

CITY OF STRONGSVILLE, OHIO

ORDINANCE NO. 2024 – 190

BY: Mayor Perciak and All Members of Council

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A CONSTRUCTION MANAGER AT-RISK AGREEMENT WITH RFC CONTRACTING, LLC, IN CONNECTION WITH THE PROPOSED FIRE STATION NUMBER 5 ON ROYALTON ROAD, IN THE CITY OF STRONGSVILLE, AND DECLARING AN EMERGENCY.

WHEREAS, by and through Resolution No. 2024-105, the Mayor advertised a request for qualifications for Construction Manager At-Risk for the construction of a proposed Fire Station Number 5 to be located on the south side of Royalton Road, between Pearl Road and Prospect Road; and

WHEREAS, in accordance with Ohio Revised Code Sections 9.33 through 9.335 and Ohio Administrative Code 153:1, the City solicited proposals for Construction Manager At-Risk services for the proposed Fire Station Number 5, on the south side of Royalton Road, between Pearl Road and Prospect Road and selected RFC Contracting, LLC ("RFC"), as the firm submitting the proposal that is of best value; and

WHEREAS, the City now desires to enter into an Agreement with RFC for the Construction Manager At-Risk services.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF STRONGSVILLE, COUNTY OF CUYAHOGA AND STATE OF OHIO:


Section 1. That the Mayor is hereby authorized to sign, acknowledge and deliver, in the name of and on behalf of the City, an Agreement for Construction Manager At-Risk services with **RFC CONTRACTING, LLC** for a proposed Fire Station Number 5, on the south side of Royalton Road, between Pearl Road and Prospect Road, in accordance with the terms and conditions set forth in the proposed Agreement attached hereto as Exhibit "1" and incorporated herein by reference, which in all respects is hereby approved. The execution of the Agreement is approved with such terms and conditions that are not materially inconsistent with this Ordinance, not substantially adverse to the City, and that are permitted by law. The approval of such terms and conditions, and that such terms and conditions are not materially inconsistent with this Ordinance and not substantially adverse to the City, shall be conclusively evidenced by the signing of the Agreement by the Mayor.

Section 2. That the funds for the purposes of said contract have been appropriated and shall be paid from the General Capital Improvement Fund.


Section 3. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council; and that all deliberations of this Council, and of any of its committees, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

CITY OF STRONGSVILLE, OHIO
ORDINANCE NO. 2024 – 190
Page 2

Section 4. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare of the City, and for the further reason that it is immediately necessary to enter into said Agreement in order to commence construction manager services for a proposed Fire Station Number 5 to protect the lives and property of citizens of the City, and conserve public funds. Therefore, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise from and after the earliest period allowed by law.



 President of Council
 Date Passed: 12 02 2024

Approved: 

 Mayor

Date Approved: Dec 2, 2024

Attest: 

 Clerk of Council

	<u>Yea</u>	<u>Nay</u>
Carbone	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Clark	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Kaminski	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Kosek	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Roff	<u>Absent</u>	<input type="checkbox"/>
Short	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Spring	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Ord. No. 2024-190 Amended: _____
 1st Rdg. 12-2-24 Ref: _____
 2nd Rdg. Suspended Ref: _____
 3rd Rdg. Suspended Ref: _____

 Public Hrg. _____ Ref: _____
 Adopted: 12-2-24 Defeated: _____



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 2nd day of December in the year 2024
(In words, indicate day, month, and year.)

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

City of Strongsville, Ohio
16099 Foltz Parkway
Strongsville, Ohio 44149

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

RFC Contracting, LLC
13477 Prospect Road, Suite 105
Strongsville, Ohio 44149

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

Construction of a New Fire Station Number 5

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

DS Architecture
1020 Huron Road, Suite 101
Cleveland, Ohio 44115

The Owner and Construction Manager agree as follows.

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

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

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

Init.

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User Notes:

(1936611925)

EX. "1"

TABLE OF ARTICLES

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

EXHIBIT A GENERAL CONDITIONS

ARTICLE 1 INITIAL INFORMATION

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

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

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

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

To be developed by the Architect

§ 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.)

The Fire Station Number 5 will be on City owned by property on the South side of Royalton Road, between Pearl Road and Prospect Road, will be approximately 15,000 square feet, and will house administrative offices, meeting areas, physical training areas, shower and locker facilities for male and female firefighters, storage areas, apparatus bays, and their associated emergency service functions.

