

A G E N D A

LINCOLNTON CITY COUNCIL



June 27, 2024

7:00 p.m.

Council Chambers

City hall



**LINCOLNTON
AGENDA
June 27, 2024
7:00 PM**

CALL TO ORDER

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

1. AGENDA APPROVALS

1a Approval of REGULAR AGENDA

1b Approval of CONSENT AGENDA

- June 6, 2024 - Regular Meeting Minutes
- Approval of Request for Releases - May 16, 2024 through June 15, 2024

2. PUBLIC COMMENT

Speakers will be limited to three (3) minutes to address Mayor and City Council. You must sign in with the City Clerk to be eligible to speak

3. REGULAR AGENDA

3a O-07-24 Capital Project Budget Ordinance - Water AIA-W-ARP

Pamela McBryde, Finance Director

3b O-08-24 Capital Project Budget Ordinance - WW-AIA-W-ARP

Pamela McBryde, Finance Director

3c BA-04-24 BUDGET AMENDMENT - Fiscal Year End

Pamela McBryde, Finance Director

4. REGULAR AGENDA

4a C-14-24 Consideration and approval of contract and Fee for Preconstruction Scope of Services from Edifice Const. for new Public Service Center

David Ramsey, Business Services Director

4b C-15-24 Placer AI Order Form

Ritchie Haynes, City Manager

5. OTHER BUSINESS

NEWS MEDIA

ADJOURNMENT

ITEM #

1

AGENDA

APPROVALS

ITEM #

1a

APPROVAL

OF

REGULAR AGENDA

ITEM #

1b

APPROVAL

OF

CONSENT AGENDA

REGULAR MEETING – June 6, 2024

The Lincolnton City Council met in Regular Session on Thursday, June 6, 2024 at 7:00 p.m. in the Council Chambers of City Hall located at 114 W. Sycamore Street, Lincolnton, NC.

Mayor Hatley called the meeting to order asking everyone to rise for a moment of silence. He then led the Pledge of Allegiance. The following Council members were in attendance:

DEMENY POINSETTE TIPTON JETTON

With the addition of two items that were not listed on the original agenda, Councilmember Christine Poinsette made a motion to approve the agenda as amended. Members voted 4-0 in favor of the motion.

Councilmember Kevin Demeny made a motion to approve items listed under the *CONSENT AGENDA* as follows:

- May 2, 2024 Regular Meeting Minutes
- C-07-24 Contract with DDA for 2024 Lincolnton Food, Wine & Brew Fest event – September 14, 2024
- C-09-24 Contract for Provision of Services between the Lincolnton Housing Authority and the Lincolnton Police Department
- Order of Collection for the 2024-2025 taxes for the City of Lincolnton
- Lincoln County Tax Department – Request for Releases – April 16th – May 15th, 2024

Members voted 4-0 in favor of the motion.

PUBLIC COMMENT

Mayor Ed Hatley recognized those that signed up to speak during the Public Comment portion of the meeting. Three members of the public took the opportunity to address council on a variety of topics.

Mr. Chris Duschel, who was accompanied by a number of local veterans showing their support, came before council to request the speed limit be

changed to 22 mph on both Water Street and W. Sycamore Street from the historic courthouse to Flint Street, as a way to increase awareness of the 22 U.S. veterans, on average, who commit suicide each day. The information displayed on the sign would not just be for veterans, but for anyone needing help. Mayor Ed Hatley commented that a public hearing would be scheduled for the August council meeting, after which, action can be taken on the request. City Manager Ritchie Haynes explained that the city's Traffic Safety Committee would review the request to make sure everything is in order. Mr. Haynes stated that he can see no issue with the city covering the cost.

Mr. Steve Peeler addressed council on behalf of Electricities, once again asking members to attend the annual conference in August. He spoke to the tremendous asset the City has in the electric system and feels that councilmembers need a working knowledge of the system, how Electricities work and any potential changes that may be coming in the future.

Mr. Trent Mason commented on and gave a review on several of the events/activities recently held. Mr. Mason encouraged members, that have not already done so, to view the Our State magazine article featuring Lincolnton as a day trip (article is online). He congratulated the Student Advisory Council on hosting a successful "Movie's in the Park" event at First Federal Park and also spoke to the free fire extinguisher Roundup event, which was also a success. Mr. Mason ended with comments on the great attendance at the Alive After Five concert held in May.

PUBLIC HEARING:

ZTA-4-2024

Zoning Text Amendments to Chapter 153 Unified Development Ordinance

Planning Director Jean Derby addressed council to request several zoning text amendments to the City's Unified Development Ordinance. Ms. Derby explained that the changes needed were to "clean up" some of the language in the original ordinance. Requested changes would be administrative in nature, allowing wording to be altered to match policy or deleted when no longer needed.

Ms. Derby stressed that this would not involve any policy changes. (Note: a copy of the proposed amendments are attached to and made part of these minutes)

Councilmember Roby Jetton made a motion to close the Public Hearing. Members voted 4-0 in favor of the motion.

Councilmember Christine Poinsette made a motion to approve *the request* as presented. Members voted 4-0 in favor of the motion.

O-06-24

**Consideration/Approval of the Proposed 2024-2025 Fiscal Year Budget –
Total Proposed Budget - \$34,669,933.00**

City Manager Ritchie Haynes gave a brief overview of the proposed budget that he presented at the May city council meeting. Mr. Haynes reminded council that, although the total budget amount has not changed, several line items did. He explained that the changes that made will allow staff to begin the process of conducting an assessment center to hire an Assistant City Manager and have them onboard January 2025.

Mr. Haynes stated that no other changes were made; no tax rate increase, no sewer rate increase, no water rate increase and no electric rate increase. He also stated that the Boger City fire department rate stays the same and that the pay study A is included in the proposed budget.

Councilmember Jill Tipton made a motion to close the Public Hearing. Members voted 4-0 in favor of the motion.

Councilmember Christine Poinsette made a motion to adopt the Budget Ordinance. Members voted 4-0 in favor of the motion

Councilmember Kevin Demeny made a motion to adopt the 2024-2025 Schedule of Fees. Members voted 4-0 in favor of the motion.

Councilmember Jill Tipton made a motion to adopt the City of Lincolnton's 2024-2025 Salary Schedule and Schedule of Budgeted Positions. Members voted 4-0 in favor of the motion.

REGULAR AGENDA:

BA-03-24

**Budget Amendment to the made to the Annual Budget Ordinance for
fiscal year ending June 30, 2024**

Finance Director Pamela McBryde presented the following budget amendment for approval:

REGULAR MEETING – June 6, 2024

BA-03-24

BE IT ORDAINED by the Governing Board of the City of Lincolnton, North Carolina, that the following amendment be made to the Annual Budget Ordinance for the fiscal year ending June 30, 2024.

Section 1: To amend the General Fund, the expenditures are to be changes as follows:

General Expense	\$	1,290,349
Police	\$	2,520
Fire		8,311
Solid Waste		6,149
Planning/Zoning		6,295
Recreation		17,086
	\$	1,330,710

Section 2: To amend the General Fund, the revenues are to be changed as follows:

General: Ad Valorem Levy	\$	180,906
General: Alcohol/Beverage Tax		11,761
SW: Disposal Tax		2,029
SW: Rollout Fees		4,120
General: Grants - Other		12,000
General: Cemetery Lot Sales		5,800
PD: Inspection Fees		520
P&Z: Zoning Department Fees		6,295
FD: Inspection Fees		6,350
FD: Misc. Revenue		1,961
Rec: Registration & Entry Fees		16,636
Rec: Sponsorships		250
General: Interest		116,090
General: ABC Revenue		4,846
General: WEX-Fuel Rebates		946
Rec: Veterans Banner Project		200
General: Federal Equitable Deposits		1
Loan Proceeds		960,000
	\$	1,330,710

General Fund: Ad Valorem Levy Taxes, Record Zoning & Planning fees, Fire Department fees, Solid Waste roll out sales, interest income earned, Veterans banner donation, WEX fuel rebates, Hollybrook Cemetery sales, ElectriCities and Soft Armor Grants, Dept. of Insurance Grant-Fire Dept., FY2324 Issurance of Leases, and Federal Equitable reimbursement for the Police Department.

Section 3: To amend the Boger City Fire District Fund, the expenditures are to be changes as follows:

Boger Ciy Fire Tax	\$	2,517
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Section 4: To amend the Boger City Fire District Fund, the revenues are to be changed as follows:

Investment Income	\$	2,517
	\$	2,517

Boger City Fire District: Record interest income earned.

Section 5: To amend the Powell Bill Fund, the expenditures are to be changes as follows:

Powell Bill Construction/Other	\$	4,331
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Section 6: To amend the Powell Bill Fund, the revenues are to be changed as follows:

Investment Income	\$	4,331
	\$	4,331

REGULAR MEETING – June 6, 2024

Powell Bill Fund: Record interest income earned.

Section 7: To amend the Water and Sewer Fund, the expenditures are to be changes as follows:

Distribution and Collection	762,844
	<u>\$ 762,844</u>

Section 8: To amend the Water and Sewer Fund, the revenues are to be changed as follows:

Investment Income	\$ 69,677
Connection Charges	88,835
Capital Contributions	510,000
Loan Proceeds	60,000
Other Operating Revenues	34,331
	<u>\$ 762,844</u>

Water and Sewer Fund: Record interest income earned, water and sewer connection charges, default fees, FY2324 Insurance of Leases, and Car Farm Road Lift Station/generator-donated capital from Combine Enterprises .

Section 9: To amend the Electric Fund, the expenditures are to be changes as follows:

Electric Operations	<u>\$ 139,585</u>
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Section 10: To amend the Electric Fund, the revenues are to be changed as follows:

Investment Income	\$ 48,906
Electric Sales	4,707
Other Operating Sources	21,971
Loan Proceeds	64,000
	<u>\$ 139,585</u>

Electric Fund: Record interest income earned, default fees, electric meter fees, rental fees and FY2324 Insurance of Leases.

Section 11: To amend the Special Revenue Fund, the expenditures are to be changed as follows:

AIA Grants-WasteWater-W-ARP-0242	\$ 209,532
	<u>\$ 209,532</u>

Section 12: To amend the Special Revenue Fund, the revenues are to be changed as follows:

AIA Grants-WasteWater-W-ARP-0242	\$ 209,532
	<u>\$ 209,532</u>

Special Revenue Fund: Record NCDEQ-AIA Grant Reimbursements for WasteWater.

Section 16: Appropriations are authorized by fund totals. The City Manager is authorized to reallocate fund appropriations among line item objects of expenditures and revenues as necessary during the budget year.

Section 17: Copies of this Budget Ordinance shall be furnished to the Clerk to the Governing Board and to the Budget Officer and Finance Director to be kept on file by them for their direction in the disbursement of funds.

TOTAL AMENDMENT	\$	2,449,518
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Adopted this 6th day of June, 2024

Ms. McBryde gave an overview of the information within the amendment, explaining the funds and revenue being shown. She spoke to the surplus currently in the General Fund, Powell Bill Fund, Water & Sewer Fund and the Electric Fund, commending the city departments on fantastic job they did this year.

Councilmember Roby Jetton made a motion to approve the budget amendment as presented. Members voted 4-0 in favor of the motion.

**Consideration of Revision to the City of Lincoln Personnel Policy-
Article VI Section 14 – Educational Involvement of City Employees**

Human Resources Director Tanya Osborne presented the revision to Article VI Section 14 of the City's Personnel Policy; Educational Involvement for City Employees. Ms. Osborne reminded council of the discussion regarding this proposed revision at the March budget work session, and explained that approval of this request will grant employees eight (8) hours of Educational Involvement leave per calendar year for employees. (Note: a copy of the proposed policy is attached to and made part of these minutes)

Councilmember Christine Poinsette made a motion to approve. Members voted 4-0 in favor of the motion.

**Consideration for Revision of Parks & Recreation Policies and
Procedures Manual Section 11- Volunteer Background Screening Process**

Human Resources Director Tanya Osborne presented a request to make revisions to the Parks & Recreation Policies and Procedures Manual regarding the volunteer background screening process. Ms. Osborne provided some background information as to when the policy was implemented. Both she and City Manager Ritchie Haynes spoke to the number of volunteer coaches needed to accommodate the growing programs compared to when the program began. She explained the issues being experienced with following this particular portion of the policy when it comes to background checks, noting that the requested revision is a result of much research and input from the League's Risk Management department and Mr. John Friguglietti, the current city attorney. Ms. Osborne listed the major changes to the policy and asked that changes be effective July 1, 2024. (Note: a copy of the proposed policy is attached to and made part of these minutes)

Councilmember Jill Tipton made a motion to approve. Members voted 4-0 in favor of the motion.

C-10-24

Ford Property (311 E. Sycamore Street and Building on Pine Street)
Demolition contract/quote

Business Services Director David Ramsey addressed council to request approval of the demolition of the Joe Ford property, which he described as being across from the splash pad behind the Ann Ford property (formerly known as the old chicken hatchery). Mr. Ramsey spoke to the quotes received for demolition, the first for \$47,000.00 and the other for \$82,000.00. Due to the discovery of asbestos, there was an increase in the original quote from D.H. Griffin, who provided the first quote. Price went from \$47,000.00 to \$55,000.00.

Councilmember Christine Poinsette made a motion to approve the demolition. Members voted 4-0 in favor of the motion.

C-11-24

Consideration to approve Construction Manager at Risk for New Public Service Center Project – Edifice LLC aka Edifice Construction

Business Services Director David Ramsey appeared before city council to request approval of the recommendation for the Construction Manager at Risk. Mr. Ramsey announced that out of the six companies that responded to the RFQ (Request for Qualifications), the project team, choose two of those companies to interview, Hickory Construction Construction and Edifice Construction. From the two interviewed, Mr. Ramsey stated that the team feels comfortable selecting Edifice Construction for this project.

With no further questions, Councilmember Demeny made a motion to approve the Construction Manager at Risk. Members voted 4-0 in favor of the motion.

Consideration to approve DH Griffin Wrecking Co. to demolish Shear Machine, Break Machine, Submarine Compressor, Boiler, Chimney Tank and associated piping at the Excel (New PSC Site) building and remove from premises

Mr. David Ramsey, Business Services Director, spoke to this item, asking councilmembers to approve request to hire D.H. Griffin Wrecking Co. to demolish large pieces of machinery in the Excel building.

Councilmember Roby Jetton made a motion to approve. Members voted 4-0 in favor of the motion.

Consideration to Approve the Purchase of a Yard Machine for the Electric Department – Specifically a DB41B

Business Services Director David Ramsey addressed City Council to request permission to purchase a yard machine for the Electric Department. Mr. Ramsey informed that \$250,000.00 has been earmarked in the budget for the past two years. Recently, a Yard Machine that is slightly used has been located and can be purchased for \$172,000.00. Mr. Brent Turner, the City's Electric Operations Director, explained the purpose of the machine and why it is needed. Mr. Turner stressed how much of an asset this machine will be to the employees as it will allow them to provide even greater customer service to the city's citizens.

