

**EAST PERRY WASTEWATER
TREATMENT FACILITY PHASE I
CONSTRUCTION MANAGER AT RISK
BID NO 2023-02**

Request for Proposals

City of Perry, Georgia



Where Georgia comes together.

**SUBMISSIONS ARE DUE AT THE ADDRESS SHOWN BELOW
NO LATER THAN FRIDAY, OCTOBER 7, 2022, AT 2:00 PM LOCAL TIME**

**City of Perry
Attn: Mitchell Worthington
Finance Department
1211 Washington Street
Perry, GA 31069**

Contents

Section 1. Background.....4

1.1 Introduction4

1.2 RFP Organization5

1.3 Owner’s Objectives.....5

Section 2. Project Overview.....6

2.1 Project Scope6

2.2 Project Budget and Funding.....6

2.3 Project Schedule6

Section 3. CMAR Services7

3.1 General.....7

3.2 Roles and Responsibilities7

Section 4. Procurement Process8

4.1 Acknowledgement of RFP and Proposer Representative8

4.2 Communications with Owner Contact.....9

4.3 Procurement Schedule.....9

4.4 Pre-Proposal Meeting and Site Tour.....9

Section 5. Proposal Submission Requirements10

5.1 Submittal Place and Deadline 10

5.2 Submission Format..... 10

5.3 Submission Content 10

5.3.1 Part 1 - Transmittal Letter..... 11

5.3.2 Part 2 – Executive Summary 11

5.3.3 Part 3 – Company Profile 11

5.3.4 Part 4 – Project Staff and Key Personnel 12

5.3.5 Part 5 – Reference Projects..... 13

5.3.6 Part 6 – Project Approach 13

5.3.7 Part 7 – CMAR Contract Markup..... 13

5.3.8 Part 8 – Fee and Rate Proposal..... 14

REQUEST FOR PROPOSAL

Section 6. Proposal Evaluation and Selection	14
6.1 General.....	14
6.2 Responsiveness.....	15
6.3 Minimum Qualification Requirements.....	15
6.4 Evaluation Criteria.....	16
6.5 Selection.....	16
Section 7. Conditions for Proposers	17
7.1 Owner Authority.....	17
7.2 Ineligible Firms and Individuals.....	17
7.3 Conflict of Interest	17
7.4 Proprietary Information.....	17
7.5 Rights of the Owner	17
7.6 Obligation to Keep Project Team Intact.....	18
7.7 Addenda	18
7.8 Protests.....	18
Attachment A Definition of Terms	19
Attachment B Scope of CMAR Services	20
Attachment C Project Background Documents.....	24
Attachment D Design Documents and Specifications	25
Attachment E Forms for Affirmation of Compliance	26
Attachment F Draft CMAR Contract.....	29
Attachment G Fee and Rate Proposal Form.....	30

Request for Proposals

Section 1. Background

1.1 Introduction

This request for proposals (RFP) for the **East Perry Wastewater Treatment Facility Phase 1** (Project) invites Proposals according to the requirements set forth in this RFP, including the format and content guidelines in Section 5. The Proposals will be reviewed and evaluated using a best-value selection process described in Section 6. At completion of the evaluation process, the **City of Perry** (Owner) will select a Proposer to award, or enter into negotiations for award of, the CMAR Contract [See Attachment F (Draft CMAR Contract)].

The capitalized terms in this RFP have the meanings as first used in the text of this RFP and/or as defined in Attachment A (Definition of Terms). The Project is to be designed and constructed in two phases using the construction management at-risk (CMAR) delivery method.

- **Preconstruction phase:** CMAR Firm will provide preconstruction services (as described in Attachment B, Scope of CMAR Services) to support the Owner's chosen Design Engineer in developing the design. During this phase, the design engineer will advance the design to the level of completion necessary to define the project and will provide construction-ready documents prior to the initiation of the construction-phase services. When the engineering firm's design reaches 90% completion, the CMAR Firm will present a construction schedule and an open-book guaranteed maximum price (GMP) or fixed price proposal to the Owner in accordance with the CMAR contract, which includes the cost of the work through commissioning and start-up, general conditions pricing, overhead and profit either as a percent (%) mark up, and a negotiated contractor contingency.

When the Owner and CMAR Firm have agreed on the construction price, the construction-phase services are authorized and initiated. (If the Owner and the CMAR Firm are unable to agree on a price for construction-phase services, the Owner reserves the right to terminate the existing CMAR Contract and begin negotiations with another CMAR firm, or direct the Design Engineer to complete the design and prepare construction documents for public bidding of the Project.)

- **Construction phase:** If the owner and CMAR firm agree on a price for construction-phase services, the CMAR Firm will procure all subcontractors and vendors, and will be responsible for the Project's construction, startup, commissioning, operator training, performance testing, and warranty services as agreed to in the CMAR Contract.

This RFP is subject to revision after the date of issuance via written addenda. Any such addenda will be transmitted to the list of potential Proposers maintained by the Owner and or its Representative. It is each Proposer's responsibility, to obtain all RFP addenda prior to submitting its proposal. In no event will the Owner be liable for any costs incurred by any Proposer or any other party in developing or submitting a Proposal.

REQUEST FOR PROPOSAL

1.2 RFP Organization

This RFP consists of seven Sections and eight Attachments:

- Section 1: Background
- Section 2: Project Overview
- Section 3: CMAR Services
- Section 4: Procurement Process
- Section 5: Proposal Submission Requirements
- Section 6: Proposal Evaluation and Selection
- Section 7: Conditions for Proposers
- Attachment A: Definition of Terms
- Attachment B: Scope of CMAR Services
- Attachment C: Project Background Documents
- Attachment D: Design Documents and Specifications
- Attachment E: Forms for Affirmation of Compliance
- Attachment F: Draft CMAR Contract
- Attachment G: Fee and Rate Proposal Form

The contents of the RFP Attachments take priority over any conflicting statements in the RFP Sections.

Certain project background documents are being made available as Attachment C (Project Background Documents) for the purpose of preparing Proposals. The Owner is providing these documents only for the purpose of obtaining Proposals for the Project and does not confer a license or grant for any other use. The extent to which the CMAR Firm may rely on such background documents is set forth in Attachment F (Draft CMAR Contract).

