		Mo.		
	Copy Machine & Supplies		Mo.		
	Communications Equipment		Mo.		
	Advertising		Mo.		
	<b>TOTAL GENERAL CONDITIONS</b>				

**Attachment A-3 to Offeror's Proposal Form**

**INSURANCE REQUIREMENTS**

**(1) General Requirements.**

Construction Manager as Constructor ("Construction Manager" or "Contractor," also called Construction Manager at Risk in the RFQ) shall carry insurance in the types and amounts indicated below for the duration of the Contract, which shall include items owned by Owner in the care, custody and control of Construction Manager prior to and during construction and warranty period.

Construction Manager must complete and forward the Certificate of Insurance to Owner before the Contract is executed as verification of coverage required below. Construction Manager shall not commence Work until the required insurance is obtained and until such insurance has been reviewed by Owner. Approval of insurance by Owner shall not relieve or decrease the liability of Construction Manager hereunder and shall not be construed to be a limitation of liability on the part of Construction Manager. Construction Manager must also complete and forward the Certificate of Insurance to Owner whenever a previously identified policy period has expired as verification of continuing coverage.

Construction Manager's insurance coverage is to be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of A or better.

All endorsements naming the Owner as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall indicate: Owner, and the address set forth for Owner in the Agreement.

The "other" insurance clause shall not apply to the Owner where the Owner is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both Owner and Construction Manager, shall be considered primary coverage as applicable.

If insurance policies are not written for amounts specified below, Construction Manager shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

Owner shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

Owner reserves the right to review the insurance requirements set forth during the effective period of this Contract and to make reasonable adjustments to insurance coverage, limits,



and exclusions when deemed necessary and prudent by Owner based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as Construction Manager. Provided, however, in event of any such adjustments by Owner, Construction Manager shall be entitled to a Change Order for any increased costs Construction Manager incurs as a result of such adjustments.

Construction Manager shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

Construction Manager shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

Construction Manager shall provide Owner thirty (30) days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicted within the Contract.

If Owner owned property is being transported or stored off-site by Construction Manager, then the appropriate property policy will be endorsed for transit and storage in an amount sufficient to protect Owner's property.

The insurance coverages required under this contract are required minimums and are not intended to limit the responsibility or liability of Construction Manager.

**(2) Business Automobile Liability Insurance.** Provide coverage for all owned, non-owned and hired vehicles. The policy shall contain the following endorsements in favor of Owner or such alternate endorsement designations as Owner may hereafter specify:

- a) Waiver of Subrogation endorsement TE 2046A;
- b) 30-day Notice of Cancellation endorsement TE 0202A; and
- c) Additional Insured endorsement TE 9901 B.

Provide coverage in the following types and amounts:

A minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability each accident.

**(3) Workers' Compensation And Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Section 401). Construction Manager shall assure compliance with this Statute by submitting two (2) copies of a standard certificate of coverage (e.g. ACCORD form) to Owner for every person providing services on the Project as acceptable proof of coverage. The Certificate of Insurance must be

presented as evidence of coverage for Construction Manager. Workers' Compensation Insurance coverage written by the Texas Workers Compensation Fund is required, unless Owner agrees to other in writing. Construction Manager's policy shall apply to the State of Texas and include these endorsements in favor of Owner:

- a) Waiver of Subrogation, form WC 420304; and
- b) 30-day Notice of Cancellation, form WC 420601.

The minimum policy limits for Employers' Liability Insurance coverage shall be as follows:

\$500,000 bodily injury per accident, \$500,000 bodily injury by disease policy limit and \$500,000 bodily injury by disease each employee.

**(4) Commercial General Liability Insurance.** The Policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract and all contracts relative to this Project.
- b) Completed Operations/Products Liability for the duration of the warranty period.
- c) Explosion, Collapse and Underground (X, C & U) coverage.
- d) Independent Construction Managers coverage.
- e) Aggregate limits of insurance per project, endorsement CG 2503.
- f) Owner listed as an additional insured, endorsement CG 2010.
- g) 30-day notice of cancellation in favor of Owner, endorsement CG 0205.
- h) Waiver of Transfer of Recovery Against Others in favor of Owner, endorsement CG 2404.

Provide coverages A&B with minimum limits as follows: a combined bodily injury and property damage limit of \$2,000,000 per occurrence.

**(5) Builders' Risk Insurance.** Construction Manager shall maintain Builders' Risk Insurance on an all-risk physical loss form in the full value of the Contract Sum as the same may be adjusted by Change Order. Coverage shall continue until the Work is accepted by Owner. Owner shall be a loss payee on the policy. If off site storage is permitted, coverage shall include transit and storage in an amount sufficient to protect property being transported or stored. The insurance shall include coverage for loss of use of Owner's property due to fire or other hazards covered by such insurance.

**(6) Umbrella Excess Liability Coverage** in an amount of not less than Ten Million Dollars (\$10,000,000), combined single limit bodily injury/property damage with coverage to be in excess

of the employer's liability, commercial general liability, and automobile liability insurance required above for each occurrence and in the aggregate. Owner shall be listed as an additional insured. A waiver of subrogation endorsement shall be obtained in favor of Owner, and a 30-day notice of cancellation endorsement in favor of the Owner.

