



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 Two Thousand

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

BETWEEN the Owner:

(Name, legal status, address, and other information)

Edmonds School District #15

20420 - 68th Avenue West

Lynnwood, WA 98036

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.

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

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

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ARTICLE 1 INITIAL INFORMATION

§ 1.0.0 These Definitions are often shorthand references to more formal definitions elsewhere in the Contract Documents. When a defined term is described elsewhere in the Contract Documents, the more descriptive definition shall control over any general description in this Section 1.0.

§ 1.0.1 The **Agreement** is this revised A133-2019 Standard Form of Agreement between Owner and Construction Manager as Constructor. All references in this Agreement to the A133-2019 in the Contract Documents are to this revised Agreement.

§ 1.0.2 An **Allowance** is a stated amount included in the GMP and approved by the Owner for a stated portion of the Work that is not fully defined and/or quantified at the time the GMP is established. When that part of the Work is adequately defined and/or quantified, the GMP will be adjusted to account for the difference between the Allowance and the actual or estimated Cost of the Work for that item in an amount that is mutually agreeable to the Owner and Construction Manager. Following the adjustment, that portion of the Work will no longer be an Allowance item. Allowances may generally not be included in subcontract bid packages, and any Allowance must be approved by the Owner.

§ 1.0.3 An **Application for Payment** is described in Section 9.3 of the General Conditions and Section 11.1 of this Agreement. An Application for Payment is generally a document the Construction Manager submits to the Owner itemizing amounts the Construction Manager believes are due and Work completed in accordance with the Contract Documents.

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§ 1.0.4 The **Architect**, listed above, is the entity with which the Owner has contracted in a separate Owner-Architect agreement. The Architect is described in Section 4.3 of this Agreement and defined in Section 4.1 of the revised General Conditions.

§ 1.0.5 A **Change Order** is defined in Section 7.2.1 of the General Conditions and is generally a written instrument prepared by the Owner with the assistance of the Architect and signed by the Owner, the Construction Manager and the Architect that modifies the Contract Documents and states their agreement upon a Change in the Work, the amount of the adjustment, if any, in the GMP, and the extent of the adjustment, if any, in the Contract Time.

§ 1.0.6 A **Claim** is defined in Section 15.1.1 of the General Conditions and generally consists of a demand or assertion by one of the parties seeking, as a matter of right, adjustments or interpretations of Contract terms, payment of money, an extension of time, or other relief. The term "Claim" includes disputes and matters in question between the Owner and the Construction Manager arising out of or relating to the Contract Documents.

§ 1.0.7 The **Conceptual Design Phase** is defined in Section 3.0 and in general consists of the initial portion of the Construction Manager's services and performance under the Contract prior to the Preconstruction Phase.

§ 1.0.8 The **Conceptual Design Phase Services** generally consist of those services provided by the Construction Manager under Section 3.0 of this Agreement.

§ 1.0.9 The **Conceptual Design Phase Services Cost** is defined in Section 5.1.1.1 of this Agreement and is the compensation payable by the Owner to the Construction Manager for Conceptual Design Phase Services.

§ 1.0.10 A **Construction Change Directive** is defined in Section 7.3 of the General Conditions as a written order prepared and signed by the Owner and the Architect, with or without the agreement of the Construction Manager, directing the Construction Manager to perform a change in the Work, or perform Work the Construction Manager contends to be a change in the Work, prior to agreement on the basis for adjustment, if any, to the Contract.

§ 1.0.11 The **Construction Manager** is the entity identified above as the party to this Agreement responsible for performing the Conceptual Design Phase Services, and, upon a notice to proceed, the Preconstruction Services, and, upon successful negotiation and execution of the GMP Amendment, responsible for construction of the Project through its own services as well as through Subcontractors. The Construction Manager is identified as the "Contractor" in the General Conditions and shall provide the services of a General Contractor/Construction Manager as defined in RCW 39.10.

§ 1.0.12 The **Construction Phase** is defined in Section 3.3 of this Agreement and any Special Conditions, and generally consists of the period of the Contract during which the Construction Manager performs construction of the Project after the earlier of execution of the GMP Amendment or the Owner's issuance of a Notice to Proceed for a portion of or for the entirety of the Work.

§ 1.0.13 The **Construction Schedule** is the schedule defined in Section 3.10 of the General Conditions and prepared, revised and utilized by the Construction Manager for its performance under the Contract for Construction.

§ 1.0.14 The **Contract** is the agreement between the Owner and the Construction Manager and is formed by the Contract Documents.

§ 1.0.15 The **Contract Documents** are defined in Section 2.1 of this Agreement and Section 1.1.1 of the General Conditions.

§ 1.0.16 The **Contract Sum** is defined in Section 6.1 of this Agreement and Section 9.1 of the General Conditions and is the amount that the Owner agrees to pay the Construction Manager for its proper performance of the Work under the Contract Documents. The Contract Sum consists of the sum of the Cost of the Work defined in Article 6 of this Agreement and the Construction Manager's Fee, and it shall not exceed the GMP. Neither the Conceptual Design Phase Services Cost, the Preconstruction Services Cost, nor the Washington State Sales Tax (WSST) due on the Contract Sum is included in the Contract Sum.

§ 1.0.17 The **Contract Time** is the time defined in Section 8.1 of the General Conditions and set forth in the GMP Amendment for achieving Substantial Completion of the Work.

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§ 1.0.18 The term **Contractor** means the Construction Manager.

§ 1.0.19 The **Cost of the Work** is the amount defined in Article 7 of this Agreement reasonably and necessarily incurred by the Construction Manager in the proper performance of the Work under the Contract Documents. The Cost of the Work includes Subcontractor bid packages, the Specified General Conditions, and the Negotiated Support Services but does not include the Construction Manager's Fee or WSST on progress payments made by the Owner to the Construction Manager.

§ 1.0.20 Drawings are defined in Section 1.1.5 of the General Conditions and generally are the graphic and pictorial portions of the Contract Documents showing the design and location of the Work, and generally include plans, elevations, sections, details, dimensions, schedules and diagrams.

§ 1.0.21 The Construction Manager's **Fee** is the amount set forth in the GMP Amendment based on the calculation contained in Section 6.1.2 of this Agreement, that the Construction Manager is to receive under this Agreement in addition to the Cost of the Work for its performance of the Work. The Fee compensates the Construction Manager for all aspects of its performance other than the Cost of the Work, and it includes the Construction Manager's profit and all overhead and risk management expenses not otherwise reimbursable under this Agreement, including but not limited to home office overhead, the cost of the Construction Manager's insurance (including builder's risk insurance), safety costs expressed as a percentage, all other risk management costs not specifically defined as a Cost of the Work (such as Subguard or the bonding of Subcontractors not required to secure bonds by the Contract Documents), any licenses, and all taxes (including B&O tax) except WSST due on progress payments made by the Owner to the Construction Manager. The Fee is applied to the reimbursable Cost of the Work, including the Negotiated Support Services and the Specified General Conditions.

§ 1.0.22 Final Completion is defined in Section 9.10.1 of the General Conditions.

§ 1.0.23 The **General Conditions** are defined in Section 2.3 of this Agreement and are set forth in the revised A201–2017 General Conditions of the Contract for Construction, which is incorporated herein by reference. All references to the "General Conditions" or to the "AIA Document A201–2017" in the Contract Documents are to the revised document.

§ 1.0.24 The **Guaranteed Maximum Price ("GMP")** is defined in Section 3.2 of this Agreement, described in Section 6.2 of this Agreement, and established in the GMP Amendment. The GMP is based on an estimate of the Contract Sum. The GMP consists of the sum that the Owner and the Construction Manager establish in the GMP Amendment as the fixed limit for all Costs of the Work reimbursable under Article 6 of this Agreement, the Construction Manager's Contingency, and the Construction Manager's Fee. The GMP does not include WSST due on the Contract Sum and paid on progress payments made by the Owner to the Construction Manager, the Conceptual Design Phase Services Cost, or the Preconstruction Services Cost. The GMP is the maximum amount the Owner is required to pay the Construction Manager for the performance of the Work. As used in this Agreement, the GMP is intended to be defined as the "total contract cost" per RCW 39.10.370(4).

§ 1.0.25 The **GMP Amendment** is described in Section 3.2.6 of this Agreement and generally is an amendment to this Agreement setting forth the GMP, the information and assumptions upon which the GMP is based, the Contract Time, separate amounts for Negotiated Support Services and for the Specified General Conditions (included within the Cost of the Work), the amount of the Construction Manager's Contingency, and other information upon which the parties agree. There may be more than one GMP Amendment, such as if the Owner and Construction Manager agree to early Work packages or for securing long-lead items.

§ 1.0.26 The **Maximum Allowable Construction Cost ("MACC")** generally consists of the amount to which the Owner, the Architect, and the Construction Manager agree in writing as an estimate of the Cost of the Work reimbursable under Article 7 of this Agreement (including the Specified General Conditions and Negotiated Support Services). The MACC does not include the Construction Manager's Contingency, the Construction Manager's Fee, Preconstruction Services Cost, or WSST due on progress payments made by the Owner to the Construction Manager. A final MACC will be established as part of the GMP negotiation in accordance with this Agreement.

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§ 1.0.27 Negotiated Support Services are defined in Section 7.7.5 of this Agreement and are generally items the Construction Manager normally would manage or perform for the Work, including but not limited to, surveying, maintenance of construction office and facilities, temporary sanitation, including temporary toilets, equipment and supplies not incorporated in the Work (with the exception of electronic equipment), cranes and hoisting, erosion control, scaffolds and shoring, elevator operations, temporary fire protection, weather protection, temporary heat, power and water use during construction, including hookup, meter and fees, background checks, testing coordination, temporary signs, fences, enclosures, barriers and barricades, refuse collection, cleanup and trash removal (except for final cleaning), street cleaning, dust control, site security (including lighting), document reproductions and delivery, maintenance of traffic on public street and roads (including flaggers), and advertisement and reproduction of Subcontractor bid packages. Approved Negotiated Support Services are reimbursable, consistent with the Contract Documents, to the extent they are Costs of the Work within the GMP. The Construction Manager's management of Negotiated Support Services is included within the Specified General Conditions. Negotiated Support Services may only be included in Subcontractor bid packages with the prior approval of the Owner for specific items.

