



Grant School District No. 3

05/15/2024 – 7:00PM

# Board Meeting Packet Addendum

42 Pages | Section: 6.7

GSD3/CB Construction Inc | GUHS HVAC  
CMGC Contract – May 2024  
Catalyst | Nick Green

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Exhibit A  
Oregon Public Contracting Provisions

(1) Contractor will make payment promptly, as due, to all persons supplying to Contractor labor or materials for the performance of the Work provided for in this Agreement. [ORS 279C.505(a)]

(2) Contractor will pay all contributions or amounts due the Industrial Accident Fund from Contractor incurred in the performance of the Agreement. [ORS 279C.505(b)]

(3) Contractor will not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or materials. [ORS 279C.505(c)]

(4) Contractor will pay to the Department of Revenue all sums withheld from employees under ORS 316.167. [ORS 279C.505(d)]

(5) Contractor will demonstrate that an employee drug testing program is in place. [ORS 279C.505(2)]

(6) For demolition work under this Agreement, Contractor will salvage or recycle construction and demolition debris, if feasible and cost-effective. [ORS 279C.510(1)]

(7) For lawn and landscape maintenance, Contractor is required to compost or mulch yard waste material at an approved site, if feasible and cost-effective. [ORS 279C.510(2)]

(8) If Contractor or any Contractor subcontractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Contractor by any person in connection with this Agreement as the claim becomes due, the proper office or officers representing the state or county, school district, municipality, municipal corporation or subdivision thereof, as the case may be, may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to Contractor by reason of this Agreement. [ORS 279C.515(1)]

(9) If Contractor or any Contractor subcontractor fails, neglects, or refuses to make payment to a person furnishing labor materials in connection with the public improvement agreement within 30 days after receipt of payment from City or a contractor, Contractor will owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580 (4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to Contractor on the amount due will equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from City or from Contractor, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived. [ORS 279C.515(2)]

(10) If Contractor or any Contractor subcontractor fails, neglects, and/or refuses to make payment to a person furnishing labor or materials in connection with this Agreement, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The payment of a claim does not relieve Contractor or Contractor's surety from obligation with respect to any unpaid claims. [ORS 279C.515(3, 4)]

(11) A person may not be employed by Contractor or any Contractor subcontractor for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or when the public policy absolutely requires it, and in such cases, except in cases of agreements for personal services as defined in ORS 279C.100, the employee will be paid at least time and a half pay:

(a) for all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

(b) for all overtime in excess of 10 hours in any one day or 40 hours in one week when the work week is for consecutive days, Monday through Friday; and

(c) for all work performed on Saturday and on any legal holiday specified in ORS 279C.540. [ORS 279C.520 (1)]

The provisions of ORS 279C.545 will apply to all claims for overtime under this Agreement.

(12) Contractor must give notice in writing to employees either at the time of hire or before commencement of work on this Agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. [ORS 279C.520 (2)]

(13) Contractor will give notice in writing to employees who perform work under this Agreement, either at the time of hire or before commencement of Work under this Agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. [ORS 279C.520 (5)(b)].

(14) Contractor will promptly, as due, make payment to any person, co-partnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums that Contractor agrees to pay for the services and all moneys and sums that Contractor collected or deducted from the wages of employees under any law, contractor, or agreement for the purpose of providing or paying for the services. [ORS 279C.530 (1)]

(15) Contractor will comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor will ensure that each subcontractor complies with these requirements. [ORS 279C.530(2)]

(16) Contractor and each Contractor subcontractor will comply with the existing state prevailing rate of wage and, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act (40 U.S.C. 276a) that may be paid to workers in each trade or occupation required for the public works employed in the performance of the agreement either by Contractor or other person doing or contracting to do the whole or any part of the Work contemplated by this Agreement. [ORS 279C.830 (1)(a)]

(17) Workers will be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and ORS 279C.840. [ORS 279C.830(1)(c)]. If the Project is subject both to ORS 279C.800 to 279C.870 and to the Davis-Bacon Act, all workers must be paid not less than the higher of the applicable state or federal prevailing rate of wage. Contractor will include this provision in each subcontract awarded under this Agreement.

(18) Contractor represents and agrees that the Contract Documents contain a sufficient provision stating that Contractor and every Subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the Project, unless exempt under ORS 279C.836(4), (7), (8) or (9).

(a) Contractor must have a public works bond filed with the Construction Contractors Board before commencing the Work, unless exempt under ORS 279C.836 (4), (7), (8), or (9).

(b) Contractor must require every subcontractor to have a public works bond filed with the Construction Contractors Board before commencing any Work, unless exempt under ORS 279C.836 (7) or (8). [ORS 279C.830 (3)]

(19) The hourly rate of wage to be paid by Contractor or every subcontractor subject to prevailing wage rates to workers will be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality where such labor is performed.

(20) Contractor and every subcontractor subject to prevailing wage rates to workers will keep the prevailing wage rates for that project posted in a conspicuous and accessible place in or about the Project.

(21) To the extent Contractor and/or any subcontractor subject to prevailing wage rates will also provide for or contribute to a health and welfare plan or a pension plan, or both, for its employees on the project, Contractor or subcontractor, as applicable, will post notice describing such plans in a conspicuous and accessible place in or about the project. The notice preferably will be posted in the same place as the notice required under Section 20, above. In addition to the description of the plans, the notice will contain information on how and where to make claims and where to obtain further information.