**Subcontractor Insurance Requirements:**

(1) Unless waived by Owner, the following forms of insurance are the minimum coverage requirements to be furnished by all Subcontractors, and deductibles shall not exceed ten thousand dollars (\$10,000). The Construction Manager has the option to require higher limits of liability from designated Subcontractors in the form of primary or excess liability coverage.

a) Workers' compensation insurance to cover full liability under Workers' Compensation Laws of the State of Texas with employer's liability coverage in limit not less than Five Hundred Thousand Dollars (\$500,000.00).

b) Commercial general liability insurance coverage shall be on an "occurrence" basis and shall insure the Subcontractor against claims related to Work performed under the Subcontract for bodily injury, including death of any person other than the Trade Construction Manager's employees, and property damage for injury to or destruction of tangible property, other than the Work itself. The policy shall contain the personal injury and broad form property damage endorsements modified as set forth below, and the policy exclusions pertaining to loss by explosion, collapse or underground damage. Owner and Construction Manager are to be named as additional insured. The policy shall include the following Overages and limits:

- (i) Completed operations liability
- (ii) Contractual liability insuring the indemnification agreement contained in the Trade Contract
- (iii) Personal injury liability with employee's exclusion deleted
- (iv) Broad form property damage extended to apply to completed operations
- (v) Automobile liability insuring Trade Construction Manager for operations of all owned, hired and non-owned vehicles
- (vi) Limits of liability shall not be less than:
  - (A) Bodily injury, except automobile:
    - (I) \$1,000,000 each occurrence
    - (II) \$1,000,000 aggregate
  - (B) Property damage, except automobile:
    - (I) \$1,000,000 each occurrence
    - (II) \$1,000,000 aggregate
  - (C) Bodily injury: Automobile
    - (I) \$500,000 each person
    - (II) \$1,000,000 each occurrence
  - (D) Property damage: Automobile
    - (I) \$500,000 each occurrence
  - (E) Umbrella excess liability \$1,000,000

- (2) All policies are to be written through a company duly authorized to transact that class of insurance in the State of Texas, with an A.M. Best Rating of B+VII or better.
- (3) Any of such insurance policies may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby.
- (4) Construction Manager's Subcontracts shall provide for reasonable indemnification of the Owner and the Architect for adequate insurance coverage, and contain such other clauses as may be required to fully protect Owner and Construction Manager's interests.

**Attachment A-4 to Offeror's Proposal Form**

**BOND REQUIREMENTS**

Pursuant to Chapter 2253 of the Texas Government Code, sections 2269.258 and 2269.411 of the Texas Government Code, and other authority, the following bond requirements shall apply regarding the engagement of the Construction Manager as Constructor for the Project:

- (1) The Offeror selected as the CMAC shall provide and deliver to the County performance and payment bonds as required by law.
- (2) The required performance and payment bonds shall be drafted, executed, issued, and delivered in full compliance with the authority stated above, including but not limited to the following requirements: (a) said bonds must be executed in the amount of the subject contract by a corporate surety licensed to do business in Texas, in compliance with Article 7.19-1 of the Texas Insurance Code and other authority; (b) said bonds shall be issued, executed, and delivered in the proper form and scope as required by law, on forms which are furnished or approved by the County.
- (3) Notwithstanding anything to the contrary stated in this Attachment A-4, if a fixed contract amount or Guaranteed Maximum Price has not been determined at the time the CMAC contract is awarded, the penal sums of the performance and payment bonds delivered to the County each must be in an amount equal to the Project construction budget – in other words, the amount of each bond in that event shall be equal to 100% of the Estimated Project Budget.
- (4) The required performance and payment bonds of the CMAC may be accepted by the County, through actual delivery of the bonds to the Commissioners Court, at the time the Guaranteed Maximum Proposal is approved by the Commissioners Court. In the alternative, and pursuant to its lawful authority, sole discretion, and best business judgment, the Commissioners Court may agree to accept the required performance and payment bonds if they are delivered by the CMAC to the County not later than the 10th day after the date the CMAC executes the contract – unless the CMAC furnishes a bid bond or other financial security acceptable to the Commissioners Court to ensure that the CMAC will furnish the required performance and payment bonds when a Guaranteed Maximum Price is established.

**Attachment A-5 to Offeror's Proposal Form**

**PREVAILING WAGE RATE REQUIREMENTS**

**General Summary**

In the execution of the Contract for this project, the Construction Manager As Constructor ("Construction Manager") (also called Construction Manager at Risk or CMAR in the RFQ) must comply with all applicable state and federal laws, including but not limited to laws concerned with labor, equal employment opportunity, safety, minimum wage and prevailing wage rates requirements under Chapter 2258 of the Texas Government Code.

The Construction Manager and each Subcontractor who performs Work under this Contract, must pay not less than the rates described herein to a worker employed by it in the execution of the Work.

A Construction Manager or Subcontractor who violates these provisions shall pay to Owner \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated herein.

The Construction Manager and each Subcontractor shall keep a record showing:

- (1) the name and occupation of each worker employed by the Construction Manager or Subcontractor in the construction of the public work; and
- (2) the actual per diem wages paid to each worker.

