



CITY COUNCIL MEETING ZEPHYRHILLS, FLORIDA

**Monday, January 24, 2022
6:00 PM**

**Zephyrhills
City Hall**

**Council
Chambers**

Call to Order – Council President
Roll Call – City Clerk Lori Hillman
Invocation – Pastor Russell Guynn
Pledge of Allegiance – Council President

1. CONSENT ITEMS

- 1.1 Approval of January 10, 2022 Regular Meeting Minutes
 - 1. M01-10-2022
- 1.2 Approval of Resolution 789-22 Participation in February 3, 2022 MAP Meeting

RESOLUTION NO. 789-22 - "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ZEPHYRHILLS, FLORIDA, AUTHORIZING THE CITY COUNCIL OF THE CITY OF ZEPHYRHILLS TO PARTICIPATE IN A JOINT MEETING OF THE MUNICIPAL ASSOCIATION OF PASCO TO DISCUSS MATTERS OF MUTUAL INTEREST; AND PROVIDING FOR AN EFFECTIVE DATE."

- 1. Resolution 789-22 Participation in 02-03-2021 MAP Meeting
- 1.3 Approval of Task Assignment 22-05 to Jones Edmunds for the WWTP FDEP Permit Renewal
 - 1. 2022-01-20-PECON-Zephyrhills-35-18-13-TA-22-05

2. BUSINESS ITEMS/CITY MANAGER'S REPORT

2.1 Construction Manager at Risk Agreement No. 37-22-01 - A.D. Morgan - SVB Indoor Tennis Center

1. 37-22-01 A.D. Morgan CM at Risk Agreement
2. Ranking of Respondents

CITIZEN COMMENTS

- 1 Sale of Alcohol at Annual Pigz in Z'hills BBQ & Blues Festival - March 4 and 5, 2022

1. Letter to City Council 2022 - Permission to Sell Alcohol

MAYOR ANNOUNCEMENTS

CITY MANAGER ANNOUNCEMENTS

CITY ATTORNEY ANNOUNCEMENTS

CITY COUNCIL COMMENTS

ADJOURN

*** PLEASE NOTE: This is a Public Meeting. Should any interested party seek to appeal any decision made by the Council with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceeding is made, which record includes the testimony and evidence upon which the appeal is to be based. F.S. 286.0105. If you are a person with a disability which requires reasonable accommodation in order to participate in this meeting, please contact the City Clerk at 813/780-0000 at least 48 hours prior to the public hearing. A.D.A. and F.S. 286.26.**

REGULAR COUNCIL MEETING

A Regular Council Meeting was held on January 10, 2022 at 6:00 p.m. in the Council Chambers of City Hall.

President Knight called the meeting to order. Roll call was taken. Present were members Kenneth Burgess, Jodi Wilkeson, Alan Knight, Charles Proctor, Lance Smith and Mayor Whitfield. City Manager William Poe and City Attorney Matthew Maggard were also present.

Staff present: Police Chief Derek Brewer, Public Works Director Shane LeBlanc, Building Official Bill Burgess, Director of Planning Todd Vande Berg, CRA Director Gail Hamilton, IT Director Mike Panak, Airport Manager Nathan Coleman, Senior Planner Rodney Corriveau, Historic Preservation Specialist and Community Planner Audrey McGuire and City Clerk Lori Hillman.

Pastor Nick Deford gave the Invocation. The Pledge of Allegiance followed.

1. UNFINISHED BUSINESS/PUBLIC HEARING

1.1 Silver Oaks PUD Amendment

Second Reading **ORDINANCE NO. 1432-22 – “AN ORDINANCE OF THE CITY OF ZEPHYRHILLS, FLORIDA MODIFYING THE MASTER PLAN FOR SILVER OAKS PLANNED UNIT DEVELOPMENT (PUD); PROVIDING FOR CONFLICT, SEVERABILITY, AND AN EFFECTIVE DATE.”**

City Manager William Poe stated the applicant withdrew their application for modification.

2. MAYOR

2.1 Judy Williams Proclamation

City Clerk Lori Hillman read aloud a proclamation presented to Judy Williams by Mayor Whitfield. Judy Williams said, “The real heroes are the kids in our community who make her a better person every day.”

2.2 Arbor Day Proclamation

City Clerk Lori Hillman read aloud a proclamation presented to Public Works Director Shane LeBlanc by Mayor Whitfield. Public Works Director Shane LeBlanc said the Arbor Day Proclamation and observance of Arbor Day are prerequisites of the City’s annual submittal for a “Tree City USA” designation.

3. CONSENT ITEMS

3.1 Approval of December 13, 2021 Regular Meeting Minutes

3.2 Approval of November 29, 2021 Regular Meeting Minutes

3.3 Approval of September 13, 2021 Regular Meeting Minutes

3.4 Approval of Florida Department of Environmental Protection State Revolving Fund Agreement WW510531 Amendment #1 (Resolution 771-20)

3.5 Approval of Piggyback Agreement 41-22-05 with A.C. Schultes of Florida Inc. for As Needed Well Drilling Construction, Rehabilitation, and Repair Services

3.6 Approval of Sole Source Agreement 41-22-06 with Nieman Electric Motor Co. for Tsurimi Lift Station Pump Purchasing and Repair

3.7 Approval of Proposal from APT for Gravity Sewer Pipe Lining

3.8 Approval of Killebrew Agreement 41-22-04 Construction of Fort King Water Line

3.9 Approval of Cost Share Funding with SWFWMD for City/County Reclaim Water Project

Jodi Wilkeson moved to pull Consent Items 3.1 and 3.3 and approve Consent Items 3.2, 3.4, 3.5, 3.6, 3.7, 3.8 and 3.9. Seconded by Charles Proctor. Motion passed unanimously.

CONSENT ITEMS 3.1 AND 3.3

Councilman Smith said the minutes of December 13, 2021, Business Item 3.1 and September 13, 2021, Business Items 3.3 and 3.8, reflect he recused himself from voting and requested the record reflect he left Council Chambers.

