



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

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

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

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

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

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

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

The Owner and Construction Manager agree as follows.

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

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

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## ARTICLE 1 INITIAL INFORMATION

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

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

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

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

§ 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.)

As defined in Article 3.1.11 and Article 9 herein.

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

Init.

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§ 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, 2.2.3, 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. A201-2017. 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 recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants. The Construction Manager shall participate in Coordination Reviews of the Drawings and Specifications with the Architect, Owner and Owner's consultants. It is not the Construction Manager's responsibility 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 statutes, ordinances, building codes, rules, and regulations. However, if the Construction Manager recognizes that portions of the Drawings and Specifications are at a variance therewith, the Construction Manager shall promptly notify the Architect and Owner in writing.

§ 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.

.1 Coordination reviews shall be performed on an ongoing basis to ensure proper fit of equipment and design elements.

§ 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 Preliminary 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 to the Owner 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, services, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.6.4 As Value Engineering items are developed, the Construction Manager shall track the items and follow up with the design team to ensure their incorporation into the design documents. This includes items eliminated from scope or moved to a list of potential alternates.

§ 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. The construction superintendent shall be engaged in the document review and written documentation of items needing more clarification shall be provided to the Architect.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities. facilities such as logistics, site trailers, staging, parking and delivery. Plans regarding these items shall be created for incorporation in the bid documents.

§ 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; subcontractor interest in the Project and shall furnish to the Owner and Architect for their information a possible list of subcontractors who are able to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner knows of any objection to such subcontractor or supplier. The receipt of such a list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect to later object to or reject any proposed subcontractor or supplier.

§ 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 well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees in writing 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.~~ items.

### § 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.)*

.1 The Construction Manager shall prepare and provide a cash flow projection for the project with each updated cost estimate and with the GMP submission.

.2 The Construction Manager shall work with the project team to ensure the safety of all stakeholders. A site specific safety plan will be required for the construction phase.

.3 Assistance in local permitting requirements and attendance at public meetings may be required.

### § 3.2 Guaranteed Maximum Price Proposal

**§ 3.2.1** At a time to be mutually agreed upon by the Owner and the Construction Manager, ~~Manager and when the drawings and specifications are no less than 85% complete,~~ 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, Price in the form of a schedule of values as described in § 11.1.5, 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 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-based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.

**§ 3.2.4** ~~In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency. The estimated Cost of the Work shall include the Construction Manager's contingency, a sum established by the Construction Manager 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.~~

possible additional costs arising under Section 3.2.2 and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order. The Construction Manager shall notify the Owner and provide backup for any charges against the contingency. Use of the contingency shall not entitle the Construction Manager to any additional fee beyond that already included in the Guaranteed Maximum Price.

**§ 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 bi-weekly meetings at which the Owner, Architect, Construction Manager and appropriate Subcontractors can discuss the status of the Work.~~ The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect; an agenda for the meeting in advance; and prepare and promptly distribute meeting minutes. If weekly meetings are required, there shall be no additional cost.

§ 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~~ After 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~~ Contract 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~~ The Owner shall furnish all legal services that may be reasonably necessary 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. Basic Services, including normal structural, mechanical and electrical engineering services, described in the edition of Document B201™ – 2017 Standard Form of Architect's Services: Design and Construction Administration as modified by the University of Maine System current as of the date of this Agreement. The Owner may authorize and cause the Architect to provide those Additional Services described in B201™ – 2017, requested by the Construction Manager which must necessarily be provided by the Architect for the Preconstruction and Construction Phases of the Work. Such services shall be provided in accordance with time schedules agreed to by the Owner, Architect and Construction Manager. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a copy of the Owner's Agreement with the Architect, from which compensation provisions may be deleted.

## 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.)~~ the lump sum amount of compensation.)

**§ 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.~~ Compensation for Preconstruction Phase Services shall be equitably adjusted if more than three (3) estimates are required or if the originally contemplated scope of services is significantly modified.

## § 5.2 Payments

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

§ 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.) shall be made monthly following presentation of the Construction Manager's Application and Certification for Payment, and, where applicable, shall be in proportion to services performed.