1.3 Owner's Objectives

The Owner's goals for delivery of the Project are as follows:

- **Quality:** Deliver the proposed facilities consistent with the project design and specifications.
- **Cost:** Minimize initial capital and life-cycle costs, and achieve Owner's budget.
- **Schedule:** Achieve substantial completion of the Project by **September 30, 2025**. Achieve final completion, including commissioning, start-up and performance testing by **December 31, 2025**. No performance guarantee will be required of the CMAR Firm.
- **Risk:** Achieve an optimal balance of risk allocation between the Owner and the CMAR Firm.
- **Safety:** Implement a comprehensive safety program that incorporates industry's best practices.

REQUEST FOR PROPOSAL

Having chosen CMAR delivery for this Project, the Owner expects the CMAR Firm to collaborate closely with the Owner and its Design Engineer during the preconstruction phase to develop a design that achieves the Owner's objectives at a mutually agreeable GMP or fixed price for delivery of the Project. The Owner also expects the CMAR Firm to construct the project, as designed, within the agreed-on price and schedule, through start-up and commissioning.

Section 2. Project Overview

2.1 Project Scope

The City of Perry (City) is seeking Proposals from qualified firms interested in providing Construction Manager at Risk (CMAR) services for a project known as the East Perry Wastewater Treatment Facility Phase 1 in Perry, Georgia (the Project). The Project includes a new 2.5 MGD wastewater treatment facility along with associated office space and site development for which the CMAR will provide Preconstruction and Construction Phase Services in collaboration with the Engineer and Owner.

The Project scope, design standards and performance requirements are described in more detail in Attachment D (Design Documents and Specifications).

2.2 Project Budget and Funding

The total budget for program management, EOR services, and preconstruction and construction CMAR services for the proposed facility is currently \$50,000,000.

The Project will be funded using a combination of local funds and Georgia Environmental Finance Administration (GEFA) loan. Selected CMAR will be required to comply with all GEFA requirements.

2.3 Project Schedule

As indicated in Section 4, it is anticipated that the CMAR Contract will be executed on or about **December 16, 2022**. Project milestones to be delivered by the CMAR Firm include:

Completion of Preconstruction Phase Services of **September 30, 2023**.

Substantial completion of **September 30, 2025**

Final completion of **December 31, 2025**, including commissioning, startup and testing.

Section 3. CMAR Services

3.1 General

As noted in Section 1 and more fully described in Attachment B (Scope of CMAR Services), the CMAR Firm will provide services in two distinct phases.

Preconstruction-phase services

- Develop the project execution plan, including project schedule.
- Develop construction management plan for the construction phase, including a subcontracting and procurement plan.
- Perform value engineering, constructability reviews on design development submittals in conjunction with the Owner and the Design Engineer at the 30%, 60% and 90% design stages.
- Prepare and maintain a project cost model and project schedule, and submit detailed, open-book cost estimates as the design is advanced.
- Prepare, implement and maintain a Project risk management plan including Risk Register.
- Submit and negotiate a GMP or fixed-price proposal for the construction phase.
- Identify Project construction permitting requirements and determine when certain construction permitting activities should be initiated.

Construction-phase services

- Procure and manage equipment and subcontractors.
- Self-perform elements of the Project scope representing a minimum of 70% the Project Value, if approved by the Owner and allowed by law.
- Secure necessary construction permits.
- Construct the Project.
- Mitigate Project risks.
- Conduct startup, commissioning, and performance testing.
- Provide operator training.
- Provide warranty coverage for constructed work.

3.2 Roles and Responsibilities

Owner: The Owner or its duly authorized Representative will cooperate with the CMAR Firm and will fulfill its responsibilities in a timely manner to facilitate the CMAR Firm's timely and efficient performance of services. Owner responsibilities include:

- Review preconstruction-phase deliverables and submissions, providing comments to CMAR Firm.
- Furnish existing studies and provide complete, accurate and reliable data and information regarding the Project, including record drawings, preliminary studies, etc.

REQUEST FOR PROPOSAL

- Provide information and perform additional studies that may be necessary to complete the Project.
- Provide adequate funding.
- Provide access to the Project site and any necessary easements.
- Obtain the governmental approvals and permits Owner is responsible for, and assist CMAR Firm in obtaining governmental approvals and permits it is responsible for.
- Provide necessary data and inputs (e.g., raw water, or wastewater influent or Biosolids quality, etc.) for Project startup and performance testing.

CMAR Firm: The CMAR Firm will cooperate with the Owner and Design Engineer and will provide the preconstruction- and construction-phase services necessary to complete the Project scope specified in this RFP. CMAR Firm responsibilities include:

- Deliver the constructed work.
- Supervise subcontractors and CMAR Firm personnel.
- Obtain necessary governmental approvals and permits.
- Perform risk management and mitigation activities.
- Provide Engineer Firm with office space located with the Owner at the Project Site. Office space will be secure, with water, electricity and janitorial services provided by CMAR. Telephone, facsimile, and/or Internet service will also be the responsibility of the CMAR Firm.
- Maintain site security and safety.
- Conduct acceptance testing.
- Develop and implement quality-management (including quality control and quality assurance) procedures.
- Establish and maintain change order management plan.
- Develop and implement Project health and safety practices.

Design Engineer: The Design Engineer will prepare all design documents, work collaboratively with the Owner and the CMAR Firm, and provide services during construction to ensure that the Project as constructed conforms to the design intent and Owner's objectives.

The roles and responsibilities of the parties are more fully described in Attachment F (Draft CMAR Contract).

Section 4. Procurement Process

4.1 Acknowledgement of RFP and Proposer Representative

Each potential Proposer should provide the Owner, within seven (7) days of issuance of this RFQ, an acknowledgement that it has received the RFQ and is a potential Proposer. Such acknowledgement shall identify and provide full contact information for the Proposer Representative, who shall be the Proposer's single point of contact for the receipt of any future documents, notices and addenda associated with this RFQ. Such acknowledgement must be sent in writing and a copy electronically transmitted to the Owner Contact.