Kenneth Burgess moved to approve Consent Items 3.1 and 3.3 with the noted revisions. Seconded by Charles Proctor. Motion passed unanimously.

NEW BUSINESS

4. PUBLIC HEARING

4.1 Approval of Sarah Vande Berg (SVB) Housing Developers Agreement 41-22-01
City Manager William Poe requested the Sarah Vande Berg Housing Developers Agreement be removed from the agenda.

Kenneth Burgess moved to remove Business Item 4.1 from the agenda. Seconded by Jodi Wilkeson. Motion passed unanimously.

5. CITY MANAGER'S REPORT

5.1 Approval of Task Order 21-62 with Furr, Wegman & Banks for Sidewalks and Trails Construction Documents

City Manager William Poe said Furr, Wegman & Banks will administer the sidewalks and trails construction work of consultant, BGE, Inc., for a total fixed fee of \$205,443.00. BGE will provide professional consulting services for the proposed construction of sidewalks within a quarter mile of Stewart Middle School, West Elementary, Woodland Elementary and Zephyrhills High School as well as the proposed construction of trails along one side of 20th Street from 5th Avenue to 12th Avenue and along one side of 16th Street from C Avenue to 5th Avenue. The project scope is based on the CRA's Sidewalk Master Plan, the City's Trail Plan and guidance from City staff. The focus of the project is to provide 52,500 linear feet of sidewalks and trails within residential neighborhoods. Staff recommended approval of Task Order 21-62 with authorization for the City Manager to execute.

Spoke from the floor: BGE, Inc. Project Manager Alex Hulbert – 2203 N. Lois Avenue – Tampa, FL 33607

Mr. Hulbert said the scope of services is to produce construction documents to go out for bid. He said a separate set of constructions documents will be produced for each school to be bid separately.

Public Works Director Shane LeBlanc said bid packages will be managed in-house for project management and will include unit pricing with a schedule of values. If the amount of work exceeds the schedule of values, the project will be broken into phases with the completion of Phase II in the next fiscal year.

City Manager William Poe said the surveying and construction plans will assist with conflicts of large trees that will need to be removed, telephone poles, underground utilities and ADA ramps for cross walks that will need to be addressed in the plans. He said a sidewalk and trails information sheet will be created for publication to residents with a proposed timeline such as Spring and/or Summer of 2023, etc. He said the proposed trail will run from Silver Oaks Village to Geiger Road and end at the entrance to Silver Oaks at Eiland Blvd. In an effort to connect these trails, which are in Pasco County's right-of-way, the City will create the design and reach out to Pasco County to provide assistance with the project through joint funding.

Lance Smith moved to approve Business Item 5.1. Seconded by Kenneth Burgess. Motion passed unanimously.

5.2 Approval of Contract with D.C. Johnson and Associates for Surveying Services for Sidewalks and Trails Project

City Manager William Poe said D.C. Johnson will provide surveying services for the sidewalks and trails project previously discussed, Business Item 5.1, for a total fixed fee of \$113,400. Staff recommended approval.

Kenneth Burgess moved to approve Business Item 5.2. Seconded by Charles Proctor. Motion passed unanimously.

6. CITY ATTORNEY'S REPORT

6.1 Resolution 788-22 – Vacation of Public Right-of-Way

First Reading **RESOLUTION NO. 788-22 – “A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ZEPHYRHILLS, FLORIDA VACATION OF RIGHT-OF-WAY FOR GATEWAY DOWNTOWN PROP, LLC AND PALMETTO CAPITAL GROUP, LLC.”**

City Manager Matthew Maggard read Resolution No. 788-22 by title. Historic Preservation Specialist and Community Planner Audrey McGuire stated property owners, Gateway Downtown Prop and Palmetto Capital Group, applied for a vacation of right-of-way for a 16' platted unimproved alleyway. A cross access easement agreement will be provided to the City by the owners for sanitation and emergency service vehicle access. The vacation is consistent with the Land Development Code requirements for vacation of right-of-way and staff recommended approval.

City Manager William Poe clarified the alleyway will be paved between C and B Avenues. He said traffic generated from the development will not impact the residents on 8th Street and A Avenue as there will be entrances on B and C Avenues with paved access from the alleyway to US-301. The remainder to the east will be unimproved right-of-way.

Jodi Wilkeson moved to approve Business Item 6.1 on the first reading. Seconded by Charles Proctor. Motion passed unanimously.

CITIZEN COMMENTS

Spoke from the floor: Jerry L. Kuhn – 39216 6th Avenue – Zephyrhills, FL 33540

Mr. Kuhn addressed Council with a complaint of a business 50 yards from his business playing their music excessively loud. He said the quarter inch glass in his office vibrates to their music, he is unable to hear the phone ring in his shop, he has to repeat himself constantly while explaining to customers the repairs to their vehicle, and customers have stated they do not want to come back due to the noise and ruckus. He said he can tolerate the music but will not tolerate losing business. He said Chief Brewer has been very helpful and asked for time to handle the situation diplomatically but the situation has been going on for six months. He said it's like a cat and mouse game, ZPD shows up, the business turns down the music for 20 minutes and then it's right back up again. He requested Council's attention to find a solution for the business to play their music at a reputable level.

City Manager William Poe said he has received calls related to the situation and is aware of ZPD and code enforcement's involvement. He said this is a code enforcement issue.

Code Enforcement / Building Official Bill Burgess said the City's Decibel Meter is currently being calibrated. He said once the Decibel Meter has been calibrated, Code Enforcement will use the machine to measure the music's decibel noise levels and issue a citation if they are in violation of the City's Noise Ordinance.

Spoke from the floor: Frank Harry Hunt, Jr. – 4939 8th Street – Zephyrhills, FL 33542

Mr. Hunt said he has been cooperating with code enforcement, the police, and fire department to get drugs out of his house. He said he cooperates with the police and has tried to remove the people living in his house but they have no place to go. He explained he lives upstairs in his home because all his rooms are rented. He states he has no money and his water has been turned off due to an unpaid water bill in the amount of \$600.00. He said he is being honest and upfront and requested assistance.