(22) Contractor or Contractor's surety, and every Contractor subcontractor or Contractor subcontractor's surety, will file certified statements with School District in writing on the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker whom Contractor or the subcontractor has employed upon such public work, and that no worker employed upon such public work has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in this Agreement, which certificate and statement will be verified by the oath of Contractor or Contractor's surety, or subcontractor or the subcontractor's surety that Contractor or subcontractor has read such statement and certificate and knows the contents thereof and that the same is true to Contractor's or subcontractor's knowledge. The certified statements will set out accurately and completely the payroll records for the prior week, including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Each certified statement required will be delivered or mailed by Contractor or subcontractor to School District. Certified statements will be submitted for each week during which Contractor or subcontractor employs a worker upon the public work will be submitted once a month by the fifth business day of the following month. If Contractor fails to file the required certified statements, School District will retain twenty-five percent (25%) of any amount earned by Contractor until Contractor has filed with the public agency certified statements as required by this Section 22. Information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 to 279C.870.

(23) Contractor or Contractor subcontractor will preserve the certified statements for a period of three years from the date of completion of this Agreement.

(24) Contractor represents and agrees that City has fully and timely included a provision that Contractor and any subcontractor will comply with ORS 279C.840 in the advertisement for bids, the RFQ, the contract specifications, the accepted quote or elsewhere in the Contract Documents and that School District has no liability for unpaid minimum wages.

(25) If requested in writing by a first-tier subcontractor, Contractor will, within ten (10) calendar days after receiving the request, send to the first-tier subcontractor a copy of that portion of any invoice, request for payment submitted to School District or pay document provided by School District, to Contractor specifically related to any labor or materials supplied by the first-tier Subcontractor.

(26) Payment of interest may be postponed when payment on the principal is delayed because of disagreement between School District and Contractor.

(27) Contractor will not request payment from School District of any amount withheld or retained in accordance herewith until such time as Contractor has determined and certified to School District that the subcontractor is entitled to the payment of such amount. A dispute between Contractor and a first-tier subcontractor relating to the amount or entitlement of a first-tier subcontractor to a payment or a late payment

interest penalty under a clause included in the subcontract pursuant to the terms hereof does not constitute a dispute to which School District is a party. School District will not be included as a party in any administrative or judicial proceeding involving such a dispute. Contractor will include in each subcontract for property or services entered into by Contractor and a first-tier subcontractor, including material supplier, for the purpose of performing a construction contract:

(a) A payment clause that obligates Contractor to pay the first-tier subcontractor for satisfactory performance under its subcontract within ten (10) days out of such amounts as are paid to Contractor by School District under such contract; and,

(b) An interest penalty clause that obligates Contractor, if payment is not made within thirty (30) days after receipt of payment from School District, to pay the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to subparagraph (a) of this Section 27. Contractor or first-tier subcontractor will not be obligated to pay an interest penalty if the only reason that Contractor or first-tier subcontractor did not make payment when payment was due is that Contractor or first-tier subcontractor did not receive payment from School District Contractor when payment was due. The interest penalty will be:

(1) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and,

(2) Computed at the rate specified in ORS 279C.515(2).

(28) Contractor will include in each of its subcontracts, for the purpose of performance of such contract condition, a provision requiring the first-tier subcontractor to include payment clause and an interest penalty clause conforming to the standards of Section 27, above, in each of its subcontracts and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(29) Contractor certifies, under penalty of perjury, that Contractor is, to the best of the person's knowledge, not in violation of any tax laws described in ORS 305.380(4).

(30) Contractor certifies that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701, as applicable, before the subcontractors commence Work under this Agreement.

(31) The provisions of ORS 279C.605 will apply to any claims against Contractor's payment bond.

(32) The provisions of ORS 279C.525 will apply to this Agreement.

(33) Contractor will comply and require all subcontractors to comply with applicable requirements of all laws, codes, ordinances, regulations, and statutes, including, without limitation, those in ORS Chapter 279C. To the extent that ORS Chapter 279C, or any other law, code, ordinance or regulations, requires any term or condition to be included in this Agreement, such term or condition are hereby incorporated by this reference. Nothing contained herein will be construed so as to require the commission of any act contrary to law, code, rule, statute, ordinance or regulation and whenever there is any conflict between any provisions contained herein and any statute, law, code, ordinance, rule, or regulation, the provision of this Agreement which is affected will be curtailed and limited only to the extent necessary to bring it within the requirements of the law, code, rule, statute, ordinance or regulation.

Suspension and Debarment. Contractor will comply with Subpart C of 2 C.F.R. 180 and Subpart C of 2 C.F.R. 1532 regarding debarment and suspension and agrees to include or cause to be included in any subcontract expected to equal or exceed \$25,000.00, at any tier, the requirement that the subcontractor comply with Subpart C of 2 C.F.R.

180 and Subpart C of 2 C.F.R. 1532. Contractor represents, warrants, and certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If Contractor becomes unable to certify to the statements contained in this Paragraph, Contractor will immediately notify School District of the inability and the reason(s) thereof. Contractor will provide immediate written notice to School District if at any time Contractor learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances. For purposes of this Paragraph, the terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this Paragraph, have the meaning set out in the definitions and coverage sections of rules implementing Executive Order 12549. Contractor acknowledges and agrees it will not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction. Contractor further agrees by signing this Agreement, that it will include this section titled "Suspension and Debarment" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions. Pursuant to 2 CFR 180.330, Contractor is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements. Contractor acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment. Contractor agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available upon written request. Upon written request, Contractor must run a search in [www.epls.gov](http://www.epls.gov) and print a copy of completed searches to document proof of compliance.

Exhibit B  
Contractor Building Access Procedures

**Purpose:** To ensure a safe, professional, and secure environment for students, staff, and contractors working on school grounds.