—%

## ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

### § 6.1 Contract Sum

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

§ 6.1.2 The Construction Manager's Fee:

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

The Construction Manager's Fee for Work encompassed in the Guaranteed Maximum Price shall be based on a percentage of the Cost of the Work at the time of the Guaranteed Maximum Price. The final fee to be included in the final payment as calculated in Article 11.2 shall be based on the actual cost of the work completed including contingencies and allowances.

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

For Additive Work, CM Fee % may be applied to the total cost of the change. For Deductive Work, no change in the fee.

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

Subcontractor's overhead and profit may be calculated as provided in AIA Document A201 – 2017.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed one hundred percent ( 100 %) 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.)

See Specification section 00.73.00.11 Schedule of Liquidated Damages.

§ 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.)

Owner to receive 100% of value engineering savings prior to establishment of the Guaranteed Maximum Price, 100% savings from allowances, 75% of unspent contingencies (with 25% going to the Construction Manager), and 50% sharing of other Cost of the Work savings internal to the Guaranteed Maximum Price.

## § 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. Contract Time shall be adjusted equitably 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 ~~services and~~ facilities, machinery, equipment, and hand tools not customarily owned by ~~construction workers that the construction workers, which~~ 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 costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. All such rental charges shall be included in the Cost of the Work at 100% of the rates set forth in the latest edition of the Rental Rate Blue Book for Construction Equipment published by Primedia Information, Inc. (or similar publication upon approval by the Owner) unless equipment is rented from third parties specifically for the Project, in which case rental charges for that equipment shall be included in the Cost of the Work at the actual cost to the Construction Manager.

§ 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~~, and as provided in AIA A201 2017, Article 3.6.1.

§ 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, Without prior written approval by the Owner, and before they are incurred, no 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.~~ approval.

§ 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.~~ others, and upon submitting written documentation of the Construction Manager's efforts to recover from the individuals and entities named herein and/or others who may pay these costs.

§ 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 timely notify the Owner in writing 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 proposal~~ 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, goods or service~~ from the related party, as a Subcontractor, according to the terms of Article 9-9; except that a Subcontractor fee will not be allowed. If the Owner fails to authorize the ~~transaction in writing, transaction,~~ 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~~ however, if the Guaranteed Maximum Price has been established, the Owner may not prohibit the Construction Manager from obtaining bids from other qualified bidders. The Construction Manager shall obtain at least three qualified 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~~ If fewer than three bids are received, the Owner may waive the three-bid requirement. The Construction Manager, after analyzing such bids, 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, 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, consistent with and/or similar to those systems being accepted in the industry for maintaining the records required to be maintained by the Construction Manager under this Article 10. 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 including, but not limited to,~~ 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 all 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 (1) calendar month ending on the last day of the month, or as follows:

month.

§ 11.1.3 ~~Provided that an Application for Payment is received by the Architect not later than the 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.)~~Intentionally omitted.

§ 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.~~completed.

§ 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.~~less retainage.

§ 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.)*

five percent (5%). The Contractor shall not withhold a greater percentage from subcontractors.

§ 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.)*

None

§ 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.)*

The Owner may, if deemed expedient by the Owner, cause the Contractor to be paid temporarily or permanently from time to time during the progress of the work, such portion of the amount retained as the Owner deems prudent or desirable.

§ 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.)*

For Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 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.~~Intentionally omitted.

§ 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. The Owner may review and make written comments on the Construction Manager's final accounting. The review and comments should be completed within thirty (30) days after delivery of the final accounting by the Architect to the Owner. Within seven days after receipt of the written comments of the Owner or notice that the Owner will not be submitting comments, the Architect will substantiate the Construction Manager's final accounting and verify that the conditions in Section 11.2.1 have been met, and either issue to the Owner a final Certificate of 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 Section 9.5.1 of AIA Document A201 – 2017. The time periods stated in this Section supersede those stated in Section 9.4.1 of AIA Document A201 – 2017.~~

**§ 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. Any disputes concerning the final account will be resolved as provided in A201 – 2017, Article 15.~~

**§ 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.

N/A

**§ 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~~ review for reimbursement any costs the Construction Manager wants to submit to the Owner as 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 ~~decide whether to terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager agreement, and the Owner will review for reimbursement any costs the Construction Manager may want to subtract~~ 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~~ Following execution of the Guaranteed Maximum Price Amendment, the Contract may be terminated 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.)*

as defined in Article 14 of AIA Document A201-2017.