Councilwoman Wilkeson said Mr. Hunt is clearly struggling with the responsibility of his home and the people that live there. She said Mr. Hunt is renting rooms and his house is zoned as a single-family home and there is a limit as to how many people can live in the house. She asked Mr. Hunt if he had anyone helping him such as the United Way Agency and he responded with a no head shake. She said Council has a responsibility to Mr. Hunt's surrounding neighbors and businesses to insure the law is not being broken in and around the home.

Police Chief Derek Brewer said he will share resources available to assist Mr. Hunt. He said he has received a ridiculous amount of calls related to Mr. Hunt's residence, some from members here tonight. He said he has spoken with Mr. Hunt and explained ZPD is not forcing him out of his residence but rather assuring that he is living in a safe environment. Police Chief Brewer will make sure resources are available to Mr. Frank and stressed there are other issues to consider which involve the police.

MAYOR ANNOUNCEMENTS – N/A

CITY MANAGER ANNOUNCEMENTS – N/A

CITY ATTORNEY ANNOUNCEMENTS – N/A

CITY COUNCIL COMMENTS – Councilman Burgess said today is January 10, 2022 and on December 31, 2022, he and Todd Vande Berg will ride down Kossik Road onto Wire Road. He advised staff not to take their foot off the gas pedal because December 31, 2022 will be here quick.

City Manager William Poe said the City will not approve any plats while waiting a resolution from Lennar Homes relative to the pole in the middle of Kossik Road.

Councilman Smith asked someone to buy Councilman Burgess some hiking boots this coming Christmas because he will need them. He said it was wonderful to acknowledge Judy Williams who has been a fixture at Zephyrhills High School for 22 years and never missed a day.

Councilman Proctor congratulated Judy Williams for her work. He appreciates Mr. Kuhn addressing Council and would like to get his situation resolved quickly.

Council Vice President Wilkeson – N/A

Council President Knight wished everyone a Happy New Year. He thanked staff for the wonderful City Christmas Party and is excited with the opening of Tina and Joe's Café downtown.

7. NOTED ITEMS:

- 7.1 Piggyback (Sourcewell) Agreement for Servicing of the Utilities Department Emergency
- 7.2 Generators by Cummins.

Meeting adjourned: 6:50 p.m.
Submitted by Lori Hillman

RESOLUTION NO. 789-22

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ZEPHYRHILLS, FLORIDA, AUTHORIZING THE CITY COUNCIL OF THE CITY OF ZEPHYRHILLS TO PARTICIPATE IN A JOINT MEETING OF THE MUNICIPAL ASSOCIATION OF PASCO TO DISCUSS MATTERS OF MUTUAL INTEREST; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Zephyrhills, Florida, and the Municipal Association of Pasco, which includes officials from Dade City, New Port Richey, Port Richey San Antonio and the Town of St. Leo, desire to participate in a joint workshop to discuss matters of mutual interest; and

WHEREAS, Section 166.0213, Florida Statutes, authorizes the governing body of a municipality to meet and discuss matters of mutual interest with the governing body of the county within which the municipality is located or the governing body of another municipality; and

WHEREAS, Section 125.001, Florida Statutes, further states that such meetings may be held at any appropriate public place within the jurisdiction of any participating county or municipality, and requires that due public notice be provided within the jurisdiction of all participating municipalities and counties; and

WHEREAS, Section 166.0213, Florida Statutes, further requires that the governing body of a municipality must first adopt a Resolution or Ordinance authorizing participation in the joint workshop.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Zephyrhills, Florida, as follows:

Section 1. Pursuant to Section 166.0213, Florida Statutes, the City Council of the City of Zephyrhills, Florida, is hereby authorized to participate in a joint meeting with the Municipal Association of Pasco on February 3, 2022 at 6:30 p.m. at St. Anthony of Padua Parish Center – 32825 Rhode Island Avenue – San Antonio, FL 33576.

Section 2. Notice of this meeting shall be duly advertised and official Association minutes shall be taken.

Section 3. This Resolution shall be effective upon adoption by City Council.

The foregoing Resolution No. 789-22 was read and passed in an open and regular meeting of the City Council of the City of Zephyrhills, Florida, on this 24th day of January, 2022.

Attest: _____
Lori L. Hillman, City Clerk

W. Alan Knight, Council President

The foregoing Resolution No. 789-22 was approved by me this 24th day of January, 2022.

Gene Whitfield, Mayor

Approved as to legal form and legal content
for the sole reliance of the City of Zephyrhills

Matthew E. Maggard, City Attorney

CONSENT ITEMS 1.3

Approval of Task Assignment 22-05 to Jones Edmunds for the WWTP FDEP Permit Renewal

Issue:

Approval of Task Assignment to Jones Edmunds for the WWTP FDEP Permit Renewal

Background:

The City of Zephyrhills has requested that the Consultant submit a proposal to renew the City's Domestic Wastewater Facility Permit Number FLA012744-008-DW1P/NRL. The effective date of the Permit is December 27, 2012. The expiration date is December 27, 2022.

In accordance with Permit Section VI.2.a, the City is to apply for renewal of this Permit at least 180 days before the expiration date using the appropriate forms listed in Rule 62-620.910, Florida Administrative Code (FAC), and in the manner established in the Florida Department of Environmental Protection (FDEP) Guide to Permitting Wastewater Facilities or Activities Under Chapter 62-620, FAC, including submitting the appropriate processing fee set forth in Rule 62-4.050, FAC. Therefore, the permit-renewal application and fee must be submitted on or before June 30, 2022.

Based on our knowledge and understanding of the WWTF, review of available data, and experience preparing previous permit renewal applications, we propose the following detailed Scope of Services to comply with FDEP requirements for the Permit renewal.