§ 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.)

\$8,250,000

§ 1.1.4 The Owner's anticipated design and construction milestone dates provided that the parties, in cooperation with the Architect, shall use commercially reasonable efforts to establish earlier milestone dates for design, construction commencement and Substantial Completion:

.1 Design phase milestone dates, if any:

Programming: September 23rd, 2024– October 27th, 2024
Schematic Design: October 28th, 2024 – December 29th, 2024
Design Development: December 30th, 2024 – March 16th, 2025
0%-30% Construction Documents: March 17th, 2025 – April 13th, 2025
GMP Development: April 14th, 2025 - May 11th, 2025
30% - 100% Construction Documents: April 14th 2025 - June 8th, 2025
Plan Review: June 9th, 2025 – July 20th, 2025
Conformed Documents: July 21st, 2025 – August 3rd, 2025

.2 Construction commencement date:

July 21st, 2025

.3 Substantial Completion date or dates:

(Paragraphs deleted) 14 months – 18 months following construction commencement

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

N/A

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

N/A

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234TM-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234-2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234-2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

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

N/A

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

Jack Draves, Fire Chief
City of Strongsville, Ohio
17000 Prospect Road
Strongsville, Ohio 44149
E-mail: Jack.draves@strongsville.org

Phone: 440-580-3216

§ 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.)

Jeffrey G. Meyers, AIA, NCARB, LEED AP BD+C
DS Architecture
1020 Huron Road, Suite 101
Cleveland, Ohio 44115
Phone: 216-771-0090
E-mail: jmeyers@dsarchitecture.com

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

.1 Geotechnical Engineer:

Provided through the Architect

.2 Civil Engineer:

Provided through the Architect

.3 Other, if any:

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

N/A

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

Jeffrey G. Meyers, AIA, NCARB, LEED AP BD+C
DS Architecture
1020 Huron Road, Suite 101
Cleveland, Ohio 44115
Phone: 216-771-0090
E-mail: jmeyers@dsarchitecture.com

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

Roger Riachi, President
RFC Contracting, LLC
13477 Prospect Road, Suite 105
Strongsville, Ohio 44149
Phone: 440.572.9444
E-mail: rriachi@aol.com

§ 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.)

Initial staffing plan is set forth in Section 5.1.2 herein.

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

Construction Manager shall follow the process set forth in Article 9 herein for subcontractor procurement.

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

N/A

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

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

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

§ 2.2 Relationship of the Parties

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

§ 2.3 General Conditions

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

§ 2.3.2 For the Construction Phase, the General Conditions of the Contract shall be as set forth in A201-2017. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 2.3.3 The AIA Document A201-2017, General Conditions of the Contract for Construction, also referred to in this Agreement as the "AIA Document A201-2017", the "A201-2017", and the "General Conditions", consist of a modified AIA Document A201-2017, General Conditions of the Contract for Construction and are attached as Exhibit A to this Agreement.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both

phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

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

§ 3.1.2 The Construction Manager shall visit the Project site with the Architect, provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other, provide its opinion of what the Construction Manager would reasonably expect to see in the program, schedule and construction budget requirements, and identify the deficiencies within these items.

§ 3.1.3 Consultation

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

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

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.4 Project Schedule

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

§ 3.1.5 Phased Construction

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

§ 3.1.5.1 This Agreement is based upon the assumption that there will be only one GMP Amendment for the Project. The parties recognize, however, that during the Preconstruction Stages, or as may be set forth in Section 1.1.5 herein, they may decide to use more than one Guaranteed Maximum Price Amendment for the Project in order to accommodate phased

construction with separate Substantial Completion dates for each phase. In that case, the Owner and the Construction Manager will execute a Guaranteed Maximum Price Amendment for each phase with each amendment after the first one supplementing the previous amendments. If the Project involves more than one phase, the requirements of this Agreement shall apply separately to each phase established, including but not limited to liquidated damages, retainage, contingency, final payment and commencement of warranties/guarantees, and the Contract Sums related thereto. The Construction Manager shall not be entitled to transfer unused contingency from one phase to one or more other phases.