§ 1.0.28 The Notice to Proceed with construction is described in Section 3.3.1 of this Agreement and is generally a written notice the Owner submits to the Construction Manager that generally permits construction or a designated portion thereof to commence upon the Construction Manager's compliance with conditions expressed in the notice.

§ 1.0.29 The Owner is the entity identified above.

§ 1.0.30 The Owner-Architect Agreement is the separate agreement between the Owner and the Architect relating to the design of the Project.

§ 1.0.31 The Owner's Designated Representative, identified in Section 1.1.8 of the Agreement, is a representative but not an agent of the Owner. His or her duties and responsibilities are set forth in the Contract Documents. The Owner's Designated Representative is not empowered to waive any terms or conditions of the Contract Documents or to orally commit the Owner to additional costs or time, except as explicitly provided in this Agreement.

§ 1.0.32 The Preconstruction Phase is defined in Section 3.1, initiated through a written Notice to Proceed with Preconstruction Services from the Owner, and in general consists of the initial portion of the Construction Manager's services and performance under the Contract after the Conceptual Design Phase and prior to execution of the GMP Amendment. The issuance of a partial or limited Notice to Proceed with construction (e.g., with a long-lead item or an early Subcontract package) does not necessarily terminate the Preconstruction Phase.

§ 1.0.33 The Preconstruction Services generally consist of those services provided by the Construction Manager under Sections 3.1 and 3.2 of this Agreement.

§ 1.0.34 The Preconstruction Services Cost is defined in Section 5.1.1.2 of this Agreement and is the compensation payable by the Owner to the Construction Manager for Preconstruction Services.

§ 1.0.35 The Project is identified above and defined in Section 1.1.4 of the General Conditions.

§ 1.0.36 The Project Team consists of the Construction Manager, the Owner, and the Architect, and all consultants and Subcontractors of any tier employed or retained by each of them.

§ 1.0.37 A Request for Information ("RFI") means a written request for information made by the Construction Manager to the Architect for the purpose of clarifying or expanding upon the Contract Documents. An RFI does not constitute a notice of Claim.

§ 1.0.38 Specifications are defined in Section 1.1.6 of the General Conditions and generally consist of the portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards, and workmanship of the Work, and performance of related services.

§ 1.0.39 Specified General Conditions are defined in Article 7 and generally mean certain selected general conditions Work and services set forth in the Contract Documents to be provided by the Construction Manager for the fixed Specified General Conditions price as a part of the Cost of the Work. The Specified General Conditions are to be performed by the Construction Manager with its own forces in most instances. The Specified General Conditions include

the Conceptual Design Phase and Preconstruction Services that occur after the GMP is established through execution of the GMP Amendment. The Specified General Conditions include but are not limited to all costs associated with the subcontract bidding process, such as developing solicitations, site tours, responding to questions from bidders, providing a bid opening facility, bidding in accordance with the requirements of the Contract Documents and subcontract award, but not reproduction costs for subcontract bid packages—which are reimbursable as a part of Negotiated Support Services. The Specified General Conditions do not include Fee or markup.

§ 1.0.40 The **Subcontracting Plan** is defined in Sections 1.1.14 and 3.1.11 and is initially prepared by the Construction Manager early in the Design Development Phase and is finalized for the Owner’s approval prior to conclusion of the Design Development Phase. It identifies all proposed Subcontractor bid packages, any contemplated alternative Subcontractor selection process permitted by RCW 39.10, any Allowances proposed for each Subcontractor bid package, all Subcontractor bid packages for which the Construction Manager expects to compete, all Subcontractor scopes of work, the timing of solicitation of Subcontractor bid packages to meet the Construction Schedule, major coordination issues with other packages, and means to enhance the opportunity for certified minority and women’s business enterprises (“MWBE Businesses”) to participate in performing the Work.

§ 1.0.41 A **Subcontractor** is defined in Section 5.1 of the General Conditions and is generally a person or entity that has a direct contract with the Construction Manager. A **Subcontractor of any tier** is a Subcontractor or a lower tier subcontractor that performs a portion of the Work of the Project at the site or supplies materials or equipment. A **Design-Build Subcontractor** is a Subcontractor that will not only construct a portion of the Work but also will design that portion as specified in the Contract Documents.

§ 1.0.42 **Substantial Completion** is defined in Section 9.8.1 of the General Conditions. The required date of Substantial Completion may be identified in the Owner’s request for proposals (“RFP”) and will be established in the GMP Amendment. There may be separate required dates of Substantial Completion set forth in the Contract Documents for various portions of the Work.

§ 1.0.43 The **Work** is defined in Section 1.1.3 of the General Conditions and generally means the construction and services performed and materials supplied during the Construction Phase(s) as required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Construction Manager to fulfill requirements of the Contract Documents.

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as “not applicable” or “unknown at time of execution.”)

§ 1.1.1 The Owner’s program for the Project, as described in Section 4.1.1:
(Insert the Owner’s program, identify documentation that establishes the Owner’s program, or state the manner in which the program will be developed.)

The Owner’s program will be set forth in specifications prepared by the Architect in coordination with the Owner.

§ 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.)

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§ 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.)

The Project will be designed and constructed in accordance with the Washington State Sustainable Schools Protocol ("WSSP")

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall ~~may~~ 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 ~~may~~ 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.)

Edmonds School District #15
20420 - 68th Avenue West
Lynnwood, WA 98036
Phone: _____
Email: _____

§ 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.)

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.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.)

[TBD]

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

§ 1.1.14.1 The Construction Manager shall prepare and submit a construction management and subcontracting plan ("Subcontracting Plan") to the Owner and the Architect for review and approval prior to the conclusion of the Design Development Phase and prior to any Subcontractor bidding. Prior to negotiation of the GMP, the Owner and the Construction Manager shall negotiate the following items and shall include the Subcontracting Plan as an exhibit to the GMP Amendment. The total value of subcontract Work performed by the Construction Manager shall not exceed thirty percent (30%) of the MACC. (Negotiated Support Services performed by the Construction Manager shall not be considered subcontract Work for purposes of this calculation.) The Subcontracting Plan shall describe the process for

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allocating scope of Work among the bid packages, shall specify whether the Construction Manager wishes to divide the scope of Work into more than one GMP and shall identify:

- .1 All subcontract bid packages, specifying those upon which the Construction Manager or its affiliates intend to bid;
- .2 The scopes of Work and proposed Allowances;
- .3 Timing of solicitation of bids for the packages to meet the Construction Schedule
- .4 Major coordination issues with other packages
- .5 The means to enhance the opportunity for MWBE Businesses to participate in performing the Work (e.g., through development of multiple work packages);
- .6 The scope of Work and cost estimates for each subcontract bid package; and
- .7 The Construction Manager's updated outreach plan and plan to enhance the opportunities for local businesses, small business entities, disadvantaged business entities, and any other disadvantaged or underutilized businesses to participate in the Project as Subcontractors and suppliers (e.g., through development of small and multiple subcontract bid packages).

The Owner does not intend to approve multiple GMPs for divided scopes of Work except in rare and compelling circumstances. Other than certain long-lead or other early items, the Owner does not intend to issue a Notice to Proceed with construction until a GMP Amendment is executed by the parties

§ 1.1.14.2 If the Owner is unable to negotiate to its reasonable satisfaction any aspect of Section 1.1.14.1 or 1.1.14.3, then the Owner may terminate negotiations with the Construction Manager. The Owner may, but is not obligated to, solicit bids or negotiate with the next highest scored proposer and continue until an agreement is reached or terminate the process.

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

§ 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 not be changed without ten days' prior notice to the other party and written approval by the Owner.

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 Owner with the assistance of 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,

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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;~~ efficient, professional and competent construction administration, management services and supervision with sufficient quantities of fully qualified, competent and experienced personnel; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an ~~expeditious-expeditious, workmanlike,~~ and economical manner consistent with the Owner's ~~interests-interests and in compliance with the Contract Documents.~~ The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. The parties shall endeavor to promote harmony, mutual respect, and cooperation among the Owner, the Architect, the Construction Manager, authorities having jurisdiction, and other persons or entities employed by them for the Project to the fullest extent possible in order to further the interests of the Owner in the Project and to effect prompt and successful completion of the Project within the requirements of the Contract Documents, the Contract Time and the GMP. The Construction Manager shall not use personnel that are different from the intended personnel listed in its response to the Owner's RFP (for either Preconstruction Services or for Construction Work) without the Owner's written approval.

§ 2.3 General Conditions

§ 2.3.1 For the Conceptual Design Phase Services and 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-Law~~ and any other Sections noted in this Agreement. 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-Contract~~ shall be as set forth in ~~A201-2017, the A201-2017 General Conditions of the Contract for Construction,~~ 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 Conceptual Design Phase Service responsibilities are set forth in Section 3.0. 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.

§ 3.0 Conceptual Design Phase

§ 3.0.1 The Construction Manager will join the ongoing conceptual design effort and shall participate as a part of the Project Team to develop a final program, determine site usage, develop a cost model, outline an overall schedule and develop one or more concept designs to prepare for the Architect's Schematic Design Phase.

§ 3.0.2 Consultation

The Construction Manager's services during the Conceptual Design Phase shall include the following as well as services described in Attachment 3:

- 1 Coordination.** The Architect will be responsible for coordinating the activities of the Project Team during the Conceptual Design Phase. The Construction Manager shall jointly schedule and participate in meetings with the Architect and Owner to review and assist in the development of the conceptual design and to discuss such matters as procedures, program, budgeting, coordination, and scheduling of the Work. The Construction Manager shall actively and cooperatively advise the Owner and the Architect on proposed site use and improvements, and on phasing.