REQUEST FOR PROPOSAL

4.2 Communications with Owner Contact

GWES will act as the Owner Contact and shall administer the RFP process. All communications shall be submitted in writing, by email, and shall specifically reference this RFP. All questions or comments should be directed to the Owner Contact as follows:

Matt Taylor, PE
GWES
733 Carroll Street, Perry, Georgia 31069
Email: matt.taylor@gwesllc.com

No oral communications from the Owner Contact or any other individual are binding. No contact with Owner staff or any public official concerning the Project during the procurement process outside of the pre-proposal meeting is allowed. A violation of this provision shall result in disqualification of Proposer.

4.3 Procurement Schedule

The current procurement schedule is as follows:

Issue RFP: September 6, 2022

Pre-Bid Meeting & Site Visit: September 22, 2022, at 10:00 am local time

Deadline for Submission of Questions: September 28, 2022

Issues Response to Questions by: October 3, 2022

Submit Proposals: October 7, 2022 no later than 2:00 pm local time

Interview Short-List: October 17, 2022

Interviews: October 24, 2022

Selection Announcement: October 28, 2022

City Council Approval of Award: November 1, 2022

Contract Negotiations Completed: December 1, 2022

Contract Execution and Notice to Proceed: December 16, 2022

4.4 Pre-Proposal Meeting and Site Tour

Owner will conduct a pre-proposal meeting for those interested in responding to the RFP.

Attendance at this meeting is mandatory. The meeting will be held at the Frank Satterfield WPCP, 108 Frank Satterfield Road, Perry on **September 22, 2022, at 10:00 a.m. local time**. At this meeting, Owner Representative will offer information about the Project and the procurement process. Those who attend the pre-proposal meeting will have the opportunity to tour the Project site following the meeting to familiarize themselves with site conditions and constraints.

Section 5. Proposal Submission Requirements

5.1 Submittal Place and Deadline

Seven (7) paper documents (one original and six (6) copies), as well as an electronic version of the Proposal on USB Drive in PDF format (Separate Files for Package 1 and Package 2), must be received no later than **October 7, 2022 at 2:00 pm local time**, addressed to:

City of Perry
Attn: Mitchell Worthington
Finance Department
1211 Washington Street
Perry, GA 31069

Each Proposer assumes full responsibility for timely delivery of its Proposal at the required location. Any Proposal received after the submittal deadline will be deemed non-responsive and returned unopened. The delivered packaging containing the Proposal documents must **note “Proposal for Construction Management at Risk (CMAR) Enclosed”** on its face.

5.2 Submission Format

The Proposal must not exceed the total pages specified in Parts 1 through 6 (most or all 8½ × 11 inch with 1-inch or greater margins). A maximum of 3 of the total pages may be 11 x 17-inch tri-fold format. Eleven-point font or larger must be used.

5.3 Submission Content

The content requirements set forth in this RFP represent the minimum content requirements for the Proposal. It is the Proposer’s responsibility to include information in its Proposal to present all relevant qualifications and other materials. The Proposal, however, should not contain standard marketing or other general materials. It is the CMAR Firm’s responsibility to modify such materials so that only directly relevant information is included in the Proposal.

Proposal Package 1 will include the general proposal information as requested and will be provided to the Selection Committee for review and scoring. Once scoring for Package 1 is completed, the Package 2 information will be opened, reviewed and scored by the Selection Committee.

REQUEST FOR PROPOSAL

The Proposal Packages 1 and 2 must include the following information in the order listed below.

Package 1

- Part 1 - Transmittal Letter
- Part 2 – Executive Summary
- Part 3 – Company Profile
- Part 4 - Project Staff and Key Personnel
- Part 5 – Reference Projects
- Part 6 – Project Approach
- Appendix A – Team Resumes
- Appendix B – Preliminary Schedule
- Appendix C – Preliminary Risk Register
- Appendix D – Bonding and Insurance Letters
- Appendix E – Forms for Affirmation of Compliance

Package 2

- Part 7 - CMAR Contract Markup Description
- Appendix F – CMAR Contract Markup
- Part 8 – Fee and Rate Proposal Description
- Appendix G – Fee and Rate Proposal
- Appendix H – Financial Statements
- Appendix I – Current and Recent Litigation

5.3.1 Part 1 - Transmittal Letter

Proposers must submit a transmittal letter on the Proposer's letterhead. It must be signed by a representative of the Proposer who is authorized to sign such material and to commit the Proposer to the obligations contained in the Proposal. The transmittal letter must include the name, address, phone number and e-mail address for the Proposer Contact and must specify who would be the CMAR Firm's signatory to any contract documents executed with the Owner. The transmittal letter may include other information deemed relevant by the Proposer. (Two page limit)

5.3.2 Part 2 – Executive Summary

The executive summary (maximum 4 pages) must include a concise overview of the key elements of the Proposal and must summarize and refer to information in the Proposal concerning satisfaction of the Minimum Qualifications Requirements. The executive summary shall not be used to convey additional information not found elsewhere in the Proposal. (Four page limit)

5.3.3 Part 3 – Company Profile

A detailed and complete description of the organizational structure proposed for the Company must be provided. (The term "company" can refer to either a single entity or a joint venture.) The Company Profile must include the following information. (One page limit)

REQUEST FOR PROPOSAL

- **General** - Provide general information about the Company, such as lines of business and service offerings, locations of home and other offices, number of employees (professional and non-professional), years in business, and evidence of required licenses.
- **Legal structure** - Identify whether the Company is organized as a corporation, limited liability company (LLC), general partnership, joint venture, limited partnership, or other form of legal entity. As applicable, identify the owners of the Company (*e.g.*, shareholders, members, partners, and the like) who hold an interest of ten percent or more.
- **Project office location** - Identify where the Company intends to maintain its project office(s) and where the majority of the pre-construction services will be performed.
- **Financial Condition** - In SOQ Appendix H (Financial Statements), provide audited financial statements for the Company for the past three years. If the Company is a joint venture, LLC or partnership, such financial statements must be provided for each partner or member.