Attachment(s):

1. 2022-01-20-PECON-Zephyrhills-35-18-13-TA-22-05

Fiscal Impact:

Budgeted in the FY22 budget under the Wastewater Division - Professional Services line item. TA is for \$82,737

Staff Recommendation:

It is the recommendation of staff to the City Council to approve TA 22-05 to Jones Edmunds for the WWTP FDEP Permit Renewal in the amount stated.

THE CITY OF ZEPHYRHILLS, FLORIDA
EXHIBIT F – TASK ASSIGNMENT JE 22-05
WWTP PERMIT RENEWAL

PURPOSE

This is a Task Assignment to the Continuing Service Engineering Services Contract dated June 11, 2018, between THE CITY OF ZEPHYRHILLS (CITY), Florida, and JONES EDMUNDS & ASSOCIATES, INC. (CONSULTANT) and made a part thereof. The purpose of this Task Assignment is to specify the required services of the CONSULTANT to provide Engineering services when and as authorized by the CITY's representative, when deemed necessary.

METHOD OF COMPENSATION

Payment shall be in accordance with the Continuing Service Contract dated June 11, 2018, for Engineering Services. Compensation for all services, material, supplies, training, and any other items or requirements necessary to complete the work as described herein shall be Eighty-Two Thousand Seven Hundred Thirty-Seven DOLLARS (\$82,737). At no time shall work fees exceed said amount of compensation herein without a written and executed Task Assignment amendment.

STANDARD OF CARE

The CONSULTANT agrees that the work produced as a result of this Task Assignment are produced in accordance with generally accepted professional standards as to completeness, correctness, and suitability for the purpose intended.

PROCESS

The following Task Assignment Process shall be followed when engineering services are required. The CONSULTANT shall provide a complete and detailed proposal to include material and labor and shall submit its proposal in the following format to the CITY for review, revision, and approval.

The CONSULTANT, at minimum, shall be required to provide the following detail in their proposal:

- Attachment 1 – Scope of Services
- Attachment 2 – Project Schedule
- Attachment 3 – Consultant's Project Team Members
- Attachment 4 – Total Cost for Services
- Attachment 5 – Truth in Negotiation Certificate (*as required per Florida Statutes*)

All Attachments to this Exhibit F are required for a complete Task Assignment to the Continuing Service Contract for Engineering Services.

ATTACHMENT 1—SCOPE OF SERVICES

All terms used herein shall have the same meaning as defined in the Contract unless otherwise noted herein. In consideration of the mutual covenants and agreements set forth in Attachments 1 through 5, the CITY and CONSULTANT agree, by signature, to the details negotiated in this Task Assignment.

BACKGROUND

The City of Zephyrhills has requested that Consultant submit a proposal to renew the City's Domestic Wastewater Facility Permit Number FLA012744-008-DW1P/NRL. The effective date of the Permit is December 27, 2012. The expiration date is December 27, 2022.

In accordance with Permit Section VI.2.a, the City is to apply for renewal of this Permit at least 180 days before the expiration date using the appropriate forms listed in Rule 62-620.910, Florida Administrative Code (FAC), and in the manner established in the Florida Department of Environmental Protection (FDEP) *Guide to Permitting Wastewater Facilities or Activities Under Chapter 62-620, FAC*, including submitting the appropriate processing fee set forth in Rule 62-4.050, FAC.

Therefore, the permit-renewal application and fee must be submitted on or before June 30, 2022.

Based on our knowledge and understanding of the WWTF, review of available data, and experience preparing previous permit renewal applications, we propose the following detailed Scope of Services to comply with FDEP requirements for the Permit renewal.

SCOPE OF SERVICES

TASK 1 – PROJECT MANAGEMENT, KICK-OFF MEETING, AND INFORMATION COORDINATION

CONSULTANT will initiate the project, complete monthly project management, and coordinate and attend one kick-off pre-application meeting with the CITY and FDEP for the following:

- Discuss project goals, milestones, and schedule.
- Review the data needs for the permit application.
- Establish lines of communications.

DELIVERABLES:

- Data Request Summary – Before the FDEP meeting, CONSULTANT will provide a data needs summary to the CITY. The data needs summary will identify missing data based on a review and compilation of data assembled for prior projects.
- Meeting Agenda and Sign-in Sheet – For the FDEP meeting, CONSULTANT will prepare a meeting agenda and sign-in sheet.
- Meeting Minutes – Following the meeting, CONSULTANT will prepare meeting minutes and distribute via email.

ASSUMPTIONS:

- Identified missing data will be provided in Excel format. If data is provided in PDF or other formats, additional effort may be required.
- Appropriate staff is available to provide technical information as required for this deliverable.

TASK 2 – PERMIT APPLICATION FORMS 1 AND 2A; REUSE OPERATING PROTOCOL

CONSULTANT will complete FAC 62-620.910 Form 1 (Wastewater Facility or Activity Permit Application—General Information) and Form 2A (Wastewater Permit Application for Domestic Wastewater Facilities) to renew the current permit for continued operation.

CONSULTANT will work with the CITY to update the Reuse Operating Protocol based on current WRF operations to ensure recent changes to the system are correctly addressed.

DELIVERABLES:

- Provide the draft application with all required attachments to the CITY for review. One PDF of the draft will be provided.
- Provide draft of revised Reuse Operating Protocol for review and comment.
- Submit to FDEP signed-and-sealed final permit renewal application using the “Electronic Document Submission Instructions” no later than June 30, 2022.
- Provide the CITY with one electronic searchable signed-and-sealed final permit renewal application. The final Reuse Operating Protocol will be included.

ASSUMPTIONS:

- No Industrial Pretreatment Program Requirements will be added to the permit.
- The CITY will collect samples and complete the analysis for all regulatory required parameters.
- The CITY will pay all permit application fees to FDEP.
- The CITY will have knowledgeable staff assist with the RCW Operating Protocol updates.