**§ 13.3 Suspension**

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

**ARTICLE 14 MISCELLANEOUS PROVISIONS**

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

**§ 14.2 Successors and Assigns**

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

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

**§ 14.3 Insurance and Bonds**

**§ 14.3.1 Preconstruction Phase**

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

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

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

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

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than five hundred thousand dollars (\$ 500,000 ) each accident, five hundred thousand dollars (\$ 500,000 ) each employee, and five hundred thousand dollars (\$ 500,000 ) policy limit.

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

**§ 14.3.1.6 Other Insurance**

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

**Coverage**

**Limits**

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

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

§ 14.3.1.9 The insurance certificate shall state the University of Maine System as Certificate Holder and additional insured as follows (regardless of campus):

University of Maine System  
Office of Risk Management  
Robinson Hall  
46 University Drive  
Augusta, ME 04330

§ 14.3.1.10 The Construction Manager must assure that similar coverage is in place for all persons or companies working for the Construction Manager, including consultants and independent contractors. By entering into this Agreement with the University, the Construction Manager certifies this coverage is or will be in place and will continue to be in place as required. Copies of these insurance certificates shall be provided upon request by the Owner.

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

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

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User Notes:

(724582993)

OWNER *(Signature)*

*(Printed name and title)*

CONSTRUCTION MANAGER *(Signature)*

*(Printed name and title)*



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# AIA® Document A133® – 2019 Exhibit A

## Guaranteed Maximum Price Amendment

This Amendment dated the    day of    in the year   , is incorporated into the accompanying AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the    day of    in the year    (the "Agreement")

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

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

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

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

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.

### TABLE OF ARTICLES

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

### ARTICLE A.1 GUARANTEED MAXIMUM PRICE

#### § A.1.1 Guaranteed Maximum Price

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

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

**§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price.** Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories,

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including allowances; the Construction Manager's contingency; alternates; the Construction Manager's Fee; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement.  
(Provide itemized statement below or reference an attachment.)

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

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

§ A.1.1.5 Alternates

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

Item	Price
------	-------

§ A.1.1.5.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Exhibit A. Upon acceptance, the Owner shall issue a Modification to the Agreement.  
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
------	-------	---------------------------

§ A.1.1.6 Unit prices, if any:

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

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

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

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

(Check one of the following boxes.)

☐ The date of execution of this Amendment.

☐ Established as follows:  
(Insert a date or a means to determine the date of commencement of the Work.)

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

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

§ A.2.3 Substantial Completion

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

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

☐ Not later than ( ) calendar days from the date of commencement of the Work.

☐ By the following date:

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

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

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

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

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

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

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

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

Number	Title	Date
--------	-------	------

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

Title	Date	Pages
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Other identifying information:

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

Item	Price
------	-------

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

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

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

**§ A.4.1** The Construction Manager shall retain the consultants, contractors, design professionals, and suppliers, identified below:  
*(List name, discipline, address, and other information.)*

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

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

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

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

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



**AIA®**

# Document A133® – 2019 Exhibit B

## Insurance and Bonds

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

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

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

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

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

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

### TABLE OF ARTICLES

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

#### ARTICLE B.1    GENERAL

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

#### ARTICLE B.2    OWNER'S INSURANCE

##### § B.2.1 General

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

##### § B.2.2 Liability Insurance

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

##### § B.2.3 Required Property Insurance

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**§ B.2.3.1.** For this project, Property Insurance coverage, up to the total amount of the Project, will be provided by the University by either adding the Project to the University's existing master property insurance or purchasing a stand-alone builder's risk policy. Coverage shall be included for the Contractor and all Subcontractors, as their interests may appear, while involved in the Project and until the work is completed or the contractor is otherwise advised in writing. This insurance is limited to the "all risk" type coverage provided under the University's master property insurance for direct physical loss or damage to the building or building materials related to the project, subject to standard policy limitations and exclusions. The contractor is responsible for a \$10,000 per claim deductible. Any other insurance desired by the Contractor beyond that covered by the University's insurance, or to cover the \$10,000 deductible, is the responsibility of the Contractor. This contract stands as verification of the University's property insurance coverage on the project and no further verification will be provided.