The record shall be open at all reasonable hours to inspection by officers and agents of Owner.

In the event of a complaint of a breach of these requirements by Construction Manager or a Subcontractor, Owner shall have the right to make a determination as provided by law, and to retain any amount due under the contract pending a final determination of the violation.

**Definitions**

**Base Per Diem Wage Rates:** Except for work on legal holidays, the "general prevailing rate of per diem wage" for the various crafts, type of workers, or mechanics is the product of (a) number of hours worked per day, except for overtime hours, times (b) respective Rate Per Hour.

**Multipliers for Overtime Rates: Over 40 hours per week:** The "general prevailing rate for overtime work" for the crafts, type of workers, or mechanics is one and one-half times the respective Rate Per Hour.

**Multipliers for Holiday Rates:** For legal holidays, the "general prevailing rate of per diem wage" for the various crafts, type of workers, or mechanics is the product of (a) one and one-half times the respective Rate Per Hour times (b) the number of hours worked on the legal holiday.

The prevailing wage rates for this Project are the rates applicable to Callahan County, Texas established by the U.S. Department of Labor which are in effect on the date of the RFQ issuance.

**RFQ No. 2021-002-ABP-CMAC:**

**EXHIBIT 2**

**(AIA Document A305-2020/Contractor's Qualification  
Statement, with Attached AIA Document  
Exhibits A through E)**

# DRAFT AIA® Document A305™ – 2020

## Contractor's Qualification Statement

**THE PARTIES SHOULD EXECUTE A SEPARATE CONFIDENTIALITY AGREEMENT IF THEY INTEND FOR ANY OF THE INFORMATION IN THIS A305-2020 TO BE HELD CONFIDENTIAL.**

**SUBMITTED BY:** (Organization name and address.)  
« »

**SUBMITTED TO:** (Organization name and address.)  
« »

### TYPE OF WORK TYPICALLY PERFORMED

(Indicate the type of work your organization typically performs, such as general contracting, construction manager as constructor services, HVAC contracting, electrical contracting, plumbing contracting, or other.)

« »

### THIS CONTRACTOR'S QUALIFICATION STATEMENT INCLUDES THE FOLLOWING:

(Check all that apply.)

- [ « » ] Exhibit A – General Information  
 [ « » ] Exhibit B – Financial and Performance Information  
 [ « » ] Exhibit C – Project-Specific Information  
 [ « » ] Exhibit D – Past Project Experience  
 [ « » ] Exhibit E – Past Project Experience (Continued)

### CONTRACTOR CERTIFICATION

The undersigned certifies under oath that the information provided in this Contractor's Qualification Statement is true and sufficiently complete so as not to be misleading.

\_\_\_\_\_  
 Organization's Authorized Representative  
 Signature

« »

\_\_\_\_\_  
 Date

« »

\_\_\_\_\_  
 Printed Name and Title

### NOTARY

State of: « »

County of: « »

Signed and sworn to before me this « » day of « » « »

\_\_\_\_\_  
 Notary Signature

My commission expires: « »

**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.

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# DRAFT AIA® Document A305™ – 2020

## Exhibit A

### General Information

This Exhibit is part of the Contractor's Qualification Statement, submitted by « » and dated the « » day of « » in the year « »  
(In words, indicate day, month and year.)

#### § A.1 ORGANIZATION

##### § A.1.1 Name and Location

§ A.1.1.1 Identify the full legal name of your organization.

« »

§ A.1.1.2 List all other names under which your organization currently does business and, for each name, identify jurisdictions in which it is registered to do business under that trade name.

« »

§ A.1.1.3 List all prior names under which your organization has operated and, for each name, indicate the date range and jurisdiction in which it was used.

« »

§ A.1.1.4 Identify the address of your organization's principal place of business and list all office locations out of which your organization conducts business. If your organization has multiple offices, you may attach an exhibit or refer to a website.

« »

##### § A.1.2 Legal Status

§ A.1.2.1 Identify the legal status under which your organization does business, such as sole proprietorship, partnership, corporation, limited liability corporation, joint venture, or other.

« »

- .1 If your organization is a corporation, identify the state in which it is incorporated, the date of incorporation, and its four highest-ranking corporate officers and their titles, as applicable.

« »

- .2 If your organization is a partnership, identify its partners and its date of organization.

« »

- .3 If your organization is individually owned, identify its owner and date of organization.

« »

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- .4 If the form of your organization is other than those listed above, describe it and identify its individual leaders:

« »

§ A.1.2.2 Does your organization own, in whole or in part, any other construction-related businesses? If so, identify and describe those businesses and specify percentage of ownership.

« »

§ A.1.3 Other Information

§ A.1.3.1 How many years has your organization been in business?

« »

§ A.1.3.2 How many full-time employees work for your organization?

« »

§ A.1.3.3 List your North American Industry Classification System (NAICS) codes and titles. Specify which is your primary NAICS code.

« »

§ A.1.3.4 Indicate whether your organization is certified as a governmentally recognized special business class, such as a minority business enterprise, woman business enterprise, service disabled veteran owned small business, woman owned small business, small business in a HUBZone, or a small disadvantaged business in the 8(a) Business Development Program. For each, identify the certifying authority and indicate jurisdictions to which such certification applies.