**Scope:** Applies to all contractors, sub-contractors, and their employees working at Grant School District 3 ("District") facilities.

**Regulations:**

- **Zero Tolerance:** No tobacco, alcohol, or other drugs of any type are permitted on school premises. This is a non-negotiable safety and legal requirement.
- **Professionalism:** Inappropriate language or behavior is strictly prohibited. All contractors and their employees must maintain a professional standard of conduct at all times while on school grounds.
- **Identification:** Contractors and all employees must wear easily identifiable dress, a uniform, or a highly visible badge that clearly displays their company name and individual name.
- **Criminal Background Checks & Fingerprinting:** All contractors and their employees who will have direct, unsupervised contact with students must have completed and passed criminal background checks and fingerprinting as required by district policy and applicable laws.

**Procedure**

**1. Pre-Approval and Background Checks:**

- All contractors must be pre-approved by the school or district administration.
- The school/district will provide instructions regarding criminal background checks and fingerprinting.
- Contractors are responsible for ensuring that they and all their employees meet the requirements before commencing work.
- Proof of background checks should be submitted to the school/district contact before any work begins, in accordance with the Criminal Records Checks and Fingerprinting policies attached hereto.

**2. Sign-In and Sign-Out:**

- All contractors and their employees must sign in at the main office upon arrival and sign out upon departure each day.
- The sign-in log should include the following information:
  - Name
  - Company
  - Date and Time of Arrival
  - Date and Time of Departure
  - Purpose of Visit
  - Designated Work Area

**3. Supervision:**

- Contractor work in areas where students are present must be supervised by a designated school staff member whenever possible.

- If unsupervised contact is necessary, the school/district must ensure background checks comply with "direct, unsupervised contact" standards.

**4. Work Areas:**

- Contractors will be assigned a designated work area.
- Work areas should be restricted from student access whenever possible.
- Contractors must not enter any other areas of the school building without specific permission from school administration.

**5. Student Interaction:**

- Contractors should minimize interaction with students.
- If interaction is necessary, it must be conducted in a professional and respectful manner.
- Under no circumstances should contractors touch or be alone with a student.

**6. Emergencies:**

- Contractors should be familiar with the school's emergency procedures.
- In the event of an emergency, contractors must follow the directions of school staff.

**7. Enforcement:**

- Violations of these procedures may result in:
  - Immediate removal from school property
  - Termination of contract
  - Potential legal action
- District reserves the right to amend these procedures at any time.



# Grant School District 3

Code: GCDA/GDDA  
Adopted: 3/14/12  
Revised/Readopted: 1/22/14; 1/20/16; 3/16/16;  
6/08/16; 1/17/18; 10/17/18;  
11/20/19

## Criminal Records Checks and Fingerprinting

In a continuing effort to ensure the safety and welfare of students and staff, the district shall require newly hired full-time and part-time employees<sup>1</sup> not requiring licensure under Oregon Revised Statute (ORS) 342.223 to undergo submit to a criminal records check and/or fingerprinting as required by law. Other individuals, as determined by the district, that will have direct, unsupervised contact with students shall submit to criminal records checks and/or fingerprinting as established by Board policy and as required by law.

“Direct, unsupervised contact with students” means contact with students that provides the person opportunity and probability for personal communication or touch when not under direct supervision

Pursuant to state law, a criminal records check and/or fingerprinting based criminal records checks shall be required of the following individuals<sup>2</sup>:

1. All district individuals employed as or by a contractors and their employees, whether employed part-time or full-time, and considered by the district to have direct, unsupervised contact with students;
2. All district contractors and their employees who provide early childhood special education or early intervention services in accordance with rules established by the Oregon Department of Education, Child Care Division;
3. Any community college faculty member providing instruction at the site of an early childhood education program, at a school site as part of an early childhood program or at a grade K through 12 school site during the regular school day;
4. Any individual who is an employee of a public charter school and not requiring licensure under ORS 342.223; and
5. Any individual considered for volunteer service with the district who is allowed to have direct, unsupervised contact with students.

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<sup>1</sup> Any individual hired within the last three months. A subject individual does not include an employee hired within the last three months if the district has evidence on file that meets the definition in Oregon Administrative Rule (OAR) 581-021-0510(11)(b).

<sup>2</sup> Subject individuals and requirements are further outlined in GCDA/GDDA-AR – Criminal Records Checks and Fingerprinting.

The district will provide the written notice about the requirements of fingerprinting and criminal records checks through means such as staff handbooks, employment applications, contracts or volunteer forms.

The identity of a subject individual requiring fingerprinting will be provided by the district to the authorized fingerprinter for verification. The procedure for processing fingerprint collection is further outlined in GCDA/GDDA-AR – Criminal Records Checks and Fingerprinting.

A subject individual shall be subject to the collection of fingerprinting information, only after acceptance of the offer of employment or contract from the district and may be charged a fee by the district. A subject individual may request the fee be withheld from the amount otherwise due the individual.

The district shall begin the employment of a subject individual or terms of a district contractor on a probationary basis pending the return and disposition of the required criminal records checks.

When the district is notified of a subject individual who has been convicted of any crimes prohibiting employment or contract will be terminated and/or will not be employed or contracted, or if employed will be terminated. When the district is notified of a subject individual who knowingly made a false statement as to the conviction of any crime, the individual will not be employed or contracted with by the district, or if employed by the district may be terminated. A subject individual who fails to disclose the presence of convictions that would not otherwise prohibit employment or contract with the district as provided by law will not be employed or contracted with by the district. A subject individual who knowingly made a false statement as to the conviction of any crime will not be employed or contracted with by the district.