§ 3.1.6 Cost Estimates

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

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall review the documents, provide its opinion of what Construction Manager would reasonably expect to see in the Documents, identify deficiencies within the Documents, and prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall also identify to Architect issues needing clarification in an effort to reduce assumptions and clarifications by the Construction Manager in the preparation of a Guaranteed Maximum Price proposal. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

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

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

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

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

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234TM-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 Subcontractors and Suppliers

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

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

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

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction.

§ 3.1.13 Compliance with Laws

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

§ 3.1.14 Other Preconstruction Services

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

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

N/A

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. In the absence of a mutual agreement regarding the timing, the Construction Manager shall, following the receipt of the 75% complete Construction Documents, submit the Guaranteed Maximum Price proposal to the Owner and Architect within 21 days following the receipt thereof. The Guaranteed Maximum Price proposal shall be based on the Prevailing Wage rates under Ohio Revised Code Chapter 4115 current as of the time of the Guaranteed Maximum Price Proposal, and 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. In arriving at the Guaranteed Maximum Price, the Construction Manager shall engage in an "open book pricing method" in which the Construction Manager provides all books, records, documents, and other data in its possession pertaining to the establishment of the Guaranteed Maximum Price, including the bidding and pricing, as well as the performance of the Work.

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

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; subcontracted and self-performed Work; alternates; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion and final completion upon which the proposed Guaranteed Maximum Price is based along with an updated Project and proposed construction schedule; and
- .5 A date not sooner than thirty (30) days from the Owner's receipt of the proposal by which the Owner must accept or reject 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 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 subject to Owner's concurrence which shall not be unreasonably withheld. The contingency shall be identified in the schedule of values and shall be adjusted, as the case may require, reflecting net savings or net losses resulting from the award of Subcontracts. Construction Manager shall inform the Owner for those items the Construction Manager intends to allocate to the contingency. As part of the Construction Manager's monthly pay application, the Construction Manager shall provide to the Owner a monthly contingency report detailing all expenditures of the Construction Contingency and the remaining balance available. The Construction Manager may not use contingency related to any self-performed Work or Work

performed by a related party. It is understood that any contingency that is unused following final completion of the Work shall belong to the Owner.

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

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

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

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

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

§ 3.3 Construction Phase

§ 3.3.1 General

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

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

§ 3.3.2 Administration

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

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

§ 3.3.2.3 Reports

The Construction Manager shall record the progress of the Project. On a bi-weekly 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, activities in progress and expected completion, activities to be started or finished in the upcoming two weeks (including but not limited to workforce size and total resource hours associated with those activities), recommendations for adjusting the construction schedule to meet milestone completion, Substantial Completion and final completion dates, and other information required by the Architect or Owner.

§ 3.3.2.4 Daily Logs

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

§ 3.3.2.5 Cost Control

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

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Construction Manager shall assist the Owner and Architect regarding requirements for and limitations on the Project, including developing a written program setting 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 [Intentionally Deleted].

§ 4.1.3 The Owner, with the assistance of the Construction Manager, 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 if reasonably necessary for the Project. The Owner shall also furnish any other information or services under the Owner's control, reasonably necessary for the Project and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

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

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

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

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

§ 4.2 Owner's Designated Representative

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

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

§ 4.3 Architect

If not already identified in this Agreement, the Owner shall retain an Architect to provide professional design services for the Project. The Construction Manager shall advise the Owner of any services of the Architect or other professionals that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager, upon request, with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

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

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

§ 5.1.1.1 Preconstruction Fee: \$1,500.00

§ 5.1.1.2 Preconstruction Stage Personnel Costs: hourly but not to exceed \$ 23,600.00 based on the rates set forth in the Construction Manager's Pricing Proposal and more particularly set forth in Section 5.1.2 herein.

§ 5.1.1.3 Preconstruction Stage Reimbursable Expenses: \$1,000.00 for bond and printing

§ 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.)

(Row deleted)

Name/Role	Rate
Roger Riachi, Project Executive	In fee
Ryan Namik, Sr. Project Manager	\$75/Hour
Joe Gase, Project Estimator/Engineer	\$55/Hour
Dave Bretland, General Superintendent	\$80/Hour

§ 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.

(Paragraph deleted)

§ 5.2 Payments

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

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

(Insert rate of monthly or annual interest agreed upon.)

N/A % N/A

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.)