« »

§ A.2 EXPERIENCE

§ A.2.1 Complete Exhibit D to describe up to four projects, either completed or in progress, that are representative of your organization's experience and capabilities.

§ A.2.2 State your organization's total dollar value of work currently under contract.

« »

§ A.2.3 Of the amount stated in Section A.2.2, state the dollar value of work that remains to be completed:

« »

§ A.2.4 State your organization's average annual dollar value of construction work performed during the last five years.

« »

§ A.3 CAPABILITIES

§ A.3.1 List the categories of work that your organization typically self-performs.

« »

§ A.3.2 Identify qualities, accreditations, services, skills, or personnel that you believe differentiate your organization from others.

« »

§ A.3.3 Does your organization provide design collaboration or pre-construction services? If so, describe those services.

« »

§ A.3.4 Does your organization use building information modeling (BIM)? If so, describe how your organization uses BIM and identify BIM software that your organization regularly uses.

« »

§ A.3.5 Does your organization use a project management information system? If so, identify that system.

« »

§ A.4 REFERENCES

§ A.4.1 Identify three client references:

*(Insert name, organization, and contact information)*

« »

§ A.4.2 Identify three architect references:

*(Insert name, organization, and contact information)*

« »

§ A.4.3 Identify one bank reference:

*(Insert name, organization, and contact information)*

« »

§ A.4.4 Identify three subcontractor or other trade references:

*(Insert name, organization, and contact information)*

« »

# DRAFT AIA® Document A305™ – 2020

## Exhibit B

### *Financial and Performance Information*

This Exhibit is part of the Contractor's Qualification Statement, submitted by « » and dated the « » day of « » in the year « »  
(In words, indicate day, month and year.)

#### § B.1 FINANCIAL

##### § B.1.1 Federal tax identification number:

« »

§ B.1.2 Attach financial statements for the last three years prepared in accordance with Generally Accepted Accounting Principles, including your organization's latest balance sheet and income statement. Also, indicate the name and contact information of the firm that prepared each financial statement.

« »

§ B.1.3 Has your organization, its parent, or a subsidiary, affiliate, or other entity having common ownership or management, been the subject of any bankruptcy proceeding within the last ten years?

« »

§ B.1.4 Identify your organization's preferred credit rating agency and identification information.

(Identify rating agency, such as Dun and Bradstreet or Equifax, and insert your organization's identification number or other method of searching your organization's credit rating with such agency.)

« »

#### § B.2 DISPUTES AND DISCIPLINARY ACTIONS

§ B.2.1 Are there any pending or outstanding judgments, arbitration proceedings, bond claims, or lawsuits against your organization, its parent, or a subsidiary, affiliate, or other entity having common ownership or management, or any of the individuals listed in Exhibit A, Section 1.2, in which the amount in dispute is more than \$75,000?

(If the answer is yes, provide an explanation.)

« »

§ B.2.2 In the last five years has your organization, its parent, or a subsidiary, affiliate, or other entity having common ownership or management:

(If the answer to any of the questions below is yes, provide an explanation.)

- .1 failed to complete work awarded to it?

« »

- .2 been terminated for any reason except for an owners' convenience?

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« »

- .3 had any judgments, settlements, or awards pertaining to a construction project in which your organization was responsible for more than \$75,000?

« »

- .4 filed any lawsuits or requested arbitration regarding a construction project?

« »

**§ B.2.3** In the last five years, has your organization, its parent, or a subsidiary, affiliate, or other entity having common ownership or management; or any of the individuals listed in Exhibit A Section 1.2:  
*(If the answer to any of the questions below is yes, provide an explanation.)*

- .1 been convicted of, or indicted for, a business-related crime?

« »

- .2 had any business or professional license subjected to disciplinary action?

« »

- .3 been penalized or fined by a state or federal environmental agency?

« »



# DRAFT AIA® Document A305™ - 2020

## Exhibit C

### Project Specific Information

This Exhibit is part of the Contractor’s Qualification Statement, submitted by « » and dated the « » day of « » in the year « »  
*(In words, indicate day, month and year.)*

**PROJECT:**

*(Name and location or address.)*

« »  
« »

**CONTRACTOR’S PROJECT OFFICE:**

*(Identify the office out of which the contractor proposes to perform the work for the Project.)*

« »

**TYPE OF WORK SOUGHT**

*(Indicate the type of work you are seeking for this Project, such as general contracting, construction manager as constructor, design-build, HVAC subcontracting, electrical subcontracting, plumbing subcontracting, etc.)*

« »

**CONFLICT OF INTEREST**

Describe any conflict of interest your organization, its parent, or a subsidiary, affiliate, or other entity having common ownership or management, or any of the individuals listed in Exhibit A Section 1.2, may have regarding this Project.

« »

**§ C.1 PERFORMANCE OF THE WORK**

**§ C.1.1** When was the Contractor’s Project Office established?

« »

**§ C.1.2** How many full-time field and office staff are respectively employed at the Contractor’s Project Office?

« »

**§ C.1.3** List the business license and contractor license or registration numbers for the Contractor’s Project Office that pertain to the Project.