Councilmember Christine Poinsette made a motion to approve the request. Members voted 4-0 in favor of the motion.

C-12-24

Approval of Recommendation for Chemical Company Contracts

Mr. Todd Elmore, Water Resources Director, presented the results of the 7/1/24 – 6/30/25 Chemical Bid Opening. Mr. Elmore reported that of the companies responding, staff recommendations are as follows:

Water Treatment Chemicals

Liquid Alum 8.23% - Chemtrade @ \$1.0395 per liquid gallon

Caustic Soda 50% - Brenntag Mid-South. @ \$2.26 per liquid gallon

Chlorine – Brenntag Mid-South. @ \$2,274.00 per cylinder

Hydrofluosilicic Acid 23% - Univar Solutions @ \$2.54 per liquid gallon

Liquid Sodium Bisulfite (55 gal. drums) – Brenntag Mid-South @ \$166.45 per drum

Activated Carbon – Univar USA, Inc. @ \$45.20 per 50 lb. bag

Wastewater Treatment Chemicals

Liquid Sodium Hypochlorite 10% - JCI Jones Chemical @ \$1.73 per liquid gallon

Liquid Sodium Bisulfite 38% - JCI Jones Chemical @ \$1.96 per liquid gallon

Mr. Elmore informed that there was actually a decrease in the bid amounts submitted when compared to last year and that the bids being recommended are the lowest bids received this year.

Councilmember Jill Tipton made a motion to approve. Members voted 4-0 in favor of the motion.

Consideration to Approve Agreement with Altaworx

Mr. Chris Jones, the City's Technology and Innovations Director, appeared before City Council to request permission to enter into a three year contract with Altaworx. Mr. Jones informed that the City currently uses this company for internet service. He spoke briefly about the links the city has and the difference. He also reported that approving this agreement will save the city \$20,000.00 over three years.

Councilmember Poinsette made a motion to approve the contract agreement with Altaworx. Members voted 4-0 in favor of the motion.

OTHER BUSINESS

City Manager Ritchie Haynes spoke to city council members to request approval of a Mutual Aid Agreement between the City and American Public Power Association. Mr. Haynes explained that the agreement comes through Electricities and allows the city to provided assistance to and/or receive assistance from other Electricities members when needed.

Councilmember Kevin Demeny made a motion to approve the Mutual Aid Agreement. Members voted 4-0 in favor of the motion.

Manager's Report/Activity Update

City Manager Ritchie Haynes reminded Councilmembers of a few, upcoming dates to remember and mentioned a couple of events recently took place. Mr. Haynes provided each member a copy of "The City Page", which contains information on employees, and he also gave a brief overview of the Homeless report. An action spreadsheet, as well as a calendar for the month of June and

REGULAR MEETING – June 6, 2024

July, was provided to members. Mr. Haynes spoke to the Our State magazine article, as well as the medical emergency incident on the Rail/Trail, stating that more information would be provided at a later date. At the request of Councilmember Demeny, Mr. Haynes reported that there have been no issued reported regarding issues related to the Social District since its implementation.

NEWS MEDIA:

Mayor Hatley opened the floor for questions from the new media. Mr. Mike Powell with Lincoln Times news directed a couple of question to the City Manager. Questions were answered accordingly.

CLOSED SESSION:

Councilmember Christine Poinsette made motion to go into Closed Session to discuss property acquisition (G.S. 143-318.11(a)(5))

ADJOURNMENT:

After returning to Open Session and with no further business,
Councilmember Christine Poinsette made a motion to adjourn the meeting. Members voted 4-0 in favor of the motion.

DAPHNE INGRAM, CMC
CITY CLERK

ED HATLEY
MAYOR

LINCOLN COUNTY
TAX DEPARTMENT

CITY OVER \$100

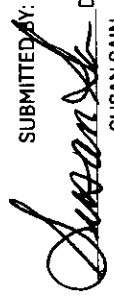
REQUEST FOR RELEASES

PERIOD COVERED

May 16, 2024 through June 15, 2024

NAME	YEAR	DISTRICT	A/C NUMBER	AMOUNT	REASON
Sweet Side Bakery & Café LLC	2023	22	0292639	\$405.69	Correction to match listing
Denmaid Transportation LLC	2016-2023	22	0256113	\$1,135.56	Business sold 12/2016
Total				\$1,541.25	

SUBMITTED BY:

 DATE: 6-20-24

SUSAN SAIN

TAX ADMINISTRATOR

APPROVED BY:

DATE:

RICHARD HAYNES

CITY MANAGER

Lincoln County Tax Department
100 East Main St
Lincolnton NC 28092

REQUEST FOR RELEASES

City Releases under \$100.00

PERIOD COVERED
May 16, 2024 through June 15, 2024

NAME	YEAR	DISTRICT	A/C NUMB	AMOUNT	REASON
ANDERSON DEVRON PIERRE	2024	44	0238635	\$4.72	ONE MONTH GAP BILL
ASHBAKER MICHAEL ALLAN	2024	22	0304176	\$4.28	ONE MONTH GAP BILL
BALL TANAKA WALTON	2024	22	0209573	\$6.95	ONE MONTH GAP BILL
BROWN BILLY JOE JR	2024	22	48044	\$7.73	ONE MONTH GAP BILL
CALLOWAY TINA BRITTAIN	2024	22	0254777	\$18.06	ONE MONTH GAP BILL
CHAPMAN TOMMY JOSEPH	2024	22	0290717	\$6.19	ONE MONTH GAP BILL
COLLINS MICHAEL EVANS	2024	22	0267446	\$31.65	ONE MONTH GAP BILL
CUNNINGHAM STEVEN TYLER	2024	22	0304254	\$31.36	ONE MONTH GAP BILL
DUGGAN STEPHANIE MICHELLE	2024	22	0304203	\$1.09	ONE MONTH GAP BILL
E & K TRUCKING LLC	2023	22	0274213	\$92.02	SOLD 04/12/2022
FREEMAN KYERA WEST	2024	22	0304216	\$16.42	ONE MONTH GAP BILL
HUSH NAAJA LINARIYA	2024	22	0296810	\$4.87	ONE MONTH GAP BILL
MEJIA RODRIGUEZ SANTOS LUCIA	2024	22	0304214	6.07	ONE MONTH GAP BILL
PATEL SANKETKUMAR	2024	22	0279239	21.61	ONE MONTH GAP BILL
POMEROY REBECCA JENKINS	2024	22	0119534	33.24	ONE MONTH GAP BILL
ROBBS TAMARO MOORE	2024	22	0247800	\$6.89	ONE MONTH GAP BILL
ROWE STACY ELAINE	2024	22	0304131	3.15	ONE MONTH GAP BILL
SALMERON JANETH LUCIA	2024	22	0231434	1.69	ONE MONTH GAP BILL

SUBMITTED BY:

 DATE: 6-20-24

SUSAN SAIN

TAX ADMINISTRATOR

APPROVED BY:

DATE: _____
RICHARD HAYNES CITY MANAGER

Lincoln County Tax Department
100 East Main St
Lincolnton NC 28092

REQUEST FOR RELEASES

City Releases under \$100.00

NAME	YEAR	DISTRICT	A/C NUMB	AMOUNT	REASON
TREJO TREJO MARTINA	2024	22	0304193	\$3.88	ONE MONTH GAP BILL
VALLADARES LAURO MOISES	2024	22	0304234	\$7.37	ONE MONTH GAP BILL
WATTS MICHAEL ADAM	2024	22	0232700	\$3.59	ONE MONTH GAP BILL
WEHUNT DEBRA CROUSE	2024	22	0304162	\$13.64	ONE MONTH GAP BILL
WOJTAL WILLIAM JOHN	2024	22	0175224	\$18.16	ONE MONTH GAP BILL

May 16, 2024 through June 15, 2024

TOTAL: \$344.63

SUBMITTED BY:

 DATE: 6-20-24

SUSAN SAIN

TAX ADMINISTRATOR

APPROVED BY:

DATE: _____
RICHARD HAYNES CITY MANAGER

§ 153.315 AMENDMENTS TO TEXT AND MAP

(D) (1) ~~No application shall be considered by the Planning Board unless it has been properly completed and submitted to the Administrator or his or her designee at least 15 days prior to the meeting at which it is to be reviewed. This requirement may be waived by a unanimous vote of the Planning Board membership present at a meeting of the Planning Board occurring less than 15 days prior to the date of submission.~~

The Planning Board shall consider no application unless it has been properly completed and submitted to the Administrator, or his or her designee, by the application deadline on the City's website, to be reviewed at the meetings corresponding to the schedule.

§ 153.316 ADDITIONAL PROVISIONS PERTAINING TO CONDITIONAL ZONING AMENDMENTS.

(E) Procedures. The procedures for requesting rezoning to a conditional district shall be as follows:

(1) ~~Ten~~ Three copies and a digital version of a completed written application for a conditional district shall be filed with the Administrator. The application shall be submitted on official forms provided by the Administrator and shall be accompanied by the following items:

(3) ~~All completed applications shall be submitted to the Administrator at least 15 days prior to the Planning Board public hearing at which it is to be reviewed. This requirement may be waived by a unanimous vote of the Planning Board membership present at a meeting of the Planning Board occurring less than 15 days prior to the date of submission.~~ The Planning Board shall consider no application unless it has been properly completed and submitted to the Administrator, or his or her designee, by the application deadline on the City's website, to be reviewed at the meetings corresponding to the schedule. In no case shall the meeting at which the Planning Board initially reviews the application occur greater than 60 days after the required number of copies of the completed application have been submitted by the applicant to the Administrator.

§ 153.053 TEMPORARY STRUCTURES AND USES.

Temporary structures and uses, when in compliance with all applicable provisions of this chapter and all other ordinances of the city shall be allowed. The following temporary structures and uses shall be permitted.

(A) Construction trailers used in connection with construction projects shall not require ~~special-use-or~~ temporary use permits provided that the following conditions are met:

- (1) The construction trailers shall be located on a building site only upon receipt of a valid building permit for the construction project;
- (2) The construction trailers may remain on a construction site as long as there is a valid building permit for the construction project; and
- (3) All construction trailers shall be located off all street rights-of-way.

§ 153.105 R-25 RURAL RESIDENTIAL DISTRICT.

(A) Permitted uses. The following uses are permitted by right. The following uses are allowed upon the issuance of a zoning permit by the Zoning Administrator in accordance with § 153.255 through 153.256.

(B) Uses subject to prescribed standards. ~~The following uses are allowed upon the issuance of a zoning permit by the Zoning Administrator in accordance with § 153.255 through 153.259 of this chapter and subject to the associated below prescribed standards:~~

(C) Yard regulations.

(1) Minimum lot size.

(a) Single-family dwellings and Class A manufactured homes:

1. ~~Twenty-five thousand~~ 25,000 square feet where no public water or public sewer is provided at the lot;
2. ~~Twenty-two thousand five hundred~~ 22,500 square feet where either one of public water or public sewer are provided at the lot; or
3. ~~Twenty thousand~~ 20,000 square feet where both public water and public sewer are provided at the lot.

(b) Two-family dwellings:

1. ~~Fifty thousand~~ 50,000 square feet where no public water or public sewer are provided at the lot;
2. ~~Thirty-five thousand~~ 35,000 square feet where either one of public water or public sewer are provided at the lot; or
3. ~~Twenty thousand~~ 20,000 square feet where both public water and public sewer is provided at the lot.

(c) Churches: ~~two~~ 2 acres.

(d) Schools: ~~five~~ 5 acres.

(e) Bed and breakfast inn: ~~one~~ 1 acre.

(f) Essential services: none.

(g) Cemeteries as a principal use: ~~three~~ 3 acres.

(h) Rest homes: ~~one~~ 1 acre.

(i) Nursing care facilities: 60,000 square feet.

(j) Continuing care communities: ~~five~~ 5 acres.

(k) Country clubs: ~~five~~ 5 acres.

~~(l) Family care home: same as single-family dwelling.~~

~~(m)~~ All other principal uses: ~~25,000 square feet.~~ 1 acre

(3) Minimum side yard setback (an additional ~~ten~~ 10 feet shall be provided on all side yards which abut a public street).

(a) Single-family and two-family dwellings and manufactured homes, Class A: ~~ten~~ 10 feet.

(4) Minimum rear yard setback. ~~Forty~~ 40 feet.

§ 153.106 R-15 SINGLE-FAMILY LOW DENSITY RESIDENTIAL DISTRICT.

(A) *Permitted uses.* The following uses are permitted by right. The following uses are allowed upon the issuance of a zoning permit by the Zoning Administrator in accordance with § 153.255 through 153.256.

- (1) Single-family dwellings;
- (2) Day care centers, small group;
- (3) Customary home occupations in accordance with § 153.045 of this chapter;
- (4) Family care homes;
- (5) Essential services, Class I and II;
- (6) Accessory structures in accordance with § 153.057 of this chapter;
- (7) Signs in accordance with §§ 153.160 through 153.172 of this chapter;
- (8) Off-street parking in accordance with §§ 153.185 through 153.188 of this chapter; and
- (9) Publicly owned and operated outdoor recreation facility one acre or less in size and not containing a swimming pool.

~~(B) Uses subject to prescribed standards. The following uses are allowed upon the issuance of a zoning permit by the Zoning Administrator in accordance with §§ 153.255 through 153.259 of this chapter and subject to the associated below prescribed standards:~~

~~(1) Country clubs and privately owned outdoor recreation facilities planned and constructed as part of a planned subdivision or development and located on the interior of the planned development provided that go-cart tracks and other outdoor vehicular racing facilities shall not be permitted.~~

(B) ~~(C)~~ *Yard regulations.*

(1) *Minimum lot size.*

- (a) Single-family dwellings: 15,000 square feet.
- (b) Essential services: none.

~~—(c) All other principal uses: 15,000 square feet.~~

(2) *Minimum front yard setback (as measured from the edge of the street right-of-way line).*

- (a) All residential uses in division (A) above: 35 feet.

~~—(b) Essential services, Class II: 35 feet.~~

- (c) All other uses: 50 feet.

(3) *Minimum side yard setback(an additional ~~ten~~ 10 feet shall be provided on all side yards which abut a public street).*

- (a) Single-family detached dwellings: ~~ten~~ 10 feet.

~~—(b) Swimming pools located in a public or private maintained recreation facility: 40 feet.~~

~~—(c) Country clubs, but not including golf courses: 40 feet.~~

~~(d)~~ **b** All other uses: 15 feet.