Two percent (2.0 %) of the Cost of the Work plus contingency used

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

As set forth in Section 6.1.2 herein

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

10% overhead and 5% profit. The Construction Manager is not entitled to recover overhead and profit for Work self-performed by the Construction Manager or Work performed by Construction Manager as a Subcontractor at any tier.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed one hundred percent (100%) of the cost listed by the current edition of the EquipmentWatch's AED Green Book heavy equipment rental rates, or if no such cost is listed, the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

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

If the Construction Manager shall fail, neglect, and/or refuse to attain Substantial Completion of the Work by the date set forth in the Guaranteed Maximum Price Amendment, Construction Manager shall be subject to liquidated damages (not a penalty) at the rate set forth below per calendar day for the total number of days the Work is delayed beyond the Substantial Completion date:

LIQUIDATED DAMAGES

Contract Amount	Dollars Per Day
\$1.00 to \$100,000.00	\$250.00
\$100,000.01 to \$500,000.00	\$500.00
\$500,000.01 to \$2,000,000.00	\$1,000.00
\$2,000,000.01 to \$5,000,000.00	\$2,000.00
\$5,000,000.01 to \$10,000,000.00	\$2,500.00
More than \$10,000,000.00	\$3,000.00

Such liquidated damages are hereby agreed to be a reasonable pre-estimate of damages the Owner will incur as a result of delayed completion of the Work and shall be in addition to any other remedies available to the Owner. The Owner may deduct liquidated damages from any unpaid amounts then or thereafter due Construction Manager. Any liquidated damages not so deducted shall be payable by the Construction Manager to the Owner upon demand. Liquidated damages are not intended to compensate the Owner for any damages the Owner incurs on account of any claims attributable to the Construction Manager that are brought by others, including Separate Contractors.

§ 6.1.7 Other:

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

§ 6.1.7.1 Construction Manager's contingency shall not exceed Two percent (2.0 %) of the Cost of the Work.

§ 6.2 Guaranteed Maximum Price

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

§ 6.3 Changes in the Work

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

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

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

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

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

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

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

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

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

§ 7.1.4 Notwithstanding the breakdown or categorization of any costs to be reimbursed in this Article or elsewhere in the Contract Documents, there shall be no duplication of payment in the event any particular items for which payment is requested can be characterized as falling into more than one of the types of compensable or reimbursable categories.

§ 7.2 Labor Costs

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

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

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:
(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

As may be set forth in the Guaranteed Maximum Price Amendment.

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

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

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

§ 7.3 Subcontract Costs

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

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

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

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

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

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

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

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

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

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

§ 7.6 Miscellaneous Costs

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

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

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

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

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

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

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

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

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

§ 7.6.7 Costs of document reproductions and delivery charges.

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

§ 7.6.9 Reasonable legal costs that are directly incurred by the Construction Manager in resolving disputes and claims for the Project by a Subcontractor and/or a lower tier Subcontractor (and not those arising from disputes solely between the Owner and Construction Manager) provided that: (i) the legal costs are approved in advance by Owner, which approval will not be unreasonably withheld; (ii) the necessity for the legal costs are not the result of the Construction Manager's negligence, willful misconduct or failure to fulfill a specific responsibility of the Construction Manager; (iii) the legal costs are not subject to the Construction Manager's indemnification obligations toward the Owner and/or are otherwise covered by insurance, sureties or others; and (vi) such costs shall not be included in the calculation of the Construction Manager's Fee.

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

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

§ 7.7 Other Costs and Emergencies

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

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017 to the extent (i) not caused by the Construction Manager, a Subcontractor, or anyone for whom either is responsible or (ii) not capable of being prevented through timely notice of any unsafe condition to the Owner.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others, and provided further that any absence of collectible insurance is not due to Construction Manager's breach of the Contract Documents for providing insurance.