TASK 3 – CAPACITY ANALYSIS REPORT

CONSULTANT will update the Capacity Analysis Report (CAR) for the WWTF that was prepared for the City of Zephyrhills in 2012. The CAR will be based on current facility operations, current influent conditions, and future conditions. Data analysis will include tabulated influent flow data reported to FDEP for the past 5 years (January 2017 through December 2021) to calculate:

- Maximum monthly average daily flow.
- Three-month average daily flow (3-MADF).
- Annual average daily flows (AADF).

The flow totals and influent Biochemical Oxygen Demand (BOD) and Total Suspended Solids (TSS) test results reported in the Discharge Monitoring Reports will be used to calculate:

- Annual average BOD and TSS loads.
- Maximum-month BOD and TSS loads.
- Peak-day BOD loads.

CONSULTANT will prepare AADF and 3-MADF projections based on wastewater flow projections and associated future sewer population estimates provided by the CITY. Based on these flow projections, a determination will be made to estimate when the projected AADF will meet or exceed the City’s permitted AADF capacity.

DELIVERABLES:

- Provide the draft CAR to the City for review. One electronic copy of the draft will be provided.
- Submit to FDEP signed-and-sealed final CAR with the permit renewal application using the “Electronic Document Submission Instructions”

- Provide the CITY with one electronic searchable signed-and-sealed CAR.

ASSUMPTIONS:

- In accordance with Task 1, missing requested data will be provided in Excel.

TASK 4 – O&M PERFORMANCE REPORT

CONSULTANT will update the previous O&M Performance Report (OMPR) for the WWTF that was prepared in 2012. A registered Professional Engineer from CONSULTANT will schedule and conduct a facility inspection to observe, with knowledgeable staff, the current physical condition of each treatment unit as required by FAC 62-600. CONSULTANT will review reported influent and effluent flow and quality data and groundwater monitoring data from the past 5 years. The OMPR will include the following:

- Plant descriptions, including a flow schematic diagram with process tank volumes, flow rates, surface areas, and effluent disposal and reuse systems.
- Effluent and reuse disposal location maps.
- Groundwater monitoring well location maps.
- One plant site visit for current physical condition review of the WWTF.
- Historical flows and loads for past 5 years.
- Projected maximum month, peak-hour, and seasonal flows at permitted capacity.
- Projected BOD and TSS loads at the permitted capacity.
- The WWTF's treatment capacity at the projected flows and loads (major unit processes only, based on previously submitted OMPR or Preliminary Design Report, excluding individual equipment capacity).
- Review of reported effluent parameters for past 5 years.
- Review of reported groundwater parameters for past 5 years.
- Review of reported ambient monitoring parameters for past 5 years.
- Explanations (**written explanations provided by the City**) for effluent and groundwater parameter exceedances, if required.
- Schedules and recommendations of corrective actions (**written explanations provided by the City**) for facility problems or deficiencies, if necessary.
- Flow meter calibration and backflow preventer testing forms (**provided by the City**).

DELIVERABLES:

- Provide the draft OMPR to the CITY for review. One electronic copy of the draft will be provided.
- Submit to FDEP signed-and-sealed final OMPR with the permit renewal application using the "Electronic Document Submission Instructions."
- Provide the CITY with one electronic searchable signed-and-sealed OMPR.

ASSUMPTIONS:

- CITY staff will be available for the site visit.
- If required, the CITY will provide written explanations for effluent and groundwater parameter exceedances.
- If required, the CITY will provide written explanations of schedules and recommendations of corrective actions for facility problems or deficiencies to include as an appendix.
- Desktop calculations to verify the previous capacity assessments are included in this Scope of Work. Use of BioWin is excluded from this Scope of Work.

TASK 5 – FDEP RAI RESPONSES

CONSULTANT will prepare and submit up to two responses to FDEP RAIs. Due to the unknowns in dealing with permitting through FDEP, CONSULTANT proposes to allocate 28 hours to prepare response letters for the two RAIs. If additional effort is required, it will be determined as needed. If responding to RAIs requires more than 28 hours effort, CONSULTANT will submit a separate cost estimate to the CITY for approval before completing any work associated with additional responses to FDEP RAIs.

DELIVERABLES:

- Provide draft and final RAI responses to the CITY for review as a PDF.
- Submit to FDEP signed-and-sealed RAI Responses using the “Electronic Document Submission Instructions.”

TASK 6 – DRAFT OPERATING PERMIT REVIEW

After the permit is issued by FDEP, CONSULTANT will review the permit and provide recommendations on requested modifications to the permit before the final permit is signed and issued.

DELIVERABLES:

- Provide preliminary written review comments and suggested revisions, if any, to the draft permit to the CITY. Comments and suggested revisions to the draft permit will be submitted electronically to FDEP.

EXCLUSIONS AND CONDITIONS

The following items are exclusions to or conditions of this Scope of Services:

- If required, the CITY will provide the data collected from the routine monitoring of the staff gauge and monitoring wells if applicable, in electronic format.
- The schedule assumes 1 week for the CITY to review the draft document.

ATTACHMENT 2—PROJECT SCHEDULE

This Task Assignment shall commence upon Notice to Proceed (NTP) and continue until the Scope of Services is completed and accepted by the CITY. Said project shall maintain schedule as provided. If schedule is altered due to unforeseen delays, the CITY's Project Manager shall be notified at once.

The deadline for submittal of the CAR, OMPR, RCW OP, and permit renewal application forms is no later than June 30, 2022. CONSULTANT will complete and submit these documents, and the CITY will be required to pay the application fee, to FDEP before the deadline.

The following table summarizes the proposed schedule of each task:

TASKS	SCHEDULE
1. Project Management, Kick-Off Meeting, and Information Coordination	2 weeks after Notice to Proceed
2. Permit Application Forms 1 and 2A; Reuse Operating Protocol	16 weeks after Kick-Off Meeting
3. CAR	16 weeks after Kick-Off Meeting
4. OMPR	16 weeks after Kick-Off Meeting
5. FDEP RAI Responses	2 weeks after receiving RAI
6. Draft Operating Permit Review	2 weeks after receiving Draft Permit

ATTACHMENT 3—CONSULTANT’S PROJECT TEAM MEMBERS

CONSULTANT shall provide the name, title, and responsibility for each of the CONSULTANT’S employees proposed to complete the Scope of Services identified in Attachment 1 of this Task Assignment. The CONSULTANT shall also provide the contact information for the Consultant’s Project Engineer assigned to this project.