5.3.4 Part 4 – Project Staff and Key Personnel

- Submit organizational chart(s) for Pre-construction and Construction Phase services.
- Provide summary of experience and roles/responsibilities on the proposed project for the following Key Staff members (or equivalent) including the proposed Lead Project Manager, Preconstruction Manager, Lead Estimator, and General Superintendent. Be certain to demonstrate the proposed staff's knowledge and understanding of the CMAR delivery method if appropriate. It is imperative that the individuals being proposed in this response will be doing the actual day-to-day activities on the project, not department heads.
- Provide a written narrative prepared by each of the key individuals listed above describing their approach to this Project. Each of these individuals must provide a written narrative of their commitment to this Project and their individual expectations related to cost, schedule, quality and collaboration. To properly respond, each individual must read the RFP document and Construction Contract. (Proposed staff must respond - no marketing responses please). Limit each person's response to 1/2 page and include with their summary experience. (Six page limit for Part 4)

Provide full resumes in Appendix A for the Key Staff described above as well as other critical team members. Resumes should reflect project experience that aligns with the minimum qualifications for projects found in 6.3. Any team member that is identified on the organizational charts should have a full resume included. Each Key Staff member's resume should also include three (3) references with contact information. Resumes are limited to two pages each.

REQUEST FOR PROPOSAL

5.3.5 Part 5 – Reference Projects

Contractor shall provide reference information for five (5) similar projects that meet the minimum construction experience criteria found in 6.3. Each reference project description should be limited to one page, and include the name of owner, role of respondent, project scope, size, location, start and completion dates, original contract value, final contract value, client reference contact information (phone and e-mail), key staff members that participated in project, and a clear indication of how each project meets the minimum criteria. (five page limit – one page per project)

5.3.6 Part 6 – Project Approach

Provide a conceptual description (12 page limit) of the CMAR Firm's approach for managing and performing its services during the Project's preconstruction and construction phases. It should address the following items:

- Discuss how a collaborative relationship with the Owner and Design Engineer would be established during preconstruction-phase development, scheduling, cost estimating and risk management.
- Communications (with owner and design engineer)
- Discuss how the design and construction processes will interface (including how constructability issues, construction document packaging, value engineering and risk issues will be addressed).
- Identify the work elements critical to the Project's success and how these components will be addressed .
- Describe the process for developing the GMP or fixed-price proposal at 60-90% design completion (defined by the owner and including the approach to establishing contingency) and for developing early-out equipment and/or construction package GMPs.
- Identify and discuss key Project risk factors and the approach for mitigation. Include Preliminary Risk Register in Appendix C.
- Provide a narrative on the approach to Project safety.
- Provide a narrative on the approach to delivering a quality project.
- Discuss the Project schedule and identify the specific approach to meeting the schedule. Include a Preliminary Schedule in Appendix B.
- Adherence to the GMP or fixed price during the construction phase

5.3.7 Part 7 – CMAR Contract Markup

The Proposal may include in Appendix F (CMAR Contract Markup) a detailed markup of the Draft CMAR Contract (including its attachments), setting forth any and all revisions requested by the Proposer. Although the Owner will undertake negotiations of the CMAR Contract, the CMAR Contract Markup will be treated as a *de facto* offer that the Owner can accept as is, which would result in a binding contract between the CMAR Firm without further negotiations or revision.

REQUEST FOR PROPOSAL

Part 7 of the Proposal (if included) must describe the significant revisions included in Proposal Appendix F (CMAR Contract Markup) and explain the rationale for such revisions and the associated benefits to the Owner. Proposers are encouraged to suggest revisions that would more efficiently allocate risk, improve the parties' understanding of risk allocation, and improve clarity of any terms of the Draft CMAR Contract where ambiguities or uncertainties may arise in their application or interpretation.

The Owner is not obligated to accept any of the requested exceptions, modifications, additions, etc. submitted by the Proposer in the CMAR Contract Markup when negotiating and finalizing the CMAR Contract. Furthermore, the Owner may request additional revisions during negotiations and before finalizing the CMAR Contract.

Proposers are encouraged to carefully review RFP Attachment F (Draft CMAR Contract) and to submit written questions and comments by the deadline specified in Section 4. Based on its assessment of the comments submitted, the Owner (at its sole discretion) may modify the Draft CMAR Contract via addenda. The Owner expects that this review and comment process will substantially reduce the need for extensive post-selection negotiation.

5.3.8 Part 8 – Fee and Rate Proposal

The Proposer must complete RFP Attachment G (Fee and Rate Proposal Form) – with all required pricing information – and include it (along with Proposal Part 8) as Proposal Appendix G (Fee and Rate Proposal). The scope of CMAR services for which pricing is required is defined in RFP Attachment B (Scope of CMAR Services). Part 8 of the Proposal should describe the basis for the Fee and Rate Proposal and discuss its viability from the CMAR Firm's perspective.

Be advised that the Owner is not interested in proposed fees or rates that provide excessive discounts from the CMAR Firm's anticipated actual costs for the requested services. If Owner determines (at its sole discretion) that the fees and rates included in a Proposal are unacceptably below industry norms or that a Proposer's fees and rates are substantially or unacceptably below other Proposals, the Owner may (at its sole discretion) either declare that Proposal to be non-responsive or seek additional detailed information from that Proposer concerning the cost basis for its fee and rate proposal, prior to rendering a decision on the Proposal's responsiveness.

Section 6. Proposal Evaluation and Selection

6.1 General

The Proposals will be reviewed and evaluated by the Owner's selection committee (with assistance provided by outside advisors, if desired by Owner) according to the requirements and criteria outlined in this Section 6. During the proposal evaluation process, written questions or requests for clarification may be submitted to one or more Proposers regarding its Proposal or related matters. Failure to respond in a timely manner to any such questions or requests may be grounds for elimination of the Proposer from further consideration. In addition, the Owner may require that all or a limited number of Proposers participate in interviews.

6.2 Responsiveness

Each Proposal will be reviewed to determine whether it is responsive to the RFP. Failure to comply with the requirements of this RFP may result in a Proposal being rejected as non-responsive. At its sole discretion, however, the selection committee may waive any such failure to meet a requirement of this RFP and may request clarification or additional information to remedy a deficiency.

6.3 Minimum Qualification Requirements

Each responsive Proposal will be reviewed to determine whether it meets the Minimum Qualification Requirements outlined in this subsection. At its sole discretion, the selection committee may waive any failure to satisfy such requirements and may request clarification or additional information to address any questions that may arise in this regard. Any Proposal that does not satisfy all of the following Minimum Qualification Requirements may be rejected.