(4) *Minimum rear yard setbacks.* All uses: 25 feet ~~or same as minimum side yard setback, whichever is greater.~~

(6) *Minimum lot width (as measured at the required front yard setback).*

~~—(a) Country clubs: 120 feet except that in no instance shall the lot width measured at the street right-of-way be less than 50 feet.~~

~~(b)~~ **a** All ~~other~~ uses: 90 feet except that in no instance shall the lot width measured at the street right-of-way be less than 35 feet.

(C D) *Screening and landscaping.*

(1) Screening, as provided in § [153.046](#) of this chapter, shall be required for the following uses and for any other circumstances as required by § [153.046](#)(A) of this chapter.

(a) Essential services, Classes I and II;

~~(b) Country clubs, but screening is not required for golf course playing areas;~~

~~(c) Outdoor swimming pools located in a public or privately maintained recreation facility;~~

~~—(d) Essential services, Class II; and~~

(e b) Public outdoor recreation facilities not constructed pursuant to a permit authorizing the construction of some residential development.

§ 153.107 R-10 SINGLE-FAMILY MEDIUM DENSITY RESIDENTIAL DISTRICT.

(A) Permitted uses. The following uses are permitted by right. The following uses are allowed upon the issuance of a zoning permit by the Zoning Administrator in accordance with § 153.255 through 153.256. ~~all permitted uses allowed in the R-15 Single-Family District.~~

- (1) Single-family dwellings;
- (2) Day care centers, small group;
- (3) Customary home occupations in accordance with § 153.045 of this chapter;
- (4) Family care homes;
- (5) Essential services, Class I and II;
- (6) Accessory structures in accordance with § 153.057 of this chapter;
- (7) Signs in accordance with §§ 153.160 through 153.172 of this chapter;
- (8) Off-street parking in accordance with §§ 153.185 through 153.188 of this chapter;
- (9) Publicly owned and operated outdoor recreation facility 1 acre or less in size and not containing a swimming pool.

~~(B) Uses subject to prescribed standards. The following uses are allowed upon the issuance of a zoning permit by the Zoning Administrator in accordance with §§ 153.255 through 153.259 of this chapter and subject to the associated below prescribed standards:~~

~~(1) All uses subject to prescribed standards listed in § 153.106(B) of this chapter.~~

(C) Yard regulations.

(1) Minimum lot size.

(a) Single-family dwellings: 10,000 square feet. ~~, except as provided in § 153.123 of this chapter.~~

(b) Essential services: none.

~~(c) Family care homes: 10,000 square feet.~~

~~(d) All other principal uses: one acre.~~

(2) Minimum front yard setback (as measured from the edge of the street right-of-way line). ~~All uses: same as R-15~~

(a) All principal uses listed as permitted uses in division (A) above: 35 feet.

(3) *Minimum side yards setback (an additional ~~ten~~ 10 feet shall be provided on all side yards which abut a public street).*

(a) Single-family dwellings ~~and family care homes: ten~~ 10 feet.

~~(b) Family care homes: ten feet.~~

~~(c) All other uses: same as R-15: 15 feet~~

(4) *Minimum rear yard setbacks.* All uses: 25 feet ~~or same as minimum side yard setback, whichever is greater.~~

(6) *Minimum lot width. (as measured at the required front yard setback).*

(a) Single-family dwellings ~~and family care homes~~: 80 feet at front yard setback; 30 feet at street right-of-way.

(b) All other uses: ~~same as R-15.~~ 90 feet at front yard setback, except that in no instance shall the lot width measured at the street right-of-way be less than 35 feet.

(D) Screening and landscaping.

(1) Screening, as provided in § 153.046 of this chapter, shall be required for the following uses and all other circumstances as required by § 153.046(A) of this chapter:

~~(a) All other uses listed in § 153.106(D) of this chapter.~~

(a) Essential services, Classes I and II;

(b) Publicly owned and operated outdoor recreation facility 1 acre or less in size and not containing a swimming pool.

§ 153.108 R-8 SINGLE AND TWO-FAMILY MEDIUM-DENSITY RESIDENTIAL DISTRICT.

(A) Permitted uses. The following uses are permitted by right. The following uses are allowed upon the issuance of a zoning permit by the Zoning Administrator in accordance with §§ 153.255 through 153.256.

~~(1) All permitted uses allowed in the R-15 District; and~~

- (1) Single-family dwellings;
- (2) Two-family dwellings
- (3) Day care centers, small group;
- (4) Customary home occupations in accordance with § 153.045 of this chapter;
- (5) Family care homes;
- (6) Essential services, Class I and II;
- (7) Accessory structures in accordance with § 153.057 of this chapter;
- (8) Signs in accordance with §§ 153.160 through 153.172 of this chapter;
- (9) Off-street parking in accordance with §§ 153.185 through 153.188 of this chapter;
- (10) Publicly owned and operated outdoor recreation facility 1 acre or less in size and not containing a swimming pool;

~~(B) Uses subject to prescribed standards. The following uses are allowed upon the issuance of a zoning permit by the Zoning Administrator in accordance with §§ 153.255 through 153.259—153.256 of this chapter and subject to the associated below prescribed standards:~~

~~(1) All uses subject to prescribed standards listed in § 153.106(B) of this chapter.~~

(C) Yard regulations.

(1) Minimum lot size.

(a) Single-family dwelling: 6,000 square feet. ~~, except as provided in § 153.123 of this chapter.~~

(b) Two-family dwellings: 12,000 square feet. ~~, except as provided in § 153.123 of this chapter.~~

~~(c) Family care home: 8,000 square feet.~~

~~(d) All other uses: same as R-10.~~

(2) Minimum front yard setback (as measured from the edge of the street right-of-way line).

(a) ~~Single and two-family dwellings bed and breakfast inn and family care home~~
All residential uses: 30 feet.

(b) All other uses: 40 feet.

(3) Minimum side yards setback (an additional ~~ten~~ 10 feet shall be provided on all side yards which abut a public street).

(a) ~~Single-family and two-family dwellings: ten~~ All residential uses: 10 feet.

~~(b) Family care homes: eight feet.~~

(c) All other uses: ~~same as R-15.~~ 15 feet

(4) *Minimum rear yard setback.* All uses: 25 feet ~~or same as minimum side yard setback, whichever is greater.~~

(6) *Minimum lot width.* ~~(as measured at the required front yard setback).~~

(a) Single-family dwelling ~~and family care home~~: 70 feet at front yard setback; 35 feet at street right-of-way.

(b) Two-family dwelling: 80 feet at front yard setback; 35 feet at street right-of-way.

(c) All other uses: ~~same as R-15.~~ 90 feet at front yard setback except that in no instance shall the lot width measured at the street right-of-way be less than 35 feet.

(D) *Screening and landscaping.*

(1) Screening, as provided in § [153.046](#) of this chapter shall be required for the following uses and for any other circumstances as required by § [153.046](#)(A) of this chapter:

~~(a) All other uses listed in § 153.106(D) of this chapter.~~

(a) Essential services, Classes I and II;

(b) Publicly owned and operated outdoor recreation facility 1 acre or less in size and not containing a swimming pool;

§ 153.109 RMF RESIDENTIAL MULTI-FAMILY DISTRICT.

(A) Permitted uses. The following uses are permitted by right. The following uses are allowed upon the issuance of a zoning permit by the Zoning Administrator in accordance with §§ 153.255 through 153.256.

- (1) ~~All permitted uses allowed in the R-15 District;~~ Single-family dwellings;
- (2) Two-family dwellings;
- (3) Multi-family dwellings with a gross density of up to six units per acre;
- (4) Churches with a maximum sanctuary seating capacity of not greater than 500 seats. Customary accessory uses shall also be permitted. Church-owned and maintained cemeteries as an accessory use are permitted;
- (5) Private recreation facilities constructed pursuant to a permit authorizing the construction of some residential development and intended primarily for the use and enjoyment of the residents thereof;
- (6) Private residential quarters provided there is sufficient off-street parking to accommodate the private residential quarters in addition to the two off-street spaces required for the principal dwelling; and
- (7) Public and private elementary and secondary schools.
- (8) Day care centers, small group;
- (9) Customary home occupations in accordance with §153.045 of this chapter;
- (10) Family care homes;
- (11) Essential services, Class I and II;
- (12) Accessory structures in accordance with §153.057 of this chapter;
- (13) Signs in accordance with §§153.160 through 153.172 of this chapter;
- (14) Off-street parking in accordance with §§153.185 through 153.188 of this chapter; and
- (15) Publicly owned and operated outdoor recreation facility 1 acre or less in size and not containing a swimming pool.

~~(B) Uses subject to prescribed standards. The following uses are allowed upon the issuance of a zoning permit by the Zoning Administrator in accordance with §§ 153.255 through 153.259 of this chapter and subject to the associated below prescribed standards.~~

~~—(1) Country clubs and privately-owned outdoor recreation facilities planned and constructed as part of a planned subdivision or development and located on the interior of the planned development provided that go-cart tracks, other outdoor vehicular racing facilities, water slides, outdoor facilities open after 10:00 p.m., and facilities using outdoor audio-loudspeaker systems shall not be permitted;—~~

~~(2) All uses subject to prescribed standards listed in § 153.106(B) of this chapter.~~

(C) Yard regulations.

(1) Minimum lot size.

(a) Single-family dwelling: 8,000 square feet. ~~, except as provided in § 153.123 of this chapter.~~

(b) Two-family dwellings: 12,000 square feet. ~~except as provided in § 153.123 of this chapter.~~

(c) Multi-family dwellings: minimum site size shall be 25,000 square feet but gross density shall not exceed six units per acre.

(d) Private recreation facilities constructed pursuant to a permit authorizing the construction of some residential development and intended primarily for the use and enjoyment of the residents thereof: none.

(e) Private residential quarters: no additional lot size beyond that required for the principal dwelling.

~~(f) All other uses: same as R-8.~~

(f) Essential services: none.

(2) *Minimum front yard setback (as measured from the edge of the street right-of-way line):*

(a) ~~Single and two-family dwellings, multi-family dwellings, bed and breakfast inn and family care home:~~ All residential uses: 30 feet.

(b) Cemeteries and essential services, Class 1 and II: 20 feet.

(c) All other uses: 40 feet.

(3) *Minimum side yards setback (an additional ~~ten~~ 10 feet shall be provided on all side yards which abut a public street).*

(a) Single and two-family dwellings: ~~ten~~ 10 feet.

(b) Multi-family dwellings: 12 feet.

~~(c) Family care home: eight feet~~

(d) Public and private elementary and secondary schools: 20 feet.

(e) Church: 20 feet.

(f) All other uses: 15 feet.

(4) *Minimum rear yard setback.* All uses: 25 feet ~~or same as minimum side yard setback, whichever is greater.~~

(6) *Minimum lot width (as measured at the required front yard setback).*

(D) *Screening and landscaping.*

(1) Screening, as provided in § 153.046 of this chapter shall be required for the following uses and for any other circumstances required by § 153.046(A) of this chapter.

(a) Multi-family developments where abutting properties zoned or used for single- or two-family residential use.

~~(b) Country club, but screening is not required for golf course playing areas.~~

§ 153.110 R-O RESIDENTIAL OFFICE DISTRICT.

(A) *Permitted uses.* The following uses are permitted by right. The following uses are allowed upon the issuance of a zoning permit by the Zoning Administrator in accordance with §§ 153.255 through 153.256.

- (1) ~~All permitted uses allowed in the R-15 District;~~ Single-family dwellings
- (2) Two-family dwellings;
- (3) Office buildings containing 5,000 square feet or less of gross floor area;
- (4) Churches including customary accessory uses. Church owned and maintained cemeteries as an accessory use are permitted;
- (5) Public and private elementary and secondary schools and/or schools district administrative offices;
- (6) Family care homes;
- (7) Customary home occupations in accordance with § 153.045 of this chapter;
- (8) Day care center, small group;
- (9) Private residential quarters, provided there is sufficient off-street parking to accommodate the private residential quarters in addition to the two off-street parking spaces required for the principal dwelling;
- (11) Public safety stations;
- (12) Barber shop/beauty shop; and
- (13) Farmers market (small scale).
- (14) Essential services, Class I and II;
- (15) Accessory structures in accordance with § 153.057 of this chapter;
- (16) Signs in accordance with §§ 153.160 through 153.172 of this chapter;
- (17) Off-street parking in accordance with §§ 153.185 through 153.188 of this chapter;
- (18) Publicly owned and operated outdoor recreation facility 1 acre or less in size and not containing a swimming pool.

(B) *Yard regulations.*

(1) *Minimum lot size.*

- ~~(a) Churches: 20,000 square feet.~~
- ~~(b) Office buildings: 9,000 square feet.~~
- ~~(c) Other uses: same as in the RMF District.~~
- (a) Single-family dwelling: 8,000 square feet.
- (b) Two-family dwellings: 12,000 square feet.
- (c) Private residential quarters: no additional lot size beyond that required for the principal dwelling.
- (d) Essential services: none.
- (e) All other principal uses: 1 acre
- (f) Churches: 20,000 square feet
- (g) Office buildings: 9,000 square feet.

(2) *Minimum front yard setback (as measured from the edge of the street right-of-way line):*

(a) All ~~other~~ uses: 30 feet.

(3) *Minimum side yard setback (an additional ~~ten~~ 10 feet shall be provided on all side yards which abut a public street).*

~~—(a) Multi-family dwelling: 15 feet.~~

~~—(b) Other uses: same as the RMF District.~~

(a) Single-and two-family dwellings: 10 feet.

(b) Public and private elementary and secondary schools: 20 feet

(c) Church: 20 feet.

(d) All other uses: 15 feet

§ 153.111 O-I OFFICE INSTITUTIONAL DISTRICT.

(A) *Permitted uses.* The following uses are permitted by right. The following uses are allowed upon the issuance of a zoning permit by the Zoning Administrator in accordance with §§ 153.255 through 153.256.

(1) ~~All uses as permitted in the R-O District but the 5,000 square foot limit for office buildings shall not apply;~~ Single-family dwellings

(2) Two-family dwellings;

(3) Office buildings

(4) Public and private elementary and secondary schools and/or schools district administrative offices;

(5) Family care homes;

(6) Customary home occupations in accordance with § 153.045 of this chapter;

(7) Private residential quarters, provided there is sufficient off-street parking to accommodate the private residential quarters in addition to the two off-street parking spaces required for the principal dwelling;

(8) Public safety stations;

(9) Barber shop/beauty shop;

(10) Farmers market (small scale).

(11) Accessory structures in accordance with §153.057 of this chapter;

(12) Signs in accordance with §§153.160 through 153.172 of this chapter;

(13) Off-street parking in accordance with §§153.185 through 153.188 of this chapter;

(14) Publicly owned and operated outdoor recreation facility 1 acre or less in size and not containing a swimming pool.