The district's use of criminal history must be relevant to the specific requirements of the position, services or employment.

The service of a volunteer to a position identified by the district as requiring a nationwide fingerprint-based criminal records check including fingerprinting may begin on a probationary basis pending the return and disposition of a state and national criminal records check based on fingerprints.

A subject volunteer who knowingly made a false statement or has a conviction of the crimes listed in ORS 342.143, or the substantial equivalent of any of those crimes if the conviction occurred in another jurisdiction or in Oregon under a different statutory name or number will result in immediate termination from the ability to volunteer in the district.

Fees associated with a criminal records check and/or fingerprinting may be charged.

The superintendent shall develop administrative regulations as necessary to meet the requirements of law.

## **Appeals**

A subject individual may appeal a determination from ODE that prevents employment or eligibility to contract with the district to the Superintendent of Public Instruction as a contested case and will be notified of such in writing by ODE under ORS 183.413 – 183.470.

A volunteer required to submit to a fingerprint-based criminal records check may appeal a determination from a fingerprint-based criminal records check by ODE that prevents the ability to volunteer with the district to the Superintendent of Public Instruction as a contested case, if the results of the background check were provided by ODE or ODE's vendor and will be notified of such in writing by ODE under ORS 183.413 – 183.470.

END OF POLICY

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**Legal Reference(s):**

[ORS 181A.180](#)  
[ORS 181A.230](#)  
[ORS 326.603](#)  
[ORS 326.607](#)

[ORS 332.107](#)  
[ORS 336.631](#)  
[ORS 342.143](#)  
[ORS 342.223](#)

[OAR 414-061-0010 – 061-0030](#)  
[OAR 581-021-0510 – 021-0512](#)  
[OAR 581-022-2430](#)  
[OAR 584-050-0012](#)

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et. seq. (2012).

**Cross Reference(s):**

EEACA - School Bus Driver Examination and Training  
IICC - Volunteers



# AIA<sup>®</sup> Document A133<sup>®</sup> – 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 15th day of May in the year 2024  
*(In words, indicate day, month, and year.)*

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

Grant School District 3, an Oregon municipal corporation  
401 N. Canyon Blvd  
Canyon City, OR 97820

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

CB Const, Inc., an Oregon corporation  
1202 Adams Ave  
La Grande, OR 97850

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

GUHS HVAC CMGC Contract  
911 S. Canyon Blvd, John Day, OR, 97845  
Construction Manager/General Contractor (CM/GC) Agreement for New Mechanical, Electrical & Communications Systems - Grant Union Jr./Sr. High School

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

ZCS Inc. dba ZCS Engineering & Architecture, an Oregon corporation  
900 Klamath Ave  
Klamath Falls, OR 97601

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<sup>™</sup>-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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#### 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.)*

Construction management and general contractor (CM/GC) services related to the installation of a new HVAC system at Grant Union Jr./Sr. High School (GUHS). The project scope includes, but is not limited to:

- Design consultation and collaboration with Owner's design team.
- Procurement of all necessary materials and equipment.
- Removal of the existing HVAC components in the gymnasium and boiler room.
- Installation of four major system components (see Attachment C):
  - A new, energy-efficient HVAC system (Schedule C.5.1);
  - Upgrades to GUHS electrical system (Schedule C.5.2).
  - Structural improvements necessary to install the HVAC system (Schedule C.5.3).
  - Communications equipment upgrades (Schedule C.5.4).
- Coordination of all necessary permits, inspections, and approvals.
- Testing and commissioning of the new system(s).
- Provide all necessary warranties and guarantees.

- Project closeout and final documentation.

§ 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.)*

Grant School District 3 is located in Grant County, Oregon, and operates the Grant Union Jr./Sr. High School (GUHS) campus. GUHS has had portions of the school building previously retrofitted during Phase One seismic retrofits and in the summer of 2023 had a new roof installed over a portion of the buildings. Generally speaking, the condition of the school building is good based on its age. ZCS Architecture & Engineering has performed a seismic performance review of the structural systems in accordance with the American Society of Civil Engineers "Seismic Evaluation and Retrofit of Existing Buildings ASCE/SEI 41-17 and designed the GUHS HVAC structural components of this project based on their prior work at GUHS. ZCS was also Owner’s Architect who oversaw the reroofing project in the summer of 2023. Owner has also compiled a hazardous materials book covering the asbestos testing and abatement performed for the building historically. Building is located in a FEMA special flood hazard area and the FEMA floodmaps were updated in 2018. Mechanical plans were designed by Engineer in a Pocket (Marcia Karr, PE) and Electrical Plans by Frontier Consulting Engineers (Redding, CA) and are incorporated herein by reference.

§ 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.)*

GMP is estimated to be \$2,350,000 but subject to change based on the final design review and subcontractor bids.

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

- 1 Design and preconstruction phase shall proceed in accordance with the schedule in Table 1.1.4.1:

*Table 1.1.4.1 – Anticipated schedule for preconstruction/design activities.*

TASK	START DATE	END DATE	DURATION
<b>1. Site Assessment and Design Planning (Weeks 1-4)</b>	<b>6/1/2024</b>	<b>7/1/2024</b>	<b>4 weeks</b>
a. Conduct site surveys to understand existing infrastructure.			
b. Develop detailed design plans for the new HVAC and communication system.			
c. Obtain necessary permits and approvals from local authorities.			
<b>2. Equipment Procurement (Weeks 2-26)</b>	<b>6/15/2024</b>	<b>11/23/2024</b>	<b>23 weeks</b>
a. Identify suppliers and place orders for HVAC equipment and components.			
b. Monitor progress with suppliers to ensure timely delivery.			
<b>3. Construction Preparation (Weeks 25-27)</b>	<b>11/16/2024</b>	<b>12/7/2024</b>	<b>3 weeks</b>
a. Mobilize construction teams and equipment.			
b. Secure staging areas for construction materials.			
c. Plan work schedules in coordination with school activities.			