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

§ 7.8 Related Party Transactions

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

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

§ 7.9 Costs Not To Be Reimbursed

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

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

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for

Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 The Construction Manager shall follow the requirements as prescribed by Ohio Revised Code 153.501, 153.502 and OAC 153:1-7-01 for the prequalification and selection of Subcontractors. The Construction Manager shall establish criteria for prequalifying prospective bidders on subcontracts and submit the criteria to the Owner for approval. The Construction Manager's criteria for prequalifying Subcontractors shall minimally include the prospective Subcontractor's experience, financial condition, conduct and performance on previous contracts, facilities, management skills, ability to execute the associated subcontract properly, and proof of compliance with licensure requirements. The Owner may require additional criteria as a condition of its approval. For each subcontract, the Construction Manager shall identify at least three prospective and pre-qualified bidders, unless fewer than three are available and shall submit the bidders to the Owner for approval. The Owner may eliminate bidders that the Owner determines do not meet the prequalification criteria and may eliminate such unqualified bidders. The Owner may also rely on the Construction Manager's representations that prospective bidders meet the prequalification requirements. The Construction Manager shall solicit bids from each prequalified bidders under an open book pricing method. If the Construction Manager or a related party intend to bid on subcontracted work (with the Owner's prior consent), the Construction Manager or related party must submit its bid at least four hours before the date and time established for opening Subcontractor bids, and the Construction Manager and related party shall ensure strict separation of the personnel involved with bidding on the Work from the personnel otherwise involved with the Project. The Construction Manager may not self-perform any Work or allow any Work to be performed by a related party if the Construction Manager has not also solicited Subcontractor bids for such Work unless the requirements for soliciting Subcontractor bids is waived by Owner. The Construction Manager or related party shall meet in all respects the bidder prequalification criteria approved by the Owner. The Construction Manager shall complete the prequalification process for each subcontract no later than 10 days before the Construction Manager intends to solicit bids for that subcontract unless the Owner agrees otherwise in writing. If an award is made to a related party, that related party will be a Subcontractor. The requirements of this Section do not apply to the Construction Manager's management and administration of the entire Work, including administration of subcontracts; general conditions work; and the balance of the Work under a subcontract terminated by the Construction Manager for cause and the Construction Manager obtains the Owner's written approval before commencement of that portion of the subcontract Work. The Construction Manager's responsibility for Subcontractors will not be relieved or diminished on account of the Owner's participation in the process described in this Section.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) was pre-qualified to perform that portion of the Work in accordance with Section 9.1 herein; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.1.2 The Construction Manager shall not substitute a subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution. The Construction Manager shall notify the Owner and the Architect of the proposed substitution of a subcontractor, person, or entity a minimum of 10 days prior to the proposed change. The Owner may require the Construction Manager to change a subcontractor previously approved, and Construction Manager may request an equitable adjustment in its Contract Sum.

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

§ 9.3 The Owner may authorize the Construction Manager to engage a design-assist firm to perform a scope of design-assist services and associated Work agreed upon by the Owner and Construction Manager. The Construction Manager may request authorization to engage a design-assist firm at any point in the Project that is appropriate or necessary to facilitate the Project's design and construction. The Construction Manager may not provide design-assist services directly or through a Construction Manager related party. A design-assist firm that is retained to provide services during the Construction Stage shall be a Subcontractor and shall be subject to the selection process in Section 9.1.

ARTICLE 10 ACCOUNTING RECORDS

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

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

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

§ 11.1.3 Provided that an Application for Payment, including supporting documentation, is received by the Architect not later than the last day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the last day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment.

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

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

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

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

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

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

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

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

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

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

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

§ 11.1.8 Retainage

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

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

Retainage shall be governed by the requirements of Ohio Revised Code Sections 153.13, 153.14 and 153.63.

(i) Labor. Payments for labor incorporated into the Work will be at the rate of 92 percent of the amount set forth in the Construction Manager's Application for Payment and approved by the Architect until the Work is 50 percent complete. When the Work is 50 percent complete, the payment for labor incorporated into the Work will be at the rate of 100 percent of the amount set forth in the Construction Manager's Application for Payment and approved by the Architect.

(ii) Materials and Equipment. There shall be paid to the Construction Manager a sum at the rate of 92 percent of the invoice costs, not to exceed the scheduled value, of material delivered on the site of the Work, or suitably stored off site. The balance of the scheduled value will be payable when the materials and equipment are incorporated into the Project and accepted by Owner. The Construction Manager shall be paid at the rate of 100% of the scheduled value for materials

incorporated into the Project. Incorporated into the Project means such materials and equipment are installed and conform to the requirements of the Project. Partial or full payment to the Construction Manager(s) for material, equipment, or Work in place shall not start any applicable warranty period.

(iii) On Contracts totaling \$15,000 or more, unless waived by the Construction Manager, an escrow account shall be established in a financial institution, as escrow agent, selected by the Owner at the time Contracts are executed, and funds retained for the faithful performance of the Work shall be deposited into the escrow account when the Work is fifty percent (50%) complete as more particularly governed by Ohio Revised Code Section 153.63.