(215) Art and photography studios (excluding adult establishments);

(316) Bed and breakfast inns;

(417) Cemeteries as a principal use;

(518) Churches;

(619) Colleges and trade schools, except truck and heavy construction equipment operating schools;

(720) Community centers;

(821) Copy service;

(922) Day care centers;

(1023) Essential services, Class 1 and II;

(1124) Florist;

(1225) Food catering service;

(1326) Funeral homes;

(1427) Gift shop having less than 2,500 square feet gross floor area;

(1528) Hospitals;

(1629) Laboratories;

(1730) Libraries;

(1831) Museums;

(1932) Optician;

(2033) Pharmacy (less than 3,000 square feet gross floor area);

(~~21~~34) Recreation facilities: country clubs, privately-owned outdoor recreation facilities and publicly owned outdoor recreation facilities greater than one acre ~~on the same basis as permitted in § 153.109(A) of this chapter~~; provided that go-cart tracks, other outdoor vehicular racing facilities, water slides, outdoor facilities open after 10:00 p.m., and facilities using outdoor audio loudspeaker systems shall not be permitted;

(35) Private recreation facilities constructed pursuant to a permit authorizing the construction of some residential development and intended primarily for the use and enjoyment of the residents thereof;

(~~22~~36) Rest homes, nursing care facilities and continuing care communities;

(~~23~~37) Health centers;

(~~24~~38) Hospitals including but not limited to university/teaching hospitals and physical rehabilitation hospitals;

(~~25~~39) Medical clinics; and

(~~26~~40) Personal health clinics.

(B) *Uses subject to prescribed standards.* ~~The following uses are allowed upon the issuance of a zoning permit by the Zoning Administrator in accordance with §§ 153.255 through 153.259 of this chapter and subject to the associated below-prescribed standards:~~

(1) Financial institutions provided that primary vehicular access is not provided by a local residential road and the use is screened from any abutting property located in a residential district in accordance with § 153.046;

(2) Post office provided that primary vehicular access is not provided by a local residential road and the use is screened from any abutting property located in a residential district in accordance with § 153.046.

(C) *Yard regulations.*

(1) *Minimum lot size.*

~~(a) Residential uses: same as RMF.~~

~~(b) Nonresidential uses: none.~~

(a) Single-family dwelling: 8,000 square feet

(b) Two-family dwellings: 12,000 square feet

(c) All other uses: none

(2) *Minimum lot width (as measured at the required front setback).*

~~(a) Residential uses: same as RMF District.~~

~~(b) Nonresidential uses: none.~~

(a) Single-family dwelling: 70 feet at front yard setback; 35 feet at street right-of-way.

(b) Two-family dwelling: 80 feet at front yard setback; 35 feet at street right-of-way.

(c) All other uses: 80 feet

(3) *Minimum front setback. (as measured from the edge of the street right-of-way).*

~~(a) Residential uses: same as RMF.~~

~~——(b) Nonresidential uses: 30 feet (as measured from the edge of the street right-of-way).~~

(a) All uses: 30 ft

(4) *Minimum side setback.* ~~Ten~~ 10 feet for all uses, except 20 feet shall be required on all corner lots and any lots that abut a Residential (R) District.

(6) *Maximum building height.* ~~Forty~~ 40 feet, except as permitted in § [153.054](#) of this chapter.

Revision-Parks and Recreation Policies and Procedures

Section 11-Volunteer Background Screening Process

Proposed Effective 07-01-2024

**City of Lincoln Parks and Recreation
Volunteer Coach Packet**

THIS PACKET CONTAINS 3 SECTIONS. PLEASE CAREFULLY READ ALL 3
SECTIONS BEFORE CONTINUING WITH YOUR VOLUNTEER COACH
APPLICATION

Section 1 – Information for Required Background Screening

The City of Lincoln Parks and Recreation Department places the highest priority on ensuring the safety of our young participants in the multiple sports programs offered. In an effort to protect children who participate in organized sporting activities with the City of Lincoln Parks and Recreation Department, background screenings will be mandatory for all recognized youth sports coaches and assistant coaches.

DEFINITIONS:

Head Coach - The City of Lincoln recognizes a head coach as an adult or teen, 18 or older, who is responsible for scheduling and organizing practices, attending all practices and games, providing guidance to participants, and teaching skills to participants. The Head Coach is the primary contact with department staff regarding team or player issues, and agrees to learn and follow all league rules and policies.

Assistant Coach - An Assistant Coach is recognized as being one who attends more than two practices or games during a season for the purpose of providing guidance and teaching skills to the participants. The Assistant Coach is responsible for organizing and scheduling practices in the Head Coach's absence. The Assistant Coach is the secondary contact with Parks and Recreation staff regarding team or player issues, and agrees to learn and follow all league rules and policies.

Hereafter, any references to "coach" will include both head coach and assistant coach.

The City of Lincoln reserves the right to limit the number of recognized coaches per team. Only those persons officially recognized as coaches by the City of Lincoln will be allowed to be on the sidelines during games or practices.

PROCEDURE:

Coaching candidates shall complete the following online:

1. Read and acknowledge "Coach's Code of Ethics" document online
2. Read and acknowledge "Youth Protection Policy" online
3. Complete and sign Volunteer Application online

Volunteer coach applicants must be willing and give consent for the following to be completed:

1. Review of Sex Offender Registry
2. Review of Criminal History

Completion of the Volunteer Application form gives consent for the background screenings to be completed.

All coaching candidates will have a background screening one time annually to coincide with the City's operating year, July 1st – June 30th.

No other personal information (e.g. work history, financial, credit, etc.) is checked or researched. In the event information surfaces via the background check, a screening committee, with members consisting of the Public Services Director, Human Resources Director, Police Chief, City Manager, and Parks and Recreation Program Coordinator will review the background information to determine coaching eligibility. The City of Lincoln Attorney will be consulted as needed. All information is strictly confidential and will not be made public.

Information Related to Disqualifying Offenses

The City of Lincoln screens for the following offenses, and if a coach applicant is found to have been convicted, pled guilty or nolo contendere of any of the following offenses, he or she shall not be allowed to participate as a volunteer coach. In some instances, factors of time may be taken into account when considering coaching eligibility (i.e. length of time since disposition of certain offenses). Additionally, pending convictions of or arrests for the following items shall be considered disqualifiers:

- Any crime, misdemeanor or felony, involving children as either an accomplice or victim
- Any felony (other than sex or violence related) within the last 10 years
- Any crime of a sexual nature, including possession or dissemination of pornography
- Any felony involving violence
- Any sort of abuse or assault/battery - physical or sexual
- Arson
- Attempted murder
- Crimes against Children (including abandonment, abuse, endangerment, pornography, possession or promotion of pornography, enticement, solicitation, sale or purchase of, injury to, indecency)
- Domestic violence
- DWI/DUI-First offense and not currently under probation-eligible
- DWI/DUI-Two or more convictions within the last 5 years-ineligible
- Falsifying information on application for volunteer coach or assistant coach position
- Felony Animal cruelty
- Homicide or manslaughter in any degree

- Indecent exposure
- Kidnapping
- Misdemeanor drug charges within last 7 years
- Misdemeanor Theft/robbery within the last 7 years
- Misdemeanor Forgery/fraud within the last 7 years
- Misdemeanor violence within 7 years
- Misdemeanor weapons violations within 7 years
- Rape

Volunteer coach applicants who are disqualified may appeal the decision by submitting a request in writing to meet with the screening committee for the purpose of clarifying facts or explaining extenuating circumstances. The written request of appeal should be submitted to the City of Lincolnton's Human Resources Director within 7 calendar days from the date the coach applicant received notification of disqualification. The Human Resources Director will coordinate a meeting date with the coach applicant and screening committee. The screening committee, with potential guidance from the City's attorney, will issue a final determination. In some cases, convictions which are more than 20 years from the disposition date may be considered if no other type of listed disqualifying offense has occurred since that date.

All coaches are required to notify the Parks and Recreation Program Coordinator immediately following an arrest or conviction of any of the listed offenses. Any coach, who while coaching for the City of Lincolnton is charged with an offense listed as a disqualifying offense, shall immediately forfeit his/her coaching eligibility until disposition by the courts. A conviction of an offense listed as a disqualifier shall result in termination of coaching eligibility.

SECTION 2 - COACH'S CODE OF ETHICS

1. I hereby pledge to provide positive support, care, and encouragement for my team participating in youth sports by following this COACH'S CODE of ETHICS PLEDGE. I further agree, acknowledge, and understand my position as a role model for participants on my team, as well as others, and accept this role along with all associated responsibilities.
2. I will encourage good sportsmanship by demonstrating positive support for all players, parents, coaches, spectators, and officials at every game and practice.
3. I will place the physical, mental, and emotional well-being of my players ahead of a personal desire to win.
4. I will insist that my players participate in a safe, healthy, and fun-filled environment that is fully supervised and structured at all times.
5. I will support officials and league administrators in order to encourage a positive and enjoyable experience for all and communicate requested information to parents.
6. I will encourage a sports environment for my players that is free of drugs, tobacco, and alcohol, and will refrain from their use at all youth sports events.
7. I will remember, and remind parents, that the game is for the youth, not for the adults.
8. I will do my very best to make youth sports fun for my players and parents and will never take the fun out of the game by over-emphasizing winning.
9. I will ask my players to treat other players, coaches, fans, and officials with respect, regardless of any other factors.
10. I will take every opportunity to teach, train, and develop my players as it relates to the sport that I am coaching, sportsmanship, and teamwork
11. I will never intentionally break league rules and will willingly abide to change any situation if a mistake is revealed by league officials, referees, or other coaches.
12. I will always use positive reinforcement to motivate my players and will never attempt to do so by use of intimidation, neither physical nor verbal.
13. I will enforce that school studies and activities should be the youth's first priority.
14. I will work with youth participating in school sports allowing each player the same opportunity for participation in the Lincoln Recreation Youth Sports League program.
15. I acknowledge that my failure to abide by this Code of Ethics will result in my removal as a coach from the Lincoln Recreation Youth Sports League and for the City of Lincoln Recreation Department.

SECTION 3 – YOUTH PROTECTION POLICY ADMINISTRATIVE POLICY #8

Section I. Purpose

The purpose of this policy is to ensure the safety and well-being of youth participating in programs offered by the City of Lincoln. This would include any city department whereby employees provide services to or come in contact with minors. This policy is intended to give guidance and protection to our employees and volunteers who work with youth, as well as the children we serve.

Section II. Youth Protection

The City of Lincoln will not tolerate any type of sexual, physical, or any type of abuse of children who are involved in city-sponsored programs or services. The City of Lincoln is committed to providing a safe place for children to play, learn and grow and condemns any instance of abuse, sexual or otherwise.

All employees and volunteers have a responsibility to help ensure that we avoid actual or perceived instances of sexual or other abuse in city programs or in positions where employees or volunteers work with or around youth. Employees and volunteers should not:

- Put him or herself in a one-on-one situation involving a child who is not their own; the City of Lincoln realizes there could be situations whereby it is necessary for employees/volunteers to be in a one-on-one situation with a child, i.e., law enforcement officials. These factors will be taken into consideration on a case-by-case basis.
- Provide unwarranted gifts, trips, attention and affection to individual children who are not their own;
- Provide private transport in a vehicle unless in an emergency situation;
- Corporal punishment of children is not allowed for any reason.

Employees and volunteers should report any form of abuse to the attention of their supervisor or Human Resources Director. Employees and volunteers may report such situations without reprisal to the person reporting the conduct so long as the report is made in good faith and the information provided is truthful to the best of their knowledge. The City of Lincoln will strive to keep complaints, investigations, and resolutions confidential. However, the City of Lincoln will fulfill its obligation to report instances of sexual abuse or any type of abuse to the appropriate law enforcement authorities.

Section III. Background Checks

In addition to the criminal background check conducted on individuals being considered for City employment, criminal background checks shall also be conducted on volunteers in positions dealing directly with youth. This shall include researching sexual offender registry records on potential employees and volunteers working directly with youth.

Section IV. Affirmation

I affirm my commitment to support the City of Lincoln as a safe place for children. I acknowledge that I have read and received a copy of the City of Lincoln's Youth Protection Policy. I fully understand the terms of this policy and agree to abide by them. I understand that any violation of this policy could lead to serious disciplinary action or criminal prosecution.

LINCOLN COUNTY
TAX DEPARTMENT

REQUEST FOR RELEASES

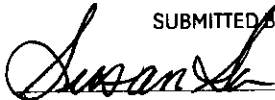
1

CITY OVER \$100

PERIOD COVERED
May 16, 2024 through June 15, 2024

<u>NAME</u>	<u>YEAR</u>	<u>DISTRICT</u>	<u>A/C NUMBER</u>	<u>AMOUNT</u>	<u>REASON</u>
Sweet Side Bakery & Café LLC	2023	22	0292639	\$405.69	Correction to match listing
Denmaid Transportation LLC	2016-2023	22	0256113	\$1,135.56	Business sold 12/2016
			Total	\$1,541.25	

SUBMITTED BY:

 DATE: 6-20-24
SUSAN SAIN

TAX ADMINISTRATOR

APPROVED BY:

RICHARD HAYNES

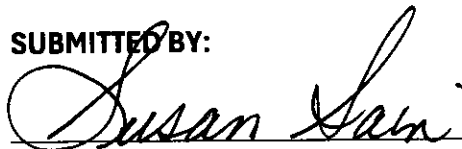
CITY MANAGER

PERIOD COVERED
May 16, 2024 through June 15, 2024

City Releases under \$100.00

NAME	YEAR	DISTRICT	A/C NUMB	AMOUNT	REASON
ANDERSON DEVRON PIERRE	2024	44	0238635	\$4.72	ONE MONTH GAP BILL
ASHBAKER MICHAEL ALLAN	2024	22	0304176	\$4.28	ONE MONTH GAP BILL
BALL TANAKA WALTON	2024	22	0209573	\$6.95	ONE MONTH GAP BILL
BROWN BILLY JOE JR	2024	22	48044	\$7.73	ONE MONTH GAP BILL
CALLOWAY TINA BRITTAIN	2024	22	0254777	\$18.06	ONE MONTH GAP BILL
CHAPMAN TOMMY JOSEPH	2024	22	0290717	\$6.19	ONE MONTH GAP BILL
COLLINS MICHAEL EVANS	2024	22	0267446	\$31.65	ONE MONTH GAP BILL
CUNNINGHAM STEVEN TYLER	2024	22	0304254	\$31.36	ONE MONTH GAP BILL
DUGGAN STEPHANIE MICHELLE	2024	22	0304203	\$1.09	ONE MONTH GAP BILL
E & K TRUCKING LLC	2023	22	0274213	\$92.02	SOLD 04/12/2022
FREEMAN KYERA WEST	2024	22	0304216	\$16.42	ONE MONTH GAP BILL
HUSH NAAJA LINARIYA	2024	22	0296810	\$4.87	ONE MONTH GAP BILL
MEJIA RODRIGUEZ SANTOS LUCIA	2024	22	0304214	6.07	ONE MONTH GAP BILL
PATEL SANKETKUMAR	2024	22	0279239	21.61	ONE MONTH GAP BILL
POMEROY REBECCA JENKINS	2024	22	0119534	33.24	ONE MONTH GAP BILL
ROBBS TAMARO MOORE	2024	22	0247800	\$6.89	ONE MONTH GAP BILL
ROWE STACY ELAINE	2024	22	0304131	3.15	ONE MONTH GAP BILL
SALMERON JANETH LUCIA	2024	22	0231434	1.69	ONE MONTH GAP BILL