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

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

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

Cause of Loss	Sub-Limit
---------------	-----------

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

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

Coverage	Sub-Limit
----------	-----------

**§ B.2.3.1.3** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section B.2.3.1 or, if necessary, replace the insurance policy required under Section B.2.3.1 with property



insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

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

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

**§ B.2.3.3 Insurance for Existing Structures**

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

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

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

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

☐ **§ B.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

☐ **§ B.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

☐ **§ B.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

☐ **§ B.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

☐ **§ B.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

[ ] **§ B.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

[ ] **§ B.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

**§ B.2.5 Other Optional Insurance.**

The Owner shall purchase and maintain the insurance selected below.

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

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

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

**Coverage**

**Limits**

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

**§ B.3.1 General**

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

**§ B.3.1.1.1** Certificates of Insurance filed with the University of Maine System shall indicate the Certificate Holder as:

University of Maine System  
Office of Risk Management  
Robinson Hall  
46 University Drive  
Augusta, ME 04330

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

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

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

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

**§ B.3.2.2 Commercial General Liability**

**§ B.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than two million dollars (\$ 2,000,000 ) each occurrence, two million dollars (\$ 2,000,000 ) general aggregate, and two million dollars (\$ 2,000,000 ) aggregate for products-completed operations hazard, providing coverage for claims including

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

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

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

§ B.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than one million dollars (\$ 1,000,000 ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ B.3.2.4 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section B.3.2.2 and B.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ B.3.2.5 Workers' Compensation at statutory limits.

§ B.3.2.6 Employers' Liability with policy limits not less than five hundred thousand dollars (\$ 500,000 ) each accident, five hundred thousand dollars (\$ 500,000 ) each employee, and five hundred thousand dollars (\$ 500,000 ) policy limit.

§ B.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and ~~docks~~-docks. Policy limits for such coverage shall not be less than five hundred thousand dollars (\$500,000) each accident, five hundred thousand dollars (\$500,000) each employee, and five hundred thousand dollars (\$500,000) policy limit. Contractor is required to provide proof of such coverage, if applicable to the Work, by submitting a copy of the endorsement or by submitting the USLH form WC 00 01 06 A (current edition).

§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than one million dollars (\$ 1,000,000 ) per claim and one million dollars (\$ 1,000,000 ) in the aggregate.

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than one million dollars (\$ 1,000,000 ) per claim and one million dollars (\$ 1,000,000 ) in the aggregate.

§ B.3.2.10 Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than one million dollars (\$ 1,000,000 ) per claim and two million dollars (\$ 2,000,000 ) in the aggregate.

§ B.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than two million dollars (\$ 2,000,000 ) per claim and two million dollars (\$ 2,000,000 ) in the aggregate.

§ B.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than one million dollars (\$ 1,000,000 ) per claim and one million dollars (\$ 1,000,000 ) in the aggregate. Authorization from Administration of the University of Maine System must be obtained thirty (30) days prior to the utilization of the equipment.

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

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

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

N/A

Init.

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

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

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

*(Where the Construction Manager's obligation to provide property insurance differs from the Owner's obligations as described under Section B.2.3, indicate such differences in the space below.*

*Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*

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

- ☐ **§ B.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than one million dollars (\$ 1,000,000 ) per claim and two million dollars (\$ 2,000,000 ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

- ☐ **§ B.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

- ☐ **§ B.3.3.2.5** Property insurance on an "all-risks" completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.

- ☐ **§ B.3.3.2.6 Other Insurance**  
*(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)*

Coverage

Limits

### **§ B.3.4 Performance Bond and Payment Bond**

The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows: and the Contractor shall furnish a Performance Bond and a Payment Bond covering the faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Contractor's usual source and the cost thereof shall be included in the Contract Sum. The amount of each bond shall be equal to 100% of the Contract Sum. Should the Contract Sum change during the contract and warranty periods, the amount of the Bonds will be changed to reflect the Contract Sum.

- .1 The Contractor shall deliver the required bonds to the Owner at the same time as the signed Contract Agreement is delivered to the Owner. Prior to the commencement of the Work, the Contractor shall submit satisfactory evidence that such bonds will be furnished.

(Specify type and penal sum of bonds.)

.2 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

Type

Penal Sum (\$0.00)

Payment Bond

Performance Bond

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement. 3 The Contract Bonds shall continue in effect for one year after final acceptance of each contract to protect the Owner's interest in connection with the one year guarantee of workmanship and materials and to assure settlement of claims, for the payment of all bills for labor, materials, and equipment by the Contractor.

#### ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

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

N/A