- **Performance bond and insurance.** The CMAR must provide in Appendix D a letter from its surety company confirming the ability of the CMAR Firm to provide a performance bond in the amount of \$60,000,000. Also, in Appendix D, include proof of insurance with appropriate limits as required in the draft CMAR Contract (AIA A133-2019).
- **Material adverse condition.** The CMAR Firm must not be subject to a material adverse condition, such as pending litigation, insufficient liquidity, weak operating net income or cash flow, or excessive leverage, that gives rise to reasonable doubt concerning its ability to continue to operate as an ongoing concern, to provide performance bonds or insurance, or to maintain sufficient financial strength to undertake and successfully complete the Project and to mitigate/absorb Project risks. Include descriptions of current and recent litigation in Appendix I.
- **Licensing and registration.** The CMAR Firm and each other firm must be licensed in the State of Georgia for the type of work to be performed.
- **Construction experience.** Within the past ten (10) years, the CMAR Firm must have successfully completed the construction of at least:
 - Three new wastewater or water treatment facilities, or upgrades and expansions to existing facilities with a minimum Project value of \$40,000,000, using collaborative delivery, with treatment capacity of at least 2.5 MGD for municipal clients in the United States.
 - Two additional Wastewater Projects of similar complexity to the proposed East Perry Wastewater Treatment Facility Phase 1 Project.
- **Safety record.** The CMAR Firm must have achieved an experience modification rate (EMR) of not greater than **0.85** for the current and past two years.

REQUEST FOR PROPOSAL

6.4 Evaluation Criteria

The selection committee will evaluate and rank the responsive Proposals that satisfy the Minimum Qualification Requirements by applying weighted evaluation criteria, as set forth below, to information provided in Proposers' SOQs and Proposals. Financial condition is evaluated on a pass/fail basis as part of the Minimum Qualification Requirements.

- **Experience and capabilities**
 - **CMAR firm** 20 points
 - **Key personnel** 20 points
- **Organization, management and safety** 5 points
- **Project approach** 25 points
- **Fee and Rate Proposal**
 - **Preconstruction Services Fee** 5 points
 - **CMAR Fee** 10 points
 - **P&P Bonds, Builders Risk, Insurance Fees** 5 points
 - **Interview / Value Added** 10 points

TOTAL 100 points

In ranking the proposals, the selection committee will use a 90-point scale whereby the maximum points awarded for each of the evaluation criteria will be based on the percentage weight set forth above. Up to an additional 10 points may be awarded to those Proposers selected for interviews.

Proposal Package 1 will include the general proposal information as requested and will be provided to the Selection Committee for review and scoring. Once scoring for Package 1 is completed, the Package 2 information will be opened, reviewed and scored by the Selection Committee. In the event the Selection Committee determines two or more of the Proposers are similarly qualified, interviews may be conducted with up to three (3) of the top scoring Proposers. The score from the interviews will be added to the scores from Package 1 and Package 2 to arrive at a final score. In the event of the tie, the interview score shall be the tie-breaker.

6.5 Selection

After the evaluation process is complete, the Owner will notify Proposers of the rankings. The top-ranked Proposer will be either selected for contract award on the basis of its CMAR Contract Markup or offered the opportunity to negotiate the final terms of the CMAR Contract. However, if the Owner determines (at its sole discretion) that the top-ranked Proposer's CMAR Contract Markup may require protracted negotiations, the Owner may choose to either select the next-ranked Proposer for award on the basis of its CMAR Contract Markup or offer it the opportunity to negotiate the final terms of the CMAR Contract. If negotiations with any selected Proposer are not successful, the Owner may either select or negotiate with the next highest-ranked Proposer (and so on for lower-ranked Proposers until either a Contract is reached or negotiations with all ranked Proposers end). At any time, the Owner also has the option to have the Design Engineer complete the design and then to proceed as with a DBB procurement.

Section 7. Conditions for Proposers

7.1 Owner Authority

Owner is a municipality in the State of Georgia operating under a municipal charter.

7.2 Ineligible Firms and Individuals

The following firms and individuals are serving in an advisory capacity to the Owner for this Project and are therefore not eligible to assist or participate with any Proposer that submits a Proposal for the Project.

GWES

Burns and McDonnell

7.3 Conflict of Interest

Georgia laws mandate the public disclosure of certain information concerning persons doing business or seeking to do business with the Owner, including affiliations and business and financial relationships such persons may have with Owner officers.

7.4 Proprietary Information

All materials submitted to the Owner become public property and are subject to the Georgia's public information laws. If the Proposal contains proprietary information that the Proposer does not want disclosed, each page containing such information must be identified and marked "PROPRIETARY" at the time of submittal. Owner will, to the extent provided by law, endeavor to protect such information from disclosure. Proposers will be notified in writing by owner if proprietary information is requested and Proposer will be given an opportunity to request from the Georgia Attorney General that the information be withheld. The final decision as to what information must be disclosed, however, lies with the Georgia Attorney General. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request. Proposers shall not be permitted to mark their entire Proposal as proprietary.

7.5 Rights of the Owner

In connection with this procurement process, including the receipt and evaluation of Proposals and award of the CMAR Contract, Owner reserves to itself (at its sole discretion) all rights available to it under applicable law, including without limitation, with or without cause and with or without notice, the right to:

- Cancel, withdraw, postpone, or extend this RFP, in whole or in part, at any time prior to the execution of the CMAR Contract, without incurring any obligations or liabilities
- Modify the procurement schedule

REQUEST FOR PROPOSAL

- Waive deficiencies, informalities and irregularities in a Proposal and accept and review a non-conforming Proposal
- Suspend and terminate the procurement process or terminate evaluations of Proposals received
- Permit corrections to data submitted with any Proposal
- Hold meetings and interviews, and conduct discussions and correspondence, with one or more of the Proposers to seek an improved understanding of any information contained in a Proposal
- Seek or obtain, from any source, data that has the potential to improve the understanding and evaluation of the Proposals
- Seek clarification from any Proposer to fully understand information provided in the Proposal and to help evaluate and rank the Proposers
- Reject a Proposal containing exceptions, additions, qualifications or conditions not called for in the RFP or otherwise not acceptable to the Owner
- Conduct an independent investigation of any information, including prior experience, included in a Proposal by contacting project references, accessing public information, contacting independent parties, or any other means
- Request additional information from a Proposer during the evaluation of its Proposal

7.6 Obligation to Keep Project Team Intact

Proposers are advised that all firms and Key Personnel identified in the Proposal shall remain on the Project Team for the duration of the procurement process and execution of the Project. (The anticipated dates for award of the CMAR Contract and for completion of the Project are set forth in Section 2.3 of this RFP.) If extraordinary circumstances require a change, it must be submitted in writing to the Owner Representative, who, at his or her sole discretion, will determine whether to authorize a change, recognizing that certain circumstances (such as termination of employment) may occur that are beyond the CMAR Firm's control. Unauthorized changes to the Project Team at any time during the procurement process may result in elimination of the Proposer from further consideration.