SUBMITTED BY:



DATE:

6-20-24

SUSAN SAIN

TAX ADMINISTRATOR

APPROVED BY:

DATE:

RICHARD HAYNES

CITY MANAGER

Lincoln County Tax Department
100 East Main St
Lincolnton NC 28092

REQUEST FOR RELEASES

1

PERIOD COVERED

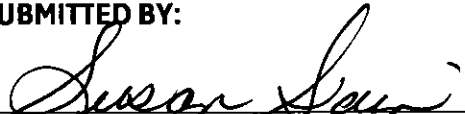
May 16, 2024 through June 15, 2024

City Releases under \$100.00

NAME	YEAR	DISTRICT	A/C NUMB	AMOUNT	REASON
TREJO TREJO MARTINA	2024	22	0304193	\$3.88	ONE MONTH GAP BILL
VALLADARES LAURO MOISES	2024	22	0304234	\$7.37	ONE MONTH GAP BILL
WATTS MICHAEL ADAM	2024	22	0232700	\$3.59	ONE MONTH GAP BILL
WEHUNT DEBRA CROUSE	2024	22	0304162	\$13.64	ONE MONTH GAP BILL
WOJTAL WILLIAM JOHN	2024	22	0175224	\$18.16	ONE MONTH GAP BILL

TOTAL: \$344.63

SUBMITTED BY:

 DATE: 6-20-24
SUSAN SAIN TAX ADMINISTRATOR

APPROVED BY:

RICHARD HAYNES CITY MANAGER

DATE: _____

ITEM #

2

PUBLIC

COMMENT

ITEM #

3

REGULAR
AGENDA

ITEM #

3a



LINCOLNTON
AGENDA ITEM SUMMARY

To: The Honorable Mayor and City Council
Date: June 27, 2024
From: Pamela McBryde, Finance Director
Subject: Capital Project Budget Ordinance - Water AIA-W-ARP

Summary:

Background:

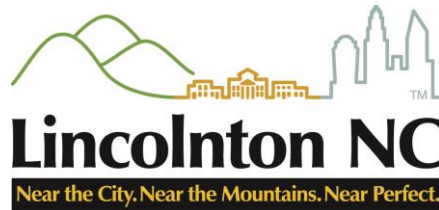
Fiscal Impact:

Recommendation:

Attachments:

1. Lincolnton Cap Proj Budget Ordinance Water AIA-W-ARP-0243 06042024

CITY COUNCIL
 Ed L. Hatley, Mayor
 Christine Poinsette, Mayor Pro-Tem
 Roby D. Jetton
 Kevin Demeny
 Jill Tipton



CITY MANAGER
 Ritchie Haynes
rhaynes@lincolntonnc.org
CITY CLERK
 Daphne Ingram
dingram@lincolntonnc.org
CITY ATTORNEY
 John M. Friguglietti, Jr., P.A.
john@davidsonlawyers.net

City of Lincolnton
114 West Sycamore St.
PO Box 617
Lincolnton, NC 28093

Capital Project Budget Ordinance

BE IT ORDAINED by the Councilmembers of the City of Lincolnton, that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

Section 1. The project authorized is the Asset Inventory and Assessment (AIA) study **Water Project No. AIA-W-ARP-0243**, to be financed by a State Fiscal Recovery Funds (ARP) Grant.

Section 2. The officers of the City of Lincolnton are hereby directed to proceed with the capital project within the terms of the funding program requirements and the budget contained herein.

Section 3. The following amounts are appropriated for the project:

Account Description	Account Code	Amount
Project Management/Admin	50-7100-50000	\$15,000
Distribution Line Evaluation	50-7100-50000	55,000
CIP Update	50-7100-50000	15,000
Asset Management Plan	50-7100-50000	15,000
Total		<u>\$100,000</u>

Section 4. The following revenues are anticipated to be available to complete this project:

Revenue Description	Account Code	Amount
State Fiscal Recovery Funds (ARP) Grant	50-3302-00505	\$100,000
Total		<u>\$100,000</u>

Section 5. The Treasurer is hereby directed to maintain within the Capital Project Fund sufficient specific detailed accounting records to satisfy the requirements of the funding agency, the funding agreements, and federal regulations.

Section 6. Funds may be advanced from the General Fund for the purpose of making payments as due. Reimbursement requests should be made to the funding agency in an orderly and timely manner.

Section 7. The Treasurer is directed to report, on a quarterly basis, on the financial status of each project element in Section 3 and on the total revenues received or claimed.

114 WEST SYCAMORE STREET • P.O. BOX 617 • LINCOLNTON, NORTH CAROLINA 28093-0617
PHONE (704) 736-8980

AIA-W-ARP-0242 CAPITAL PROJECT BUDGET ORDINANCE

June 27, 2024

Section 8. The Treasurer is directed to include a detailed analysis of past and future costs and revenues on this capital project in every budget submission made to this Board.

Section 9. Copies of this capital project budget ordinance shall be furnished to the Secretary to the Board, and to the Treasurer for direction in carrying out this project.

Adopted this ____ day of _____, 2024 at Lincolnton, North Carolina.

Ed Hatley, Mayor

ATTEST:

Daphne Ingram, City Clerk

ITEM #

3b



LINCOLNTON
AGENDA ITEM SUMMARY

To: The Honorable Mayor and City Council
Date: June 27, 2024
From: Pamela McBryde, Finance Director
Subject: Capital Project Budget Ordinance - WW-AIA-W-ARP

Summary:

Background:

Fiscal Impact:

Recommendation:

Attachments:

1. Lincolnton Cap Proj Budget Ordinance WW AIA-W-ARP-0242 06042024

CITY COUNCIL
 Ed L. Hatley, Mayor
 Christine Poinsette, Mayor Pro-Tem
 Roby D. Jetton
 Kevin Demeny
 Jill Tipton



CITY MANAGER
 Ritchie Haynes
rhaynes@lincolntonnc.org
CITY CLERK
 Daphne Ingram
dingram@lincolntonnc.org
CITY ATTORNEY
 John M. Friguglietti, Jr., P.A.
john@davidsonlawyers.net

City of Lincolnton
114 West Sycamore St.
PO Box 617
Lincolnton, NC 28093

Capital Project Budget Ordinance

BE IT ORDAINED by the Councilmembers of the City of Lincolnton, that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

Section 1. The project authorized is the Asset Inventory and Assessment (AIA) study **Wastewater Project No. AIA-W-ARP-0242**, to be financed by a State Fiscal Recovery Funds (ARP) Grant.

Section 2. The officers of the City of Lincolnton are hereby directed to proceed with the capital project within the terms of the funding program requirements and the budget contained herein.

Section 3. The following amounts are appropriated for the project:

Account Description	Account Code	Amount
Project Management/Admin	50-7120-50000	\$ 25,000
Mobilization/Demobilization	50-7120-50000	1,500
Manhole Inspections	50-7120-50000	33,500
CCTV Inspections	50-7120-50000	155,250
CCTV Inspections-COL	61-7120-59600	60,000
CIP Update	50-7120-50000	20,000
Asset Management Plan	50-7120-50000	20,000
WWTP Assessment	50-7120-50000	44,750

Total **\$360,000**

Section 4. The following revenues are anticipated to be available to complete this project:

Revenue Description	Account Code	Amount
City of Lincolnton for Additional CCTV	61-3832-00000	\$ 60,000
State Fiscal Recovery Funds (ARP) Grant	50-3302-00504	300,000

Total **\$360,000**

Section 5. The Treasurer is hereby directed to maintain within the Capital Project Fund sufficient specific detailed accounting records to satisfy the requirements of the funding agency, the funding agreements, and federal regulations.

114 WEST SYCAMORE STREET • P.O. BOX 617 • LINCOLNTON, NORTH CAROLINA 28093-0617
PHONE (704) 736-8980

AIA-W-ARP-0242 CAPITAL PROJECT BUDGET ORDINANCE

June 27, 2024

Section 6. Funds may be advanced from the General Fund for the purpose of making payments as due. Reimbursement requests should be made to the funding agency in an orderly and timely manner.

Section 7. The Treasurer is directed to report, on a quarterly basis, on the financial status of each project element in Section 3 and on the total revenues received or claimed.

Section 8. The Treasurer is directed to include a detailed analysis of past and future costs and revenues on this capital project in every budget submission made to this Board.

Section 9. Copies of this capital project budget ordinance shall be furnished to the Secretary to the Board, and to the Treasurer for direction in carrying out this project.

Adopted this ____ day of _____, 2024 at Lincolnton, North Carolina.

Ed Hatley, Mayor

ATTEST:

Daphne Ingram, City Clerk

ITEM #

3c

CITY COUNCIL

Ed L. Hatley, Mayor
 Christine Poinsette, Mayor Pro-Tem
 Roby D. Jetton
 Kevin Demeny
 Jill Tipton

**CITY MANAGER**

Richard Haynes
rhaynes@lincolntonnc.org

CITY CLERK

Daphne Ingram
[dingram@lincolntonnc.org](mailto:d Ingram@lincolntonnc.org)

CITY ATTORNEY

John M. Friguglietti, Jr.
john@davidsonlawyers.net

BA-04-24

BE IT ORDAINED by the Governing Board of the City of Lincolnton, North Carolina, that the following amendment be made to the Annual Budget Ordinance for the fiscal year ending June 30, 2024.

Section 1: To amend the General Fund, the expenditures are to be changes as follows:

General Expense	\$	1,702,126
Police		235
Fire		2,375
Solid Waste		675
Planning/Zoning		2,435
Bus & Comm. Dev		202
Recreation		9,773
	<u>\$</u>	<u>1,717,820</u>

Section 2: To amend the General Fund, the revenues are to be changed as follows:

General: Ad Valorem Levy	\$	82,541
General: Lease/Rental Vehicle Tax		2,129
General: Franchise Tax		70,218
SW: Rollout Fees		675
General: Cemetery Lot Sales		300
PD: Inspection Fees		200
PD: Sidewalk Café Permit		35
P&Z: Zoning Department Fees		2,435
FD: Inspection Fees		2,375
Rec: Admission & Concession		2,464
Rec: Registration & Entry Fees		6,874
Rec: Rental Fees		436
BC&D: Event Fees		202
General: Interest		56,567
General: Misc. Rev-Contributed Property		1,416,191
General: Sale of Capital Assets		2,342
General: Insurance Settlement		300
General: WEX-Fuel Rebates		497
General: Federal Equitable Deposits		0
Loan Proceeds		71,041

\$	1,717,820
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General Fund: Various tax/fee revenues (recurring), Franchise tax, Interest income, Insurance settlement-S. Cedar/E Water Street, GASB 96-SBITAS, Asset sales @ PSC bldg, & Contributed Property - transfer of ownership with Lincoln County: Oaklawn, W Church St, W Water St.

Section 3: To amend the Boger City Fire District Fund, the expenditures are to be changes as follows:

Boger Ciy Fire Tax	\$	1,270
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Section 4: To amend the Boger City Fire District Fund, the revenues are to be changed as follows:

Investment Income	\$	1,270
	\$	1,270

Boger City Fire District: Record interest income earned.

Section 5: To amend the Powell Bill Fund, the expenditures are to be changes as follows:

Powell Bill Construction/Other	\$	2,180
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Section 6: To amend the Powell Bill Fund, the revenues are to be changed as follows:

Investment Income	\$	2,180
	\$	2,180

Powell Bill Fund: Record interest income earned.

Section 7: To amend the Water and Sewer Fund, the expenditures are to be changes as follows:

Distribution and Collection	\$	225,764
Wastewater Treatment Plant		36,880
	\$	262,644

Section 8: To amend the Water and Sewer Fund, the revenues are to be changed as follows:

Investment Income	\$	35,613
Connection Charges		13,650
Other Operating Revenues		13,381
Fund Balance Appropriated		200,000
	\$	262,644

Water and Sewer Fund: Record interest income earned, water and sewer connection charges, default fees, and Fund balance appropriation for PY Capital Projects completed in FY2324: Clarks Creek Rebuild Upgrade (2022-011); S Cedar Street Sewer Line (2023-027) & E Pine Street Sewer Line (2023-028).

Section 9: To amend the Electric Fund, the expenditures are to be changes as follows:

Electric Operations	\$	64,565
---------------------	----	--------

Section 10: To amend the Electric Fund, the revenues are to be changed as follows:

Investment Income	\$	26,175
Other Operating Revenue		16,774
Loan Proceeds-Interest		21,616
	\$	64,565

Electric Fund: Record interest income earned, Default fees, Security light charges, Rental fees, "Due to Other Funds" interest [GF to Electric] and Insurance settlement-S. Cedar/E Water Street.

Section 11: To amend the Special Revenue Fund, the expenditures are to be changed as follows:

AIA Grants-Water-D-ARP-0243	\$	11,902
	\$	11,902

Section 12: To amend the Special Revenue Fund, the revenues are to be changed as follows:

AIA Grants-Water-D-ARP-0243	\$	11,902
	\$	11,902

Special Revenue Fund: Record NCDEQ-AIA Grant Reimbursements for Water.

Section 16: Appropriations are authorized by fund totals. The City Manager is authorized to reallocate fund appropriations among line item objects of expenditures and revenues as necessary during the budget year.

Section 17: Copies of this Budget Ordinance shall be furnished to the Clerk to the Governing Board and to the Budget Officer and Finance Director to be kept on file by them for their direction in the disbursement of funds.

Section 18: 2023-2024 Year-end budget adjustments and authorization to make amendments that may result from adjustments made by auditors to entries, with a report being made to Council at the next scheduled meeting.