- 2 Construction schedule: Construction shall proceed in accordance with the schedule in Table 1.1.4.2:

*Table 2.1.4.2 – Anticipated schedule for construction.*

TASK	START DATE	END DATE	DURATION
<b>1. Exterior HVAC Work (TBD)</b>	<b>7/13/2025</b>	<b>8/3/2025</b>	<b>3 weeks</b>
a. Demo existing HVAC equipment, wiring, and ductwork.			
b. Install exterior HVAC components such as condensers and ductwork.			
c. Coordinate work around weather conditions to minimize delays.	<b>7/26/2025</b>	<b>8/9/2025</b>	<b>2 weeks</b>

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<b>2. Interior HVAC Work (TBD)</b>			
a. Demo existing HVAC equipment, wiring, and ductwork.			
b. Install interior components, including air handlers and ductwork.			
c. Integrate the new system with the existing infrastructure.			
<b>3. Communications Wiring (TBD)</b>	<b>7/13/2025</b>	<b>8/3/2025</b>	<b>3 weeks</b>
a. Demo existing components			
b. Install interior wiring components			
c. Integrate new system			
<b>4. Testing and Commissioning (TBD)</b>	<b>8/1/2025</b>	<b>8/15/2025</b>	<b>2 weeks</b>
a. Test the system to ensure proper functionality and safety.			
b. Make any necessary adjustments and obtain final approvals.			
<b>5. Project Completion (TBD)</b>	<b>8/17/2025</b>	<b>8/24/2025</b>	<b>1 weeks</b>
a. Clean up and restore all construction areas			
b. Conduct a final walkthrough and handover to the school administration.			

**.3 Substantial Completion date or dates:**

All work shall be substantially complete by August 24, 2025, unless extended in writing by Owner.

**.4 Other milestone dates:**

Note: Owner is using funding from Owner’s Capital Projects Funds and Elementary and Secondary School Emergency Relief Fund (ESSER III). ESSER III funds are federal funds awarded to Owner that can be used to reimburse eligible expenses incurred between March 13, 2020, and September 30, 2024. Owner may also seek additional federal funding through Round 2 of the U.S. Department of Energy’s Renew America’s Schools grants (application due Thursday, June 13, 2034) or through private placement loans for the Project. In the event that additional federal or state funds specific to HVAC improvements are awarded, the Project schedule and milestones will be adjusted to account for the additional requirements associated with these funds, including the labor standards required under Oregon’s new school indoor air quality law ("HB3031").

**§ 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.)

None.

**§ 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.)

ASHRAE energy audits will be required for the Project if state or federal funds are received. Owner anticipates a preliminary award decision in August 2024. Milestones for preconstruction will be adjusted accordingly to accommodate the additional energy audit requirements. If energy audits identify sustainability requirements, these will be reflected in the final designs before the construction phase is awarded.

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

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

Init.

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

Mark Witty, Superintendent, Grant School District 3, or his designee.  
+1 (541) 620-2109  
markwitty@grantesd.org

§ 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.)

ZCS Architecture & Engineering, Shaun Wilson ([shaunw@zcsea.com](mailto:shaunw@zcsea.com)) and Dan Saltee ([dansaltee@zcsea.com](mailto:dansaltee@zcsea.com))  
Engineer in a Pocket, Marcia Karr ([karr704@gmail.com](mailto:karr704@gmail.com))  
Frontier Consulting Engineers, Nathan Warner ([nathan@frontierce.com](mailto:nathan@frontierce.com))

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

.1 Mechanical Engineer:

Engineer in a Pocket  
Marcia Karr, PE  
karr704@gmail.com  
+1 (360) 918-6938

.2 Electrical Engineer:

Frontier Consulting Engineers  
Nathan Warner  
nathan@frontierce.com  
530.232.6160 ext. 119

.3 Other, if any:

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

Contract Administration: Catalyst Public Policy Advisors, LLC  
Nick Green, President  
nick@catalyst.win  
+1 (541) 620-2809

Project Management/Owner's Rep: AEWV Innovations, LLC  
Aaron Lieuallen  
aaronlieuallen@gmail.com  
+1 (541) 620-2360

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

Shaun Wilson, ZCS, [shaunw@zcsea.com](mailto:shaunw@zcsea.com), (503) 659-2205  
Dan Saltee, ZCS, [dansaltee@zcsea.com](mailto:dansaltee@zcsea.com), (503) 659-2205

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

Troy L. Farwell, Project Manager, [troy@cbconst.us](mailto:troy@cbconst.us), (541) 263-1555

§ 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.)

None.

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

All subcontractors performing construction work described in ORS 701.005(2) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence work under the contract. All subcontractor procurement shall comply with applicable provisions of ORS 279C – Public Contracting, including those provisions incorporated as Exhibit A to this Agreement.

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

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

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

## ARTICLE 2 GENERAL PROVISIONS

### § 2.1 The Contract Documents

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

Init.