7.7 Addenda

If any revisions to the RFP or procurement process become necessary or desirable (at the Owner's sole discretion), the Owner, through the Owner Representative, may issue written addenda. The Owner (or Owner's Representative) will issue any such addenda to potential Proposers based on the list of potential Proposers maintained by the Owner Representative. It is each Proposer's responsibility, however, to obtain all addenda prior to submitting its Proposal.

7.8 Protests

Any protest to an Owner's action in connection with this procurement must be filed in writing no later than seven (7) business days following such action and must be in strict accordance with the Owner's applicable procedures and with applicable law.

Attachment A

Definition of Terms

The definitions of some of the capitalized terms used in this RFP are presented below:

CMAR Firm – The CMAR Firm or other any other firm (such as a subcontractor or joint-venture partner) that will provide construction services and have responsible charge of construction of the Project.

Contract Documents – The Contract Documents comprise the items listed in the Draft CMAR Contract found in Attachment F.

Design Engineer – The engineering firm that will provide professional design services and have responsible charge of the design, including preparation of the construction documents.

Draft CMAR Contract – The draft Contract, including the agreement and all of its attachments, presented as RFP Attachment F (Draft CMAR Contract).

Key Personnel – The individuals, employed by CMAR Firm or other firms included on the Project Team, who would fill certain key roles in delivering the Project and related services by the CMAR Firm, including at least the following positions: project executive, project manager, safety manager, quality manager, preconstruction manager, lead estimator, procurement manager, construction manager, and construction superintendent(s).

Minimum Qualification Requirements – The requirements set forth in Subsection 6.3 of this RFP that, at a minimum, must be satisfied (or waived by Owner) in order for the Proposal to be evaluated and ranked according to the comparative evaluation criteria.

Owner – City of Perry, Georgia

Project – East Perry Wastewater Treatment Facility Phase 1

Project Team – The CMAR Firm, Key Personnel and any additional firms (such as subcontractors and sub-consultants) included in the Proposal.

Proposer – The entity responding to this RFP by submitting the Proposal.

Work – Work comprises all construction and other services required by the Contract Documents, including procuring, and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

Attachment B

Scope of CMAR Services

The CMAR Firm will provide the following preconstruction- and construction-phase services, as identified and described in the Proposal, and for the price specified in the Fee and Price Proposal.

A. PRECONSTRUCTION-PHASE SERVICES

Preconstruction-phase services will include:

1. Co-locate during preconstruction at the request of the Owner.
2. Provide a project manager, all Key Personnel and all other associated personnel necessary to fully meet the CMAR Firm's obligations for preconstruction services.
3. Within 14 days of the notice to proceed the preconstruction phase, provide a construction management plan that includes approach to safety, quality, cost, schedule, project organization during both preconstruction and construction phases, packaging, and subcontractor management plan.
4. Consult with, advise and provide recommendations to the Owner and the Design Engineer on all aspects of the planning, design, and proposed construction, as well as drawings and specifications.
5. As the design progresses—from about 30% completion up to and including 90% completion of the final design, plans and specifications—provide ongoing constructability review and input, including information on material availability, recommendations on equipment and/or packaging to advance construction, and independent quantity calculations to verify quantities specified by Design Engineer.
6. At the 60% design completion milestone, provide list of additional details that would be needed to complete the project in the allotted time or to accelerate aspects of the work.
7. At the 30%, 60% and 90% design completion milestones, hold review workshops with project manager, estimator, scheduler, and superintendent, along with any other necessary personnel.
8. Provide on-going value-engineering and constructability reviews, including written reports and recommendations at the 30%, 60% and 90% design completion milestones.
9. Identify, evaluate and propose cost-effective alternatives to the project design or equipment specified.
10. Develop independent detailed construction cost estimates, critical path method schedules and cash flow forecasts at the 30%, 60% and 90% final design completion milestones.
11. Provide monthly project planning and scheduling reports to optimize the sequencing of constructing the project.
12. Identify long-lead equipment procurement needs and submit a report to the Owner.
13. Identify, evaluate, and recommend elements of the Project that may require less than 100% design completion.
14. Make recommendations to the Owner regarding the division of the Work to facilitate bids and proposals for the major elements of the Work

REQUEST FOR PROPOSAL

15. Advise the Owner regarding ways to gain efficiency in Project delivery.
16. Provide complete, detailed, written GMP or fixed-price proposal, including line-item cost breakdowns with conditions, assumptions, and CMAR contingency at the 60% (or as agreed to with the Owner) level of design completion.
17. Provide a construction emergency response plan and site safety plan.
18. Develop, implement and maintain a quality management plan that ensures conformance to the project design and to every section of the specifications. Develop a QC program to ensure continuing attention to the production and installation of error-free work.
19. Provide an environmental management plan detailing programs for a storm water pollution prevention plan and handling other environmental issues (dust, on-site chemicals and fuel, etc.) required to comply with permits and regulations applicable to the Project.
20. Schedule all Project construction-related activities.
21. Identify work that the Proposer intends to self-perform. Identify and recommend which work, if any, should be procured through value-based competitive selections, in lieu of low-bid selection.
22. Participate in monthly progress meetings on-site or at the office location provided by the Owner (located with the Design Engineer).
23. Participate in one Project kick-off meeting for preconstruction-phase services.
24. Participate in up to 10 additional meetings or workshops with the Design Engineer, Owner or others as needed.