TOTAL AMENDMENT	\$	2,060,381
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Adopted this 27h day of June, 2024

Attest:

Daphne Ingram
City Clerk

Edward L Hatley
Mayor

ITEM #

4

REGULAR
AGENDA

ITEM #

4a



LINCOLNTON
AGENDA ITEM SUMMARY

To: The Honorable Mayor and City Council
Date: June 27, 2024
From: David Ramsey, Business Services Director
Subject: Consideration and approval of contract and Fee for Preconstruction Scope of Services from Edifice Const. for new Public Service Center

Summary:

Background:

Fiscal Impact:

Recommendation:

Attachments:

1. Edifice CMAR contract - draft
2. Edifice CMAR agreement between City and Edifice
3. Edifice CMAR exhibit B - insurance
4. Edifice CMAR exhibit C - preconstruction scope
5. Edifice CMAR exhibit D - precon services fee est

DRAFT

AIA® Document A133™ – 2019

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

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

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

« City of Lincolnton
114 W. Sycamore St.
Lincolnton, NC 28093
704.736.8980 »

« »
« »
« »

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

«Edifice, LLC»« »
«4111 South Blvd (28209)»
«Post Office Box 36349»
«Charlotte, North Carolina 28236
Telephone: 704-332-0900
North Carolina General Contracting License #10514»

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

« City of Lincolnton Public Service Center »
« 500 Sigmon Rd, Lincolnton, NC »
« »

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

« BECKER MORGAN GROUP, INC. »
« 615 South College Street, Suite 8-158 »
«Charlotte, NC 28202 »
« »

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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.

ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

TABLE OF ARTICLES

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

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

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

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

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

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

« Existing Conditions:

The project consists of an approximately 33,000 square foot warehouse built in 1965 and a 4,000 sq. ft. warehouse built in 2002 located on 2 parcels totaling a little over 16 acres. (parcel 00980 10.133 acres & 70508 6.345 acres). Building and site were previously Excel Textile Supply Company.

Proposed Objectives:

The City would like to re-purpose the existing buildings into multi-use facilities that would include: warehousing, offices, restrooms, showers, breakrooms, and staging areas for several City departments – electric, water and sewer, streets, solid waste, and garage services. Other objectives are to build another building to be appr. 5,000 to 8,000 sq. ft. training/meeting facility that may also house several offices for the aforementioned departments. Other needs on the property include: a wash down pit, pole barn type storage for vehicles and equipment along

with a lay down yard for keeping materials, and equipment dry. This list is not all inclusive nor limited »

§ 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.)

To Be Determined

§ 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.)

« Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00) »

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

- .1 Design phase milestone dates, if any:

«TBD »

- .2 Construction commencement date:

«TBD »

- .3 Substantial Completion date or dates:

«TBD »

- .4 Other milestone dates:

«TBD »

§ 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.)

«Not Applicable »

§ 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.)

«Not Applicable »

§ 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.)

« David Ramsey
City of Lincolnton
114 W. Sycamore St.
Lincolnton, NC 28093
704.736.8980 »

§ 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.)

«David Ramsey
City of Lincolnton
114 W. Sycamore St.
Lincolnton, NC 28093
704.736.8980 »

§ 1.1.10 The Owner shall retain the following consultants and contractors:

(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

«TBD »« »
« »
« »
« »
« »

.2 Civil Engineer:

« »« »
« »
« »
« »
« »

.3 Other, if any:

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

«TBD »

§ 1.1.11 The Architect's representative:

(List name, address, and other contact information.)

« Doug Burns, AIA
Office Director»
«« BECKER MORGAN GROUP, INC. »
« 615 South College Street, Suite 8-158»
«Charlotte, NC 28202 »

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:

(List name, address, and other contact information.)

«Michael A. Carlisto »
«Executive Vice President »
«Edifice, LLC»

«4111 South Boulevard»
«Charlotte, North Carolina 28209»
«mcarlisto@edificeinc.com »
«704-332-0900 »

§ 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.)

«See attached Preconstruction Services Scope and Fee »

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:

(List any Owner-specific requirements for subcontractor procurement.)

«On public projects in North Carolina, follow all procurement requirements for Construction Management at Risk projects as written in NC G.S. 143-128. »

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

«TBD – Implement Design Documents into the contract at GMP »

§ 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. The Construction Manager expects the Owner and Architect to work together as the Project Team for the betterment and ultimate benefit of the project.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information;

Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term “Contractor” as used in A201–2017 shall mean the Construction Manager.

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

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

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

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

§ 3.1.3 Consultation

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

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

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

§ 3.1.4 Project Schedule

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

§ 3.1.5 Phased Construction

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

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's **information** 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 **information** and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

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

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

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

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

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

§ 3.1.11 Subcontractors and Suppliers

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

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

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

§ 3.1.12 Procurement

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

§ 3.1.13 Compliance with Laws

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

§ 3.1.14 Other Preconstruction Services

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

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

«See attached Preconstruction Services Scope and Fee »

§ 3.2 Guaranteed Maximum Price Proposal

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

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

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

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

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

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

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

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

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

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

§ 3.3 Construction Phase

§ 3.3.1 General

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

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

§ 3.3.2 Administration

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

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

§ 3.3.2.3 Monthly Report

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

§ 3.3.2.4 Daily Logs

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

§ 3.3.2.5 Cost Control

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

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

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

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

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

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

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

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

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

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

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

§ 4.2 Owner's Designated Representative

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

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

§ 4.3 Architect

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

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

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

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

« Construction Manager shall be paid a Lump Sum of One Hundred Thousand and Eighty Dollars and 00/00 (\$ 100,080.00) which includes all costs, expenses, and fees for Preconstruction Services. See Exhibit "C" – Preconstruction Services Fee and Exhibit D- Scope of services, attached for further information. If project does not proceed for any reason, then the Construction Manager shall be paid actual costs to date.» See attached Preconstruction Fee Schedule and Scope of Services for further information »

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

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

« See attached Preconstruction Fee Schedule and Scope of Services for hourly rates to be used to calculate fees that are supplemental to any work not covered under the lump sum scope of work in Exhibit C. »

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 **«TBD»** (**« »**) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

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

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid **«Twenty»** (**«20»**) 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.)

«Twelve» % **«per annum»**

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

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

§ 6.1.2 The Construction Manager's Fee:

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

«6% of Cost of the Work to be converted to a Lump Sum at Owner's acceptance of the GMP»

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

«The Cost of Work plus (+) 5% for additive changes and 0% for deductive changes.»

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

« »

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed **«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.)

«Owner and Contractor acknowledge and agree if Contractor fails to achieve Substantial Completion of the Work within the Contract Time the Contractor agrees to pay Owner as Liquidated Damages, and not as a penalty, but as a reasonable estimate of the amount of damages Owner will suffer, the amount of Five Hundred and 00/00 dollars (\$500.00) per day for each calendar day occurring after the Contract Time during which Contractor fails to achieve Substantial Completion. The Liquidated Damages described herein shall be the Owner's sole and exclusive remedy for any delays.»

§ 6.1.7 Other:

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

«If the "Total Cost of the Work", which equals the Cost of the Work as defined in Article 7 plus the Contractor's Fee, is less than the value of the Guaranteed Maximum Price (GMP), then the difference between the Total Cost of the Work and the GMP shall be split as follows: % shall be distributed to the Owner % shall be distributed to the Construction Manager»

§ 6.2 Guaranteed Maximum Price

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

§ 6.3 Changes in the Work

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

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

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

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

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

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

§ 6.3.6 In the event of significant delay or price increase of material occurring during the performance of the contract through no fault of the Contractor, the contract sum, time of performance, and contract requirements shall be equitably adjusted by change order in accordance with the procedures of the contract documents. A change in price of an item of material shall be considered significant when the price of an item increases 5% percent between the date of this contract and the date of delivery.

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

«The following personnel’s cost shall be included in the Cost of the Work at the following rates:

Project Executive	\$ 5,320/week (this will be prorated per time spent on project)
Construction Manager	\$ 5,014/week (this will be prorated per time spent on project)
Project Manager	\$ 4,440/week
Assistant Project Manager	\$ 2,865/week
Superintendent	\$ 4,120/week
Area Superintendent	\$ 3,438/week
Assistant Superintendent	\$ 2,865/week
Quality Control Manager	\$ 2,648/week
Project Assistant	\$ 1,986/week

Cost shall commence approximately 2 (two) weeks prior to the start of construction and conclude upon Final Completion. The above stated rates include each personnel’s base salary and burdens described in Article 7.2.4. Contractor shall invoice monthly in arrears for actual time spend by Contractor for the work. Contractor shall keep accurate time records which shall be accessible to the Owner upon request.

§ 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.

Costs of this Article 7.2.4 for those personnel identified in Article 7.2.2 are included in the stated rates. Costs as noted in this Article 7.2.4 for those personnel associated with Article 7.2.1 are to be considered actual Cost of the Work at the reimbursable rate of 49%.

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

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

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

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

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

§ 7.6 Miscellaneous Costs

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

Contractor's Insurance is to be considered cost at the following rates applied to the total of all the items identified in this Article 7:

General Liability	0.90%
Builder's Risk	0.35%

Pollution Insurance	0.05%
Contractor's Payment and Performance Bonds	1.00%
Subcontractor Default Insurance	1.25%

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

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

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

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

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

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

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

§ 7.6.6 Costs for electronic equipment, and software, directly related to the Work and located at the site and Construction Manager's office, with the Owner's prior approval. **Costs associated with the items within this Article are to be considered cost at the reimbursable rate of 0.25% of the Cost of Work.**

§ 7.6.7 Costs of **communication services including cell phone, site phones and internet service**, document reproductions and delivery charges.

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

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

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

§ 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, **including but not limited to: Superintendent's vehicle and fuel, Project Manager's vehicle and fuel and the meals and living expenses of those personnel identified in Article 7.2.2.1.**

§ 7.7 Other Costs and Emergencies

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

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

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

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

§ 7.8 Related Party Transactions

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

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

§ 7.9 Costs Not To Be Reimbursed

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

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

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

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

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

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

ARTICLE 10 ACCOUNTING RECORDS

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

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

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

« »

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the «25th» day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the «10th» day of the «following» month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than «fifteen » («15 ») days after the Architect receives the Application for Payment.

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

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit a **Conditional Waiver and Release of Mechanic's Lien**.

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

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

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

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

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

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

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

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

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

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

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

§ 11.1.8 Retainage

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

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

«Five Percent (5%)

§ 11.1.8.1.1 The following items are not subject to retainage:

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

« Cost of Bonds, Insurance, Permits, General Conditions, and Construction Manager's Fee »

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

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

« When the project is fifty percent (50%) complete the retainage percentage withheld on the Contractor by the Owner will be reduced to two and one half percent (2.5%) and remain at two and one half percent (2.5%) until Substantial Completion.»

§ 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.)

« Upon achieving Substantial Completion, the Owner will withhold one hundred fifty percent (150%) of the cost of outstanding punch list items and release the balance of retainage to the Contractor. »

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

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

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

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

§ 11.2 Final Payment

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

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

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

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

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

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

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

« »

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

§ 11.3 Interest

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

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

«12» % « per annum »

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.)

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§ 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)*

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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.
- .4 **Add a termination fee equal to Twenty-Five percent (25%) of Construction Manager's originally calculated fee**

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

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

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

§ 13.2.1 Termination

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

§ 13.2.2 Termination by the Owner for Cause

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

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

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

§ 13.2.3 Termination by the Owner for Convenience

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

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

« Contractor's Fee on all Work completed up to termination date plus all associated costs associated with such termination plus fee for all Work not completed.

Contractor's fee upon termination for convenience to be 10% of the Cost of the Work completed up to the date of termination, plus any costs associated with such termination, plus 10% of the anticipated Cost of Work not yet completed. »

§ 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 and 00/100»** (\$ **«1,000,000.00»**) for each occurrence and **«Two Million Dollars and 00/100»** (\$ **«2,000,000.00»**) 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 and 00/100»** (\$ **«1,000,000.00»**) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

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

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than **«One Million Dollars and 00/100»** (\$ **«1,000,000.00»**) each accident, **«One Million Dollars and 00/100»** (\$ **«1,000,000.00»**) each employee, and **«One Million Dollars and 00/100»** (\$ **«1,000,000.00»**) policy limit.

§ 14.3.1.5 Not Used

§ 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
Professional Liability Insurance	In the amount of not less than \$1,000,000.00 each claim and \$1,000,000.00 aggregate.

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

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

§ 14.3.2 Construction Phase

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

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

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

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

«Notices shall be delivered electronically to the individuals executing the Agreement.»

§ 14.5 Other provisions:

«N/A»

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

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

« »

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

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

« »

[« »] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

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

«Exhibit “A” – Guaranteed Maximum Price Amendment Date TBD
Exhibit “B” – Insurance Bonds Date TBD
Exhibit “C” – Preconstruction Services Scope of Services
Exhibit “D” – Preconstruction Services Fee Date

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

City of Lincoln

Edifice, LLC

OWNER (Signature)

« » « »
(Printed name and title)

CONSTRUCTION MANAGER (Signature)

«Michael A. Carliso» «Executive Vice President »
(Printed name and title)

DRAFT

AIA® Document A133™ – 2019

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

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

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

« City of Lincolnton
114 W. Sycamore St.
Lincolnton, NC 28093
704.736.8980 »

« »
« »
« »

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

«Edifice, LLC»« »
«4111 South Blvd (28209)»
«Post Office Box 36349»
«Charlotte, North Carolina 28236
Telephone: 704-332-0900
North Carolina General Contracting License #10514»

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

« City of Lincolnton Public Service Center »
« 500 Sigmon Rd, Lincolnton, NC »
« »

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

« BECKER MORGAN GROUP, INC. »
« 615 South College Street, Suite 8-158 »
«Charlotte, NC 28202 »
« »

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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.

ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

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EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

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

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

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

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

« Existing Conditions:

The project consists of an approximately 33,000 square foot warehouse built in 1965 and a 4,000 sq. ft. warehouse built in 2002 located on 2 parcels totaling a little over 16 acres. (parcel 00980 10.133 acres & 70508 6.345 acres). Building and site were previously Excel Textile Supply Company.

Proposed Objectives:

The City would like to re-purpose the existing buildings into multi-use facilities that would include: warehousing, offices, restrooms, showers, breakrooms, and staging areas for several City departments – electric, water and sewer, streets, solid waste, and garage services. Other objectives are to build another building to be appr. 5,000 to 8,000 sq. ft. training/meeting facility that may also house several offices for the aforementioned departments. Other needs on the property include: a wash down pit, pole barn type storage for vehicles and equipment along

with a lay down yard for keeping materials, and equipment dry. This list is not all inclusive nor limited »

§ 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.)

To Be Determined

§ 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.)

« Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00) »

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

- .1 Design phase milestone dates, if any:

«TBD »

- .2 Construction commencement date:

«TBD »

- .3 Substantial Completion date or dates:

«TBD »

- .4 Other milestone dates:

«TBD »

§ 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.)

«Not Applicable »

§ 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.)

«Not Applicable »

§ 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.)

« David Ramsey
City of Lincolnton
114 W. Sycamore St.
Lincolnton, NC 28093
704.736.8980 »

§ 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.)