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User Notes:

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**§ 2.2 Relationship of the Parties**

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

**§ 2.3 General Conditions**

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

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

**ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

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

**§ 3.1 Preconstruction Phase**

**§ 3.1.1 Extent of Responsibility**

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

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

**§ 3.1.3 Consultation**

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

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

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

#### **§ 3.1.4 Project Schedule**

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

#### **§ 3.1.5 Phased Construction**

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

#### **§ 3.1.6 Cost Estimates**

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

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

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

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

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

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

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

#### **§ 3.1.11 Subcontractors and Suppliers**

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

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

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

**§ 3.1.12 Procurement**

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

**§ 3.1.13 Compliance with Laws**

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

**§ 3.1.14 Other Preconstruction Services**

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

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

The preconstruction phase will include site assessment, design planning, obtaining permits, and equipment procurement. Owner anticipates at least four (4) onsite preconstruction meetings shall be needed. Some pre-ordering for long lead-time items like electrical panels may be authorized by Owner prior to final negotiation of the GMP amendment to this Agreement.

**§ 3.2 Guaranteed Maximum Price Proposal**

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

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

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

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

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

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

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

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

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

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

### § 3.3 Construction Phase

#### § 3.3.1 General

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

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

#### § 3.3.2 Administration

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

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

#### § 3.3.2.3 Monthly Report

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

#### § 3.3.2.4 Daily Logs

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

### § 3.3.2.5 Cost Control

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

## ARTICLE 4 OWNER'S RESPONSIBILITIES

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

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

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

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

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

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

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

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

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

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

**§ 4.2 Owner's Designated Representative**

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

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

**§ 4.3 Architect**

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

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

**§ 5.1 Compensation**

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

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

Preconstruction costs shall not exceed \$10,000 (including hours, travel, printing, and miscellaneous expenses) without prior written approval from Owner. Preconstruction costs shall be billed at the hourly rates identified in §5.1.2 in accordance with Construction Manager's proposal.

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

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

Individual or Position	Rate
Project Executive	\$95
Project Manager	\$85
Superintendent	\$75

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

**§ 5.1.3** If the Preconstruction Phase services covered by this Agreement have not been completed within six ( 6 ) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

**§ 5.2 Payments**

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

**§ 5.2.2** Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid forty ( 40 ) 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.)*

7.5 % APR

**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.)*

4.0% of direct construction costs.

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

Written change order or amendment to this Agreement.

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

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed ninety-five percent ( 95 %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

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

§ 6.1.7 Other:

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

**§ 6.2 Guaranteed Maximum Price**

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

**§ 6.3 Changes in the Work**

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

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

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

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



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

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

## ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 7.1 Costs to Be Reimbursed

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

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

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

### § 7.2 Labor Costs

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

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

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

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

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

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

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

### § 7.3 Subcontract Costs

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

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

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

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of

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the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

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

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

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

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

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

**§ 7.6 Miscellaneous Costs**

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

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

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

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

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

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

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

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

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

§ 7.6.7 Costs of document reproductions and delivery charges.

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

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

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

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

### § 7.7 Other Costs and Emergencies

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

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

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

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

### § 7.8 Related Party Transactions

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

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

### § 7.9 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;

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

#### **ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS**

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

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

#### **ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS**

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

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

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

#### **ARTICLE 10 ACCOUNTING RECORDS**

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and

copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

## ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

### § 11.1 Progress Payments

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

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

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 30<sup>th</sup> day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the 30<sup>th</sup> 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.

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

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

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

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

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

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

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

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

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

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

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

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

#### § 11.1.8 Retainage

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

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

5%

§ 11.1.8.1.1 The following items are not subject to retainage:

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

Pre-purchased equipment which will be placed in storage for longer than 3 months.

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

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

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

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

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

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

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

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

## § 11.2 Final Payment

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

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

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

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

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

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

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

§ 11.2.4 If, subsequent to final payment, and at the Owner’s request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall

reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

**§ 11.3 Interest**

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

*(Paragraphs deleted)*

**ARTICLE 12 DISPUTE RESOLUTION**

**§ 12.1 Initial Decision Maker**

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

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

*(Paragraphs deleted)*

**§ 12.2 Binding Dispute Resolution**

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

*(Check the appropriate box.)*

- Arbitration pursuant to Article 15 of AIA Document A201–2017
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

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

**ARTICLE 13 TERMINATION OR SUSPENSION**

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

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

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

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

**§ 13.1.4** In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination.

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In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

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

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

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

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

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

### § 13.2.1 Termination

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

### § 13.2.2 Termination by the Owner for Cause

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

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

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

Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

### § 13.2.3 Termination by the Owner for Convenience

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

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

### § 13.3 Suspension

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

## ARTICLE 14 MISCELLANEOUS PROVISIONS

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

### § 14.2 Successors and Assigns

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

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

### § 14.3 Insurance and Bonds

#### § 14.3.1 Preconstruction Phase

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

§ 14.3.1.1 Commercial General Liability with policy limits of not less than one million ( \$ 1,000,000 ) for each occurrence and two million ( \$ 2,000,000 ) in the aggregate for bodily injury and property damage.

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

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

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than one million ( \$ 1,000,000 ) each accident, two million ( \$ 2,000,000 ) each employee, and five million ( \$ 5,000,000 ) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than one million (\$ 1,000,000 ) per occurrence and two million (\$ 2,000,000 ) in the aggregate.

§ 14.3.1.6 Other Insurance

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

Coverage

Limits

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

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

§ 14.3.2 Construction Phase

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

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

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

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

§ 14.5 Other provisions:

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

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

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

.6 Other Exhibits:

(Check all boxes that apply.)

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

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Exhibit A	Oregon Public Contracting Provisions		5
Exhibit B	Contractor Building Access Procedures		5

.7 Other documents, if any, listed below:

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

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

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

Mark Witty, Superintendent  
(Printed name and title)

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

Derek Howard, President  
(Printed name and title)

# **Additions and Deletions Report for** **AIA® Document A133® – 2019**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:49:34 ET on 05/13/2024.