« »

**§ C.1.4** Identify key personnel from your organization who will be meaningfully involved with work on this Project and indicate (1) their position on the Project team, (2) their office location, (3) their expertise and experience, and (4) projects similar to the Project on which they have worked.

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« »

§ C.1.5 Identify portions of work that you intend to self-perform on this Project.

« »

§ C.1.6 To the extent known, list the subcontractors you intend to use for major portions of work on the Project.

« »

§ C.2 EXPERIENCE RELATED TO THE PROJECT

§ C.2.1 Complete Exhibit D to describe up to four projects performed by the Contractor’s Project Office, either completed or in progress, that are relevant to this Project, such as projects in a similar geographic area or of similar project type. If you have already completed Exhibit D, but want to provide further examples of projects that are relevant to this Project, you may complete Exhibit E.

§ C.2.2 State the total dollar value of work currently under contract at the Contractor’s Project Office:

« »

§ C.2.3 Of the amount stated in Section C.2.2, state the dollar value of work that remains to be completed:

« »

§ C.2.4 State the average annual dollar value of construction work performed by the Contractor’s Project Office during the last five years.

« »

§ C.2.5 List the total number of projects the Contractor’s Project Office has completed in the last five years and state the dollar value of the largest contract the Contractor’s Project Office has completed during that time.

« »

§ C.3 SAFETY PROGRAM AND RECORD

§ C.3.1 Does the Contractor’s Project Office have a written safety program?

« »

§ C.3.2 List all safety-related citations and penalties the Contractor’s Project Office has received in the last three years.

« »

§ C.3.3 Attach the Contractor’s Project Office’s OSHA 300a Summary of Work-Related Injuries and Illnesses form for the last three years.

§ C.3.4 Attach a copy of your insurance agent’s verification letter for your organization’s current workers’ compensation experience modification rate and rates for the last three years.

§ C.4 INSURANCE

§ C.4.1 Attach current certificates of insurance for your commercial general liability policy, umbrella insurance policy, and professional liability insurance policy, if any. Identify deductibles or self-insured retentions for your commercial general liability policy.

§ C.4.2 If requested, will your organization be able to provide property insurance for the Project written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis?

« »

§ C.4.3 Does your commercial general liability policy contain any exclusions or restrictions of coverage that are prohibited in AIA Document A101-2017, Exhibit A, Insurance A.3.2.2.2? If so, identify.

« »

§ C.5 SURETY

§ C.5.1 If requested, will your organization be able to provide a performance and payment bond for this Project?

« »

§ C.5.2 Surety company name:

« »

§ C.5.3 Surety agent name and contact information:

« »

§ C.5.4 Total bonding capacity:

« »

§ C.5.5 Available bonding capacity as of the date of this qualification statement:

« »



DRAFT AIA® Document A305™ – 2020  
**Exhibit D**

*Contractor's Past Project Experience*

	1	2	3	4
PROJECT NAME				
PROJECT LOCATION				
PROJECT TYPE				
OWNER				
ARCHITECT				
CONTRACTOR'S PROJECT EXECUTIVE				
KEY PERSONNEL (include titles)				
PROJECT DETAILS	Contract Amount  Completion Date  % Self-Performed Work	Contract Amount  Completion Date  % Self-Performed Work	Contract Amount  Completion Date  % Self-Performed Work	Contract Amount  Completion Date  % Self-Performed Work
PROJECT DELIVERY METHOD	<input type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input type="checkbox"/> CM advisor <input type="checkbox"/> Other:	<input type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input type="checkbox"/> CM advisor <input type="checkbox"/> Other:	<input type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input type="checkbox"/> CM advisor <input type="checkbox"/> Other:	<input type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input type="checkbox"/> CM advisor <input type="checkbox"/> Other:
SUSTAINABILITY CERTIFICATIONS				

# DRAFT AIA® Document A305™ - 2020

## Exhibit E

### Contractor's Past Project Experience, Continued

	1	2	3	4
PROJECT NAME				
PROJECT LOCATION				
PROJECT TYPE				
OWNER				
ARCHITECT				
CONTRACTOR'S PROJECT EXECUTIVE				
KEY PERSONNEL (include titles)				
PROJECT DETAILS	Contract Amount  Completion Date  % Self-Performed Work	Contract Amount  Completion Date  % Self-Performed Work	Contract Amount  Completion Date  % Self-Performed Work	Contract Amount  Completion Date  % Self-Performed Work
PROJECT DELIVERY METHOD	<input type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input type="checkbox"/> CM advisor <input type="checkbox"/> Other:	<input type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input type="checkbox"/> CM advisor <input type="checkbox"/> Other:	<input type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input type="checkbox"/> CM advisor <input type="checkbox"/> Other:	<input type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input type="checkbox"/> CM advisor <input type="checkbox"/> Other:
SUSTAINABILITY CERTIFICATIONS				

**RFQ No. 2021-002-ABP-CMAC**

**EXHIBIT 3**

**(AIA Document A133-2019/with Attached AIA  
Document Exhibits A and B)**

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

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

« »« »  
« »  
« »  
« »

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

« »« »  
« »  
« »  
« »

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

« »  
« »  
« »

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

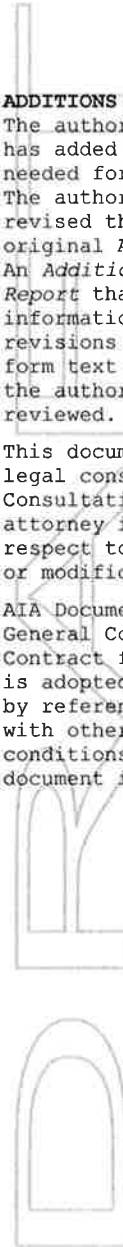
« »« »  
« »  
« »  
« »

The Owner and Construction Manager agree as follows.