The following is a list of CONSULTANT’S proposed team members. Any changes to the proposed project team will be coordinated in advance with the City’s Project Manager.

Name	Title	Responsibility
Michael Clark, PE	Senior Engineer	CSM/PM
Jeffrey Crowley, PE, CCM, PMP, LEED AP, BDIA	Senior Manager	Senior QA/QC
Sean Menard, PE, PMP	Department Manager	Task Manager
Tivonia Potts, EI	Engineer Intern	Technical
John Kramer	Sr, CADD	Technician
Terry A. Martin	Sr. Administrative Assistant	Clerical

ATTACHMENT 4—TOTAL COST FOR SERVICES

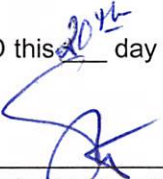
Based on the Scope of Services described in Attachment 1, the CITY will compensate the CONSULTANT on a lump-sum basis as follows:

TASKS	FEE
1. Project Management, Kick-Off Meeting, and Information Coordination	\$17,160
2. Permit Application Forms 1 and 2A; Reuse Operating Protocol	\$10,996
3. CAR	\$19,460
4. OMPR	\$19,660
5. FDEP RAI Responses	\$ 9,940
6. Draft Operating Permit Review	\$ 5,521
TOTAL	\$82,737

ATTACHMENT 5—TRUTH IN NEGOTIATION CERTIFICATE

The wage rates and other factual unit costs supporting the compensation under the June 11, 2018 Contract are accurate, complete and current as of the time of entering into the contract. This Certificate is executed in Compliance with Section 287.055 (5) (a) of the Florida Statutes.

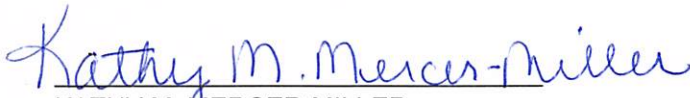
DATED this 20th day of January, 2022.

By:  (affiant's signature)
Stanley F. Ferreira, Jr.

STATE OF FLORIDA
COUNTY OF ALACHUA

BEFORE ME, the undersigned authority, personally appeared Stanley F. Ferreira, Jr., President & CEO of Jones Edmunds & Associates, Inc. who, after first being duly sworn, deposes and says that the foregoing Truth in Negotiation Certificate is true and correct to the best of his knowledge, information and belief.

SWORN TO AND SUBSCRIBED before me on this 20th day of January, 2022, by Stanley F. Ferreira, Jr. He is personally known to me.


KATHY M. MERCER-MILLER
COMMISSION SEAL/NUMBER:

SIGNATURE

IN WITNESS THEREOF, the above parties have executed this instrument, the name of each party being affixed and these present duly signed by its undersigned representative, pursuant to authority of its governing body.

OWNER:

The City of Zephyrhills, FL

By: _____
W. Alan Knight, Council President

Date Approved: _____

ATTEST:

By: _____
Lori Hillman, City Clerk

CONSULTANT:

Jones Edmunds & Associates, Inc.

By:  _____
Stanley F. Ferreira, Jr.
President & CEO

ATTEST:

By:  _____
Kathy Mercer-Miller, Contracts Specialist

MClark/PSimms

BUSINESS ITEMS/CITY MANAGER'S REPORT 2.1

Construction Manager at Risk Agreement No. 37-22-01 - A.D. Morgan - SVB Indoor Tennis Center

Issue:

Request Council's approval on the selection of A.D. Morgan Corporation and award of contract, based on ranking, of a Construction Manager Services Contractor for the Phase II Sarah Vande Berg Tennis Center - Indoor Courts /MultiActivity Center in response to RFP No. 35-21-03 Construction Management Services.

Background:

On October 17, 2021, the City distributed RFP No. 35-21-03 to select a contractor to provide Construction Management Services for the building of the Sarah Vande Berg's indoor tennis and multiactivity building. They will be working closely with Furr, Wegman & Banks the City's Architect/Engineering firm. The solicitation was distributed online through BidNet Direct with twenty seven (27) firms downloading the solicitation package. On December 3, 2021, the City received five (5) solicitation responses:

- 1). Ajax Building Corporation
- 2). J.O. Delotto & Sons
- 3). Park & Eleazer Construction
- 4). The A.D. Morgan Corporation
- 5). Wharton Smith

The City's Evaluation Committee comprised the Public Works Director, Shane Le Blanc, Building Official Bill Burgess and Planning Director, Todd Vande Berg reviewed the written responses and selected the top three firms for interviews via GoToMeeting on December 13, 2021. With the committee's review of the written responses and the evaluation of the interviews the ranking of the firms are listed below.

- 1st - The A.D. Morgan Corporation
- 2nd - Ajax Building Corporation
- 3rd - Wharton Smith

Attached for consideration is the AIA agreement with A.D. Morgan for a guaranteed maximum price of \$4,000,000 to construct Phase II of SVB. The contract is a standard AIA Agreement that provides for maximum price, preconstruction services, project schedule, cost estimates, subcontractors and suppliers, procurement, Construction services, City's responsibilities, contractor's responsibilities, compensation for reconstruction services, compensation for

construction services, dispute resolution, and termination.

Attachment(s):

1. 37-22-01 A.D. Morgan CM at Risk Agreement
2. Ranking of Respondents

Fiscal Impact:

Funding is available in the FY 2021-22 budget through a state appropriation. The total appropriation for the project is \$4,665,000.

Staff Recommendation:

Based on the review by the Evaluation Committee, staff recommends Council's approval of the award of bid to A.D. Morgan, Corp. and award of contract to A.D. Morgan, Corp.