- .2 **Design Review.** The Construction Manager shall review record drawings, geotechnical report, and investigate the existing conditions to ensure that the Contract Documents will reflect the actual site conditions. Design review activities are to be a cooperative and collaborative effort with the Architect, the Owner and their consultants. The Construction Manager shall recommend changes and alternatives to the Architect, without, however, assuming any of the Architect's design responsibilities.
- .3 **Site Investigation.** The Construction Manager shall review existing sites and building program assessments made by the Architect and others and suggest to the Owner, and shall perform as agreed with the Owner and as a non-labor cost under Section 5.1.1, site investigation to assist in development of the design and construction planning and to verify existing conditions and/or capability of existing systems.
- .4 **Scheduling.** The Construction Manager shall review the Owner's preliminary overall schedule for the Project, including potential construction phasing, to ensure its viability and make recommendations for change and improvement and shall advise the Owner concerning scheduling issues related to various scenarios explored during the conceptual design.
- .5 **Budgeting.** The Construction Manager shall work collaboratively with the Owner, the Architect and the Owner's cost consultant to evaluate and modify as necessary a BIM cost model for use during this and future design phases and shall advise the Owner concerning cost issues related to various proposals related to the conceptual design.
- .6 **Construction Planning.** The Construction Manager shall provide comments on construction feasibility, constructability, and safety, including alternative sequencing of Work, designs or materials, if appropriate, including estimating services when requested by the Architect and approved by the Owner to evaluate critical elements of the design as they are formulated.
- .7 **Future Phase Planning.** The Construction Manager shall develop with the Owner and the design team a work plan for subsequent phases that incorporates processes that reflect a collaborative approach to achieve the Owner's goals for the Project. This effort shall include finalizing the scope, work plan, and schedule as well as any resultant updating of the cost proposal for the Construction Manager's Preconstruction Services.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

.1 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 prepared by the Architect are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, the Applicable Laws 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.

.2 The Construction Manager shall carefully review upon receipt all Drawings and Specifications submitted to it at each level of design. The Construction Manager shall promptly report to the Owner and the Architect any error, inconsistency or omission that the Construction Manager may discover in them and shall recommend changes and alternatives. The Construction Manager's review shall be made in the Construction Manager's capacity as a contractor and not as a licensed design professional, except to the extent the Construction Manager or a Subcontractor has design-build responsibilities.

§ 3.1.2 The Following a notice to proceed and completion of the Conceptual Design Phase, and pursuant to the work plan developed in that phase, 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

The Construction Manager's services during the Preconstruction Phase shall include the following as well as services described in Attachment 3.

§ 3.1.3.1 Coordination. The Architect will be responsible for coordinating the activities of the Project Team during the Preconstruction Phase. The Construction Manager shall jointly schedule and conduct meetings with the Architect and

Owner every two (2) weeks during the design phase to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall actively and cooperatively advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also actively and collaboratively 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; phasing and site work planning; sequencing and scheduling for procurement, installation, and construction; traffic planning; occupied campus strategies; factors related to construction quality, local market trends, bidding strategies, maintainability and durability; 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-value engineering. 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~~ using, if agreed among the parties, 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.

§ 3.1.3.4 Design Review and Assist. The Construction Manager shall review the Schematic Design Documents, the Design Development Documents, and the Construction Documents, as well as the Specifications and other Contract Documents, as they are developed and completed. The Construction Manager shall support and participate in updating BIM models as assigned and will also review all other documents provided by the Owner, including but not limited to record drawings of existing facilities, and all documents provided or made available as part of the GC/CM selection process. The Construction Manager shall promptly report in writing to the Owner and the Architect any errors, inconsistencies, incomplete information, or other questions or deficiencies that the Construction Manager has discovered and that need to be resolved for the successful completion of the Work, paying particular attention to coordination issues. Design review activities are to be a cooperative and collaborative effort with the Architect, the Owner and their consultants. The Construction Manager shall actively provide input on the documents with a goal to provide the Owner with greater cost certainty as changes and alternatives are developed and discussed. The Construction Manager shall, where possible, introduce changes and alternatives to further the Owner’s design objectives. The Construction Manager shall recommend changes and alternatives to the Architect and the Owner, without, however, assuming any of the Architect’s design responsibilities, except to the extent the Construction Manager or a Subcontractor performs design-build Work. The Construction Manager is not responsible to ascertain that the Drawings and Specifications prepared by the Architect are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations (the "Applicable Laws"). However, if the Construction Manager recognizes that portions of the Drawings and Specifications vary from the Applicable Laws, the Construction Manager shall promptly notify the Architect and the Owner in writing.

§ 3.1.3.5 Constructability. The Construction Manager shall work with the Owner and Architect to prepare a constructability plan for the Project to reduce cost, save time, improve quality, reduce risk and improve the overall process of Project delivery. Key objectives of the constructability program will include creation and maintenance of a well-planned, safe, effective, cooperative and mutually beneficial work environment for all participants. A primary objective of these efforts will be to assist the Owner to ensure that the final GMP does not exceed the Owner’s budget and that the Project is completed on time. The Construction Manager shall perform actions designed to minimize adverse effects of labor or material shortages or delays; time requirements for procurement, installation and construction completion; and factors related to construction cost. As part of this effort, the Construction Manager shall participate in and provide written comments appropriate to the design phase as a part of formal constructability reviews following completion of the Schematic Design Documents, upon fifty percent (50%) and one hundred percent (100%) completion of the Design Development Documents, and upon completion of the permit set of Construction Documents. The Construction Manager shall comply with OSPI regulations and confirm prior to solicitation of the first subcontract bid package that a constructability analysis has been performed.

§ 3.1.3.6 Value Engineering. The Construction Manager will participate in value engineering continuously throughout the Preconstruction Phase and will submit formal analyses complying with OSPI requirements following completion of the Schematic Design Documents and following completion of the Design Development Documents. At the completion of each of its reviews, the Construction Manager will provide the Owner and Architect with a formal record of its findings and recommendations. The Architect and the Construction Manager will brief the Owner and any value engineers and

answer their questions to determine the advisability of changes in the design documents. Value engineering will include selecting building systems, with final selection of systems to occur prior to the start of the Construction Documents Phase.

§ 3.1.3.7 Subcontractors. The Construction Manager will coordinate with the Owner and the Architect early in the Schematic Design Phase concerning the advisability of engaging MC/CM and/or EC/CM Subcontractors in accordance with the alternative procedure specified in RCW 39.10.385. If the Construction Manager and the Owner so agree, the Construction Manager will select and engage any such MC/CM and/or EC/CM prior to the commencement of the Design Development Phase.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, and on or before fifty percent (50%) completion of the Design Development Phase, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's and the Owner's review and the Owner's acceptance. Regardless of any review, acceptance, or approval of the Construction Manager's schedule, the Owner shall not be responsible for any aspects of the Construction Manager's schedule. The Construction Manager shall obtain the Architect's and the Owner'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; responsibilities, including designated School Board meetings; 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. The Construction Manager will be responsible for the Construction Schedule, including consideration of phased construction.

§ 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 public access, occupancy needs, site logistics, utilities, safety, cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 The Construction Manager will continuously and contemporaneously advise the Owner and the Architect of estimated costs during the Preconstruction Phase, shall be an active participant collaborating with the Owner's cost consultant on the BIM cost model, and shall advise the Owner concerning cost issues related to various proposals related to the design. Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's and the Owner'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, the Owner, 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 The Construction Manager will collaborate with the Architect and Owner on cost estimates continuously throughout the Preconstruction Phase, and will, at a minimum, prepare formal detailed cost estimates following completion of the Schematic Design Documents, following completion of the Design Development Phase, and upon thirty-five percent (35%) completion of the Construction Documents, and upon receipt of the permit set of the Construction Documents. 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 and the Owner'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, including participation in preparing a list of proposed cost savings equal to or greater than the overage, and the Architect will, if requested by the Owner, modify the design to meet the Owner's budget. The Construction Manager will also collaborate with the Architect and Owner on cost estimates prior to issuing each subcontract bid package, and will, at a minimum, prepare detailed cost estimates for each such package.

§ 3.1.6.2.1 If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect, including participation in preparing a list of proposed cost savings equal to or greater than the overage, and the Architect will, if requested by the Owner, modify the design to meet the Owner's budget.

§ 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 and the Owner 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, if used by the parties and 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 and the Owner's review and the Owner's acceptance, and shall update at least monthly, a procurement schedule for items and/or associated services 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 these items and/or services. The Construction Manager ordinarily will contract directly for these items and/or services. If the Owner agrees consistent with RCW 39.10.390, to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions reasonably acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them. assume full responsibility for them.

§ 3.1.12.1 The Construction Manager shall identify and estimate the value of any items that require off-site storage, together with proposed locations for storage during the course of the Work acceptable to Owner. These locations shall be selected to provide a maximum of protection and minimum of cost and delay associated with delivery to the site.

§ 3.1.12.2 Stored Materials. If authorized by the Owner, an Application for Payment may include a request for payment for material delivered to the Project site and suitably stored, for completed preparatory Work and, provided the Construction Manager complies with or furnishes satisfactory evidence of the following, for material stored off the Project site:

- .1 The material will be placed in a bonded warehouse that is structurally sound, dry, lighted, secure and suitable for the materials to be stored;
- .2 The warehouse is approved in writing by the Owner. The Owner generally will not approve locations beyond a 10-mile radius of the Project absent special circumstances;
- .3 Only materials for the Project are stored within the warehouse (or a secure portion of a warehouse set aside for the Project);

- .4 The Construction Manager furnishes the Owner a certificate of insurance extending the Construction Manager's insurance coverage for damage, fire and theft to cover the full value of all materials stored, or in transit;
- .5 The warehouse (or secure portion thereof) is continuously under lock and key, and only the Construction Manager's authorized personnel shall have access;
- .6 The Owner shall at all times have the right of access to stored materials in the possession of the Construction Manager;
- .7 The Construction Manager assumes total responsibility for the stored materials; and
- .8 The Construction Manager furnishes to the Owner proofs of title, satisfactory evidence that the Construction Manager has paid for the materials in question, certified lists of materials stored, bills of lading, invoices and other information as may be required, and shall also furnish notice to the Owner when materials are moved from storage to the Project site.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with ~~applicable laws, statutes, ordinances, codes, rules and regulations, the~~ Applicable Laws 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.)