B. CONSTRUCTION-PHASE SERVICES

Construction-phase services will include the following:

1. Construction of the Project consistent with the relevant state laws, including all applicable codes.
2. Self-perform a maximum of 80% of the Project Value.
3. Remaining contingency fund at the end of the Project will be shared 50%/50%.
4. All CMAR fees and expenses will be reviewed and approved by the Owner. The CMAR must only participate as a lead entity and not as a lower-tier subcontractor.
5. Discuss Project with subcontractors and material suppliers to determine workloads, bonding capacity, and worker/mechanic availability.
6. Review rules for how and when a CMAR Firm can self-perform some elements of a project with its own forces and systems for selection.
7. Prepare the bids/proposals packages for the elements of the Work incorporating the requirements of the Contract.
8. Develop and submit recommendations for awarding the subcontracts to construct the Project.
9. Participate in up to five (5) Project kick-off meetings for construction-phase services;
10. Perform the construction portion of the Work in strict accordance with all applicable Contract Documents.

REQUEST FOR PROPOSAL

11. Coordinate and manage the Work that includes all required appurtenances, necessary site improvements, and all other work required to make a complete and operable system within the GMP or fixed price and the allowable contract time.
12. Coordinate with various local and state agencies, as necessary.
13. Arrange for procurement of materials and equipment.
14. Manage all procurement and construction-related subcontracts while meeting the Owner's requirements for procurement of subcontractor and supplier bids or proposals. This effort includes inspecting the Work performed by subcontractors to ensure conformance with the Contract Documents.
15. CMAR is the primary responsible party to monitor and maintain quality controls over shop drawings, equipment and materials, implementation, and Work.
16. Provide performance bond, payment bond, and one-year extended performance bond or maintenance bond as detailed in Section 5.3.3 of this RFP.
17. Provide insurance for the preconstruction and construction phases as detailed below.
18. Implement the construction site safety plan to provide a safe working site for the Project, maintain, update and implement as needed for the emergency response plan.
19. Conduct a meeting with all the contractors and sub-contractors performing major elements of the Work prior to the start of their activities.
20. Obtain any necessary construction permits.
21. Manage storm water runoff and dust.
22. Establish and implement procedures to track, expedite and process all submittals, change orders, and requests for information.
23. Review and process shop drawings and other documents for submission to Design Engineer.
24. Establish a critical path method schedule for the Project, monitor and update the construction schedule monthly, prepare two-week look ahead work schedules consistent with overall schedule.
25. Review and process all pay applications from subcontractors.
26. Conduct monthly progress meetings with the on-site trade foremen or superintendents.
27. Attend monthly meetings with the Design Engineer and Owner staff and provide written monthly progress report and updated schedule.
28. Maintain current hard copies of project as-built drawings, including all subcontracted work, and submit monthly in hard copy, PDF and electronic format, as specified by the Design Engineer.
29. Develop, implement and manage a commissioning, start-up and testing plan necessary for the Owner to accept the Project as completed and ready to use.
30. Expedite and coordinate delivery, storage, security and installation of Owner-procured material and equipment, as applicable.
31. Update and revise the operation and maintenance manual developed by the Design Engineer as necessary.

REQUEST FOR PROPOSAL

32. Supervise and manage the warranties provided to the Owner for the equipment and construction work.
33. Receive warranty work items from the subcontractors and vendors and provide same to Owner upon final completion of the Project, or at a date negotiated by the parties.
34. Conduct a walk-through with the Owner and Design Engineer to ensure that the Owner, Design Engineer, and CMAR Firm are in agreement that the construction-phase work is complete before the one-year warranty goes into effect.
35. Implement close-out procedures necessary for the Owner to accept the Project as being finally complete; provide lien waivers from all subcontractors and material suppliers.
36. Complete all construction-phase services and Work, including performance testing; and
37. Prepare a final report on all construction costs.

Attachment C

Project Background Documents

Project Background Documents can be found at the following link:

<https://drive.google.com/drive/folders/1p9ifsEr0SJwO9mlzT1SF985b-ftz4v3b?usp=sharing>

Attachment D

Design Documents and Specifications

Project Design Documents and Specifications can be found at the following link:

NONE AVAILABLE AT THIS TIME

Attachment E
Forms for Affirmation of Compliance

REQUEST FOR PROPOSAL

S.A.V.E AFFIDAVIT VERIFY STATUS FOR BUSINESS TRANSACTION WITH THE CITY OF PERRY

STATE OF _____

COUNTY OF _____

By executing this affidavit under oath, as an applicant for a public benefit, as referenced in O.C.G.A §50-36-1, administered by the Georgia Department of Community Affairs, the undersigned applicant verifies on of the following with respect to my ability to enter into a contract with the City of Perry.

1. _____ I am a United States Citizen
Or

2. _____ I am a legal permanent resident of the United States.
Or

3. _____ I am an otherwise qualified alien or non-immigrant under the Federal Immigration and Nationality Act and lawfully present in the United States with an alien number issued by the Department of Homeland Security or other federal immigration agency. My alien number issued by the Department of Homeland Security or other federal immigration agency is: _____.

The undersigned applicant also hereby verifies that he or she is 18 years of age or older and has provided at least on secure and verifiable document, as required by O.C.G.A. §50-36-1(f)(1), with this affidavit.

The secure and verifiable document provided with the affidavit can best be classified as:

In making the above representation under oath, I understand that any person who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in an affidavit shall be guilty of a violation of O.C.G.A. §16-10-20, and face criminal penalties as allowed by such criminal statute.

Executed this ____ day of _____, 202_ in _____(city) _____ (state).

Signature of Applicant

Printed Name of Applicant

SUBSCRIBED AND SWORN BEFORE ME ON THIS _____ DAY OF _____, 202__.

NOTARY PUBLIC

My Commission Expires: _____

REQUEST FOR PROPOSAL

CONTRACTOR AFFIDAVIT UNDER O.C.G.A. § 13-10-91(b)(1)

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of City of Perry has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned contractor will continue to use the federal work authorization program throughout the contract period and the undersigned contractor will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the information required by O.C.G.A. § 13-10-91(b). Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number

Date of Authorization

Name of Contractor

Name of Project

Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, _____, 202__ in _____ (city), _____ (state).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME ON THIS _____ DAY OF _____, 202__.

NOTARY PUBLIC

My Commission Expires:_____

Attachment F

Draft CMAR Contract

The City's intent is to use the contract(s) below for Construction Manager at Risk agreement. Any significant changes in the contract language that are anticipated will be provided to the Proposers as part of an addendum during the advertisement period.