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

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

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



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## TABLE OF ARTICLES

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

## EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

## EXHIBIT B INSURANCE AND BONDS

## ARTICLE 1 INITIAL INFORMATION

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

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

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

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

« »

§ 1.1.2 The Project's physical characteristics:

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

« »

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

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

« »

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

.1 Design phase milestone dates, if any:

« »

.2 Construction commencement date:

« »

.3 Substantial Completion date or dates:

« »

.4 Other milestone dates:

« »

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

« »

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

« »

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

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

« »

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

« »  
« »  
« »  
« »  
« »  
« »

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

« »

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

.1 Geotechnical Engineer:

« »« »  
« »  
« »  
« »  
« »

.2 Civil Engineer:

« »« »  
« »  
« »  
« »  
« »

.3 Other, if any:

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

« »

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

« »  
« »  
« »  
« »  
« »  
« »

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

« »  
« »  
« »  
« »  
« »  
« »

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

« »

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

« »

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

« »

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

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

## ARTICLE 2 GENERAL PROVISIONS

### § 2.1 The Contract Documents

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

### § 2.2 Relationship of the Parties

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

### § 2.3 General Conditions

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

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

## ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

### § 3.1 Preconstruction Phase

#### § 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant



or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

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

**§ 3.1.3 Consultation**

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

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

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

**§ 3.1.4 Project Schedule**

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

**§ 3.1.5 Phased Construction**

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

**§ 3.1.6 Cost Estimates**

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

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

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

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

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

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

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

#### § 3.1.11 Subcontractors and Suppliers

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

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

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

#### § 3.1.12 Procurement

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

#### § 3.1.13 Compliance with Laws

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

#### § 3.1.14 Other Preconstruction Services

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

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

« »

### § 3.2 Guaranteed Maximum Price Proposal

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

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

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

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

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

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

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

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

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

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

### § 3.3 Construction Phase

#### § 3.3.1 General

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

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties.

The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

### **§ 3.3.2 Administration**

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

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

### **§ 3.3.2.3 Monthly Report**

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

### **§ 3.3.2.4 Daily Logs**

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

### **§ 3.3.2.5 Cost Control**

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

## **ARTICLE 4 OWNER'S RESPONSIBILITIES**

### **§ 4.1 Information and Services Required of the Owner**

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

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

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

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

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

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

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

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

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

#### § 4.2 Owner's Designated Representative

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

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

#### § 4.3 Architect

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

### ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

#### § 5.1 Compensation

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

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

« »

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

« »

Individual or Position

Rate

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

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

§ 5.2 Payments

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

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager’s invoice. Amounts unpaid « » ( « » ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager. (Insert rate of monthly or annual interest agreed upon.)

« » % « »

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager’s performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager’s Fee.

§ 6.1.2 The Construction Manager’s Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager’s Fee.)

« »

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

« »

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

« »

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

§ 6.1.6 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

« »

§ 6.1.7 Other:

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

« »

### § 6.2 Guaranteed Maximum Price

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

### § 6.3 Changes in the Work

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

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

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

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

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

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

## ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 7.1 Costs to Be Reimbursed

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

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

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

### § 7.2 Labor Costs

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

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

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

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

« »

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

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

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

### § 7.3 Subcontract Costs

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

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

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

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

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

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

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

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

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

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

### § 7.6 Miscellaneous Costs

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

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



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

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

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

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

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

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

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

§ 7.6.7 Costs of document reproductions and delivery charges.

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

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

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

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

## § 7.7 Other Costs and Emergencies

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

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

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

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

### § 7.8 Related Party Transactions

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

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

### § 7.9 Costs Not To Be Reimbursed

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

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

## ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

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

## ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager’s own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or

equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

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

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

#### ARTICLE 10 ACCOUNTING RECORDS

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

#### ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

##### § 11.1 Progress Payments

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

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

« »

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

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

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

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

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

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

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

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

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

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

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

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

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

## § 11.1.8 Retainage

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

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

« »

§ 11.1.8.1.1 The following items are not subject to retainage:

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

« »

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

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

« »

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

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

« »

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

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

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

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

## § 11.2 Final Payment

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

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

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

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

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

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

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

« »

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

### § 11.3 Interest

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

« » % « »

## ARTICLE 12 DISPUTE RESOLUTION

### § 12.1 Initial Decision Maker

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

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

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

« »

« »  
« »  
« »

### § 12.2 Binding Dispute Resolution

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

(Check the appropriate box.)