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 Zephyrhills
5335 8th Street
Zephyrhills, FL 33542

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

The A.D. Morgan Corp.
716 N. Renellie Dr.
Tampa, FL 33609

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

SVB Tennis Center -Indoor Tennis Building
Zephyrhills, FL

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

Furr, Wegman & Banks Architects, P.A.
625 E. Orange St.
Lakeland, FL 33801

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

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

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

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

Init.

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User Notes:

(1836270914)

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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.)

Construction Management services for new indoor tennis facility.

§ 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.)

TBD

§ 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.)

\$4,000,000

Init.

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User Notes:

(1836270914)

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

.1 Design phase milestone dates, if any:

TBD

.2 Construction commencement date:

TO BE DETERMINED UPON ESTABLISHMENT OF THE GUARANTEED MAXIMUM PRICE

.3 Substantial Completion date or dates:

TO BE DETERMINED UPON ESTABLISHMENT OF THE GUARANTEED MAXIMUM PRICE

.4 Other milestone dates:

N/A

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

N/A

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

N/A

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document 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.)

N/A

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

Shane LeBlanc
Public Works Director
5335 8th Street
Zephyrhills, FL 33542

§ 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.)

Same

Init.

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

.1 Geotechnical Engineer:

.2 Civil Engineer:

Cornelison Engineering & Design, Inc.
7810 Gall Blvd. #49
Zephyrhills, FL 33541

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

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

Aaron Banks
Principal, Architect
625 East Orange St.
Lakeland, FL 33801

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

John Kalaf
VP Operations
716 N. Renellie Dr.
Tampa, FL 33609

§ 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.)

AS REQUIRED TO MEET DELIVERABLE

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

AS REQUIRED TO MEET DELIVERABLES

Init.

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

N/A

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

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

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

§ 2.2 Relationship of the Parties

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

§ 2.3 General Conditions

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

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

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

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

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

§ 3.1.3 Consultation

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

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

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

§ 3.1.4 Project Schedule

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

§ 3.1.5 Phased Construction

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

§ 3.1.6 Cost Estimates

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

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement.

The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

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

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

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

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

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

§ 3.1.11 Subcontractors and Suppliers

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

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

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

§ 3.1.12 Procurement

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

§ 3.1.13 Compliance with Laws

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

§ 3.1.14 Other Preconstruction Services

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

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

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The

Init.

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.

Init.

§ 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.)

.75% of the GMP - .75% of anticipated GMP of \$4,000,000 = \$30,000

§ 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.)

INCLUDED ABOVE IN PRECONSTRUCTION FEE

Init.

Individual or Position
N/A

Rate
N/A

§ 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 the agreed upon schedule duration which is to-be-determined>> 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 (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

1% per month % 12% per year

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.)

5%

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

Change order to base contract

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

Mark up to 15% for overhead and profit, including bond. Sub-subcontract costs shall be marked up at 5% including overhead and bond.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed N/A percent (N/A %) 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.)

\$500.00 per day

§ 6.1.7 Other:

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

§ 6.2 Guaranteed Maximum Price

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

§ 6.3 Changes in the Work

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

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

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

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

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

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

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

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

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

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

§ 7.2 Labor Costs

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

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

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

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

TO BE DETERMINED UPON ESTABLISHMENT OF THE GMP

Init.

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

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

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

§ 7.3 Subcontract Costs

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

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

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

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

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

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

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

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

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

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

§ 7.6 Miscellaneous Costs

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

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

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

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

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

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

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

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

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

§ 7.6.7 Costs of document reproductions and delivery charges.

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

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

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

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

§ 7.7 Other Costs and Emergencies

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

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

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

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

§ 7.8 Related Party Transactions

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

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

§ 7.9 Costs Not To Be Reimbursed

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

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

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

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

subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

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

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

ARTICLE 10 ACCOUNTING RECORDS

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

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

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

N/A

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 5th day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the last day of the 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 (25) days after the Architect receives the Application for Payment. *(Federal, state or local laws may require payment within a certain period of time.)*

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

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

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

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

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

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

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

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

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

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

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

§ 11.1.8 Retainage

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

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

5%

§ 11.1.8.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

General conditions, insurance, and bond

§ 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.)

2.5% at 50% complete, at owners discretion

§ 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.)

N/A

§ 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

Init.

either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

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

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

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

§ 11.3 Interest

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

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

1% Per month % Or, 12% annually

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

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

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

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

§ 12.2 Binding Dispute Resolution

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

(Check the appropriate box.)

☐ Arbitration pursuant to Article 15 of AIA Document A201–2017

☒ Litigation in a court of competent jurisdiction

☐ Other: *(Specify)*

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

ARTICLE 13 TERMINATION OR SUSPENSION

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

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

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

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

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

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

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

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

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order

Init.

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.)

Total cost incurred plus pro-rata fee

§ 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 (SEE ATTACHED CERTIFICATE OF INSURANCE) for each occurrence and (SEE ATTACHED CERTIFICATE OF INSURANCE) 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 (SEE ATTACHED CERTIFICATE OF INSURANCE) 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 (SEE ATTACHED CERTIFICATE OF INSURANCE) each accident, (SEE ATTACHED CERTIFICATE OF INSURANCE) each employee, and (SEE ATTACHED CERTIFICATE OF INSURANCE)) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than (SEE ATTACHED CERTIFICATE OF INSURANCE) per claim and (SEE ATTACHED CERTIFICATE OF INSURANCE) in the aggregate.

§ 14.3.1.6 Other Insurance

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

Coverage	Limits
N/A	N/A

§ 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.

Init.

§ 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.)

N/A

§ 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.)

Init.

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

OWNER *(Signature)*

W. Alan Knight City Council President
(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

John Kalaf V.P. Operations
(Printed name and title)

Init.

Additions and Deletions Report for AIA® Document A133™ – 2019

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 13:02:06 ET on 01/21/2022.