AIA Document A133-2019 Standard Form of Agreement Between Owner and Construction Manager as Construction where the Basis of Payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

In conjunction with AIA Document A201-2017 General Conditions of the Contract for Construction



AIA[®] Document A133[™] – 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the _____ day of _____ in the year _____
(In words, indicate day, month, and year.)

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

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

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

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

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

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

The Owner and Construction Manager agree as follows.

Init.

AIA Document A133[™] – 2019. Copyright © 1991, 2003, 2009, and 2019 by The American Institute of Architects. All rights reserved. WARNING: This AIA[®] Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA[®] Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. To report copyright violations of AIA Contract Documents, e-mail The American Institute of Architects' legal counsel, copyright@aia.org.

TABLE OF ARTICLES

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

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

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

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

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

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

§ 1.1.2 The Project's physical characteristics:

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

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:
(Provide total and, if known, a line item breakdown.)

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

- .1 Design phase milestone dates, if any:
- .2 Construction commencement date:
- .3 Substantial Completion date or dates:
- .4 Other milestone dates:

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

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

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

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

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

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

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

.1 Geotechnical Engineer:

.2 Civil Engineer:

.3 Other, if any:

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

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

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

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

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

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

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

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

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

§ 2.2 Relationship of the Parties

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

§ 2.3 General Conditions

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

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

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

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

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

§ 3.1.3 Consultation

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

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

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

§ 3.1.4 Project Schedule

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

§ 3.1.5 Phased Construction

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

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the

cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

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

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

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

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

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

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

§ 3.1.11 Subcontractors and Suppliers

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

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

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

§ 3.1.12 Procurement

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

§ 3.1.13 Compliance with Laws

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

§ 3.1.14 Other Preconstruction Services

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

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

§ 3.2 Guaranteed Maximum Price Proposal

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

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

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

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

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

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

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

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

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

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

§ 3.3 Construction Phase

§ 3.3.1 General

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

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

§ 3.3.2 Administration

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

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

§ 3.3.2.3 Monthly Report

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

§ 3.3.2.4 Daily Logs

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

§ 3.3.2.5 Cost Control

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

ARTICLE 4 OWNER’S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

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

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

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

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

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

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

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

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

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

§ 4.2 Owner's Designated Representative

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

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

§ 4.3 Architect

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

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

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

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

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Individual or Position

Rate

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

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

§ 5.2 Payments

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

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

_____ % _____

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

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

§ 6.1.2 The Construction Manager's Fee:

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

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

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

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

§ 6.1.6 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

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

§ 6.2 Guaranteed Maximum Price

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

§ 6.3 Changes in the Work

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

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

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

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

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

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

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

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

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

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

§ 7.2 Labor Costs

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

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

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

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

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

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

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

§ 7.3 Subcontract Costs

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

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

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

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

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

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

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

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

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

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

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

§ 7.6 Miscellaneous Costs

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

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

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

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

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

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

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

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

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

§ 7.6.7 Costs of document reproductions and delivery charges.

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

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

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

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

§ 7.7 Other Costs and Emergencies

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

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

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

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

§ 7.8 Related Party Transactions

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

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

§ 7.9 Costs Not To Be Reimbursed

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

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

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

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

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

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

ARTICLE 10 ACCOUNTING RECORDS

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

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 The aggregate of any amounts previously paid by the Owner;
- 2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- 3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- 4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;

- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

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

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

§ 11.1.8.1.1 The following items are not subject to retainage:

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

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

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

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

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

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

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

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

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

§ 11.2 Final Payment

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

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

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

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

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

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

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

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

§ 11.3 Interest

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

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

_____ % _____

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the

Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

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

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

§ 12.2 Binding Dispute Resolution

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

(Check the appropriate box.)

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

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

ARTICLE 13 TERMINATION OR SUSPENSION

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

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

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

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

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

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

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

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

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

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

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

§ 13.2.1 Termination

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

§ 13.2.2 Termination by the Owner for Cause

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

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

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

§ 13.2.3 Termination by the Owner for Convenience

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

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

§ 13.3 Suspension

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

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

§ 14.2 Successors and Assigns

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

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

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

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

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

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

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

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

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

§ 14.3.1.6 Other Insurance

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

Coverage

Limits

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

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

§ 14.3.2 Construction Phase

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

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

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

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

§ 14.5 Other provisions:

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

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

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

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

[] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

.7 Other documents, if any, listed below:

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

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

OWNER *(Signature)*

CONSTRUCTION MANAGER *(Signature)*

(Printed name and title)

(Printed name and title)

Init.

AIA Document A133™ – 2019. Copyright © 1991, 2003, 2009, and 2019 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** To report copyright violations of AIA Contract Documents, e-mail The American Institute of Architects' legal counsel, copyright@aia.org.

Attachment G

Fee and Rate Proposal Form

Example Proposal Form Response below:

Owner's Estimated Cost of Work			\$ 43,500,000.00	(a)	
	% Fee	Lump Sum	Total		Notes
Preconstruction-Phase Services Fee		\$ 225,000.00	\$ 225,000.00	(b)	Total is Lump Sum Fee, %Fee is binding
<i>*Provide backup information in Appendix G in the form of a Man-Hour estimate for Preconstruction tasks identified in Attachment B Preconstruction Phase Services.</i>					
Construction-Phase Services Fee (on Cost of Work)	4.00%		\$ 1,740,000.00	(c)	Total is (a) times %Fee, %Fee is binding
Payment and Performance Bonds	0.65%		\$ 282,750.00	(d)	Total is (a) times %Fee, %Fee is binding
Commercial General Liability Insurance	0.75%		\$ 326,250.00	(e)	Total is (a) times %Fee, %Fee is binding
Builders Risk Insurance	0.25%		\$ 108,750.00	(f)	Total is (a) times %Fee, %Fee is binding
General Conditions Cost Estimate		\$ 2,500,000.00	\$ 2,500,000.00	(g)	Total is lump sum, non-binding
<i>**Provide backup information in Appendix G to substantiate the General Conditions Estimate.</i>					
Proposed Construction Contingency on Direct Work	3.00%		\$ 1,305,000.00	(i)	Total is (a) times %Fee, non-binding
<i>***Proposed Construction Contingency should be reflective of general risks identified in the Preliminary Risk Register in Appendix C.</i>					
		Total Estimated Costs	\$ 49,987,750.00		sum of all items, non-binding