See Attachment 3.

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, and when the Drawings and Specifications are at least ninety percent (90%) complete, the Owner and the Architect will submit a "GMP set" of Construction Documents to the Construction Manager, and, within twenty-one (21) days of receipt, 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. The Construction Manager shall promptly notify the Owner if it does not consider the Drawings and Specifications to be at least ninety percent (90%) complete and shall not propose a GMP until the applicable Drawings and Specifications are at least ninety percent (90%) complete. The scope of the Work shall not be divided into multiple GMPs except to the extent included in the approved Subcontracting Plan.

§ 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~~ from the Contract Documents and will also provide for market conditions at the time of bidding and possible estimating inaccuracies within the GMP. Such further development does not include material changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order. A Change in the Work will not be warranted if the Work in question was reasonably inferable from or contemplated by, or a prudent contractor should have realized that the Work was necessary and appropriate under, the Contract Documents referenced in the GMP Amendment.

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, divided into the proposed Subcontractor bid packages, and including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's

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contingency systems (the MACC, including specific amounts for Specified General Conditions, Negotiated Support Services, and other Article 7, Costs of the Work); the Construction Manager's Contingency set forth in Section 3.2.4; and the Construction Manager's Fee; Fee (Allowances will rarely be used and must be pre-approved by the Owner);

- 4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- 5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 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. **Preparation of the Construction Manager's GMP proposal.**

§ 3.2.4.1 In preparing the Construction Manager's GMP proposal, the Construction Manager shall include its Contingency, which will be a negotiated amount acceptable to the Owner not exceeding five percent (5%) of the MACC, for the Construction Manager's exclusive use to cover costs arising under Section 3.2.2 and other costs that are properly reimbursable as a Cost of the Work but not qualified for inclusion in a Change Order.

- 1 The Construction Manager may use the Construction Manager's Contingency to pay for Project issues that are within its control, such as design issues that a reasonable construction manager should have resolved during the Preconstruction Services Phase, items in Drawings but not in the Specifications, items on one Drawing but not another, items specified but not drawn, non-specified items within Specifications, buy-out errors or shortfalls, scope gaps, ambiguities in the Construction Documents, damaged Work not covered by insurance (including, to the extent permitted by the Contract Documents, a deductible), unanticipated general conditions expenses, interdisciplinary design coordination, Subcontractor performance, and unanticipated expediting costs for critical materials.
- 2 The Construction Manager's Contingency may also be used for issues beyond the Construction Manager's control such as lost time, increases in bid subcontracts, Subcontractor performance or failure, and expediting costs for critical materials.
- 3 The Contingency is not available for Owner-directed design or scope changes, unforeseen or differing site conditions, and design errors or omissions beyond the reasonable inferences described in Section 3.2.2, as they normally are scope changes.
- 4 The Construction Manager must give the Owner notice of anticipated use of the Contingency on a Contingency Log that is discussed and updated at the weekly construction meetings, and the Construction Manager shall provide supporting cost backup when applying for the Owner's consent to use the Contingency. The Construction Manager shall use the Contingency only with the Owner's prior written consent, which shall not unreasonably be withheld.
- 5 Each use of Contingency shall be shown as a separate line items in the schedule of values submitted with Applications for Payment.
- 6 Any balance remaining in the Contingency, including the Fee percentage on the remaining Contingency balance (if any), shall be returned to the Owner in a deductive Change Order before final payment.

§ 3.2.4.2 The MACC shall consist of all Subcontractor scopes of Work by bid package consistent with the Subcontracting Plan, including Work the Construction Manager will self-perform through the Subcontractor bidding process, and other Article 7, Costs of the Work including the Negotiated Support Services and the Specified General Conditions. Upon receipt of the one hundred percent (100%) complete Drawings, the Construction Manager shall ascertain whether any scope changes beyond those specified in Section 2.2.2 have occurred in the subcontract bidding documents as a result of completion of the Construction Documents to the one hundred percent (100%) level. In the event that these scope changes were required for the Project and approved by both the Construction Manager and the Owner, a Change Order may be issued. It is the intent of the parties that when the GMP is set, the Construction Manager will have participated in and be fully aware of the existing conditions and proposed design for the Project. It is further intended that the GMP will include all elements necessary to complete the Work in accordance with the Contract Documents, and that Change Orders adjusting the GMP will therefore not be necessary except in limited circumstances as set forth below. Accordingly, the GMP shall be adjusted principally for the following events:

- 1 **Scope Changes.** Owner revisions on scope items previously approved by the Owner and incorporated in the pricing of the GMP.
- 2 **Concealed or Unknown Conditions** as described in Section 3.7.4 of the General Conditions. For example, during the Construction Phase, substantially differing site conditions are encountered that could

not have been reasonably anticipated or discovered by the Construction Manager during the Preconstruction Phase. This category includes unknown and unforeseeable hazmat and soil conditions.

- 3 Significant Design Errors or Omissions.** Significant errors or omissions in the Drawings or Specifications that could not reasonably have been anticipated or discovered by the Construction Manager before the GMP was established. However, design errors and omissions do not include, for example: (a) failure to coordinate between trades; (b) requirements of the Specifications that are not specifically shown in Drawings; (c) requirements of the Drawings that are not specifically described in the Specifications; or (d) design changes made at the request of the Construction Manager in order to facilitate the constructability of the Project. The failure of the Architect to specify every detail in the Construction Documents does not eliminate the requirement for the Construction Manager to provide at least a standard commercially available detail that can serve the basic functions of the design.

4 Allowance adjustments.

§ 3.2.4.3 Examples of events for which the GMP shall not be adjusted include but are not limited to:

- 1 Subcontractor gaps.** Gaps in scope coverage between Subcontractors, including self-performed Work.
- 2 Scope gaps.** An item indicated in the Drawings or Specifications that was not picked up in the GMP.
- 3 Ambiguities.** Ambiguities, latent and patent, in the Construction Documents that the Construction Manager knew of or that a reasonable contractor would have identified and raised with the Owner prior to establishing the GMP.
- 4 Interdisciplinary Coordination.** Coordination inconsistencies and errors between design disciplines that the Construction Manager knew of, caused or contributed to, or reasonably should have known of.
- 5 Subcontractor Failure.** A Subcontractor fails to perform or goes bankrupt.
- 6 Escalation of materials, equipment or labor prices.**
- 7 The Construction Manager's Estimating errors.**
- 8 Expediting costs for critical materials.**
- 9 Coordination Claims.** Costs related to Subcontractor Claims or charges that result from mistakes or omissions in Subcontractor buyout, or coordination issues between Subcontractors, or interference between Subcontractor and the Construction Manager or among Subcontractors.
- 10 Tariff Changes.** Increases or decreases in the cost of goods to the extent caused by tariffs imposed by the United States.

§ 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 promptly and in writing of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment ~~and the revised Contract Documents and the revised Contract Documents~~, and shall comply with the contractual procedure in providing notice and asserting and pursuing any Claim that may arise therefrom. If the Construction Manager does not provide this notification within thirty (30) days of its receipt of the revised Drawings and Specifications, the revisions shall be considered accepted with no change in the GMP or Contract Time.

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§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes (but not WSST on the Contract Sum) 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. The only taxes and tariffs excluded from the GMP and separately reimbursable by the Owner are state and local sales taxes on progress payments on account of the Contract Sum.

§ 3.2.10 If, upon establishing the GMP, the GMP varies more than fifteen percent (15%) from the budget specified in the RFP due to changes in the scope requested and approved by the Owner, the percentage applied to the GMP to determine the Fee may be renegotiated when the GMP is negotiated.

§ 3.3 Construction Phase

§ 3.3.1 General

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

§ 3.3.1.2 The Construction Phase shall commence upon 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.

§ 3.3.1.3 Although it will not cause the Construction Phase to commence, the Owner may at any time approve the Construction Manager’s (a) award of a subcontract, (b) undertaking construction Work with its own forces, or (c) issuance of a purchase order for materials or equipment and/or associated services required for the Work. Any Work so approved and undertaken shall comply with and be subject to this Agreement and the General Conditions.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct weekly progress 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~~ Construction Schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017 of the General Conditions. The Construction Manager shall provide regular monitoring and shall update monthly (or sooner in the event of a substantial change) the Construction Schedule as Work progresses.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the ~~Project~~ Project in writing and by photographs. 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. The reports shall:

- .1 Include information concerning both the entire Project and each subcontract bid package.
- .2 Identify variances between scheduled and probable completion dates, and recommend action required to meet scheduled completion dates.
- .3 Review the schedule for portions of the Project not started or incomplete and recommend to the Owner alternate procedures or adjustments to meet the scheduled completion dates.
- .4 Provide summary reports of each schedule update.
- .5 Document all significant changes in the schedule and any Owner’s approval of the change, and reflect the reasons for them.
- .6 Identify significant problems in scheduling together with recommended corrective action.
- .7 Maintain and report a QC log.
- .8 Document any outstanding RFIs and risks associated with delayed responses.
- .9 List outstanding submittals and risks associated with delayed responses.
- .10 Document any outstanding Change Orders and any risks associated with delayed responses.
- .11 The status of permits that the Construction Manager is required to obtain or assist in obtaining.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, Architect with its monthly Application for Payment or more often as requested by the Owner, a daily log containing a record for each day of weather, Subcontractors working on the site, deliveries, Work accomplished, portions of the Work in progress, number and employer 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. The information on the log does not constitute notice of a potential or actual Claim to 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. The Construction Manager shall include a Project status report in a format acceptable to the Owner, listing (i) all pending and/or approved Change Orders and Construction Change Directives (including amounts), (ii) an analysis of the Specified General Conditions and Negotiated Support Services budget with an explanation of substantial variances from previous budgets, (iii) projected cash flow of construction costs, (iv) an allocation by subcontract bid package and schedule-of-values line item, (v) expenditures to date, (vi) estimates to complete, (vii) forecast at completion, (viii) variances with budget and commitment, and (ix) the items for which the Owner has authorized the Construction Manager to use Contingency, the cost of those approved items, and the balance of funds remaining in the Contingency account.