## **PAGE 1**

**AGREEMENT** made as of the 15th day of May in the year 2024

...

Grant School District 3, an Oregon municipal corporation  
401 N. Canyon Blvd  
Canyon City, OR 97820

...

CB Const. Inc., an Oregon corporation  
1202 Adams Ave  
La Grande, OR 97850

...

GUHS HVAC CMGC Contract  
911 S. Canyon Blvd, John Day, OR, 97845  
Construction Manager/General Contractor (CM/GC) Agreement for New Mechanical, Electrical & Communications Systems - Grant Union Jr./Sr. High School

...

ZCS Inc. dba ZCS Engineering & Architecture, an Oregon corporation  
900 Klamath Ave  
Klamath Falls, OR 97601

## **PAGE 2**

Construction management and general contractor (CM/GC) services related to the installation of a new HVAC system at Grant Union Jr./Sr. High School (GUHS). The project scope includes, but is not limited to:

- Design consultation and collaboration with Owner's design team.
- Procurement of all necessary materials and equipment.
- Removal of the existing HVAC components in the gymnasium and boiler room.
- Installation of four major system components (see Attachment C):
  - A new, energy-efficient HVAC system (Schedule C.5.1);
  - Upgrades to GUHS electrical system (Schedule C.5.2).
  - Structural improvements necessary to install the HVAC system (Schedule C.5.3).
  - Communications equipment upgrades (Schedule C.5.4).
- Coordination of all necessary permits, inspections, and approvals.
- Testing and commissioning of the new system(s).
- Provide all necessary warranties and guarantees.

- Project closeout and final documentation.

PAGE 3

Grant School District 3 is located in Grant County, Oregon, and operates the Grant Union Jr./Sr. High School (GUHS) campus. GUHS has had portions of the school building previously retrofitted during Phase One seismic retrofits and in the summer of 2023 had a new roof installed over a portion of the buildings. Generally speaking, the condition of the school building is good based on its age. ZCS Architecture & Engineering has performed a seismic performance review of the structural systems in accordance with the American Society of Civil Engineers "Seismic Evaluation and Retrofit of Existing Buildings ASCE/SEI 41-17 and designed the GUHS HVAC structural components of this project based on their prior work at GUHS. ZCS was also Owner's Architect who oversaw the reroofing project in the summer of 2023. Owner has also compiled a hazardous materials book covering the asbestos testing and abatement performed for the building historically. Building is located in a FEMA special flood hazard area and the FEMA floodmaps were updated in 2018. Mechanical plans were designed by Engineer in a Pocket (Marcia Karr, PE) and Electrical Plans by Frontier Consulting Engineers (Redding, CA) and are incorporated herein by reference.

...

GMP is estimated to be \$2,350,000 but subject to change based on the final design review and subcontractor bids.

...

- .1 Design phase milestone dates, if any, and preconstruction phase shall proceed in accordance with the schedule in Table 1.1.4.1:

...

*Table 3.1.4.1 – Anticipated schedule for preconstruction/design activities.*

<b>TASK</b>	<b>START DATE</b>	<b>END DATE</b>	<b>DURATION</b>
<b>1. Site Assessment and Design Planning (Weeks 1-4)</b>	<b>6/1/2024</b>	<b>7/1/2024</b>	<b>4 weeks</b>
a. Conduct site surveys to understand existing infrastructure.			
b. Develop detailed design plans for the new HVAC and communication system.			
c. Obtain necessary permits and approvals from local authorities.			
<b>2. Equipment Procurement (Weeks 2-26)</b>	<b>6/15/2024</b>	<b>11/23/2024</b>	<b>23 weeks</b>
a. Identify suppliers and place orders for HVAC equipment and components.			
b. Monitor progress with suppliers to ensure timely delivery.			
<b>3. Construction Preparation (Weeks 25-27)</b>	<b>11/16/2024</b>	<b>12/7/2024</b>	<b>3 weeks</b>
a. Mobilize construction teams and equipment.			
b. Secure staging areas for construction materials.			
c. Plan work schedules in coordination with school activities.			

...

- ~~.2 Construction commencement date:~~

- ~~.2 Construction schedule: Construction shall proceed in accordance with the schedule in Table 1.1.4.2:~~

*Table 4.1.4.2 – Anticipated schedule for construction.*

<b>TASK</b>	<b>START DATE</b>	<b>END DATE</b>	<b>DURATION</b>
<b>1. Exterior HVAC Work (TBD)</b>	<b>7/13/2025</b>	<b>8/3/2025</b>	<b>3 weeks</b>
a. Demo existing HVAC equipment, wiring, and ductwork.			
b. Install exterior HVAC components such as condensers and ductwork.			
c. Coordinate work around weather conditions to minimize delays.	<b>7/26/2025</b>	<b>8/9/2025</b>	<b>2 weeks</b>

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User Notes:

(1380868471)

<b>2. Interior HVAC Work (TBD)</b>			
a. Demo existing HVAC equipment, wiring, and ductwork.			
b. Install interior components, including air handlers and ductwork.			
c. Integrate the new system with the existing infrastructure.			
<b>3. Communications Wiring (TBD)</b>	<b>7/13/2025</b>	<b>8/3/2025</b>	<b>3 weeks</b>
a. Demo existing components			
b. Install interior wiring components			
c. Integrate new system			
<b>4. Testing and Commissioning (TBD)</b>	<b>8/1/2025</b>	<b>8/15/2025</b>	<b>2 weeks</b>
a. Test the system to ensure proper functionality and safety.			
b. Make any necessary adjustments and obtain final approvals.			
<b>5. Project Completion (TBD)</b>	<b>8/17/2025</b>	<b>8/24/2025</b>	<b>1 weeks</b>
a. Clean up and restore all construction areas			
b. Conduct a final walkthrough and handover to the school administration.			

PAGE 4

All work shall be substantially complete by August 24, 2025, unless extended in writing by Owner.

...

Note: Owner is using funding from Owner’s Capital Projects Funds and Elementary and Secondary School Emergency Relief Fund (ESSER III). ESSER III funds are federal funds awarded to Owner that can be used to reimburse eligible expenses incurred between March 13, 2020, and September 30, 2024. Owner may also seek additional federal funding through Round 2 of the U.S. Department of Energy’s Renew America’s Schools grants (application due Thursday, June 13, 2034) or through private placement loans for the Project. In the event that additional federal or state funds specific to HVAC improvements are awarded, the Project schedule and milestones will be adjusted to account for the additional requirements associated with these funds, including the labor standards required under Oregon’s new school indoor air quality law ("HB3031").

...

None.

...

ASHRAE energy audits will be required for the Project if state or federal funds are received. Owner anticipates a preliminary award decision in August 2024. Milestones for preconstruction will be adjusted accordingly to accommodate the additional energy audit requirements. If energy audits identify sustainability requirements, these will be reflected in the final designs before the construction phase is awarded.

PAGE 5

Mark Witty, Superintendent, Grant School District 3, or his designee.  
+1 (541) 620-2109  
markwitty@grantesd.org

...

ZCS Architecture & Engineering, Shaul Wilson ([shaunw@zcsea.com](mailto:shaunw@zcsea.com)) and Dan Saltee ([dansaltee@zcsea.com](mailto:dansaltee@zcsea.com))  
Engineer in a Pocket, Marcia Karr ([karr704@gmail.com](mailto:karr704@gmail.com))  
Frontier Consulting Engineers, Nathan Warner ([nathan@frontierce.com](mailto:nathan@frontierce.com))

...

.1 Geotechnical-Mechanical Engineer:

Engineer in a Pocket  
Marcia Karr, PE  
karr704@gmail.com  
+1 (360) 918-6938

...

.2 Civil-Electrical Engineer:

Frontier Consulting Engineers  
Nathan Warner  
nathan@frontierce.com  
530.232.6160 ext. 119

...

Contract Administration: Catalyst Public Policy Advisors, LLC  
Nick Green, President  
nick@catalyst.win  
+1 (541) 620-2809

Project Management/Owner's Rep: AEWV Innovations, LLC  
Aaron Lieuallen  
aaronlieuallen@gmail.com  
+1 (541) 620-2360

...

Shaun Wilson, ZCS, shaunw@zcsea.com, (503) 659-2205  
Dan Saltee, ZCS, dansaltee@zcsea.com, (503) 659-2205

**PAGE 6**

Troy L. Farwell, Project Manager, troy@cbconst.us, (541) 263-1555

...

None.

...

All subcontractors performing construction work described in ORS 701.005(2) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence work under the contract. All subcontractor procurement shall comply with applicable provisions of ORS 279C – Public Contracting, including those provisions incorporated as Exhibit A to this Agreement.

**PAGE 9**

The preconstruction phase will include site assessment, design planning, obtaining permits, and equipment procurement. Owner anticipates at least four (4) onsite preconstruction meetings shall be needed. Some pre-ordering for long lead-time items like electrical panels may be authorized by Owner prior to final negotiation of the GMP amendment to this Agreement.

**PAGE 12**

Preconstruction costs shall not exceed \$10,000 (including hours, travel, printing, and miscellaneous expenses) without prior written approval from Owner. Preconstruction costs shall be billed at the hourly rates identified in §5.1.2 in accordance with Construction Manager's proposal.



...

<u>Project Executive</u>	<u>\$95</u>
<u>Project Manager</u>	<u>\$85</u>
<u>Superintendent</u>	<u>\$75</u>

...

si

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within six (6) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

...

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid forty (40) 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.

PAGE 13

7.5 % APR

...

4.0% of direct construction costs.

...

Written change order or amendment to this Agreement.

...

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed ninety-five percent (95 %) of the standard rental rate paid at the place of the Project.

...

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

PAGE 18

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

month.

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 30<sup>th</sup> day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the 30<sup>th</sup> 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.

PAGE 19

5%

...

Pre-purchased equipment which will be placed in storage for longer than 3 months.

PAGE 20

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

Payment.

PAGE 21

*(Insert rate of interest agreed upon, if any.)*

—%

...

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

...

Arbitration pursuant to Article 15 of AIA Document A201–2017

PAGE 23

§ 14.3.1.1 Commercial General Liability with policy limits of not less than one million (\$ 1,000,000 ) for each occurrence and two million (\$ 2,000,000 ) in the aggregate for bodily injury and property damage.

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

...

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than one million (\$ 1,000,000 ) each accident, two million (\$ 2,000,000 ) each employee, and five million (\$ 5,000,000 ) 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 (\$ —) per claim and (\$ one million (\$ 1,000,000 ) per occurrence and two million (\$ 2,000,000 ) in the aggregate.

PAGE 25

<u>Exhibit A</u>	<u>Oregon Public Contracting Provisions</u>	<u>5</u>
<u>Exhibit B</u>	<u>Contractor Building Access Procedures</u>	<u>5</u>

...

Mark Witty, Superintendent

Derek Howard, President

## **Certification of Document's Authenticity**

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:49:34 ET on 05/13/2024 under Order No. 2114524871 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed)

President, Catalyst Public Policy Advisors, LLC

(Title)

05/13/2024

(Dated)