PAGE 1

City of Zephyrhills
5335 8th Street
Zephyrhills, FL 33542

...

The A.D. Morgan Corp.
716 N. Renellie Dr.
Tampa, FL 33609

...

SVB Tennis Center -Indoor Tennis Building
Zephyrhills, FL

...

Furr, Wegman & Banks Architects, P.A.
625 E. Orange St.
Lakeland, FL 33801

PAGE 2

Construction Management services for new indoor tennis facility.

...

TBD

...

\$4,000,000

PAGE 3

TBD

...

TO BE DETERMINED UPON ESTABLISHMENT OF THE GUARANTEED MAXIMUM PRICE

...

TO BE DETERMINED UPON ESTABLISHMENT OF THE GUARANTEED MAXIMUM PRICE

...

N/A

...

N/A

...

N/A

...

N/A

...

Shane LeBlanc
Public Works Director
5335 8th Street
Zephyrhills, FL 33542

...

Same
PAGE 4

Cornelison Engineering & Design, Inc.
7810 Gall Blvd. #49
Zephyrhills, FL 33541

...

Aaron Banks
Principal, Architect
625 East Orange St.
Lakeland, FL33801

...

John Kalaf
VP Operations
716 N. Renellie Dr.
Tampa, FL 33609

...

AS REQUIRED TO MEET DELIVERABLE

...

AS REQUIRED TO MEET DELIVERABLES
PAGE 5

N/A

PAGE 10

.75% of the GMP - .75% of anticipated GMP of \$4,000,000 = \$30,000

...

INCLUDED ABOVE IN PRECONSTRUCTION FEE

PAGE 11

N/A

N/A

...

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within (~~—~~)the agreed upon schedule duration which is to-be-determined>> months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

...

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

...

1% per month % 12% per year

...

5%

...

Change order to base contract

...

Mark up to 15% for overhead and profit, including bond. Sub-subcontract costs shall be marked up at 5% including overhead and bond.

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

...

\$500.00 per day

PAGE 12

TO BE DETERMINED UPON ESTABLISHMENT OF THE GMP

PAGE 16

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

N/A

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 5th day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the last day of the 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 (25) days after the Architect receives the Application for Payment.

PAGE 17

5%

PAGE 18

General conditions, insurance, and bond

...

2.5% at 50% complete, at owners discretion

...

N/A

PAGE 19

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

...

1% Per month % Or, 12% annually

PAGE 20

[☒] Litigation in a court of competent jurisdiction

PAGE 21

Total cost incurred plus pro-rata fee

PAGE 22

§ 14.3.1.1 Commercial General Liability with policy limits of not less than ~~(\$—) for each occurrence and (\$—) (SEE ATTACHED CERTIFICATE OF INSURANCE) for each occurrence and (SEE ATTACHED CERTIFICATE OF INSURANCE)~~ 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 ~~(\$—) (SEE ATTACHED CERTIFICATE OF INSURANCE)~~ per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

...

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than ~~(\$—) each accident, (\$—) each employee, and (\$—) (SEE ATTACHED CERTIFICATE OF INSURANCE) each accident, (SEE ATTACHED CERTIFICATE OF INSURANCE) each employee, and (SEE ATTACHED CERTIFICATE OF INSURANCE))~~ policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than ~~(\$—) per claim and (\$—) (SEE ATTACHED CERTIFICATE OF INSURANCE) per claim and (SEE ATTACHED CERTIFICATE OF INSURANCE)~~ in the aggregate.

...

N/A
PAGE 23

N/A

N/A

...

N/A
PAGE 24

W. Alan Knight City Council President

John Kalaf V.P. Operations

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:02:06 ET on 01/21/2022 under Order No. 2114271561 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

Written and Interview

	Written	Interview	Total	
AJAX	285	258	543	2
The A.D. Morgan	281	268	549	1
J.O. Delotto	223		223	
Park & Eleazer	198		198	
Wharton Smith	266	256	522	3
Totals	1253	782	2035	



38550 Fifth Avenue
Zephyrhills FL, 33542
Phone: (813) 782-1913 Fax: (813) 783-6060
www.ZephyrhillsChamber.org

January 13, 2022

Mayor Whitfield
City Council
City of Zephyrhills
5335 8th Street
Zephyrhills, FL 33542

Dear Mayor Whitfield, Council President Knight, and City Council,

On behalf of the board of directors, I'd like to thank you for your continued support of Pigz in Z'Hills. As you know our 12th Annual Pigz in Z'Hills BBQ & Blues Festival has been named the **Florida BBQ Association State Championship** and will be held on March 4-5th, 2022. The decision to move forward with our 2022 event amidst the pandemic has not been taken lightly. As you know our chamber and community rely on the economic impact of this event as well as our youth groups. We will do all we can to ensure safety protocols will be met.

With the news of the State Championship, and in hopes to keep the crowd down, on Saturday we have decided to add events to Friday night from 5-9pm. We have booked our most popular band, The Chuck Riley All-Stars, for the evening and know they will be a draw on Friday night. We will also be hosting our 2nd Kidz Grillin' Contest. Thanks to generous sponsors 25 youth in our community will be able to compete for free. The kidz will be mentored by our amazing local Pitmasters. A cornhole tournament will be in action on that evening along with vendors selling their food and wares.

As always, part of the event is selling beer and wine to adults, and we would like your permission to continue with this practice. All protocols that have been set up since the inception of this event will be followed. Every person will be carded, and a wristband will be place on their arm. Any person seen drinking alcohol without a wristband will be turned over to the police and asked to leave the premises. Signs "Drink Responsibly" will be posted at the beer truck and kiosk. Any patron who has the appearance of being overly inebriated will be escorted with a designated driver to their vehicle and not allowed back on premises.

Thank you for taking the time to consider these requests and for your continued support of your Chamber. If you have any questions, or concerns, I will be happy to answer them during the City Council meeting on Monday, January 24th.

Sincerely,
Melonie Monson
President & EEO