§ 3.3.2.6 Subcontractor Work. The Construction Manager shall review and inspect the Work of the Subcontractors on a regular basis (at least as often as described in the Construction Manager's approved quality management plan) for defects and deficiencies in their Work and for conformance with the Drawings, Specifications and other Contract Documents, and shall stop the Work of Subcontractors if necessary. The Construction Manager shall provide notification at regularly scheduled progress meetings of any significant defects or deficiencies and recommend remedial action. The Construction Manager shall take the lead role in negotiating and resolving any disputes with Subcontractors and obtain the Owner's concurrence or approval of all settlements before executing change orders with Subcontractors.

§ 3.3.2.7 Records. As part of the Specified General Conditions, the Construction Manager shall maintain, in good order and on a current basis, a record copy of all subcontracts, purchase orders, Drawings marked to record all changes made during construction, Specifications, addenda, Change Orders, and other Modifications; shop drawings; product data; samples; submittals; inspection reports; purchases; materials; equipment; applicable handbooks; maintenance and operating manuals and instructions; other related documents and revisions which arise out of subcontracts or Work. These records shall be available to the Owner, and, at completion of the Project, delivered to the Owner.

§ 3.3.2.8 Staffing. As part of the Specified General Conditions, the Construction Manager shall provide an adequate and experienced staff consistent with or in excess of that specified in its response to the RFP. The Construction Manager shall identify the specific project manager, superintendent, and necessary assistants who will be in attendance at the Project site during performance of the Work to the Owner at the time the GMP Amendment is executed. The Owner reserves the right to reasonably reject such proposed personnel and the Construction Manager shall replace any rejected personnel with an agreeable replacement. The staff shall include necessary and appropriate project managers, superintendents, field engineers, engineers, quality control specialists, scheduling engineers, cost engineers, safety engineers, clerical, accounting, and data processing personnel, and others so that, among other things:

- .1 The Work is performed and coordinated in a timely manner in compliance with the Contract Documents;
- .2 Change Order Proposals and responses to Construction Change Directives are submitted to the Owner within fourteen (14) days after the Construction Manager's receipt;
- .3 Replies to correspondence from the Owner, Subcontractors, and governmental agencies are answered within seven (7) days; and
- .4 Substantial and Final Completion are achieved within the time specified in the Contract Documents and consistent with the General Conditions.
- .5 BIM models are maintained and updated with as-built information during construction

§ 3.3.2.9 Apprenticeship.

- .1 Pursuant to RCW 39.04.320, the Construction Manager shall achieve apprentice participation of at least fifteen percent (15%) of the total construction labor hours.

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- .2 Apprentice hours shall be performed by participants in training programs approved by the Washington State Apprenticeship Council.
- .3 "Labor hours" means the total hours of workers receiving an hourly wage who are directly employed on the site of the public works project. "Labor hours" includes hours performed by workers employed by the Construction Manager and all Subcontractors working on the Project. "Labor hours" does not include hours worked by foremen, superintendents, owners, and workers who are not subject to prevailing wage requirements of RCW 39.12.
- .4 During the term of this Contract, the Owner may adjust the apprentice labor hour requirement upon its finding or determination that includes:
 - (1) A demonstration of lack of availability of apprentices in the geographic area of the Project;
 - (2) A disproportionately high ratio of material costs to labor hours that does not make feasible the required minimum levels of apprentice participation;
 - (3) Demonstration by participating contractors of a good faith effort to comply with the requirements of RCW 39.04.300 through .320;
 - (4) Small contractors or subcontractors (e.g., small or emerging businesses) would be forced to displace regularly employed members of their workforce;
 - (5) The reasonable and necessary requirements of the Contract render apprentice utilization infeasible at the required level (e.g., the number of skilled workers required and/or limitations on the time available to perform the Work preclude utilization of apprentices); or
 - (6) Other criteria the Owner deems appropriate, which are subject to review by the office of the Governor.
- .5 The Construction Manager shall report apprentice participation to the Owner at least quarterly, on forms provided or approved by the Owner. In addition, copies of quarterly certified payroll records may be requested to document the goal. The reports will include:
 - (1) The name of the Project;
 - (2) The dollar value of the Project;
 - (3) The date of the Construction Manager's Notice to Proceed;
 - (4) The name of each apprentice and apprentice registration number;
 - (5) The number of apprentices and labor hours worked by them, categorized by trade or craft;
 - (6) The number of journey level workers and labor hours worked by them, categorized by trade or craft;
and
 - (7) The number, type, and rationale for the exceptions granted.

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~~, requested and upon its approval, 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~~. Project and may designate a replacement representative. 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. Because the Owner is a public entity, the Owner's Designated Representative will have authority within specified limits to act on behalf of the Owner in writing with respect to changes in the scope of the Work, in the GMP, and/or the Contract Time. Any decisions and approvals beyond those specified limits involving a change in the scope of the Work, in the GMP, and/or the Contract Time, or involving modification or waiver of the terms of the Contract Documents must be approved in writing by the Owner's Board of Directors.

§ 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. The Owner is not required to furnish legal, insurance, and accounting services for the benefit of the Construction Manager.

§ 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, the agreement between the Owner and Architect,~~ including any additional services requested by the Construction Manager ~~that are and authorized by the Owner that are reasonably 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~~ **ARTICLE 5 COMPENSATION AND PAYMENTS FOR CONCEPTUAL DESIGN PHASE AND FOR PRECONSTRUCTION PHASE SERVICES**

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's ~~Preconstruction Phase services~~ Conceptual Design Phase and 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.)*

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.1 Conceptual Design Phase: Compensation for the Conceptual Design Phase Services (the "Conceptual Design Phase Services Cost") shall not exceed _____ dollars (\$ _____), plus Washington State sales due on this amount, and shall be paid on an hourly basis at the rates and for the individuals specified in Exhibit ___ to this Agreement. In addition, the Construction Manager shall receive compensation for any pre-approved non-labor costs incurred to perform the Conceptual Design Phase Services, including equipment at the hourly rates specified in the attachment. Non-labor costs include but are not limited to costs of testing, intrusive investigation, selective demolition and restoration, copying, blueprints and courier costs. The Conceptual Design Phase Services rates shall be fully loaded and shall include personnel and consultant costs and all benefits, materials, equipment, taxes, profit and overhead. Costs that would cause the not-to-exceed amount to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

.2 Preconstruction Phase: Compensation for the Preconstruction Services (the "Preconstruction Services Cost") shall not exceed _____ dollars (\$ _____), plus Washington State sales tax due on this amount, and shall be paid on an hourly basis at the rates and for the individuals specified in Exhibit ___ to this Agreement. In addition, the Construction Manager shall receive compensation for any pre-approved non-labor costs incurred to perform the Preconstruction Services, including equipment at the hourly rates specified in the attachment. Non-labor costs include but are not limited to costs of testing, intrusive investigation, selective demolition and restoration, copying, blueprints and courier costs. The Preconstruction Services rates shall be fully loaded and shall include personnel and consultant costs and all benefits, materials, equipment, taxes, profit and overhead. The Preconstruction Services Cost includes any MC/CM and EC/CM selection and preparation costs. Costs that would cause the not-to-exceed amount to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

The Construction Manager's Fee in Section 6.1.2 does not apply to Conceptual Design Phase Services or Preconstruction Phase Services. Any balance remaining from the not-to-exceed amounts for Conceptual Design Phase Services or Preconstruction Services is not subject to any Savings Bonus provision and will revert to the Owner.

§ 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.)

See Attachment 3

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~~ Conceptual Design Phase Services covered by this Agreement have not been completed within () months of the date of this Agreement, by _____, (_____), through no fault of the Construction Manager, the Construction Manager's compensation for Conceptual Design Phase Services shall be equitably adjusted. If the ~~Preconstruction Phase Services~~ Services covered by this Agreement have not been completed by _____ (_____), 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. The invoice will contain detail of and support for the services performed.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid Thirty (30) days after the ~~invoice date~~ date when payment is due 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.)

~~%~~ Pursuant to RCW 39.76, not to exceed the Bank of America prime rate plus one percent (1)% per annum

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.)

The Construction Manager's Fee for the Work during the Construction Phase shall be the fixed, lump sum amount that will be calculated as the percentage specified in the Fee Proposal Form (_____ Percent (_____ %)) multiplied by the MACC negotiated as part of the GMP and the Contingency.

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

In the event a Change Order is issued for a Change in the Work, the change in the Construction Manager's Fee will be the percentage specified in the Fee Proposal Form (_____ Percent (_____ %)) multiplied by the net change in the Cost of the changed 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:

The fee for changed Work directly performed by a Subcontractor of any tier, including overhead and profit, is specified in Section 7.5 of the General Conditions. If a lower-tier Subcontractor performs changed Work, the fee of upper-tier Subcontractors is also specified in Section 7.5 of the General Conditions.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed _____ percent (_____ equipment, over the full duration of the Project, shall not exceed seventy-five percent (75 %) of the standard rental rate paid at the place of the Project, and as further described in Section 7.5.2.