Arbitration pursuant to Article 15 of AIA Document A201–2017

Litigation in a court of competent jurisdiction

Other: (Specify)

« »

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

## ARTICLE 13 TERMINATION OR SUSPENSION

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

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

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

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

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

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

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

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a

condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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

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

### **§ 13.2.1 Termination**

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

### **§ 13.2.2 Termination by the Owner for Cause**

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

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

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

### **§ 13.2.3 Termination by the Owner for Convenience**

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

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

« »

## **§ 13.3 Suspension**

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



## ARTICLE 14 MISCELLANEOUS PROVISIONS

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

### § 14.2 Successors and Assigns

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

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

### § 14.3 Insurance and Bonds

#### § 14.3.1 Preconstruction Phase

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

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

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

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

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

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

#### § 14.3.1.6 Other Insurance

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

Coverage

Limits

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

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

### § 14.3.2 Construction Phase

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

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

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

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

« »

§ 14.5 Other provisions:

« »

## ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

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

« »

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

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

« »

[ « » ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

- .7 Other documents, if any, listed below:

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

« »

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

OWNER (Signature)

« »« »

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

« »« »

(Printed name and title)

BRAD

# DRAFT AIA<sup>®</sup> Document A133™ – 2019

## Exhibit A

### *Guaranteed Maximum Price Amendment*

This Amendment dated the « » day of « » in the year « », is incorporated into the accompanying 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 dated the « » day of « » in the year « » (the “Agreement”)

*(In words, indicate day, month, and year.)*

for the following **PROJECT:**

*(Name and address or location)*

« »  
« »

**THE OWNER:**

*(Name, legal status, and address)*

« »« »  
« »

**THE CONSTRUCTION MANAGER:**

*(Name, legal status, and address)*

« »« »  
« »

#### TABLE OF ARTICLES

- A.1 GUARANTEED MAXIMUM PRICE
- A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

#### ARTICLE A.1 GUARANTEED MAXIMUM PRICE

##### § A.1.1 Guaranteed Maximum Price

Pursuant to Section 3.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of the Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed « » (\$ « »), subject to additions and deductions by Change Order as provided in the Contract Documents.

#### 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.

**ELECTRONIC COPYING** of any portion of this AIA<sup>®</sup> Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

§ A.1.1.2 **Itemized Statement of the Guaranteed Maximum Price.** Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, including allowances; the Construction Manager’s contingency; alternates; the Construction Manager’s Fee; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement.

*(Provide itemized statement below or reference an attachment.)*

« »

§ A.1.1.3 The Construction Manager’s Fee is set forth in Section 6.1.2 of the Agreement.

§ A.1.1.4 The method of adjustment of the Construction Manager’s Fee for changes in the Work is set forth in Section 6.1.3 of the Agreement.

§ A.1.1.5 **Alternates**

§ A.1.1.5.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price

§ A.1.1.5.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Exhibit A. Upon acceptance, the Owner shall issue a Modification to the Agreement.

*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

Item	Price	Conditions for Acceptance

§ A.1.1.6 Unit prices, if any:

*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*

Item	Units and Limitations	Price per Unit (\$0.00)

**ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

§ A.2.1 The date of commencement of the Work shall be:

*(Check one of the following boxes.)*

[ « » ] The date of execution of this Amendment.

[ « » ] Established as follows:

*(Insert a date or a means to determine the date of commencement of the Work.)*

« »

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of execution of this Amendment.

§ A.2.2 Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The Contract Time shall be measured from the date of commencement of the Work.

§ A.2.3 **Substantial Completion**

§ A.2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of the entire Work:

*(Check one of the following boxes and complete the necessary information.)*

[ « » ] Not later than « » ( « » ) calendar days from the date of commencement of the Work.

[ « » ] By the following date: « »

§ A.2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Construction Manager shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date

§ A.2.3.3 If the Construction Manager fails to achieve Substantial Completion as provided in this Section A.2.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.6 of the Agreement.

**ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED**

§ A.3.1 The Guaranteed Maximum Price and Contract Time set forth in this Amendment are based on the Contract Documents and the following:

§ A.3.1.1 The following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ A.3.1.2 The following Specifications:  
(Either list the Specifications here, or refer to an exhibit attached to this Amendment.)

« »

Section	Title	Date	Pages

§ A.3.1.3 The following Drawings:  
(Either list the Drawings here, or refer to an exhibit attached to this Amendment.)

« »

Number	Title	Date

§ A.3.1.4 The Sustainability Plan, if any:  
(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Construction Manager's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages

Other identifying information:

§ A.3.1.5 Allowances, if any, included in the Guaranteed Maximum Price:  
(Identify each allowance.)

Item	Price

§ A.3.1.6 Assumptions and clarifications, if any, upon which the Guaranteed Maximum Price is based:  
(Identify each assumption and clarification.)

« »

§ A.3.1.7 The Guaranteed Maximum Price is based upon the following other documents and information:  
(List any other documents or information here, or refer to an exhibit attached to this Amendment.)

« »

**ARTICLE A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS**

§ A.4.1 The Construction Manager shall retain the consultants, contractors, design professionals, and suppliers, identified below:

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

« »

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

\_\_\_\_\_  
**OWNER** (Signature)

« »

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
**CONSTRUCTION MANAGER** (Signature)

« »

\_\_\_\_\_  
(Printed name and title)

# DRAFT AIA® Document A133™ – 2019

## Exhibit B

### *Insurance and Bonds*

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the « » day of « » in the year « »  
(In words, indicate day, month and year.)

for the following **PROJECT**:  
(Name and location or address)

« »  
« »

**THE OWNER:**  
(Name, legal status, and address)

« »« »  
« »

**THE CONSTRUCTION MANAGER:**  
(Name, legal status, and address)

« »« »  
« »

#### TABLE OF ARTICLES

- B.1 GENERAL
- B.2 OWNER'S INSURANCE
- B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS
- B.4 SPECIAL TERMS AND CONDITIONS

#### ARTICLE B.1 GENERAL

The Owner and Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™-2017, General Conditions of the Contract for Construction.

#### ARTICLE B.2 OWNER'S INSURANCE

##### § B.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article B.2 and, upon the Construction Manager's request, provide a copy of the property insurance policy or policies required by Section B.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

##### § B.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

#### 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.

This document is intended to be used in conjunction with AIA Document A201™-2017, General Conditions of the Contract for Construction. Article 11 of A201™-2017 contains additional insurance provisions.



### § B.2.3 Required Property Insurance

§ B.2.3.1 Unless this obligation is placed on the Construction Manager pursuant to Section B.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ B.2.3.1.1 **Causes of Loss.** The insurance required by this Section B.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

*(Indicate below the cause of loss and any applicable sub-limit.)*

**Cause of Loss**

**Sub-Limit**

§ B.2.3.1.2 **Specific Required Coverages.** The insurance required by this Section B.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Construction Manager's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

**Coverage**

**Sub-Limit**

§ B.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section B.2.3.1 or, if necessary, replace the insurance policy required under Section B.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ B.2.3.1.4 **Deductibles and Self-Insured Retentions.** If the insurance required by this Section B.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ B.2.3.2 **Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

### § B.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

#### § B.2.4 Optional Extended Property Insurance.

The Owner shall purchase and maintain the insurance selected and described below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

- [  ] § B.2.4.1 **Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.
- « »
- [  ] § B.2.4.2 **Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.
- « »
- [  ] § B.2.4.3 **Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.
- « »
- [  ] § B.2.4.4 **Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.
- « »
- [  ] § B.2.4.5 **Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.
- « »
- [  ] § B.2.4.6 **Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.
- « »
- [  ] § B.2.4.7 **Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.
- « »

#### § B.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

- § B.2.5.1 **Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. (Indicate applicable limits of coverage or other conditions in the fill point below.)

« »

- § B.2.5.2 **Other Insurance**  
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage

Limits

## ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

### § B.3.1 General

**§ B.3.1.1 Certificates of Insurance.** The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured on the Construction Manager's Commercial General Liability and excess or umbrella liability policy or policies.

**§ B.3.1.2 Deductibles and Self-Insured Retentions.** The Construction Manager shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Construction Manager.

**§ B.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

### § B.3.2 Construction Manager's Required Insurance Coverage

**§ B.3.2.1** The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Construction Manager is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

« »

### § B.3.2.2 Commercial General Liability

**§ B.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than « » (\$ « ») each occurrence, « » (\$ « ») general aggregate, and « » (\$ « ») aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Construction Manager's indemnity obligations under Section 3.18 of the General Conditions.

§ B.3.2.2.2 The Construction Manager's Commercial General Liability policy under this Section B.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Construction Manager's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ B.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than « » (\$ « ») per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ B.3.2.4 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 such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section B.3.2.2 and B.3.2.3, 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.

§ B.3.2.5 Workers' Compensation at statutory limits.

§ B.3.2.6 Employers' Liability with policy limits not less than « » (\$ « ») each accident, « » (\$ « ») each employee, and « » (\$ « ») policy limit.

§ B.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate.

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate.

§ B.3.2.10 Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate.

§ B.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate.

§ B.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate.

### § B.3.3 Construction Manager's Other Insurance Coverage

§ B.3.3.1 Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Construction Manager is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*

« »

§ B.3.3.2 The Construction Manager shall purchase and maintain the following types and limits of insurance in accordance with Section B.3.3.1.

*(Select the types of insurance the Construction Manager is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)*

- [ « » ] § B.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

*(Where the Construction Manager's obligation to provide property insurance differs from the Owner's obligations as described under Section B.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*

« »

- [ « » ] § B.3.3.2.2 Railroad Protective Liability Insurance, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate, for Work within fifty (50) feet of railroad property.

- [ « » ] § B.3.3.2.3 Asbestos Abatement Liability Insurance, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

- [ « » ] § B.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an “all-risks” completed value form.
- [ « » ] § B.3.3.2.5 Property insurance on an “all-risks” completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.
- [ « » ] § B.3.3.2.6 Other Insurance  
(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage	Limits

§ B.3.4 Performance Bond and Payment Bond

The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:  
(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Payment Bond	
Performance Bond	

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

« »