«David Ramsey
City of Lincolnton
114 W. Sycamore St.
Lincolnton, NC 28093
704.736.8980 »

§ 1.1.10 The Owner shall retain the following consultants and contractors:

(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

«TBD »« »
« »
« »
« »
« »

.2 Civil Engineer:

« »« »
« »
« »
« »
« »

.3 Other, if any:

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

«TBD »

§ 1.1.11 The Architect's representative:

(List name, address, and other contact information.)

« Doug Burns, AIA
Office Director»
«« BECKER MORGAN GROUP, INC. »
« 615 South College Street, Suite 8-158»
«Charlotte, NC 28202 »

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:

(List name, address, and other contact information.)

«Michael A. Carlisto »
«Executive Vice President »
«Edifice, LLC»

«4111 South Boulevard»
«Charlotte, North Carolina 28209»
«mcarlisto@edificeinc.com »
«704-332-0900 »

§ 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.)

«See attached Preconstruction Services Scope and Fee »

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:

(List any Owner-specific requirements for subcontractor procurement.)

«On public projects in North Carolina, follow all procurement requirements for Construction Management at Risk projects as written in NC G.S. 143-128. »

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

«TBD – Implement Design Documents into the contract at GMP »

§ 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. The Construction Manager expects the Owner and Architect to work together as the Project Team for the betterment and ultimate benefit of the project.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information;

Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term “Contractor” as used in A201–2017 shall mean the Construction Manager.

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

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

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

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

§ 3.1.3 Consultation

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

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

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

§ 3.1.4 Project Schedule

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

§ 3.1.5 Phased Construction

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

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's **information** 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 **information** and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

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

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

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

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

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

§ 3.1.11 Subcontractors and Suppliers

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

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

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

§ 3.1.12 Procurement

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

§ 3.1.13 Compliance with Laws

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

§ 3.1.14 Other Preconstruction Services

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

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

«See attached Preconstruction Services Scope and Fee »

§ 3.2 Guaranteed Maximum Price Proposal

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

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

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

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

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

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

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

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

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

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

§ 3.3 Construction Phase

§ 3.3.1 General

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

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

§ 3.3.2 Administration

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

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

§ 3.3.2.3 Monthly Report

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

§ 3.3.2.4 Daily Logs

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

§ 3.3.2.5 Cost Control

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

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

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

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

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

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

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

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

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

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

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

§ 4.2 Owner's Designated Representative

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

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

§ 4.3 Architect

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

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

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

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

« Construction Manager shall be paid a Lump Sum of One Hundred Thousand and Eighty Dollars and 00/00 (\$ 100,080.00) which includes all costs, expenses, and fees for Preconstruction Services. See Exhibit "C" – Preconstruction Services Fee and Exhibit D- Scope of services, attached for further information. If project does not proceed for any reason, then the Construction Manager shall be paid actual costs to date.» See attached Preconstruction Fee Schedule and Scope of Services for further information »

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

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

« See attached Preconstruction Fee Schedule and Scope of Services for hourly rates to be used to calculate fees that are supplemental to any work not covered under the lump sum scope of work in Exhibit C. »

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 «TBD» (« ») months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

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

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid «Twenty» («20») 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.)

«Twelve» % «per annum»

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

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

§ 6.1.2 The Construction Manager's Fee:

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

«6% of Cost of the Work to be converted to a Lump Sum at Owner's acceptance of the GMP»

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

«The Cost of Work plus (+) 5% for additive changes and 0% for deductive changes.»

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

« »

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed **«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.)

«Owner and Contractor acknowledge and agree if Contractor fails to achieve Substantial Completion of the Work within the Contract Time the Contractor agrees to pay Owner as Liquidated Damages, and not as a penalty, but as a reasonable estimate of the amount of damages Owner will suffer, the amount of Five Hundred and 00/00 dollars (\$500.00) per day for each calendar day occurring after the Contract Time during which Contractor fails to achieve Substantial Completion. The Liquidated Damages described herein shall be the Owner's sole and exclusive remedy for any delays.»

§ 6.1.7 Other:

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

«If the "Total Cost of the Work", which equals the Cost of the Work as defined in Article 7 plus the Contractor's Fee, is less than the value of the Guaranteed Maximum Price (GMP), then the difference between the Total Cost of the Work and the GMP shall be split as follows: % shall be distributed to the Owner % shall be distributed to the Construction Manager»

§ 6.2 Guaranteed Maximum Price

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

§ 6.3 Changes in the Work

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

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

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

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

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

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

§ 6.3.6 In the event of significant delay or price increase of material occurring during the performance of the contract through no fault of the Contractor, the contract sum, time of performance, and contract requirements shall be equitably adjusted by change order in accordance with the procedures of the contract documents. A change in price of an item of material shall be considered significant when the price of an item increases 5% percent between the date of this contract and the date of delivery.

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

«The following personnel’s cost shall be included in the Cost of the Work at the following rates:

Project Executive	\$ 5,320/week (this will be prorated per time spent on project)
Construction Manager	\$ 5,014/week (this will be prorated per time spent on project)
Project Manager	\$ 4,440/week
Assistant Project Manager	\$ 2,865/week
Superintendent	\$ 4,120/week
Area Superintendent	\$ 3,438/week
Assistant Superintendent	\$ 2,865/week
Quality Control Manager	\$ 2,648/week
Project Assistant	\$ 1,986/week

Cost shall commence approximately 2 (two) weeks prior to the start of construction and conclude upon Final Completion. The above stated rates include each personnel’s base salary and burdens described in Article 7.2.4. Contractor shall invoice monthly in arrears for actual time spend by Contractor for the work. Contractor shall keep accurate time records which shall be accessible to the Owner upon request.

§ 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.

Costs of this Article 7.2.4 for those personnel identified in Article 7.2.2 are included in the stated rates. Costs as noted in this Article 7.2.4 for those personnel associated with Article 7.2.1 are to be considered actual Cost of the Work at the reimbursable rate of 49%.

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

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

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

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

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

§ 7.6 Miscellaneous Costs

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

Contractor's Insurance is to be considered cost at the following rates applied to the total of all the items identified in this Article 7:

General Liability	0.90%
Builder's Risk	0.35%

Pollution Insurance	0.05%
Contractor's Payment and Performance Bonds	1.00%
Subcontractor Default Insurance	1.25%

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

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

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

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

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

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

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

§ 7.6.6 Costs for electronic equipment, and software, directly related to the Work and located at the site and Construction Manager's office, with the Owner's prior approval. **Costs associated with the items within this Article are to be considered cost at the reimbursable rate of 0.25% of the Cost of Work.**

§ 7.6.7 Costs of **communication services including cell phone, site phones and internet service**, document reproductions and delivery charges.

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

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

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

§ 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, **including but not limited to: Superintendent's vehicle and fuel, Project Manager's vehicle and fuel and the meals and living expenses of those personnel identified in Article 7.2.2.1.**

§ 7.7 Other Costs and Emergencies

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

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

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

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

§ 7.8 Related Party Transactions

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

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

§ 7.9 Costs Not To Be Reimbursed

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

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

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

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

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

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

ARTICLE 10 ACCOUNTING RECORDS

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

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

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

« »

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the «25th» day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the «10th» day of the «following» month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than «fifteen » («15 ») days after the Architect receives the Application for Payment.

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

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit a **Conditional Waiver and Release of Mechanic's Lien**.

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

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

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

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

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

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

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

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

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

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

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

§ 11.1.8 Retainage

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

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

«Five Percent (5%)

§ 11.1.8.1.1 The following items are not subject to retainage:

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

« Cost of Bonds, Insurance, Permits, General Conditions, and Construction Manager's Fee »

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

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

« When the project is fifty percent (50%) complete the retainage percentage withheld on the Contractor by the Owner will be reduced to two and one half percent (2.5%) and remain at two and one half percent (2.5%) until Substantial Completion.»

§ 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.)

« Upon achieving Substantial Completion, the Owner will withhold one hundred fifty percent (150%) of the cost of outstanding punch list items and release the balance of retainage to the Contractor. »

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

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

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

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

§ 11.2 Final Payment

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

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

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

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

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

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

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

« »

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

§ 11.3 Interest

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

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

«12» % « per annum »

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.)

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§ 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.
- .4 **Add a termination fee equal to Twenty-Five percent (25%) of Construction Manager's originally calculated fee**

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

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

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

§ 13.2.1 Termination

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

§ 13.2.2 Termination by the Owner for Cause

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

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

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

§ 13.2.3 Termination by the Owner for Convenience

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

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

« Contractor's Fee on all Work completed up to termination date plus all associated costs associated with such termination plus fee for all Work not completed.

Contractor's fee upon termination for convenience to be 10% of the Cost of the Work completed up to the date of termination, plus any costs associated with such termination, plus 10% of the anticipated Cost of Work not yet completed. »

§ 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 and 00/100»** (\$ **«1,000,000.00»**) for each occurrence and **«Two Million Dollars and 00/100»** (\$ **«2,000,000.00»**) 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 and 00/100»** (\$ **«1,000,000.00»**) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

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

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than **«One Million Dollars and 00/100»** (\$ **«1,000,000.00»**) each accident, **«One Million Dollars and 00/100»** (\$ **«1,000,000.00»**) each employee, and **«One Million Dollars and 00/100»** (\$ **«1,000,000.00»**) policy limit.

§ 14.3.1.5 Not Used

§ 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
Professional Liability Insurance	In the amount of not less than \$1,000,000.00 each claim and \$1,000,000.00 aggregate.

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

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

§ 14.3.2 Construction Phase

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

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

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

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

«Notices shall be delivered electronically to the individuals executing the Agreement.»

§ 14.5 Other provisions:

«N/A»

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

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

« »

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

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

« »

[« »] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

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

«Exhibit “A” – Guaranteed Maximum Price Amendment Date TBD
Exhibit “B” – Insurance Bonds Date TBD
Exhibit “C” – Preconstruction Services Scope of Services
Exhibit “D” – Preconstruction Services Fee Date

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

City of Lincoln

Edifice, LLC

OWNER (Signature)

« » « »
(Printed name and title)

CONSTRUCTION MANAGER (Signature)

«Michael A. Carliso» «Executive Vice President »
(Printed name and title)

DRAFT 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)

« **City of Lincolnton Public Service Center** »
« **500 Sigmon Rd, Lincolnton, NC** »
« »

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

« **City of Lincolnton**
114 W. Sycamore St.
Lincolnton, NC 28093
704.736.8980 »« »
« »

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

« **Edifice, LLC** »« »
« **4111 South Boulevard**
Charlotte, North Carolina 28209 »

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.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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.

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§ 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

§ 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.

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- [☐] **§ 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.

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§ 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.3.1.2 **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.

§ 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 ~~«One Million Dollars and 00/00-»~~ (\$ ~~«1,000,000.00-»~~) each occurrence, ~~«Two Million Dollars and 00/00-»~~ (\$ ~~«2,000,000.00-»~~) general aggregate, and ~~«Two Million Dollars and 00/00-»~~ (\$ ~~«2,000,000.00-»~~) 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.
- ~~.104~~ 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 and 00/100-»~~ (\$ ~~«1,000,000.00-»~~) 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 ~~«One Million Dollars and 00/100-»~~ (\$ ~~«1,000,000.00-»~~) each accident, ~~«One Million Dollars and 00/100-»~~ (\$ ~~«1,000,000.00-»~~) each employee, and ~~«One Million Dollars and 00/100-»~~ (\$ ~~«1,000,000.00-»~~) 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

~~§ 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 « » (\$ « ») per claim and « » (\$ « ») in the aggregate. Not Used~~

§ 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 and 00/100-»** (\$ **«1,000,000.00-»**) per claim and **«Two Million Dollars and 00/100-»** (\$ **«2,000,000.00-»**) 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 and 00/100-»** (\$ **«1,000,000.00-»**) per claim and **«Two One Million Dollars and 00/100-»** (\$ **«21,000,000.00-»**) 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 « » (\$ « ») per claim and « » (\$ « ») in the aggregate. Not Used~~

~~§ 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 « » (\$ « ») per claim and « » (\$ « ») in the aggregate. Not Used~~

§ 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.)

« »

§ 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.)

- [**« X »**] **§ 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.)*

«Construction Manager 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 2 of the General Conditions.-»

- [« »] § 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 « » (\$ « ») per claim and « » (\$ « ») 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:
(Specify type and penal sum of bonds.)

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.

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

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

« »



Exhibit C -
Preconstruction Scope of Services
City of Lincolnton
Lincolnton Public Service Center
May 20th, 2024

PRECONSTRUCTION SERVICES (From June 2024 to May 2025):
Scope of services will include but not be limited to the following activities:

General Preconstruction Services at Each Phase of Design

Programming and Conceptual Pricing

- Coordination meetings with the City and Design Team
- High level conceptual pricing exercises and planning

Schematic Design

- Update and coordination meetings with owner and design team – Bi-Weekly or as needed
- Programming review and verification
- Develop a project schedule with design milestones, budget milestones, authorities having jurisdiction review and approvals, owner activities, and high-level construction activities and milestones
- Quantity take off and unit cost pricing analysis
- Schematic design estimate
- Clarifications to estimate
- Value engineering review and workshop with owner and designer
- Reconcile estimate with independent professional construction cost estimator hired by others
- High level constructability review
- Facilitate estimate review meeting and refine the estimate based on team comments
- Establish Project Collaborative website for the Project Team to utilize and share information

Design Development

- Update and coordination meetings with owner and design team – Bi-Weekly or as needed
 - Discuss initial topics, open and action items, new items, design related items, Owner related items, preconstruction and construction related items. Schedule updates and constant budget impact discussions
- Schedule updates and coordination of Long Lead materials and components
- Product and system analysis with recommendations
- Design development budget update and estimate
 - Quantity take-off and unit cost pricing analysis
 - Solicit key trades for current market pricing as needed
 - Clarifications to estimate
 - Reconcile estimate with independent professional construction cost estimator if hired by others

- Reconcile estimate with the Project Team
- Facilitate estimate review meeting and refine the estimate based on team comments
- Value engineering review and workshop with owner and designer
 - Analyze products and building systems and make recommendations
- Identify and create bidding Trade Packages
- Develop initial Site Logistics and Phasing Plans
- Constructability Review
 - Verify items from Schematic Design
 - Create and coordinate new items with the project team
- Edifice will identify and track preferred alternates the owner and project have deemed necessary. Edifice will assist with preparation of the project documents in conjunction preferred alternates that require board of commissioner's approval.