§ 6.1.6 Liquidated damages, if any:

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

The Owner will assess, and the Construction Manager will be responsible for, liquidated damages in the amount of \$ _____ per day for each calendar day beyond the Contract Time that Substantial Completion is not timely achieved, and \$ _____ per day for each calendar day beyond the Contract Time that Final Completion is not timely achieved. Liquidated damages may be assessed concurrently for Substantial Completion and Final Completion, as applicable, and for multiple phases. In addition, without limiting any right or remedy under this Agreement or at law, the Owner may take over and complete the Work (or any portion of the Work) at any time more than ninety (90) days following Substantial Completion of the Work if Final Completion has not been achieved, and charge all direct and indirect costs of completion against the Construction Manager.

The Construction Manager and the Owner agree that the liquidated damages amounts set forth herein are not penalties and are a reasonable estimation of actual damages to the Owner, as of the date of this Agreement, based on the inherent uncertainty and difficulty in calculating and quantifying damages caused by delays in the construction of school district facilities.

Any sums for which the Construction Manager is liable to the Owner may be deducted at any time by the Owner from any sums due the Construction Manager. In the event that no amounts are due from the Owner to the Construction Manager, then the Owner shall notify the Construction Manager in writing of the liquidated damages amount that is due, and the Construction Manager shall pay such amount to the Owner within thirty (30) calendar days of such notice.

§ 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.)

If the Project is completed for less than the GMP, all savings shall accrue to the Owner. If the Project is completed for more than the GMP, the additional cost is the responsibility of the Construction Manager.

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§ 6.1.8 The Specified General Conditions will be identified in the GMP Amendment based on the fixed amounts identified in Construction Manager's response to the Owner's RFP.

§ 6.1.9 The not-to-exceed amount of Negotiated Support Services will be negotiated at the time of establishing the MACC.

§ 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 consistent with the requirements of the Contract Documents as a result of changes in the Work.

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

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

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

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, Price for changed Work performed by the Construction Manager, the terms "cost" and "costs" as used in Article 7 of AIA Document A201-2017, the General Conditions shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 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 the actual net costs reasonably and necessarily incurred by the Construction Manager in the proper performance of the Work, Work, without overhead, profit, fee, or markup. 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. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 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.

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§ 7.1.4 Direct payments (if any) by the Owner for the building permit or related permits, reserve capacity fees, and plan-check fees, including SEPA, design review, and land use fees are not a part of the Cost of the Work or the GMP and are not subject to the Construction Manager's Fee.

§ 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~~ workshops or transporting materials, equipment or personnel to and from the Project site.

§ 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~~ are included in the Specified General Conditions and not separately reimbursable.

§ 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.)

Work are included in the Specified General Conditions and not separately reimbursable.

§ 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~~. Work are included in the Specified General Conditions and not separately reimbursable.

§ 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. Section 7.2.1. Costs paid or incurred by the Construction Manager for vacations, bonuses, travel, stock options, deferred compensation, or discretionary payments to employees are not directly reimbursable. As part of the GMP Amendment, the parties may agree to a wage burden rate for all workers under Section 7.2.1, which will be fully burdened, including all the wage-based costs, and fixed for the duration of the Contract Time.

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

§ 7.3 Subcontract Costs

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

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

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed ~~construction~~ construction, except on-site storage and handling of materials, which are included under Specified General Conditions.

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

§ 7.4.3 Notwithstanding the above, costs of material and equipment procured by the Construction Manager but not incorporated in the completed construction may be included in the Negotiated Support Services if approved by the Owner.

§ 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 (as described in the Contract Documents) and hand tools owner and 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. Project identification and temporary signage are included in the Negotiated Support Services.

§ 7.5.2 Rental charges (not to exceed the local fair market rental costs) actually paid to non-related third parties 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 over the duration of the Project of any such Construction Manager owned equipment may not exceed the lessor of the local fair market rental costs or seventy-five percent (75%) of the purchase price of any comparable item.

§ 7.5.2.1 Rentals from the Construction Manager or any entity in which the Construction Manager or one or more of its owners has a direct or indirect ownership interest ("CM Equipment") shall be separately accounted for and the rental costs shall not exceed Rental Rate Blue Book by Data Quest, San Jose, California, or fair market rental costs, whichever are lower. If more than one rate is applicable, the best available rate will be utilized. The rates in effect at the time of the performance of the Work are the maximum rates allowable for equipment of modern design and in good working condition and include full compensation for furnishing all fuel, oil, lubrication, repairs, maintenance, and insurance to the same extent as the comparable Blue Book or fair market rate. Equipment not of modern design and/or not in good working condition will have lower rates. Hourly, weekly, and/or monthly rates, as appropriate, will be applied to yield the lowest total cost. When rental rates payable do not include fuel, lubrication, maintenance and servicing, as defined as operating costs in the Blue Book, such operating costs shall be reimbursed based on actual costs. The rate for CM Equipment necessarily standing by for future use on the Work shall be fifty percent (50%) of the rate established above. If CM Equipment is required for which a rental rate is not established by the Blue Book, an agreed rental rate shall be established for that equipment, which rate and use must be approved by the Owner prior to performing the Work.

§ 7.5.3 Costs of street cleaning (as a Negotiated Support Service); removal of rubbish and debris from the site of the Work and its proper and legal disposal ~~disposal~~ except when performed by a Subcontractor. A separate subcontract that specifically requires progress cleaning, removal of rubbish and debris not normally included in a trade subcontract is included in the Negotiated Support Services and is not separately reimbursable as a Cost of the Work. Any progress cleaning, rubbish and debris removal shall be performed under Negotiated Support Services unless included as part of a trade subcontract scope identified above.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and ~~supplies~~ supplies are included in Negotiated Support Services and are not separately reimbursable.

§ 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~~ written approval and per any terms required by the Owner.

§ 7.5.6 Notwithstanding the above, costs of other material and equipment, temporary facilities and related items procured by the Construction Manager will generally be included in Negotiated Support Services, but some may be designated for inclusion in the Specified General Conditions. Reference the Cost Responsibility Matrix attached as an exhibit for clarification. All furniture, technology, communication (including cell phones), personal transportation (including pickup trucks) and clerical equipment therein, temporary controls (except cleaning and erosion controls), and delivery by the Construction Manager, on-site storage, sheds and handling are Specified General Conditions.

§ 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.~~ Insurance premiums, including builder's risk insurance premiums, and risk management tools not explicitly required by the Contract Documents (including Subcontractor bonds beyond those required by Chapter

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39.10 RCW, default insurance or Subguard®) are not Costs of the Work, but are included within the Construction Manager's Fee, as are portions of deductibles not reimbursable under the Contract Documents.

§ 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 Use, B&O tax, income and similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is ~~liable~~ liable are included in the Fee and are not reimbursable. The Owner will pay sales tax on progress payments.

§ 7.6.3 Fees and assessments for the ~~building permit, and for other permits, licenses, and inspections, for which the Construction Manager~~ Project specific permits, licenses (but not the Construction Manager's business license), and inspections of governmental authorities having jurisdiction, for which the Construction Manager (but not Subcontractors) is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required of the Construction Manager 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~~ the General Conditions or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3. ~~The Construction Manager's testing coordination is included in Negotiated Support Services and is not separately reimbursable as a Cost of the Work~~

§ 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 General Conditions. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price. ~~If such royalties, fees, and costs are excluded by the Contract Documents, then they shall not be reimbursable as a Cost of the Work.~~

§ 7.6.6 Costs for communications services, electronic equipment, and software, ~~including computers, cell phones, onsite cameras, and photo documentation software~~, directly related to the Work and located at the site, with the Owner's prior ~~approval~~ approval are included in Specified General Conditions and/or Negotiated Support Services and are not separately reimbursable.

§ 7.6.7 Costs of document reproductions and delivery ~~charges~~ charges are included in Specified General Conditions and are not separately reimbursable, except that reproduction costs for subcontract bid packages are under the Negotiated Support Services.

§ 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.~~ [Deleted].

§ 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~~ approval are included in Specified General Conditions and are not separately reimbursable.

§ 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~~ Work with the Owner's prior approval, are included in Specified General Conditions and are not separately reimbursable.

§ 7.6.12 The cost of pre-approved warehousing of stored materials or equipment subsequently incorporated into the Work.

§ 7.6.12 Safety costs expressed as percentage are not Costs of the Work, but are included within the Construction Manager's Fee.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval. Temporary heat and temporary hookups and temporary meter installation for water, utilities, natural gas, sewer and storm sewer, necessary for proper execution and completion of the Work and included in the Negotiated Support Services. Permanent hookup, meters and fees for permanent utilities are Costs of the Work.

§ 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~~ the General Conditions.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or ~~suppliers~~ suppliers of any tier, 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~~ the General Conditions 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~~ 7.9 or are listed as covered by the Fee or the Specified General Conditions.

§ 7.7.5 Negotiated Support Services

Negotiated Support Services by the Construction Manager may be accomplished and will be reimbursed as Costs of the Work within the GMP, only as follows:

- .1 Negotiated Support Services described and included in the GMP;
- .2 The responsibility for Negotiated Support Services may not be included in subcontract bid packages or transferred to Subcontractors without the Owner's prior approval;
- .3 The Fee is applied to the Cost of the Work that are performed as part of the Negotiated Support Services.

Neither overhead, profit, nor Fee shall be contained within Negotiated Support Services; the Fee will be applied to the Negotiated Support Services.

§ 7.7.6 Specified General Conditions

The fixed, lump sum contained in the Construction Manager's response to the Owner's RFP for certain detailed, selected and identified general conditions Work and services (including onsite cameras, photo documentation and cameras that connect to BIM) to be provided by the Construction Manager as Specified General Conditions. The Specified General Conditions Work is to be performed by the Construction Manager with its own forces in most instances and to include the Preconstruction Services and are activities that occur after the GMP is established through execution of the GMP Amendment. Neither overhead, profit nor Fee shall be contained within the fixed, lump sum; the Fee will be applied to the lump-sum Specified General Conditions.

§ 7.7.7 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of the General 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

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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~~; below, as all such items are covered by the Construction Manager's Fee, the Specified General Conditions or Negotiated Support Services, or are at the Construction Manager's risk:

- .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,~~ Subcontractors and suppliers of any tier, 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, the Conceptual Design Phase or the Preconstruction Phase;~~
- .10 Overtime wages, unless pre-approved by the Owner;
- .11 Data processing, software, hardware or computer-related costs not included in the Specified General Conditions;
- .12 Penalties and fines imposed by a governmental entity;
- .13 Safety costs expressed as a percentage and/or not included in the Negotiated Support Services or Specified General Conditions;
- .14 Liquidated damages;
- .15 Except as included within the Specified General Conditions, reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office;
- .16 Legal, consultant, or Claims-related expenses;
- .17 Warehousing in the Construction Manager's facility; and
- .18 Business licenses.

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 as specified herein.~~

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§ 8.1.1 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. If the Construction Manager is offered discounts and/or rebates based upon prompt payment, the Construction Manager shall offer the Owner the opportunity to take advantage of such discount and/or rebate, and if the Owner makes such a prompt payment then the Owner shall only be charged the price as reduced by the discount and/or rebate. If the Owner declines the opportunity the Construction Manager may keep any such discounts and/or rebates it achieves through its own prompt payment. If the Construction Manager does not provide the Owner the opportunity to participate then the Construction Manager may only charge the net costs after consideration of discounts and rebates. The Construction Manager shall notify the Owner in a timely manner of the availability of such cash discounts, rebates, or refunds.

§ 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 The Construction Manager shall comply with the applicable requirements of RCW 39.10, the provisions of which shall take precedence over any inconsistent provisions of the Contract Documents. Except as specified below, the Construction Manager shall assemble the bidding materials, manage the bidding process, and 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 analyze the Subcontractor bids and deliver such bids to the Architect and Owner with an indication recommendation 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.

Unless all bids are rejected, subcontract bid packages shall be awarded to the "responsible" and responsive bidder submitting the low responsive bid. Determination of "responsibility" shall comply with the requirements of RCW 39.10 and Washington law.

- .1 Other than Work under the Specified General Conditions and Negotiated Support Services, all Work on the Project shall be competitively bid as required by RCW 39.10. Negotiated Support Services shall not be bid as a package, but individual components of Negotiated Support Services may be bid. The Construction Manager may not use alternates without approval of the Owner.
- .2 The Construction Manager shall bid out the subcontract bid packages in accordance with its approved Subcontracting Plan. The Construction Manager shall document and report monthly to the Owner on its procurement process. The Owner's written approval is required for changes to the Subcontracting Plan.
- .3 Before initially soliciting bids for the first subcontract bid package, the Construction Manager shall submit, and the Owner shall reasonably approve, final bid package estimates and an allocation of the scope of Work among the bid packages for each subcontract bid package in the approved Subcontracting Plan. The sum of all the final bid package estimates in the Subcontracting Plan plus any other described Article 7 Costs of the Work plus the Negotiated Support Services and Specified General Conditions shall not exceed the MACC.
- .4 When in the best interests of the Project and when critical to the successful completion of a subcontract bid package and the Owner consents, the Owner and Construction Manager may make a pre-bid determination of Subcontractor eligibility in accordance with RCW 39.10. In addition, if the anticipated subcontract value will exceed \$3 million and the Owner consents, the Construction Manager may select a mechanical Subcontractor, an electrical Subcontractor, or both, in accordance with the alternative procedure specified in RCW 39.10.385.
- .5 As part of its Subcontracting Plan, the Construction Manager shall promptly notify the Owner of Work (other than Negotiated Support Services and Specified General Conditions) that it will seek to self-perform. The Construction Manager, including its subsidiaries and affiliates, may bid on a subcontract bid package if the Work within the subcontract bid package is customarily performed by the Construction

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Manager, if the Construction Manager has, in the Owner's reasonable opinion, aggressively sought competition, if the bid opening is managed by the Owner, if notification of the Construction Manager's intention to bid is included in the public solicitation of bids for the bid package, and if the Construction Manager otherwise complies with RCW 39.10. In no event may the total value of subcontract Work performed by the Construction Manager exceed thirty percent (30%) of the MACC negotiated as part of the GMP Amendment. (Negotiated Support Services performed by the Construction Manager shall not be considered subcontract Work for purposes of this calculation.) The Construction Manager must provide staff to superintend and manage Work it performs in subcontract bid packages with individuals separate and distinct from the staff involved in the overall management of this Contract. The Construction Manager shall coordinate subcontract bid package Work it performs with the Work of Subcontractors.

- .6 The Construction Manager shall require a bid bond from Subcontractors bidding Work expected to cost more than \$300,000, and all Subcontractors awarded a subcontract in excess of \$300,000 shall provide a performance and payment bond for the subcontract amount.
- .7 The Construction Manager's solicitations of subcontract bid packages shall be made in accordance with the following procedures:
 - A representative from the Owner will be present at each bid opening to observe the procedure.
 - Solicitations for bids will be advertised at least fourteen (14) days in advance in a legal newspaper circulated in the area of the Project.
 - Bidders may obtain the bid results by telephone from the Construction Manager.
 - Responsiveness requirements and bidding procedures will be described in each solicitation and shall be reviewed with the Owner prior to a bid opening.
- .8 The services performed by the Construction Manager in soliciting subcontract bid packages are covered under the Specified General Conditions.
- .9 The Construction Manager shall ensure compliance with RCW 39.10 and with all the above requirements for Subcontractor solicitation, and subcontracts shall conform to the requirements of RCW 39.10.
- .10 The Construction Manager shall promptly contract with the selected bidder and shall promptly deliver a copy of each subcontract to the Owner.

~~§ 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. [Deleted].~~

~~§ 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 fee, except for any contracts awarded under the alternative procedure of RCW 39.10.385, which shall include a maximum allowable subcontract cost. If a mechanical and/or electrical subcontracts are awarded in accordance with the alternative procedure specified in RCW 39.10.385 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 and these Subcontractors shall be audited prior to final payment in accordance with Section 11.2.~~

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager and any cost-reimbursable Subcontractors 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~~, copy (including electronically), the Construction Manager's and Subcontractors' original records and accounts, including complete documentation supporting accounting entries, books, ledgers, computerized records, daily reports, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, invoices of Subcontractors of any tier and suppliers, memoranda, and other data relating to this Contract. ~~The Construction Manager Project or any Claim. The Construction Manager and its Subcontractors 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 in compliance with the Contract Documents to the Architect and the Owner 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. The submission of this Application constitutes a certification that the Work is current on the Construction Schedule, unless otherwise noted on the Application. The Application shall be in a form acceptable to the Owner.

§ 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:

month.

§ 11.1.3 Applications for Payment

.1 Draft Application. At the last scheduled meeting of each month, the Construction Manager shall submit to the Owner the reports required in Section 3.3 and a draft, itemized applications for payment for Work performed during that calendar month on a form supplied or approved by the Owner. This shall not constitute a payment request. The Construction Manager, the Owner, and the Architect shall confer prior to the last working day of the month regarding the current progress of the Work and the amount of payment to which the Construction Manager is entitled. The Architect or Owner may request the Construction Manager to provide data substantiating the Construction Manager's right to payment as the Architect or the Owner may require, such as copies of invoices from Subcontractors of any tier, lien releases, and approved payrolls, and reflecting retainage as provided elsewhere in the Contract Documents. The Construction Manager shall not be entitled to make a payment request, nor is any payment due the Construction Manager, until such data is furnished.

.2 Payment Request. After the Construction Manager, the Owner, and the Architect have met and conferred regarding the updated draft Applications, and the Construction Manager has furnished all progress information required and all data requested by the Owner or the Architect, the Construction Manager may submit a payment request by the last working day of the month following the meeting in the agreed-upon amount, in the form of separate notarized, itemized Applications for Payment for Work properly performed during that calendar month on a form supplied or approved by the Owner, along with a lien release on a form furnished by the Owner from each Subcontractor for whose Work the Owner paid the Construction Manager for the prior month. The Applications shall also state that prevailing wages have been paid in accordance with the pre-filed statements of intent to pay prevailing wages on file with the Owner and that all payments due Subcontractors of any tier from the Owner's payment the prior month have been made.

.3 Payment. Provided that an Application for Payment is received by the ~~Architect-Owner~~ not later than the last working day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the last day of the following month. If an Application for Payment is received by the ~~Architect-Owner~~ after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty (30) days after the ~~Architect-Owner~~ receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

.4 Disputed Amounts. If the Construction Manager believes it is entitled to payment for Work performed in addition to the agreed-upon amount, the Construction Manager may, also by the last working day of that month and after the meeting described in Section 11.1.3.1, submit to the Owner and the Architect, along with the approved Application for Payment, a separate written payment request specifying the exact additional amount due, the category in the schedule of values in which the payment is due, the specific Work for which the additional amount is due, and why the additional payment is due. Furthermore, for the submittal to be considered, pursuant to WAC 296-127-320, the Construction Manager and all Subcontractors shall file with the Owner by the same date certified copies of all payroll records relating to the additional amount sought.

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit the reports required in Section 3.3 and its current detailed computerized substantiation (such as a detailed job cost report) and lien releases; the Construction Manager shall also submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence if required by the Owner or Architect to Architect. Upon request, the Construction Manager shall demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments

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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. The Construction Manager shall promptly, following the date of execution of the GMP Amendment, prepare a comprehensive list of equipment that it anticipates using on the Project, whether owned or rented. The Construction Manager shall maintain and submit to the Owner monthly a detailed equipment inventory of all equipment it has purchased and charged as a Cost of the Work or job-owned through aggregate rentals and shall prepare an equipment rental report that identifies the equipment rented for the month and identifies the source of the rented equipment. The inventory shall include (i) the original acquisition cost and date, (ii) the Owner-approved fair market value of the equipment when first used on the Project, and (iii) the final disposition.

§ 11.1.5 At least fourteen (14) days before the first Application for Payment, the Construction Manager shall submit to the Owner and Architect a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner or Architect may require. These schedules, unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Construction Manager's Applications for Payment. 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. Within the Schedule of Values, the Construction Manager's Fee, Negotiated Support Services, Specified General Conditions, and the Construction Manager's Contingency shall be shown as separate line items.

§ 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-Owner may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

- .1 Mobilization shall be a maximum of one-half of one percent (0.5%) of the GMP and shall be paid only if supported by an itemized breakdown of costs acceptable to the Owner.
- .2 The schedule of values shall allocate at least one percent (1%) of the GMP to Commissioning, as defined in the Contract Documents.
- .3 The schedule of values shall allocate at least two percent (2%) of the listed value of each line item in the schedule of values to that portion of the Work between Substantial Completion and Final Completion of that line item, to be earned and become payable in the next Application for Payment upon Final Completion of that line item.

§ 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-Owner.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. The Architect will, within seven (7) days after receipt of the Construction Manager's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1 of the General Conditions.

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

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

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;

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- .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; and
- .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.~~ 6.1.2.

§ 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 or the Owner has previously withheld a Certificate for Payment or the Owner has withheld payment as provided in Article 9 of ~~AIA Document A201-2017;~~ the General Conditions;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Owner or 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;~~ the General Conditions;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 ~~Retainage withheld pursuant to Section 11.1.8. Subtract the statutory retainage of five percent (5%) of the sum of the completed Cost of the Work plus Fee as a fund for the protection and payment of the Claims of any person or entity arising out of the Work and the state with respect to taxes, pursuant to RCW 60.28.~~

§ 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.)

See General Conditions, Section 9.3.4

§ 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.)

Not applicable.

§ 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.)

Not applicable.

~~§ 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, the General Conditions.

§ 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,~~ Subcontracts if other than five percent (5%), 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 and the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect or the Owner has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect or the Owner has made exhaustive or continuous on-site inspections; or (3) that the Architect or the Owner has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner’s auditors acting in the sole interest of the Owner. Payment by the Owner shall not constitute final approval of the Work done or the amount due.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, except for statutory retainage, shall be made by the Owner to the Construction Manager within thirty (30) days of the Owner’s Final Acceptance of all the Work under the Contract, which shall occur 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 (including final accountings from any cost-reimbursable Subcontractors) and a final Application for Payment; ~~and~~
- .3 Final Completion has been achieved;
- .4 a final Certificate for Payment has been issued by the Architect in accordance with Section ~~11.2.2.2,~~ 11.2.2.2; and
- .5 the requirements for Final Acceptance in the General Conditions are met.

§ 11.2.2 Within 30 days of the Owner’s receipt of the Construction Manager’s final accounting for the Cost of the Work, ~~the Owner shall~~ Work (including the final accounting of any mechanical and/or electrical subcontracts under RCW 39.10.385), the Owner shall, at its option, 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. The Owner’s final accounting shall not preclude or in any way limit the Owner from exercising its rights of audit under other provisions of this Contract.

§ 11.2.2.2 Within ~~seven~~ seven (7) 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~~ Neither the Owner nor the Architect is responsible for verifying the accuracy of the Construction Manager’s final accounting. The Owner’s final accounting shall not preclude or in any way limit the Owner from exercising its rights of audit under other provisions of this Contract.

§ 11.2.2.3 If the Owner or 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 invoke~~ the dispute resolution procedure of Article 15 of the General

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Conditions. Commencement of the dispute resolution procedure for the disputed amount shall be made by the Construction Manager within ~~30~~ thirty (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 commence the dispute resolution procedure within this thirty- (30-) day period shall result in the substantiated amount reported by the Owner or 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-undisputed amount in the final Application for Payment.

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

See General Conditions.

§ 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.

§ 11.2.5 Statutory retainage will be withheld from Applications for Payment and will be paid as specified in the General Conditions and RCW 60.28.

§ 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.)

% Bank of America prime rate plus two percent (2%) per annum.

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 ~~Initial Decision Maker~~[Deleted].

§ 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

Any Claim between the Owner and the construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of the General Conditions. 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.)

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— 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. Litigation in a Superior Court of competent jurisdiction in Snohomish County, Washington

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.0 Termination Prior to Commencement of the Preconstruction Phase

§ 13.0.1 Prior to issuing a Notice to Proceed with the Preconstruction Phase, the Owner may terminate this Agreement upon not less than seven (7) 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 (7) days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of the General Conditions. Notwithstanding anything herein to the contrary, the Owner shall at all times maintain the right to terminate for cause or for convenience as described in Article 14 of the General Conditions.

§ 13.0.2 In the event of termination of this Agreement pursuant to Section 13.0.1, the Construction Manager shall be equitably compensated for Conceptual Design Phase Services reasonably and necessarily performed prior to receipt of a notice of termination, not to exceed the Conceptual Design Phase Services Cost. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.1.1.

§ 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, or if the Owner elects not to proceed with the Project or to use a different contracting structure for any reason, 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. Notwithstanding anything herein to the contrary, the Owner shall at all times maintain the right to terminate for cause or for convenience as described in Article 14 of the General Conditions.

§ 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~~ Services and Work reasonably and necessarily performed prior to receipt of a notice of termination, in accordance with the terms of this ~~Agreement~~ Agreement, not to exceed the Preconstruction Services Cost. 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 reasonably and necessarily performed prior to receipt of a notice of ~~termination~~ termination, in accordance with the terms of this Agreement, not to exceed the Preconstruction Services Cost. 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 terminated Work incurred by the Construction Manager to the date of termination;

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- .2 Add the Construction Manager's Fee computed upon the Cost of the Work performed up 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;~~ services; ~~and~~
- .4 Adjust for statutory retainage in accordance with RCW 60.28.

In all cases, the Construction Manager is not entitled to any payment, including, but not limited to, Fee or markup, for Work not performed.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, to the extent permitted in Article 7 of this Agreement, either by purchase or rental at the election of the Owner, for any equipment purchased in connection with the Project and now 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;~~ the General Conditions.

§ 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 General Conditions, 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;~~ the General Conditions; and
- .5 Adjust for statutory retainage in accordance with Chapter 60.28 RCW.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, to the extent permitted in Article 7 of this Agreement, either by purchase or rental at the election of the Owner, for any equipment purchased in connection with the Project and now 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

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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, the~~ General Conditions, 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.)

Not applicable.

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of ~~AIA Document A201–2017, the~~ General Conditions; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of ~~AIA Document A201–2017, the~~ General Conditions, 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, the~~ Master Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

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

§ 14.2.2 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 purchase and maintain the insurance required by Article 11 of the General Conditions for the duration of the Conceptual Design Phase and~~ 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.~~[Deleted].

§ 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.~~[Deleted].

§ 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.[Deleted].

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~~§ 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. [Deleted].~~

~~§ 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. [Deleted].~~

§ 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

See Article 11 of the General Conditions for other insurance and bond requirements.

§ 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 ~~14.3.1.14.3.1~~ and in accordance with Article 11 of the General Conditions.

§ 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, Article 11 of the General Conditions~~ 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.~~ provide, as a reimbursable Cost of the Work, statutory payment and performance bonds as set forth in in this Section 14.3.2.1 and Article 11 of the General Conditions.

§ 14.3.2.1.1 The Construction Manager shall deliver the required bonds to the Owner within ten (10) days of executing the GMP Amendment. The amount of the Construction Manager's performance and payment bonds shall be equal to one hundred percent (100%) of the GMP pursuant to Chapter 39.10 RCW and Chapter 39.08 RCW, "Contractor's Bond."

§ 14.3.2.1.2 The Construction Manager shall also require each Subcontractor that is awarded a Subcontractor bid package in excess of \$300,000 to provide payment and performance bonds in the full amount of the subcontract sum from a surety company acceptable to the Owner and the Construction Manager and authorized to issue bonds in the State of Washington. The Construction Manager may require a performance and payment bond from any other Subcontractor, provided that such requirement is set forth in the Subcontractor bidding documents. Within ten (10) days of entering into a subcontract, and before any payment is due, the Subcontractor on each Subcontractor bid package shall deliver copies of the bonds to the Owner and to the Architect.

§ 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.)

Not applicable.

§ 14.5 Other provisions:

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§ 14.5.1 PROJECT INFORMATION

The Construction Manager and all Subcontractors shall submit Project information as may be required by the state Capital Projects Advisory Review Board and OSPI.

§ 14.5.2 The Construction Manager shall coordinate and schedule all Work with permitting agencies, utility companies, and other such agencies determined to have jurisdictional authority necessary for completion of the Work. The Construction Manager shall be responsible for providing all information, documents, and fees to the permitting agencies, utility companies, and other such agencies determined to have jurisdictional authority as necessary to timely obtain and coordinate permits, utility and other such connections. The Construction Manager shall obtain all permit renewals during the course of the Work.

§ 14.5.3 The Construction Manager will be responsible for providing information to the Department of Labor and Industries and/or local jurisdictions, as requested.

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, as revised
- .2 AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if ~~executed~~executed, as revised
- .3 ~~AIA Document A133™–2019, Exhibit B, Insurance and Bonds~~[Deleted]
- .4 AIA Document A201™–2017, General Conditions of the Contract for ~~Construction~~Construction, as revised
- .5 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203–2013 incorporated into this Agreement.)

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

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

Supplementary and other Conditions of the Contract:

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

Attachment 1 Preconstruction Services Schedule

<u>Attachment 2</u>	<u>Preconstruction Services Plan</u>
<u>Attachment 3</u>	<u>Description of Preconstruction and Conceptual Design Phase Services</u>
<u>Attachment 4</u>	<u>Cost Responsibility Matrix</u>

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)



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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Perkins Coie LLP, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 17:08:05 ET on 05/11/2021 under Order No. 1226258892 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of 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, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

(Title)

(Dated)