§ 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.)

Preconstruction Phase Compensation, Construction Manager's Fee

§ 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.)

As permitted by the Owner in the Owner's sole discretion as set forth in the General Conditions and Ohio Revised Code Sections 153.13, 153.14 and 153.63. Any reduction of retainage, or portion thereof, however, shall not be a waiver of (i) any of the Owner's rights to retainage in connection with other payments to the Construction Manager or (ii) any other right or remedy that the Owner has under the Contract Documents, at law or in equity.

§ 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.)

Such retainage as may be held by the Owner following Substantial Completion as set forth in the General Conditions, including retainage that may be withheld for incomplete Work, uncorrected Work and unsettled claims and disputes.

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

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

§ 11.1.11 [Intentionally Deleted].

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

§ 11.1.13 If all or part of any funds of the Construction Manager that are held by the Owner, whether it be retainage, escrowed funds or otherwise, should be attached, garnished or levied upon under any order of court, or if the delivery thereof shall be stayed or enjoined by any order of court, or if any other writ, order, judgment, or decree shall be made or entered by any court affecting the held funds, or any part thereof, the writ, order, judgment, or decree so entered or issued, whether with or without jurisdiction, Owner shall provide Construction Manager with notice of same so that Construction Manager may seek, at its sole cost and expense, an appropriate protective order or other appropriate relief which Construction Manager shall do so promptly. If the Construction Manager fails to secure a protective order or other

appropriate relief by the date by which the Owner is required to comply with the attachment, garnishment, levy, writ, order, judgment, or decree, or if the Construction Manager fails to act promptly, the Owner may obey and comply with such attachment, garnishment, levy, writ, order, judgment, or decree. Owner shall not be liable to and shall be held harmless by the Construction Manager, its successors, or assigns related to such compliance, notwithstanding that such writ, order, judgment or decree be subsequently reversed, modified, annulled, set aside, or vacated.

§ 11.2 Final Payment

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

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

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

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

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

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

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

(Paragraph deleted)

§ 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.)

N/A % N/A

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any dispute 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 *(Paragraphs deleted)* services.

§ 12.2 Binding Dispute Resolution

The method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

Arbitration pursuant to Article 15 of AIA Document A201–2017

Litigation in a court of competent jurisdiction
(Paragraphs deleted)

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

ARTICLE 13 TERMINATION OR SUSPENSION

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

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

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

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

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

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

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

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

under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse 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.

§ 13.1.7 Termination for Cause by Owner Prior to Establishment of Guaranteed Maximum Price

§ 13.1.7.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement for cause in accordance with Section 14.2 of A201-2017. Compensation to the Construction Manager for services performed during the Preconstruction Phase and for Work performed after the commencement of the Construction Phase, but prior to the execution of the Guaranteed Maximum Price Amendment, shall be governed by Section 14.2 of A201-2017. Should the Owner terminate this Agreement for cause under this Section 13.1.7, but that cause be subsequently found insufficient to support termination, the termination shall be deemed one of convenience under Section 13.1.3.

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

§ 13.2.1 Termination

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

§ 13.2.2 Termination by the Owner for Cause

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

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

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

§ 13.2.3 Termination by the Owner for Convenience

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

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

Compensation to the Construction Manager shall be governed by Section 14.4 of the General Conditions

§ 13.3 Suspension

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

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

§ 14.2 Successors and Assigns

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

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

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than two million dollars (\$2,000,000) for each occurrence and two million dollars (\$2,000,000) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than one million dollars (\$1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

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

§ 14.3.1.4 Workers’ Compensation at statutory limits and Employers Liability with policy limits not less than one million dollars (\$1,000,000) each accident, one million dollars (\$1,000,000) each employee, and one million dollars (\$1,000,000) policy limit.

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

§ 14.3.1.6 Other Insurance

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

Coverage	Limits
None	

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

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

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in Article 11 of AIA Document A201-2017 and elsewhere in the Contract Documents provided that Owner, at the Owner's option, may require the Construction Manager to provide the builder's risk insurance policy under Section 11.2 of the General Conditions, and Construction Manager shall include with the Guaranteed Maximum Price proposal the cost for the Construction Manager to provide the builder's risk insurance policy.

§ 14.3.2.1 The Construction Manager shall provide a performance bond and payment bond as required by Ohio Administrative code 153:1-4-02. Each surety under the bonds shall be licensed to conduct business in Ohio and satisfactory to the Owner.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given

(Paragraphs deleted)

by e-mail provided that the e-mail is sent to the e-mail address of a party's designated representative. An email notice shall be deemed received when the message enters the recipient's inbox, except that if the message enters the recipient's inbox after 5:00 pm in the time zone where the Project is located or on a Saturday, Sunday or legal holiday, then it shall be deemed received the next business day.

§ 14.5 Other provisions:

§ 14.5.1 The Construction Manager shall assist the Owner and Architect in connection with the Architect's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the Project. The Construction Manager shall assist the Architect with the Architect's responsibility in making usual and customary presentations before any governmental or quasi-governmental agency having jurisdiction over the Project.

§ 14.6 PREVAILING WAGE

§ 14.6.1 The Construction Manager shall comply with the Prevailing Wage requirements under Ohio Revised Code Chapter 4115.

§ 14.6.2 The Construction Manager shall:

§ 14.6.2.1 pay to laborers and mechanics performing Work on the Project the Prevailing Wage rates of the Project locality, as determined by the Ohio Department of Commerce, Wage and Hour Bureau;

§ 14.6.2.2 post in a prominent place readily accessible by all workers on the site, a legible listing of the current classifications of laborers, workers, and mechanics employed;

§ 14.6.2.3 ensure that the rates posted are current and remain posted in legible condition during the period of the Contract; and

§ 14.6.2.4 not be entitled to an increase in the Guaranteed Maximum Price on account of an increase in Prevailing Wage rates except as otherwise provided by applicable law.

§ 14.6.3 Not later than the date of the commencement of the Work, the Construction Manager shall provide the Owner's Prevailing Wage coordinator with a schedule of dates during the term of the Contract when the Construction Manager shall pay wages to its employees for the Project. The Construction Manager shall also deliver to the Prevailing Wage coordinator a certified copy of the Construction Manager's payroll, within two weeks after the initial pay date, and supplemental reports for each month thereafter. If the life of the Contract is expected to be no more than four months from

the beginning of performance by the Construction Manager, such supplemental reports shall be filed each week after the initial report.

§ 14.6.4 The Construction Manager is responsible for compliance of its Subcontractors and lower tier Sub-subcontractor with Prevailing Wage requirements.

§ 14.6.5 Prior to final payment, the Construction Manager, each Subcontractor and Sub-subcontractor, regardless of tier, shall provide to the Owner an affidavit stating that the Construction Manager, Subcontractor and lower tier Sub-subcontractors have fully complied with sections 4115.03 to 4115.16 of the Revised Code.

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 except when the amendment is through a Construction Change Directive or some other mechanism under the Contract Documents that allows for a modification without the Construction Manager's signature.

§ 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 (modified)
- .2 [Intentionally Deleted]
- .3 [Intentionally Deleted]
- .4 Modified AIA Document A201™-2017, General Conditions of the Contract for Construction attached to this Agreement as Exhibit A
- .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.)

N/A

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

[N/A] 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.)

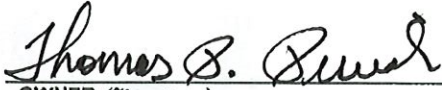
[N/A] Supplementary and other Conditions of the Contract:

(Table deleted)

- .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.)

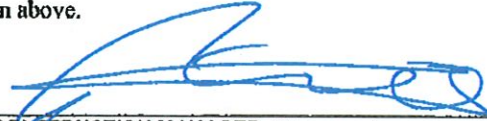
N/A

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



OWNER (Signature)

Thomas P. Perciak, Mayor
(Printed name and title)



CONSTRUCTION MANAGER (Signature)

Roger Riachi, President
(Printed name and title)

Approved as to Form:



Neal M. Jamison, Director of Law

CERTIFICATE

As fiscal officer of the City of Strongsville, I certify that the moneys required to meet the obligations of the City during the current fiscal year for the Agreement to which this is attached have been lawfully appropriated by the Council of the City for such purposes and are in the City treasury or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Section 5705.41 of the Revised Cod.

Dated: 12/2/2024, 2024


Director of Finance