Construction Documents

- Update and coordination meetings with owner and design team – Bi-Weekly or as needed
 - Discuss initial topics, open and action items, new items, design related items, Owner related items, preconstruction and construction related items. Schedule updates and constant budget impact discussions
 - Start prequalifying trade contractor
 - Schedule the Project Outreach and Information meeting
 - Schedule updates and coordination of Long Lead materials and components
 - Construction document budget update and estimate
 - Quantity take-off and unit cost pricing analysis
 - Verify value engineering from design development and create, analyze, and agree on new ideas
 - Design quality control and/or VE workshop with owner and designer
 - Clarifications to estimate
 - Perform quality control review of construction documents
 - Conduct estimate review meeting and refine cost estimate based on feedback
 - Constructability review and verification of Design Development Constructability review items
 - Start creating the detailed construction schedule milestones
 - Finalize the Site Logistics and Phasing Plans
 - Coordinate a Site-Specific Safety Plan with Chris Gates – Edifice Corporate Safety Director
 - Edifice will identify and track preferred alternates the owner and project have deemed necessary. Edifice will assist with preparation of the project documents in conjunction preferred alternates that require board of commissioner's approval.
- **Prequalification of Trade Contractors**
 - Establish a prequalification process to ensure that all City prequalification policies are adhered to, and project-specific criteria is included.
 - Tailor bid packages for the benefit of the project in terms of available resources and funding
 - Advertise trade package opportunities for those interested in prequalifying to bid the project
 - Occurs at end of Design Development and/or beginning of Construction Documents
 - Edifice will work with the City & Becker Morgan Group on the Prequalification process making sure all policies are followed and project specific criteria is included
 - Outreach Sessions will be held to help advertise and promote interest in the project



- Describe prequalification process at Outreach Sessions
 - Target local qualified subcontractor participation
- The City and Edifice will work together to develop the list of Prequalified Trade Contractors in concert with the G.S. 143-135.8 Prequalification and 143-128.1 Construction Management at Risk Contracts
- All City requirements for MWBE or HUB participation will be followed
- Get approval from the City and the Prequalification Committee (if applicable) for recommended prequalified bidders
 - The Prequalification Committee can be members of the Project Team
- Only prequalified trade contractors will be allowed to bid the project
- Create and establish the formal and informal trade packages for bidding

Public Bid Process

- Advertise the project for bid to all prequalified trade contractors
 - Create a Bid Package Manual outlining scopes of work for each trade package and instructions to bidders applicable to the project
 - Conduct an open, competitive public bid process for all trade packages
 - Offer and provide Minority, MWBE, and/or HUB firms assistance during the bidding phase
 - Notify Prequalified Bidders of pre-bid meeting and bid date
 - Conduct Pre-Bid meeting
 - Hold the bid opening in a public location at a City facility or on a Project Team location.
 - Provide feedback to any unsuccessful bidders
 - Edifice will work in concert with the City and the Designers on all the necessary requirements related to the bid opening
 - G.S. 143-129 Procedure for Letting of Public Contracts will be followed
 - All requirements for Minority, MWBE and/or HUB participation will be followed
 - Post Bid meetings with all apparent low, responsive, responsible trade contractors will be held to determine the authenticity and accuracy of bids
 - Award 1st Tier Contracts and engage in the contract process
 - Report actual Minority, MWBE and/or HUB participation vs. Goals
 - Report actual Local participation numbers internally to the City as requested
 - Manage bid tab to include all necessary project preferred alternates.
- **Guaranteed Maximum Price Amendment(s)**
 - Once Post Bid Meetings are finalized and apparent low bidders are determined, a Guaranteed Maximum Price (GMP) Proposal will be put together
 - The GMP Proposal will then become part of the Guaranteed Maximum Price Amendment to the original contract
 - **Contract**
 - The AIA A133 – 2019 Standard Form of Agreement Between Owner and Construction Manager as Constructor along with the AIA A201 – 2017 General Conditions of the Contract for Construction are being utilized
 - The value of Preconstruction Services will be the initial contract value. Construction services will be added when the Guaranteed Maximum Price is determined through an Amendment to the contract

EXHIBIT D - Preconstruction Services Fee Estimate				30-May-24
Lincolnton Public Service Center		Start Date	Jun-24	
Owner: City of Lincolnton		Completion Date	May-24	
		Estimate	\$12,500,000	
Personnel Activates				
Conceptual & Schematic Design	Man-hours	Rate		Labor
VP of Preconstruction Services	20	\$	144.00	\$ 2,880
Preconstruction Manager	70	\$	100.00	\$ 7,000
Project Executive	50	\$	133.00	\$ 6,650
Subtotal	140		\$	16,530
Design Development	Man-hours	Rate		Labor
VP of Preconstruction Services	15	\$	144.00	\$ 2,160
Preconstruction Manager	80	\$	100.00	\$ 8,000
Project Manager	40	\$	111.00	\$ 4,440
Project Executive	45	\$	133.00	\$ 5,985
Subtotal	180		\$	20,585
Complete CD's	Man-hours	Rate		Labor
VP of Preconstruction Services	15	\$	144.00	\$ 2,160
Preconstruction Manager	90	\$	100.00	\$ 9,000
Project Manager	45	\$	111.00	\$ 4,995
Project Executive	30	\$	133.00	\$ 3,990
Construction Manager	45	\$	125.00	\$ 5,625
Superintendent	25	\$	103.00	\$ 2,575
Subtotal	250		\$	28,345
Bid Documents and Bidding	Man-hours	Rate		Labor
VP of Preconstruction Services	5	\$	144.00	\$ 720
Preconstruction Manager	65	\$	100.00	\$ 6,500
Project Manager	60	\$	111.00	\$ 6,660
Project Executive	30	\$	133.00	\$ 3,990
Construction Manager	30	\$	125.00	\$ 3,750
Tech.services - Edifice	40	\$	75.00	\$ 3,000
Subtotal	230		\$	24,620
Services Cost Recap				
Personnel Activity Summary	Man-hours	Days		Labor
Schematic Design	140	18		\$ 16,530
Design Development	180	23		\$ 20,585
Complete CD's	250	31		\$ 28,345
Bid Documents and Bidding	230	29		\$ 24,620
Subtotal	800	100		\$ 90,080
Pre-construction Summary				
Total Labor				\$ 90,080
Allowance for Additional Testing & Investigations During Preconstruction Services				\$ 10,000
Total Pre-construction Services Fee				\$100,080

ITEM #

4b



LINCOLNTON
AGENDA ITEM SUMMARY

To: The Honorable Mayor and City Council
Date: June 27, 2024
From: Ritchie Haynes, City Manager
Subject: Placer AI Order Form

Summary:

Background:

Fiscal Impact:

Recommendation:

Attachments:

1. Order Form - City of Lincolnton, NC - 03.19.2024 - Placer.ai



PLACER LABS, INC.

ORDER FORM

City of Lincolnton, NC	(“Customer”)	Placer Labs, Inc.	(“Placer”)
Address:	PO Box 617	Address:	440 N Barranca Ave., #1277
	Lincolnton, NC 28093		Covina, CA 91723
Contact Person:	Ritchie Haynes	Contact Person	Sam Ireland
Email:	rhaynes@lincolntonnc.org	Billing Contact Person:	Jason Tsui
Phone:	704-748-9090	Billing Email*:	billing@placer.ai
Billing Contact Email:	jblack@lincolntonnc.org	Billing Phone*:	415-228-2444 ext 806
			*Not for use for official notices.

1. Services.

The services provided under this Order Form (the “**Services**”) include:

- Chain Report Expanded which displays chain-level demographic and psychographic data.
- Access, via Placer Venue Analytics Platform (“**Placer’s Platform**”), to all major venues within the United States
- Customer may not provide access to any third party agents acting on its behalf (including any consultants, contractors, or other agents of Customer) without prior written consent from Placer. Any such approved access may be subject to an additional fee pursuant to a written amendment to this Order Form
- Access, via Placer’s Platform, to reports, including Visits, Trade Areas, Customer Journey, Customer Insights, Dwell Times, and Visitation by Hour/Day
- Actionable insights include:
 - Foot traffic counts and dwell time
 - True Trade Areas displaying frequent-visitors-density by home and work locations
 - Customers’ demographics, interests, and time spent at relevant locations
 - Where customers are coming from and going to, and the routes they take
 - Benchmarking of Foot Traffic, Market Share, Audiences, and other key metrics
 - Competitive insights
 - Void Analysis Reports
- Access to Xtra reports per ad hoc needs; in Excel, KML, Tableau, and other formats: Quarterly Maximum of 26 credits; Annual Maximum of 104 credits
- Premier Customer Support
 - Regular meetings with Placer's Customer Success Team
 - Live, Virtual Training support as reasonably needed
- Access to STI Demographics Bundle + Mosaic Data Set, and AGS CrimeRisk. The applicable Advanced Demographics and Psychographics are generated using the Input Datasets from the data vendors as set forth below:

Description	Input Datasets Used
STI Demographics Bundle	PopStats
	Spending Patterns
	Workplace
	Market Outlook
Experian Mosaic	Mosaic Segmentation
AGS CrimeRisk	CrimeRisk

2. Permitted Uses

The data, information and materials accessible via the Services are referred to as “**Placer Data**”. Customer may use Placer Data solely for the following purposes (“**Permitted Uses**”): (a) Customer may use Placer Data for Customer’s internal business purposes; and (b) Customer may incorporate Placer Data into Research Data, as described and subject to the restrictions below.

“**Research Data**” means datasets and other materials created by Customer that result in any part from Customer’s use of Placer Data. The Customer may share Research Data with current and potential customers, and in marketing materials; provided that the Customer shall cite Placer as a provider of such information (for such purpose only, Placer grants Customer the rights to use the Placer.ai name and logo, provided that any such use of the Placer.ai name and logo must clearly indicate that Placer is the provider of data only, and is not involved in any analysis, conclusion, recommendation). Customer shall not, directly or indirectly, resell, distribute, sublicense, display or otherwise provide Placer Data to any third parties, except that Customer may display Placer Data as part of Research Data.

3. Term and Termination.

Initial Term: The initial term of this Order Form will begin as of the last signature date set forth below, and will continue for 12 consecutive months thereafter (the “**Initial Term**”). Each renewal or additional term, if any, is referred to as “**Additional Term**,” and the Initial Term and any Additional Terms are referred to collectively as the “**Term**.”

Additional Term: Following expiration of the Initial Term, this Order Form shall be automatically renewed for additional periods of the same duration as the Initial Term, unless either party provides written notice of non-renewal at least thirty (30) days prior to the expiration of the then-current term.

Termination: Either party may terminate this Order Form upon thirty (30) days’ notice if the other party materially breaches any of the terms or conditions of this Order Form or the Agreement (as defined below), and the breach remains uncured during such thirty (30) days. In addition, Placer may immediately suspend Customer’s access to the Services, or terminate the Order Form, in the event of non-payment by the Customer or breach by Customer of any restrictions regarding usage of the Services.

4. Fees.

\$16,000/year invoiced: in full upon signing this Order Form.

Invoice sent electronically to Customer’s billing contact email via NetSuite.

Customer shall pay the fees set forth above in this Order Form.

Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection.

Customer is responsible for all applicable taxes arising directly from the Services other than U.S. taxes based on Placer’s net income.

If Customer believes that Placer has billed Customer incorrectly, Customer must contact Placer no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared in order to receive an adjustment or credit. Inquiries should be directed to Placer’s customer support department at support@placer.ai.

Placer may increase the Fees any time following the Initial Term (but not more frequently than once in any twelve (12) month period). The amount of such annual increase will equal the greater of CPI or five percent (5%) per annum.

In the event of any termination, Customer will pay in full for the Services.

All billing will be sent via electronic invoice to the Customer contact indicated above. Customer shall pay all fees within thirty (30) days of the invoice date.

5. Support.

Placer will use commercially reasonable efforts to provide customer service and technical support in connection with the Services on weekdays during the hours of 9:00 A.M. through 5:00 P.M. Pacific Time, with the exclusion of federal holidays. For any such support, please contact us at support@placer.ai.

6. Mutual NDA.

Each party (the “**Receiving Party**”) understands that the other party (the “**Disclosing Party**”) has disclosed or may disclose business, technical or financial information relating to the Disclosing Party’s business (hereinafter referred to as “**Proprietary Information**” of the Disclosing Party). Proprietary Information of Placer includes, without limitation, non-public information regarding features, functionalities and performance of, and pricing for, the Services. The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted by the Agreement) or disclose to any third party any Proprietary Information. The foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public, (b) was in the possession of or known to the Receiving Party, prior to disclosure thereof by the Disclosing Party, without any restrictions or confidentiality obligations, (c) was rightfully disclosed to it, without any restrictions or confidentiality obligations, by a third party, (d) was independently developed without use of any Proprietary Information of the Disclosing Party, or (e) is required to be disclosed by law, provided that the Receiving Party provides the Disclosing Party with prompt written notice of such requirement and reasonably cooperates with the Disclosing Party to limit or challenge such requirement. These provisions regarding Proprietary Information shall apply in perpetuity and shall survive any termination of the Order Form or the Agreement.

7. Miscellaneous.

All notices under the Order Form and the Agreement will be in writing and will be deemed to have been duly given (a) upon delivery by a recognized delivery service (e.g., FedEx) with delivery confirmation, (b) upon receipt, if sent by U.S. certified or registered mail, return receipt requested, or (c) when sent via email, if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient. Notices shall be sent to the addresses set forth in the Order Form, which addresses may be subsequently modified by written notice given in accordance with these provisions.

Trial Offering. If Placer provides Customer with additional Services or Placer Data during the Term and identifies such Services or Placer Data as for evaluation or trial purposes only (a “Trial Offering”), access to the Trial Offering is permitted only during the period designated by Placer (or if not designated, 30 days from receipt of access) (“Trial Subscription Term”), unless the Trial Offering is earlier terminated as provided below. During the Trial Subscription Term, Customer may only use the Trial Offering for internal evaluation purposes and may not otherwise use or distribute the Trial Offering for any other purposes. Notwithstanding any provision included in this Order Form or the Agreement to the contrary, in respect of the Trial Offering Customer acknowledges and agrees that: (i) either party may terminate the Trial Subscription Term immediately and without liability upon written notice to the other party; (ii) any Trial Offering is provided “as is”; (iii) Placer provides no warranty, service levels or indemnity for any Trial Offering and (iv) Placer's liability related to any Trial Offering will not exceed USD \$100. Notwithstanding the foregoing, the Services and Placer Data provided in this Order Form is not considered a Trial Offering.

Customer grants Placer the right to use Customer’s company name and company logo, for Placer’s promotional purposes.

This Order Form is entered into by and between Customer and Placer effective as of the date of the last signature below. This Order Form and use of the Services are governed by, and Customer and Placer agree to, the License Agreement located at <https://www.placer.ai/placer-license-agreement/> (the “**Agreement**”); provided, however, that in the event of any conflict between this Order Form and the Agreement, this Order Form shall control. Unless otherwise defined in this Order Form, capitalized terms herein have the same meaning as in the Agreement.

“Customer”

City of Lincolnton, NC
By:
Name:
Title:
Date:

“Placer”

Placer Labs, Inc.
By:
Name:
Title:
Date: