



# Rutherfordton

## NORTH CAROLINA

### Request for Qualifications (RFQ)-

### Construction Manager at Risk (CMAR)

for the

### Rutherfordton Municipal Complex Renovation Project

Date of Issue: Thursday, November 7<sup>th</sup>

#### A. PURPOSE FOR RFQ

1. Through this request for qualification (RFQ), notice is hereby given that the Town of Rutherfordton North Carolina, is seeking a firm to provide CMAR Services for the Rutherfordton Municipal Complex Renovation Project (Project).
2. This RFQ provides complete information on the services being sought, the submittal requirements, and the timeline. Copies of the RFQ may be downloaded directly from [www.rutherfordton.net](http://www.rutherfordton.net)

Interested firms may submit a Statement of Qualifications, meeting the requirements defined in the RFQ to:

Doug Barrick, Town Manager  
Town of Rutherfordton  
129 North Main Street  
Rutherfordton NC 28139  
[dbarrick@rutherfordton.net](mailto:dbarrick@rutherfordton.net)  
828-447-6360

3. **Statements of Qualifications must be received by 3:00 p.m. on Friday, December 6, 2024.** To ensure receipt of any addenda to the RFQ, please contact the person listed above to **register as an interested firm**. The Town is not responsible for providing updated information/changes to firms not known by the Town as holding a copy of this RFQ.
4. **Any questions regarding this RFQ must be received in writing prior to 1:00pm on Wednesday November 25<sup>th</sup> and directed to Doug Barrick, Town Manager.** Questions received after this date may not receive a response. All responses to questions will issued in an addendum sent to each registered firm AND posted to the Town's website: <https://www.TownofRutherfordton.org/Bids.aspx>
5. This RFQ does not obligate the Town to pay any costs incurred by respondents in the preparation and submission of a response. Furthermore, the RFQ does not obligate the Town to accept or contract for any expressed or implied services. The Town of Rutherfordton reserves the right to reject any and all submittals. The Town of Rutherfordton is committed to a program of equal employment opportunity regardless of race, color, creed, sex, age, nationality or disability.

6. A Pre-Submittal Meeting will be held at:  
Time: 11:00 am – Thursday November 21, 2024  
Location: Digitally via Teams

**It is strongly recommended that any firm interested in responding to this RFQ attend the Pre-Submittal Meeting. Firms must email Doug Barrick, Town Manager at [dbarrick@rutherfordton.net](mailto:dbarrick@rutherfordton.net) to receive the meeting login information by 5pm on Wednesday November 20, 2024.**

## **B. BACKGROUND AND SCOPE OF CMAR SERVICES**

1. The Town has acquired the former Rutherfordton Elementary School Campus known now as the Isothermal Community College Rutherford Learning Center (RLC). This 5.8-acre campus sits on the edge of Downtown Rutherfordton with frontage along S. Washington St, Maple Street, and N. Mitchell St. The campus features 2 buildings, building 1 contains approx. 17,617 square feet and was built in 1957 while building 2 contains approx. 14,522 square feet on the main level, and 11,534 square feet on the second level, for a total of 26,056 square feet, and was built in 1967.

This campus will allow for the renovation of the 2-story 1967 building to house Police, and Town Hall and provide opportunities for indoor recreation, a commercial kitchen, and a multitude of large community gathering spaces as well as ample parking that would not overburden downtown. Plans for Building 1 have not been established and will be part of the overall site master plan.

The Campus currently houses Isothermal Community College and the Rutherford Arts Council, the Town will work with Isothermal Community College as their space needs will expire upon the construction of the new allied health building to be constructed on the Main Campus off College Ave in Spindale. Rutherford County Schools as a part of the agreement will work with the Arts Council on future space needs as the Town begins to utilize the property. The Town is also working with the architectural firm of CPL Architecture to shift the focus towards the renovation of the school site for these purposes. This project affords the Town a new opportunity to grow Downtown with the use of the properties originally under review for alternative public purposes and economic development as well as the ability to react to the recent public survey data and focus groups that called for a mix of large and small gathering spaces with the opportunity to provide recreational spaces.

This facility gives the Town the ability to control costs, take advantage of a building renovation budget instead of new construction costs, and get a much higher return on square footage costs. A building of this scale would have been financially unachievable under a new construction budget. Rutherfordton looks to keep moving forward this fall with the Master planning of this campus and construction planning for this renovation project. Subsequently, the Town operations of the Police and Town Hall will not have to seek temporary locations during this project. "Overall this is a win-win for the Town and the School System and provides the Town of Rutherfordton with a wonderful opportunity to tackle housing options, as well as craft a new municipal operations center and surrounding uses to support the health of the community and downtown", said Mayor Dancy. The property will also benefit from the upcoming investment in the community from the 2022 RAISE grant award that will improve Charlotte Rd from Maple St to Oakland Rd in Spindale with pedestrian improvements, intersection improvements, as well as a connection between the Purple Martin Greenway and Thermal Belt Rail Trail.

2. The Town has retained CPL Architecture Engineering Planning (CPL) and their consultants for design services. CPL has begun the Programming and Schematic Design phases of the project; and will be providing services through the Construction Administration phase.

Procurement of CM services will be made in accordance with the provisions of G.S. 143-64.31 which requires that CM firms be selected on the basis of demonstrated competence and qualification for the type of professional services required without regard to fee. After selection of a qualified CM, the

Town and the selected firm will negotiate a contract for those services at a fair and reasonable fee with the best qualified firm.

The CM will be an integral member of the project team which consists of representatives from the Town, the project Architect/Engineer (Project Design Team), and other consultants, as determined by the Town. Generally, it will be the responsibility of the construction manager to integrate the design and construction, utilizing the firm's skills and knowledge of general contracting to contribute to the development of the project during the design pre-construction phases. During the construction phase, the CM will be responsible for effecting construction of the project within the GMP and providing all necessary construction services through trade contractors selected as provided by the NC General Statutes.

The CM contract will be performed in **THREE** Phases which are as follows:

#### **PHASE I PRE-CONSTRUCTION SERVICES**

##### **1. Project Review**

- a. The Construction Manager (CM) shall serve as an integral part of the Project Team and shall meet with the Town, the Project Design Team, consultants, other design team members and stakeholders to fully understand the design program, the design documents, the project scope, and all other pertinent aspects of the Project.
- b. The CM shall develop written project procedures in cooperation with the Town and other members of the Project Team that will be used as a guide for the management and coordination of this project throughout the life of the project.

##### **2. Consultation Services**

- a. The Construction Manager shall attend regularly scheduled meetings with the Town, the Project Design Team, consultants, and other design team members and stakeholders to advise them on matters relating to site use, improvements, selection of materials, building methods, construction details, building systems and equipment, phasing, logistics, and sequencing. The CM shall provide written recommendations to the Town on construction feasibility.

##### **3. Value Analysis**

- a. The Construction Manager shall evaluate the sequential and final construction documents and obtain an understanding of the intent of the Town and the Project Designer. The CM shall provide value analysis services and offer cost savings suggestions and best value recommendations to the Town at sequences of design completion, acceptable to the Town, and appropriate to the level of completeness of the design documents. All recommendations shall be in writing, and detail relevant budget and schedule impacts, and must be fully reviewed with the Project Design Team and Town and approved by the Town prior to implementation.
- b. Value analysis efforts shall result in a design that is most effective in construction costs, as well as long term operational costs relative to issues of energy use and facility maintenance. Value analysis studies shall include life cycle cost analysis as may be required to assist the Project Designer to achieve an appropriate balance between costs, aesthetics and function.
- c. Value analysis efforts shall also take into consideration applicable constructability issues including but not limited to an analysis of site, budget, schedule, and quality risks.

- d. The CM shall promptly notify the Town and Project Design Team in writing upon observing any features in the design that appear to be incomplete, out of sequence, ambiguous, confusing, conflicting, or non-standard to industry practices.
- e. All value analysis studies must be provided on a timely basis within the schedule and shall be supported by validated facts, research, and actual cost data.
- f. Value analysis studies shall be continuous as the design is being developed.

#### 4. Schedule

- a. The CM shall utilize standard industry scheduling software to prepare, provide, and maintain appropriately detailed CPM schedules during pre-construction and construction phases of work.
- b. Scheduling software shall allow for incorporation of design changes resulting from constructability reviews and value analyses and provide for coordination of all work to be performed. The scheduling software shall be capable of producing and coordinating logic developed network diagrams, and tabular reports accurately depicting the critical path and milestone activities. Schedule shall incorporate all phases of construction work with detail of areas under construction.
- c. The CM shall submit the schedule electronically, both in pdf and native-format, and provide regular updates as required by the Town. The project schedule shall be sufficiently detailed to allow for a realistic projection of design activity sequences and durations. The submitted schedule shall be a complete schedule update, showing all relationships and the project's critical path(s) up through and including a realistically attainable substantial completion date. Column information displayed shall include total float and the submittal shall include a printout of a comparison report of the latest schedule compared against the previously submitted project schedule.
- d. Updated schedules will be required at the end of each Design phase established by the contract between the Town and the Designer, and after major value engineering decisions.
- e. Within thirty (30) days from the Notice to Proceed, the CM is to establish a detailed CPM schedule of the pre-construction / design phase with the concurrence of the Town and the Project Designer. The CM is responsible to monitor this schedule during the pre- construction / design phase, ensure that this schedule is updated, and advise the Town of any deficiencies in adhering to this schedule by any party.

#### 5. Logistics and Phasing Plan (site specific)

- a. CM will develop graphic Logistics and Phasing Plans to help analyze the project site, define the flow of labor and materials into the site, and reduce offsite traffic impacts. The logistics plan will show locations of all temporary construction facilities, including hoists, offices, crane positioning, safety equipment, staging areas, etc. The logistics plan will also reference surrounding roads, parking, offices, and activities that may be affected. The logistic plan will attempt to maintain a smooth flow of material and labor around the job site and maintain an efficient project schedule.
- b. Project Designer will provide documents in electronic format such as AutoCAD, "Revit" or other approved architectural electronic model for the project. CM is strongly encouraged to make use of this format to communicate graphic representations of phasing and logistics plans unless an alternate method is more appropriate. If appropriate, CM is encouraged to use an electronic format model in providing constructability review, coordination review, and cost modeling. The model shall be available for use, by the Owner, Design team and CM, allocating risk and liability.

6. Quality Control / Quality Assurance (QA/QC)

- a. All work products shall be based on Owner-accepted QA/QC steps to be performed by the CM during the Pre-Construction Services Phase of the Project.
- b. Within 15 days of execution of the Pre-Construction Services Agreement the CM shall submit to the Town for approval a written QA/QC Plan.
- c. This plan shall be based on structured and industry acceptable QA/QC steps to be performed by the CM during the Pre-Construction Services Phase of the Project. The Plan shall also indicate all firm(s) and/or individual(s) assigned by the CM to perform QA/QC functions and their professional qualifications to perform such services.
- d. All design and construction documents including, but not limited to, drawings, specifications, cost estimates, constructability reports, engineering reports, site assessments, and other related project documentation are to be checked and stamped (certified) by the CM. The Town is to be provided a complete set of documents certified by the CM.

7. Constructability Review

CM shall review the design throughout the Pre-Construction Phase to determine the Project's constructability. All issues identified as creating a risk to the project or potentially impacting constructability shall be identified in a written report submitted to both the Town and the Project Designer. At a minimum, the written report shall contain:

- (1) A description of the constructability issue with background information;
- (2) a summary of the CM's in-depth study/research; and,
- (3) written recommendations for addressing the issue; and
- (4) alternate methods to bring the scope within the allocated budget and schedule if applicable.

8. Construction Cost Model / Estimates

- a. The CM shall develop a project budget / cost model (independent from any similar cost estimates provided by the Owner and such required of the Project Design Team, such as the Statement of Probable Construction Costs), which shall be updated as needed, but at a minimum at the end of each design phase during which the CM is performing Pre-Construction Services. (Hereinafter referred to as the CM Cost Model Update.)
- b. Each CM Cost Model Update must contain a statement of the total amount determined under that construction cost model to be the total construction costs for the facility (including alternates, CM General Conditions, CM fees, and CM contingency) in accordance with the Project Designer's Program.
- c. The CM Cost Model Update shall be compared to the Owner's Project Budget to determine whether it is sufficient to complete the Design Program and account for reasonably expected constructability issues / project risks. Additionally this budget comparison shall set out all required fees, reserves, contingencies, and industry standard project related expenses in order to reflect the total anticipated cost of the project.
- d. During all design phases, in the event that the CM Cost Model Update and/or the Project Designer's Statement of Probable Construction Costs exceed the Project Budget, the CM shall without additional compensation work in conjunction with the Project Designer to evaluate any additional design or redesign work for the facility as necessary to maintain the Project Program within the Project Budget.

- e. Each CM Cost Model Update and the Design Team's Probable Construction Costs will be reviewed by the Project Design Team (designer) and the Town, at sequences acceptable to the Town, for reasonableness and compatibility with the Project Budget. Meetings and negotiations between Town, Project Designer and the Construction Manager will be held to resolve questions and differences that may occur between the Designer's Probable Construction Costs and the CM Cost Model Update. The Construction Manager shall work with the Town and Project Designer to reach a mutually acceptable joint Probable Construction Cost.
9. Coordination of Contract Documents
- a. The Construction Manager shall review the drawings and specifications, recommending alternative solutions whenever design details affect costs, construction feasibility or schedules. The Construction Manager shall notify the Project Designer and the Town in writing upon observing any features in the plans or specification, which appear to be ambiguous, confusing, conflicting, or erroneous.
  - b. The Construction Manager shall provide a thorough interdisciplinary coordination review of the Construction Drawings and Specifications to be performed by a qualified firm or qualified personnel before Trade Contract Bidding. Review shall be performed utilizing a structured and industry accepted process. The CM shall provide the Town with all review comments and review the final documents to see that all comments have been incorporated.
  - c. Any discovery of ambiguous, confusing, conflicting and/or erroneous features discovered in the plans or specifications by the CM during the review process shall be corrected for construction, via teamwork with the Design Team and Owner, and any associated costs from such coordination shall be included in the CM's Guaranteed Maximum Price (GMP).
10. Ownership of Documents
- a. All data information, material and matter of any nature and all copies thereof in any and all forms whatsoever developed by the CM or in the CM's possession or control relating to the Project are the property of the Town and shall be turned over to the Town within ten (10) days after the Town's request.

## **PHASE II PRE-CONSTRUCTION SERVICES/GMP**

1. Preliminary Guaranteed Maximum Price (pGMP)
- a. CM to submit pGMP as completion of preconstruction services for the Town's consideration, review and acceptance. The contract contained within this RFQ itemizes the requirements of the pGMP.
  - b. The pGMP must not exceed the amount of funding available in the Project Budget.
  - c. In the event that the pGMP exceeds the Project Construction Budget, the Town reserves the right to direct the CM to (and the CM shall) work in conjunction with the Project Designer to redesign the Project as necessary to maintain the Project Program and meet the Project Budget. The Construction Manager's detailed construction cost estimates and pGMP will be reviewed by the Project Designer and the Town for reasonableness and compatibility with the Project Budget. Meetings and negotiations between Town, Project Design Team and the Construction Manager will be held to resolve questions and differences that may occur between the Project Budget and the Construction Manager's construction cost estimate and corresponding pGMP. The Construction Manager shall work with the Town and Project Design Team to reach a mutually acceptable pGMP.

- d. Once pGMP is accepted, the CM shall provide a GMP for the project which shall be the sum of the accepted bids for the cost of work, any necessary estimates for the cost of work where no acceptable or responsive bids were received, contract compliance costs, the construction contingency and the CM fee.

## 2. Town / Owner's Contingency

Town / Owner's Construction Contingency will be established. Expenditures against this contingency will be available to cover all costs resulting from changes in scope not specifically covered in the CM-GMP Contingency, and initiated by the Town's designated representative with the Town's written approval via a change order amendment issued by the Town.

## 3. CM-GMP Contingency

- a. The GMP shall include a construction contingency (CM-GMP Contingency) in an amount approved by the Town, to help reduce the risks assumed by the CM in providing the PGMP and/or GMP for the Project and for contracts based upon early-released plans and specifications or for sequential phased project work. The Town and the CM acknowledge that the contingency is included to adjust the estimate for eventualities which have not been taken into precise account in the establishment of the GMP, including (1) scope gaps between trade contractors, (2) contract default by trade contractors, (3) unforeseen field conditions (4) costs of corrective work not provided for elsewhere and (5) design gaps which a prudent CM could not have reasonably detected during the discharge of the CM's pre-construction duties.
- b. The CM-GMP Contingency is not allocated to any particular item of the Cost of the Work, and is established for the CM's use as noted above, with Owner's written approval. It is understood that the amount of the CM-GMP contingency is the maximum sum available to the CM to cover costs incurred as a result of such unanticipated causes or details, and that cost overruns in excess of the amount of the CM-GMP contingency will be borne by the CM.
- c. The CM-GMP contingency may be applied to any items within the Cost of the Work without the necessity of a change order, without constituting a change in the Work, and without resulting in any change in the GMP. The CM will notify the Town and Project Designer in writing of the CM's intent to apply any part of the CM-GMP contingency to any item within the Cost of the Work prior to any such application. The CM shall fully document the change on its copy of the construction documents. Owner shall not withhold its approval of the CM Contingency unreasonably.
- d. The amount of the CM-GMP contingency is to be reviewed by the Town as part of its review of the GMP. No set amount or percentage for the CM-GMP contingency will be agreed to prior to the submittal of the GMP. The Town retains the right to specifically request revisions to the amount of the CM-GMP contingency prior to the Town's acceptance and approval of the GMP.

## 4. Non-Acceptance of the GMP and Termination of Construction Manager Contract

- a. The Town, at its sole discretion, may decline to accept the Construction Manager's GMP for any Construction Phase and thereupon, without penalty, the Contract shall terminate according to its terms at the end of the Pre-Construction Phase of the work under contract.
- b. In any event, such termination shall likewise terminate all further services and obligations of the Construction Manager. The Construction Manager shall accept the amount negotiated for Pre-construction services as full and complete reimbursement of all costs and services performed by the Construction Manager for Pre-Construction Services or the Construction Phase services under contract, and shall not be entitled to any further amounts. Thereafter, the Town shall have the right to continue its activities to place the project under construction

with no obligation or restriction regarding the Construction Manager and with full ownership and use of any data and information developed during Pre-Construction activities.

5. Bidding Services

- a. In accordance with North Carolina General Statutes Section 143-128.1 the CM will be required to prequalify all first-tier subcontractors with assessment tools and criteria for the Project including specific prequalification scoring values jointly developed with the Town.
- b. CM shall proceed to obtain written, sealed competitive bids and open them in a manner consistent with NC General Statutes.

**PHASE III CONSTRUCTION SERVICES**

The CM firm manages the construction project for the Town of Rutherfordton, as an open book project. All cost savings are returned to the Town.

All work performed under this contract shall be in accordance with the terms and general conditions of the contract as modified or supplemented by any contract amendments, special conditions, or other contract documents as listed hereinafter, any addenda, and other components of the contract.

1. GENERAL

- a. The Construction Phase for the Project shall commence on the later of the following two required conditions: (1) the full completion and execution of the Guaranteed Maximum Price Amendment for the Project and (2) issuance of a Notice to Proceed on the Project. If the Owner and Construction Manager agree the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently.

2. ADMINISTRATION

- a. The Subcontractors whose bids are accepted and used by the Construction Manager to determine the Cost of the Work and to calculate the Guaranteed Maximum Price shall be the Subcontractors used by the Construction Manager unless the Owner authorizes or requires another subcontractor to be used.
- b. The Construction Manager shall schedule and conduct meetings at which Owner, Owner's Designated Representative, Architect, Construction Manager and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute minutes of all meetings.
- c. Promptly after the Owner's acceptance of the Guaranteed Maximum Price proposal and issuance of a Notice to Proceed on the Project, the Construction Manager shall prepare a schedule for the Work and submittal schedule in accordance with the General Conditions of the contract, including the Owner's occupancy requirements.
- d. The Construction Manager shall provide monthly written reports to the Owner, Owner's Designated Representative and Architect on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered, and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Architect.
- e. 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, Owner's Designated Representative and Architect at regular intervals.

## C. SUBMITTAL RESPONSE

The Submittal should be divided into individual sections as listed below. Firms are urged to include only information that is relevant to this specific Submittal so as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of the RFQ and emphasize the firm's demonstrated capability to provide services of this type.

All requirements and questions should be addressed and all requested data should be supplied. The Town reserves the right to request additional information which, in its opinion, is necessary to ensure that the firm's competence, number of qualified employees, business organization and financial resources are adequate to perform according to contract.

By submission of a Proposal, the firm acknowledges that representatives of the Town have the right to make any inquiry or investigation they deem appropriate to substantiate or supplement information contained in the Proposal and if requested the firm must authorize in writing the release to the Town of any and all information sought in such inquiry or investigation.

The Submitter shall provide one (1) unbound copy and one (1) electronic PDF copy on a thumb drive. Please limit response to thirty (30) single-sided or 15 double-sided pages, excluding appendix items, and Town required non-collusion affidavit. Font size shall be no less than 11 pt. Also, in keeping with the Town's conservation effort, you are asked to please print the full submittal on recyclable, normal stock, white, office paper without a plastic binding or a plastic cover.

### 1. COVER LETTER

The RFQ Response shall contain a cover letter, signed by a principal in the firm, indicating his or her title and that he or she has the authority to submit the Response on behalf of the firm. The cover letter should contain the following statement:

"The undersigned has the authority to submit this RFQ Response on behalf of name of company to the Town of Rutherfordton for Construction Manager at Risk. Rutherfordton Municipal Complex."

The cover letter should contain one of the following two paragraphs:

"With respect to all trade secrets that the Submitter may submit to the Town in connection with this Response or the Contract, if the Contract is awarded to the Submitter, the Submitter shall comply with the section of the RFQ titled "Trade Secrets and Confidentiality," (see Attachment A) including but not limited to all of its subsections, such as the subsection titled "Defense of Town." The Submitter acknowledges that the Town will rely on the preceding sentence."

-or-

"The Submitter is not submitting and shall not submit any trade secrets to the Town in connection with this Response or the Contract, if the Contract is awarded to the Submitter. The Submitter acknowledges that the Town will rely on the preceding sentence."

### 2. QUALIFICATIONS OF THE FIRM

The Response shall provide a description of the professional and technical experience, background, qualifications and professional licensing / certification of the firm. The firm should show that their company possesses demonstrated experience in all areas of the profession. **If this is a Joint Venture submittal, include information for both firms for this section (Section 2).** Include:

- A. Qualifications of the firm
  - a. Brief history of the firm
  - b. Organizational structure, (e.g. LLC, Corp., Partnership, etc.)
  - c. State of incorporation Years in business
  - d. If this is a joint venture / association submittal, provide a clear explanation of the role of all firms and the percentage of involvement for each.
- B. North Carolina General Contractor's license number. Include copy of current license in the Appendix.
- C. Provide the following information regarding the firm:
  - a. Address of office that will be managing this project
  - b. Range of services offered in the managing office
  - c. Number of Project Managers and Superintendents in the managing office that have experience relevant to this project
- D. Annual dollar workload listed for each of the last three (3) years inclusive of projects per year:
 

2024	#projects _____	\$ _____ tot.
2023	#projects _____	\$ _____ tot.
2022	#projects _____	\$ _____ tot.
- E. List the current projects in progress. Include: name, location, approximate square footage, current contract value and estimated date of completion.
- F. Demonstrate experience working with the Town of Rutherfordton, Town/County Planning and Inspections, State of North Carolina Agencies as may be required.
- G. Demonstrate at least 5 years of experience in construction manager-at-risk.
- H. Provide the address of the office that the project staff assigned to this project will be based.
- I. Provide the following Organization Chart.
  - a. Project Team Organizational Chart that at a minimum identifies entire project staff
  - b. Resumes for key team members including preconstruction, onsite management staff and support services. Include (1) certifications/licenses, (2) education, (3) relevant experience, (4) staff member's location, (5) aspects of pre-construction or construction the person will handle and (6) the percentage by which each person will divide their time between pre-construction and construction.
- J. Litigation/Claims. If yes to any of the questions below, list the project(s), dollar value, contact information for owner and designer and provide a full explanation with relevant documentation.
  - a. Has your company ever failed to complete work awarded to it? \_\_\_Yes \_\_\_No
  - b. Has your company ever failed to substantially complete a project in a timely manner (i.e. more than 20% beyond the original contracted, scheduled completion date)?  
\_\_\_Yes \_\_\_No
  - c. Has your company filed any claims with the North Carolina public entity within the last five years? \_\_\_Yes\_\_\_ No
  - d. Has your company been involved in any suits or arbitration within the last five years?  
\_\_\_Yes \_\_\_No

- e. Are there currently any judgments, claims, arbitration proceedings or suits pending or outstanding against your company, its officers, owners, or agents? ☐ Yes ☐ No
- f. Within the last five (5) years, has Submitter been named in any action, administrative proceeding, or arbitration in which it was alleged that the Submitter failed to comply with N.C. Gen. Stat. Chapter 22C or any similar state or federal statute requiring the prompt payment of subcontractors? ☐ Yes ☐ No
- g. Has your present company, its officers, owners, or agents ever been convicted of charges relating to conflicts of interest, bribery, fraud, misrepresentation or bid- rigging?  
☐ Yes ☐ No
- h. Has your present company, its officers, owners, or agents ever been barred from bidding public work in North Carolina? ☐ Yes ☐ No
- i. Have your company been assessed Liquidated Damages with the last ten (10) years?  
☐ Yes ☐ No
- j. Has your present company, its officers, owners, or agents ever been convicted of charges relating to conflicts of interest, bribery, fraud, misrepresentation or bid- rigging?  
☐ Yes ☐ No
- k. Has your present company, its officers, owners, or agents ever been barred from bidding public work in North Carolina? ☐ Yes ☐ No
- l. Have your company been assessed Liquidated Damages with the last ten (10) years?  
☐ Yes ☐ No
- K. Within last five (5) years, has any contract for construction or CM services of Submitter's been considered in default, suspended or terminated for convenience or cause? If so, please attach an explanation of the matter including the name and location of the project, the name and address of the owner's representative, and all pertinent details of the default, suspension or termination.
- L. Within the last five (5) years, has Submitter's contract or any portion of the work connected to the contract been completed by the Owner or Submitter's surety? If so, please attach an explanation providing the name and location of the project, the name and address of the owner's representative, and all pertinent details of the matter.
- M. Within the last five (5) years, has Submitter been debarred or suspended for any reason by any federal, state or local government procurement agency or refrained from bidding on a public project due to an agreement with such procurement agency? If so, please attach a full explanation.
- N. Within the last five (5) years, has Submitter been named in any action, administrative proceeding, or arbitration in which it was alleged that the Submitter failed to comply with N.C. Gen. Stat. Chapter 22C or any similar state or federal statute requiring the prompt payment of subcontractors? If so, please attach a full explanation.
- O. Within the last five (5) years, has the Submitter or any predecessor or related entities, or any officers, shareholders/partners or key personnel of the Submitter ever been convicted of or pleaded guilty to any crime (a) related to the bid process for contracts on public or private projects or (b) involving fraud or misrepresentation? If so, please attach a full explanation.

- P. Identify any projects in which the firm was assessed Liquidated Damages within the last five (5) years.

### 3. RELEVANT EXPERIENCE

Provide 3-5 fact sheets on projects of similar scope, size and complexity. Preferably, these projects will have been completed in the last five (5) years. For each project, provide the following information:

- A. Description of the project, scope of work and location of project.
- B. Project's GMP and final construction cost. Attach an explanation for each project where total project cost exceeded GMP OR estimated project cost by greater than 10 percent (10%).
- C. List CM fee for each project as \$ and as a % of the overall construction cost.
- D. Comparison of the number of days in the original schedule with the number of days taken for actual completion. Attach explanation for any project completion date greater than 30 days behind the original schedule as adjusted by change order.
- E. Number of Phases, short elaboration on Phasing strategy and success, and/or strategy of logistics plan of work within occupied spaces, if applicable.
- F. Name, company and title of owner's representative, their telephone and e-mail address.
- G. Name, company and title of lead architect's representative, their telephone and e-mail address.
- H. Specific details on the extent to which pre-construction and construction phase services were provided.
- I. Indicate which members of the proposed team personnel managed this project.
- J. Minority participation strategies.

### 4. KEY PERSONNEL

Identify the primary contact professional who would be assigned responsibility for this project and note their experience with construction manager at risk projects. Provide information on the key individuals identified in the Project Team Organizational Chart in accordance with the following:

- A. List of key personnel who will be assigned to the project. Attach sworn statement that the above persons will be exclusively assigned to this project for its duration.
- B. For each person listed above, list what aspects of pre-construction or construction the person will handle. For those persons who will divide their time between pre-construction and construction phases, indicate what percentage of their time will be devoted to each phase.
- C. For each person listed in response to the above, list his/her experience with firm, other prior and relevant experience with projects of similar size and scope in construction/design, and the person's location. Attach the resumes and references for each person listed.
- D. Attach project organizational chart indicating the placement of each of the persons listed in response to the above.
- E. Identify any sub-consultants submitted to be used on this project and their location. Clearly explain their role and the percentage of involvement.

### 5. METHODS AND PROCEDURES

The Submittal should provide a detailed methodology for accomplishing the Rutherfordton Municipal Complex Project. This approach shall include additional suggestions that are not specifically requested in this RFQ, but are considered necessary to ensure the highest degree of safety, constructability,

value and operation. Provide the following information based on your experience on similar projects over the last five years:

- A. Provide a brief, overall description of how the project will be organized and managed, and how the services will be performed in both Pre-Construction and Construction Phases. Project planning that offers the same project manager for pre-construction and construction phases shall be given preference. Address the following elements in the description.
  - a. Value Engineering
  - b. Approach to meet schedules and complete projects within budget
  - c. Approach to minimizing business and operational disruptions on an occupied campus
  - d. Planning, scheduling and staffing plans
  - e. Major issues/risks you anticipate impacting this project and mitigation plan
  - f. Preliminary site logistics and phasing strategy
  - g. Constructability Reviews/Issues
  - h. Cost Model/Estimates
  - i. Project Tracking/Reporting
  - j. Request for Information (RFI) and Shop Drawings
  - k. Quality Control
  - l. Safety Management
  - m. Use of technology

Minority Participation: Describe the program (plan) that your company has developed to encourage participation by local, minority and other HUB firms to meet or exceed the goals set by North Carolina General Statute 143-128.2. Attach a copy of that plan to this proposal. Provide documentation of the local, minority and other HUB participation that you have achieved over the past two years on both public and private construction projects. Outline specific efforts that your company takes to notify, recruit, and utilize local, minority and other HUB firms of opportunities for participation. Indicate the participation goal that you expect to achieve on this project. The CMR will be required to submit a final plan for compliance with Section 143-128.2 for Town approval prior to soliciting bids for the Project's first tier subcontractors.

- B. Discuss how you envision the relationships working with your firm and the Town of Rutherfordton, the Architects, citizens and other organizations that may be involved.
- C. Identify other firms that you plan to subcontract or joint venture with, if any, for this contract and identify what they will be responsible for. If your submission assumes that the Town will take certain actions or provide certain facilities, data or information, state these assumptions explicitly.

## 6. EXCEPTIONS

- A. Any and all exceptions to the RFQ, including the attached contract must be listed on an item-by-item basis and cross-referenced with the RFQ document. If there are no exceptions, Firm must expressly state that no exceptions are taken.
- B. If your firm wishes to provide a submittal that does not comply with the standards as discussed above, it is recommended that you also submit one that does comply in addition to the one that does not comply so that your "non-compliant" version can be considered as an alternative if the Town is interested in it. This will allow your firm's compliant version to be considered if the Town remains steadfast on applying the standards discussed above.

## 7. FINANCIAL CONDITION OF THE FIRM

- A. The Town is seeking a CMAR who clearly possesses the financial resources necessary to undertake the requirements of the proposed contract. To demonstrate those resources, firms must submit the most recent two (2) years' financial statements of the firm. In the event you believe that this

information is proprietary, submit with your proposal a single copy of the document(s) containing this information in a separate, sealed envelope marked "Confidential" together with a stamped, self-addresses envelope. The Town will return all confidential, proprietary information to you at the termination of the selection process.

- B. Must submit a statement from an A- or better Surety Company licensed to do business in North Carolina attesting to the firm's bonding cap Town to provide adequate performance and payment bonds for this project. In the event you believe that this information is proprietary, submit a single copy of the document(s) containing this information in a separate, sealed envelope marked "Confidential" together with a stamped, self-addresses envelope. The Town will return all confidential, proprietary information to you at the termination of the selection process.
- C. Must submit a current comprehensive Dun & Bradstreet financial report inclusive of Dun & Bradstreet rating.

The Town may request that the Submitter provide an annual operating statement, income tax form, or other reasonably comprehensive evidence of financial condition.

#### 8. INSURANCE REQUIREMENTS

The CM@R shall provide to the Town evidence of Professional Liability Insurance in an amount not less than One Million and No/100 (\$1,000,000.00) Dollars per occurrence and Two Million and No/100 (\$2,000,000.00) Dollars Aggregate and General Liability Insurance.

The CM@R shall furnish the Town with a Certificate of Liability Insurance showing satisfactory proof of carriage of the insurance required hereunder and such insurance shall be approved by the Town prior to the Engineer/Architect and any subcontractor of the Engineer/Architect commencing any services under this Agreement. The Town of Rutherfordton shall be the Certificate Holder and shall be named as an Additional Insured.

The insurance required for this contract is as follows:

(a) Commercial General Liability ISO #CG 00 01 10 93: The Contractor shall take out and maintain during the life of this contract commercial general liability insurance with limits of \$1,000,000 per occurrence; \$2,000,000 aggregate other than products/completed operations; \$2,000,000 aggregate for products/completed.

(b) Automobile Liability ISO #CA 00 01 12 93: The Contractor shall take out and maintain during the life of this contract automobile liability insurance in an amount not less than \$1,000,000 combined single limit per accident for bodily injury and property damage from owned, non-owned, and hired automobiles.

(c) Workers' Compensation and Employers' Liability Insurance: The Contractor shall take out and maintain during the life of this contract workers' compensation insurance as required by the laws of the State of North Carolina and Employers' Liability with limits of \$100,000 each accident, \$500,000 policy limit and

\$100,000 each employee for all employees employed on the project. In case any employee(s) engaged in work under this contract is or are not protected under the Workers' Compensation Statute, the Contractor shall provide adequate coverage for the protection of employees not otherwise protected.

#### Acceptability of Insurance

All insurance policies shall be written by insurers licensed to do business in North Carolina. It is realized that certain business activities may not be readily insurable by admitted carriers. If insurance is written by non-admitted carriers whose names appear on the current listing of approved and non-admitted carriers prepared by the North Carolina Department of Insurance, such carriers will be favorably considered assuming they meet all other requirements. Non-admitted carriers should be so identified on the

Certificate of Insurance form. The Town reserves the right to reject any and all certificates or policies issued by insurers with a Best's rating less than A;VII.

#### Indemnity Provision

Contractor assumes entire responsibility and liability for losses, expenses, demands and claims in connection with or arising out of any injury, or alleged injury (including death) to any person, or damage, or alleged damage, to property of the Town of Rutherfordton or others sustained or alleged to have been sustained in connection with or to have arisen out of or resulting from the negligence of the Contractor, his subcontractors, agents, and employees, in the performance of the work/service set forth in the Standard Specifications and Special Provisions, and any changes, addenda, or modifications including losses, expenses or damages sustained by the Town of Rutherfordton, and agrees to indemnify and hold harmless the Town of Rutherfordton, its officials, employees or volunteers from any and all such losses, expenses, damages, demands and claims and agrees to defend any suit or action brought against them, or any of them, based on any such alleged injury or damage, and to pay all damages, cost and expenses in connection therewith or resulting there from. As an integral part of this agreement Contractor agrees to purchase and maintain during the life of this contract contractual liability insurance in the amount required in the general liability insurance requirements and to furnish proper evidence thereof.

#### Other Provisions:

(1) Any deductible or self-insured retention must be declared to and approved by the Town.

(2) The policies are to contain, or be endorsed to contain, the following provisions:

(a) Commercial General Liability Coverage

- 1) The Town of Rutherfordton, its officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Town, its officials, employees or volunteers.
- 2) The Contractor's insurance coverage shall be primary insurance as respects the Town, its officials, employees and volunteers. Any insurance or self-insurance maintained by the Town, its officials, employees or volunteers shall be excess of Contractor's insurance and shall not contribute with it.
- 3) Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(b) All Coverage's

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to:

Town of Rutherfordton

129 North Main Street

Rutherfordton, NC 28139

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its officials, employees, and volunteers. In the event the Town is damaged by the failure of

the Contractor to maintain such insurance and to so notify the Town, the Contractor shall bear all reasonable costs properly attributable thereto.

(c) Subcontractors

Contractor shall include all subcontractors as insurers under its policies OR shall furnish separate certificates and endorsements for each subcontractor. All coverage's for subcontractors shall be subject to all of the requirements stated herein.

(d) No Waiver of Immunity

Any insurance coverage required by the terms of this contract shall not be deemed a contract of insurance purchased by the Town nor a waiver of the Town's immunity pursuant to NCGS 160A-485.

**D. SELECTION CRITERIA**

- 25%: Project Approach and Understanding of Project Objectives and Constraints, Including proposed QAQC program
- 20%: Experience Working on Similar Projects and Working with Applicable Regulatory Bodies including Town / County Planning and Inspections
- 10%: Demonstrated Excellence with Projects of similar scale, budget and scope
- 25%: Demonstrated Ability to Meet Project Schedules and Budgets
- 15%: Management, Team Organization and Skill Experience of Key Team Members
- 5%: Other Factors as determined by the Selection Panel (Examples: References, Quality of Presentation Materials, Responsiveness, etc.)

**E. SCHEDULE**

<b>Preliminary Schedule:</b>	<b>Date:</b>
RFQ Advertisement	Thursday, November 7, 2024
Pre-submittal Meeting	Thursday, November 21, 2024
Receive RFQ Packages	Friday, December 6, 2024
Establish a shortlist of firms and schedule interviews	Friday, December 13, 2024
Interview Date (Tentative)	Week of December 16 <sup>th</sup>
Notify Most Qualified Firm	Friday, December 20, 2025
Complete Negotiations	Tuesday, January 7, 2025
Town Council Award of Contract	Wednesday, January 8, 2025
Notice to Proceed	Thursday, January 9, 2025
Project Completion	Est. May 2027

**F. BUDGET** Approximately \$8,000,000 for construction

**G. NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT (ADA)**

1. The Town of Rutherfordton will not discriminate against qualified individuals with disabilities on the basis of disability in the Town's services, programs, or activities. The Town will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in the Town's programs, services, and activities. The Town will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all Town programs, services, and activities. Anyone who requires an auxiliary aid or service for effective communications, or a modification of policies or procedures to participate in the Town program, service, or activity, should contact Logan Small, ADA Coordinator,



voice 919- 560-4197, fax 560-4196, TTY 919-560-1200, or Logan.Small@durhamnc.gov, as soon as possible but no later than 48 hours before the scheduled event.

**H. E-VERIFY COMPLIANCE**

1. If this contract is awarded pursuant to North Carolina General Statutes (NCGS) 143-129 – (i) the contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the NCGS; (ii) the words "contractor," "contractor's subcontractors," and "comply" as used in this subsection (a) shall have the meanings intended by NCGS 143-129(j); and (iii) the Town is relying on this subsection (a) in entering into this contract. (b) If this contract is subject to NCGS 143-133.3, the contractor and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the NCGS.

**I. STATE TREASURER'S LISTS REGARDING IRAN AND BOYCOTT OF ISRAEL**

1. If the successful bidder or the Town signs the contract on October 1, 2017 or afterwards, and the value of the contract is \$1,000 or more, the following applies unless the bidder otherwise states in its bid: the bidder affirms (by submitting a bid) that (1) its name does not appear on the list of companies that are engaged in a boycott of Israel developed by the N. C. State Treasurer under N.C.G.S. 147-86.81(a)(1) or on a list created by the Treasurer pursuant to

N.C.G.S. 147-86.58 as a company engaging in investment activities in Iran, and (2) it has no reason to expect that its name will appear on either of those lists. Take notice that a contract between a company named on either list and the Town may be void.

**J. NON-CONTACT PROVISION**

1. Interested firms are prohibited from contacting any Town official or employee concerning this Project during the course of the interview, negotiations, pre-contracting, or other process of this solicitation, except to participate in the pre-submittal meeting, and to submit questions via the Town's designated project manager. Any such contact shall be grounds for disqualification of any firm who may have initiated such contact.

**K. ATTACHMENTS**

1. Appendix A: Certification Form
2. Appendix B: E-verify Form
3. Appendix C: Iran Divestment Certification
4. Appendix D: Town of Rutherfordton Contract
5. Appendix E: Project Site Location & Preliminary Building Layout

## APPENDIX A

### Certification Form

(Provide separate Certification for each Joint Venture or Partnership entity)

**\*\*COMPANY NAME\*\***

**\*\*SEAL\*\***

I HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS RESPONSE TO THE REQUEST FOR PROPOSALS IS CORRECT AND TRUTHFUL TO THE BEST OF MY KNOWLEDGE AND BELIEF.

This the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**By: \_\_\_\_\_ Title: \_\_\_\_\_**

License number under which the project **will** be executed: Name license number above is held in:

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_ a Notary Public in and for the County and State aforesaid, do hereby certify that personally came before me this day and acknowledged that he is of and by that authority duly given and as an act of the foregoing instrument was signed by As, attested by him/herself as Secretary, and sealed with the common seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal this the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Notary Public

My commission expires: a

## APPENDIX B

### E-Verify

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_ (the individual attesting below), being duly authorized by and on behalf of \_\_\_\_\_ ("Employer") after first being duly sworn hereby swears or affirms as follows:

1. Employer understands that E-Verify is the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with NCGS §64-25(5).
2. Employer understands that Employers Must Use E-Verify. Each employer, after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS§64-26(a).
3. Employer is a person, business entity, or other organization that transacts business in this State and that employs 25 or more employees in this State. (Mark Yes or No)
  - a. YES \_\_\_\_\_, or
  - b. NO \_\_\_\_\_
4. Employer and Employer's subcontractors comply with E-Verify, and if Employer subsequently retains any subcontractors on this project Employer will ensure their compliance with E-Verify.

This \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Signature of Affiant  
Print or Type Name: \_\_\_\_\_

State of \_\_\_\_\_ County of \_\_\_\_\_  
Signed and sworn to (or affirmed) before me, this the \_\_\_\_\_  
day of \_\_\_\_\_, 2020.

My Commission Expires:

\_\_\_\_\_

Notary Public

|||  
Official/Notaria  
I Seal)  
(Affix

## APPENDIX C

### Iran Divestment Act Certification

N.C.G.S. 143C-6A-5(a)

As of the date listed below, \_\_\_\_\_ (name of vendor/bidder) is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 143-6A-4.

The undersigned hereby certifies that he or she is authorized by the vendor/bidder listed above to make the foregoing statement.

---

Signature

Date

---

Printed Name

Title

Notes to persons signing this form:

N.C.G.S. 143C-6A-5(a) requires this certification for bids or contracts with the State of North Carolina, a North Carolina local government, or any other political subdivision of the State of North Carolina. The certification is required at the following times:

- When a bid is submitted
- When a contract is entered into (if the certification was not already made when the vendor made its bid)
- When a contract is renewed or assigned

N.C.G.S. 143C-6A-5(b) requires that contracts with the State, a North Carolina local government, or any other political subdivision of the State of North Carolina must not utilize any subcontractor found on the State Treasurer's Final Divestment List.

The State Treasurer's Final Divestment List can be found on the State Treasurer's website at [www.nctreasurer.com/Iran](http://www.nctreasurer.com/Iran) and will be updated every 180 days.

Appendix D: Town of Rutherfordton  
Contract

# DRAFT AIA® Document A133™ – 2019

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

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

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

~~«City of Belmont»~~  
~~«115 N Main Street»~~  
~~«Belmont, NC 28012»~~ Town of Rutherfordton  
129 North Main St  
Rutherfordton NC 28139  
~~«»~~

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

«TBD» « »  
« »  
« »  
« »

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

~~«City of Belmont Community Rec Center»~~  
~~«Belmont, NC»~~  
~~«»~~ Rutherfordton Municipal Complex  
132 Maple St  
Rutherfordton NC 28139

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

«CPL Architects and Engineers, PC» « »  
«6302 Fairview Road, Suite 102»  
«Charlotte, NC 28210»  
~~«»~~

The Owner and Construction Manager agree as follows.

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

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

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

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

## TABLE OF ARTICLES

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

### EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

### EXHIBIT B INSURANCE AND BONDS

## ARTICLE 1 INITIAL INFORMATION

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

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

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

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

« »

§ 1.1.2 The Project's physical characteristics:

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

« »

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

*(Provide total and, if known, a line item breakdown.)*

« »

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

- .1 Design phase milestone dates, if any:

« »

- .2 Construction commencement date:

« »

- .3 Substantial Completion date or dates:

« »

- .4 Other milestone dates:

« »

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

« »

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

« »

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

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

« »

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

« »

« »

« »

« »

« »

« »

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

« »

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



**.1 Geotechnical Engineer:**

<< >><< >>  
<< >>  
<< >>  
<< >>  
<< >>

**.2 Civil Engineer:**

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**.3 Other, if any:**

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

<< >>

**§ 1.1.11 The Architect's representative:**

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

<< >>  
<< >>  
<< >>  
<< >>  
<< >>  
<< >>

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

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

<< >>  
<< >>  
<< >>  
<< >>  
<< >>  
<< >>

**§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:**

*(List any Owner-specific requirements to be included in the staffing plan.)*

<< >>

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

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

<< >>

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

<< >>

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

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

## **ARTICLE 2 GENERAL PROVISIONS**

### **§ 2.1 The Contract Documents**

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

### **§ 2.2 Relationship of the Parties**

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

### **§ 2.3 General Conditions**

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

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

## **ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

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

### **§ 3.1 Preconstruction Phase**

#### **§ 3.1.1 Extent of Responsibility**

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

Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

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

### § 3.1.3 Consultation

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

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

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

### § 3.1.4 Project Schedule

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

### § 3.1.5 Phased Construction

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

### § 3.1.6 Cost Estimates

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

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

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

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

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

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

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

**§ 3.1.11 Subcontractors and Suppliers**

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

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

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

**§ 3.1.12 Procurement**

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

**§ 3.1.13 Compliance with Laws**

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

**§ 3.1.14 Other Preconstruction Services**

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

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

« »

**§ 3.2 Guaranteed Maximum Price Proposal**

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

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

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

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

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

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

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

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

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

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

### **§ 3.3 Construction Phase**

#### **§ 3.3.1 General**

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

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

### **§ 3.3.2 Administration**

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

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

### **§ 3.3.2.3 Monthly Report**

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

### **§ 3.3.2.4 Daily Logs**

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

### **§ 3.3.2.5 Cost Control**

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

## **ARTICLE 4 OWNER'S RESPONSIBILITIES**

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

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

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

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

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

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

**§ 4.1.4.2** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands;



adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

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

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

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

#### § 4.2 Owner's Designated Representative

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

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

#### § 4.3 Architect

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

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

#### § 5.1 Compensation

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

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

« »

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

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

« »

Individual or Position

Rate

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such

as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

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

## § 5.2 Payments

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

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

« » % « »

## ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

### § 6.1 Contract Sum

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

§ 6.1.2 The Construction Manager's Fee:

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

« »

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

« »

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

« »

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

§ 6.1.6 Liquidated damages, if any:

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

« »

§ 6.1.7 Other:

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

« »

### § 6.2 Guaranteed Maximum Price

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

### § 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The



Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

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

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

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

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

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

## **ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE**

### **§ 7.1 Costs to Be Reimbursed**

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

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

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

### **§ 7.2 Labor Costs**

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

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

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

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

« »

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

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions,

provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

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

### **§ 7.3 Subcontract Costs**

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

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

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

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

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

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

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

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

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

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

### **§ 7.6 Miscellaneous Costs**

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

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

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

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

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

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

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

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

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

§ 7.6.7 Costs of document reproductions and delivery charges.

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

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

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

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

## § 7.7 Other Costs and Emergencies

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

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

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

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

## § 7.8 Related Party Transactions

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

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

## **§ 7.9 Costs Not To Be Reimbursed**

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

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

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

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

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

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

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

**§ 9.1.1** When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the

difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

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

## **ARTICLE 10 ACCOUNTING RECORDS**

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

## **ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES**

### **§ 11.1 Progress Payments**

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

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

« »

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

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

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

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

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

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



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

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

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

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

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

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

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

## § 11.1.8 Retainage

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

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

<< >>

§ 11.1.8.1.1 The following items are not subject to retainage:

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

<< >>

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

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

« »

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

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

« »

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

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

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

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

## **§ 11.2 Final Payment**

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

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

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

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

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

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

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

« »

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

### § 11.3 Interest

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

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

« » % « »

## ARTICLE 12 DISPUTE RESOLUTION

### § 12.1 Initial Decision Maker

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

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

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

« »

« »

« »

« »

### § 12.2 Binding Dispute Resolution

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

*(Check the appropriate box.)*

[ « » ] Arbitration pursuant to Article 15 of AIA Document A201–2017

[ « » ] Litigation in a court of competent jurisdiction

[ « » ] Other: *(Specify)*



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

## ARTICLE 13 TERMINATION OR SUSPENSION

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

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

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

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

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

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

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

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

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

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

### **§ 13.2.1 Termination**

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

### **§ 13.2.2 Termination by the Owner for Cause**

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

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

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

### **§ 13.2.3 Termination by the Owner for Convenience**

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

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

« »

## **§ 13.3 Suspension**

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

## **ARTICLE 14 MISCELLANEOUS PROVISIONS**

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

### **§ 14.2 Successors and Assigns**

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

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

## § 14.3 Insurance and Bonds

### § 14.3.1 Preconstruction Phase

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

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

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

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

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

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

### § 14.3.1.6 Other Insurance

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

Coverage	Limits
----------	--------

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

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

### § 14.3.2 Construction Phase

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

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

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

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

§ 14.5 Other provisions:

**ARTICLE 15 SCOPE OF THE AGREEMENT**

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

§ 15.2 The following documents comprise the Agreement:

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

<< >>

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

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

<< >>

☐ Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

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

<< >>

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

OWNER (Signature)

<< >><< >>

(Printed name and title)

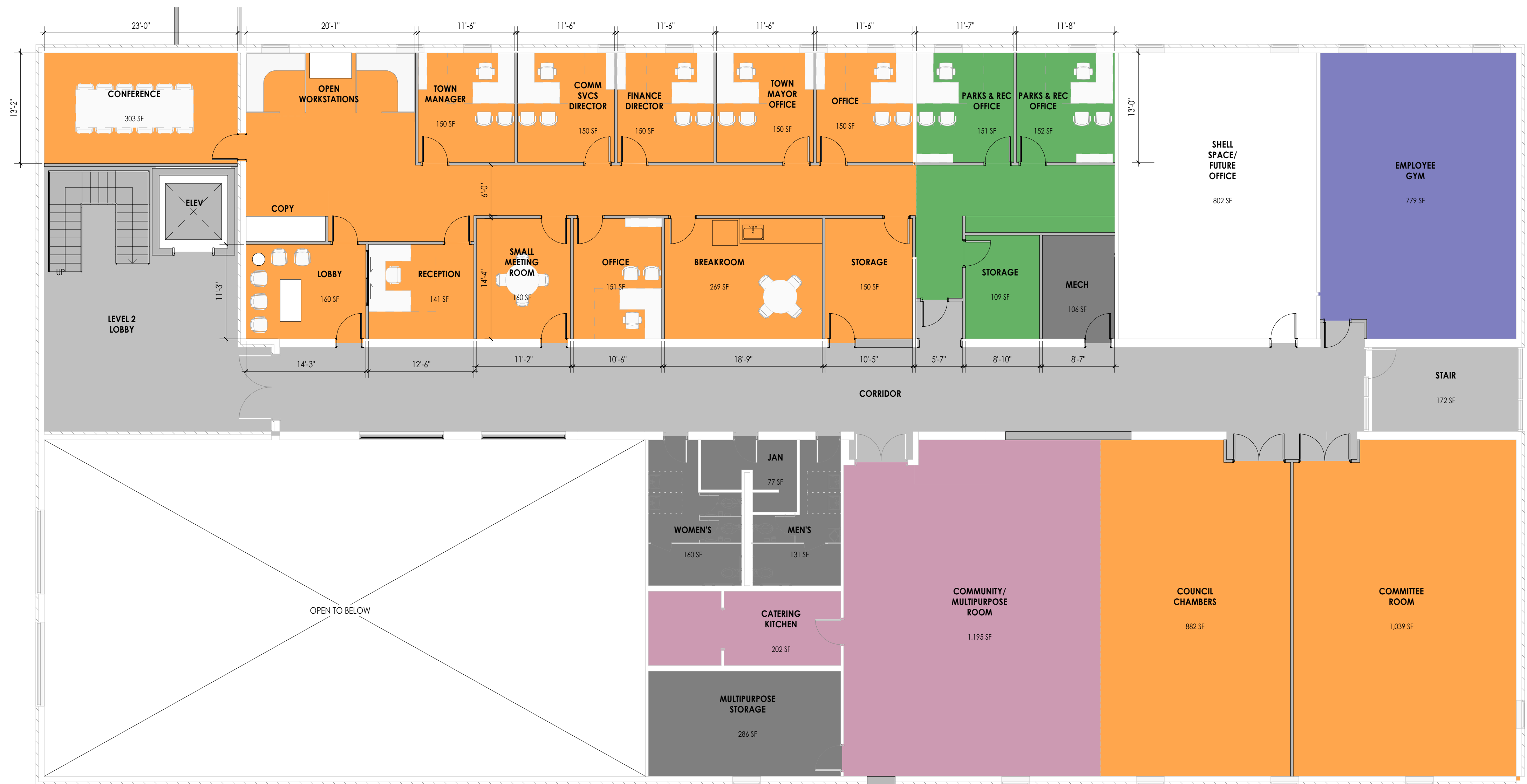
CONSTRUCTION MANAGER (Signature)

<< >><< >>

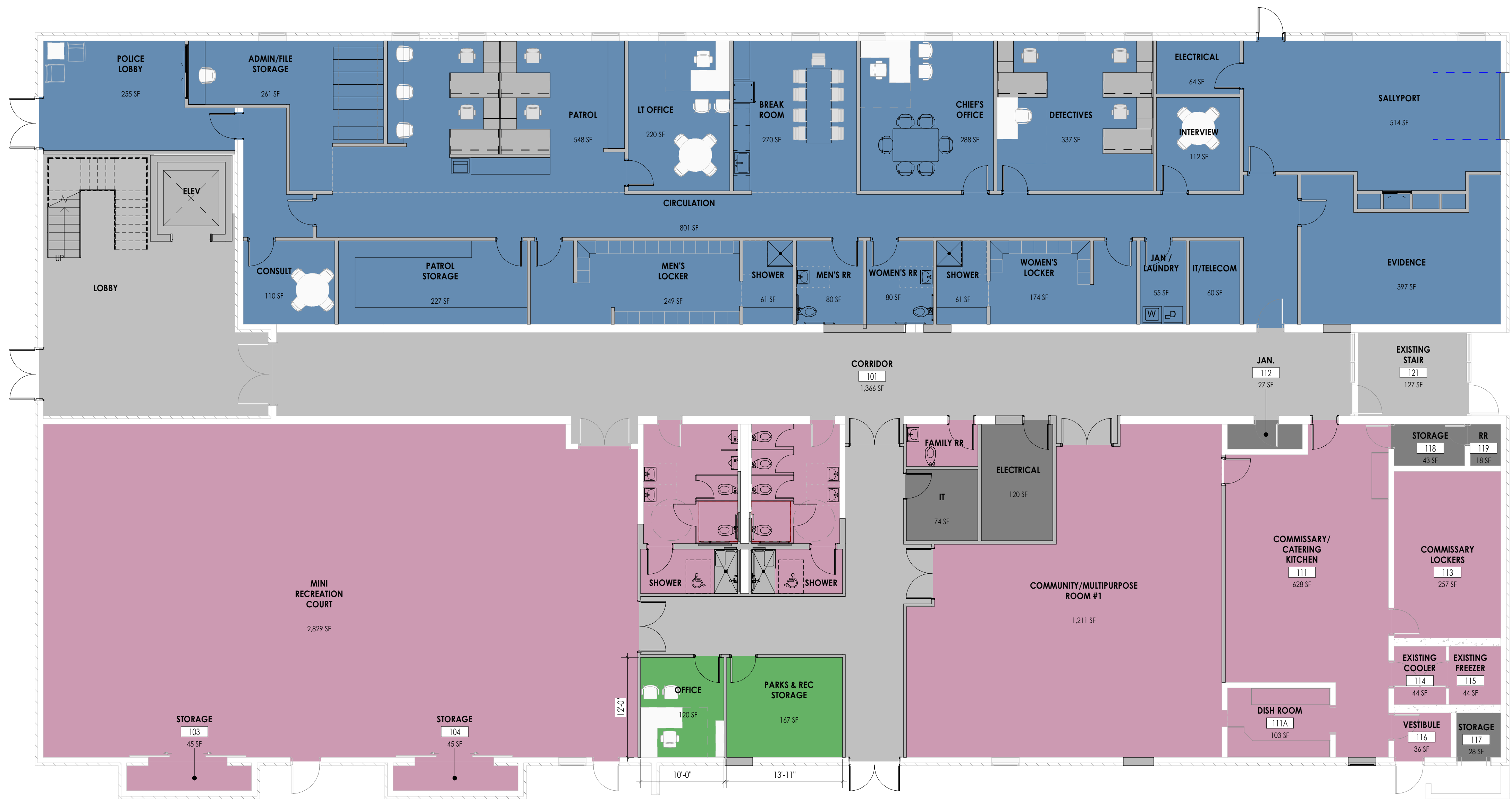
(Printed name and title)

Appendix E: Project Site Location &  
Preliminary Building Layout





2  
A200  
LEVEL 2 - NEW WORK PLAN  
1/8" = 1'-0"



1  
A200  
LEVEL 1 - NEW WORK PLAN  
1/8" = 1'-0"

## SYMBOLS LEGEND

NOTE: THIS LEGEND MAY CONTAIN SYMBOLS THAT ARE NOT USED IN THIS PROJECT.

	DOOR TAG		GLAZING SYSTEM TAG
	NEW COLUMN GRID LINE		EXISTING COLUMN GRID LINE
	ROOM NAME		ROOM TAG
	CASEWORK TAG		PARTITION TYPE TAG
	REVISION NO. 1		ACCESSORY TAG
	WALL SECTION MARK		EQUIPMENT SYMBOL (NUMBER)
	INTERIOR ELEVATION MARK		BUILDING SECTION MARK
	EXTERIOR ELEVATION MARK		DETAIL FOR REFERENCE MARK
	DENOTES FINISH FLOOR GRADE ELEVATION		

## FLOOR PLAN KEYED NOTES

ENTER FLOOR PLAN KEYED NOTES HERE.

- F1
- F2
- F3
- F4
- F5
- F6
- F7
- F8
- F9
- F10



CPL | Architecture Engineering Planning  
400 Bellemore Street Suite 401,  
Greensboro, NC 27401  
CPLteam.com



## PROJECT INFORMATION

Project Name  
R23.15343.00  
Client Name  
TOWN OF RUTHERFORDTON

Project Name  
TOWN HALL AND POLICE  
DEPARTMENT

Project Address  
132 MAPLE ST.  
RUTHERFORDTON, NC 28139

## PROJECT ISSUE & REVISION SCHEDULE

# Date Description



## PROFESSIONAL STAMPS

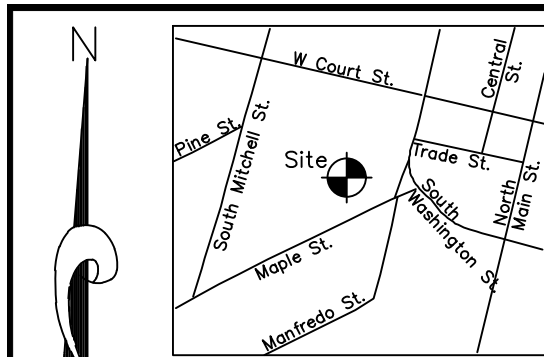
FOR REVIEW ONLY  
NOT FOR PERMIT OR  
CONSTRUCTION

## SHEET INFORMATION

Issued  
06/26/2024  
Project Status  
SCHEMATIC DESIGN  
Drawn By  
CPL  
Checked By  
CPL  
Drawing Title  
OVERALL FLOOR PLANS  
Scale  
As Indicated

Drawing Number

A200



VICINITY MAP  
(not to scale)

REFERENCE BEARING  
NAD 83/2011 NC GRID  
(By observed monuments)

I, K. SCOTT WALKER certify that this map was drawn under my supervision from an actual survey made under my supervision (deed description recorded in Book AS NOTED or other reference source AS NOTED); that the boundaries not surveyed are indicated as drawn from information in Book AS NOTED or other reference source AS NOTED; that the ratio of precision or positional accuracy is 1:10000; and that this map meets the requirements of The Standards of Practice for Land Surveying in North Carolina (21 NCAC 56.1600). This 24th day of JUNE, 2024.

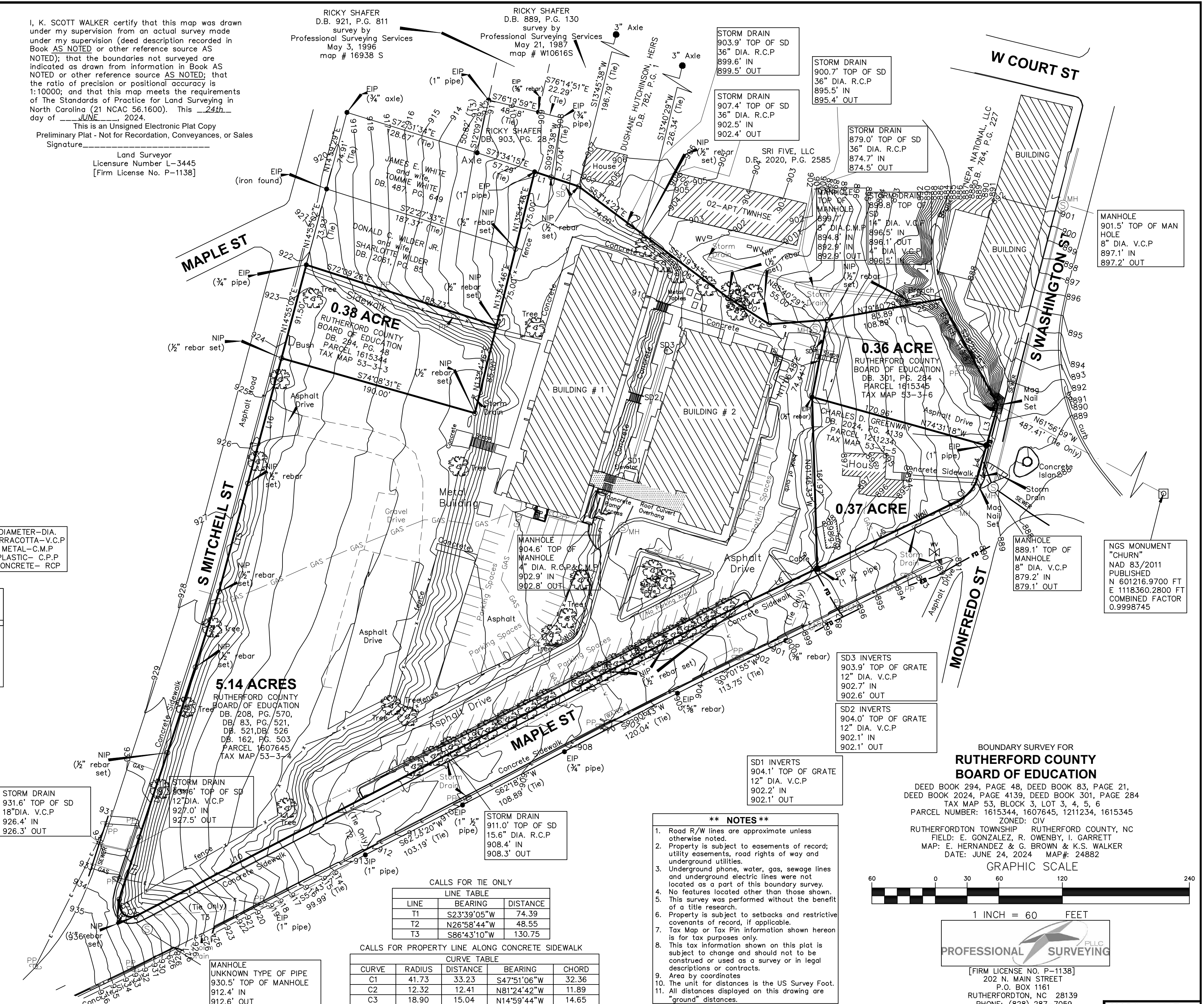
This is an Unsigned Electronic Plat Copy  
Preliminary Plat - Not for Recordation, Conveyances, or Sales  
Signature \_\_\_\_\_  
Land Surveyor  
Licensure Number L-3445  
[Firm License No. P-1138]

CALLS FOR PROPERTY LINE		
LINE TABLE		
LINE	BEARING	DISTANCE
L1	S71°34'15"E	16.48
L2	S71°34'15"E	27.50

CALLS FOR PROPERTY LINE ALONG CONCRETE SIDEWALK		
LINE TABLE		
LINE	BEARING	DISTANCE
L3	S15°50'31"W	39.47
L4	S15°50'31"W	35.53
L5	S64°24'39"W	139.76
L6	S64°22'59"W	75.18
L7	S63°51'21"W	81.85
L8	S63°08'28"W	63.50
L9	S62°37'28"W	282.85
L10	S62°33'56"W	219.56
L11	N17°47'33"E	61.69
L12	N18°30'57"E	84.30
L13	N18°05'03"E	84.80
L14	N17°11'29"E	74.86
L15	N15°03'50"E	105.89
L16	N14°59'05"E	122.19

UNDERGROUND UTILITIES MARKINGS FIELD LOCATED FROM 811 SERVICE	
— ORANGE PAINT FIBER OPTIC	
— YELLOW PAINT GAS	
— GREEN PAINT SEWER	
— BLUE PAINT WATER	

LEGEND	
● FOUND IRON PIN (EIP)	
○ SET IRON PIN (NIP)	
• POINT	
▲ NAIL OR RAILROAD SPIKE	
⊕ HYDRANT	
□ TELEPHONE PEDESTAL (PED)	
☆ LIGHT POLE OR LAMP	
○ UTILITY POLE	
⊗ WATER VALVE	
⊗ WATER METER (wm)	
⊗ GAS VALVE	
⊗ SEWER MANHOLE	
⊗ CONCRETE MONUMENT	
⊗ RIGHT OF WAY MONUMENT	
● STONE	
— Property Line	
— Adjoiners (Surveyed)	
— Adjoiners (not surveyed)	
— Non-boundary Tie Only	
— Right of Way	
— Utility Lines	
— Asphalt	
— Gravel	
— Corrugated Plastic Pipe (CPP)	
— Corrugated Metal Pipe (CMP)	



CALLS FOR TIE ONLY		
LINE TABLE		
LINE	BEARING	DISTANCE
T1	S23°39'05"W	74.39
T2	N26°58'44"W	48.55
T3	S86°43'10"W	130.75

CALLS FOR PROPERTY LINE ALONG CONCRETE SIDEWALK				
CURVE TABLE				
CURVE	RADIUS	DISTANCE	BEARING	CHORD
C1	41.73	33.23	S47°51'06"W	32.36
C2	12.32	12.41	N81°24'42"W	11.89
C3	18.90	15.04	N14°59'44"W	14.65

- \*\* NOTES \*\***
- Road R/W lines are approximate unless otherwise noted.
  - Property is subject to easements of record; utility easements, road rights of way and underground utilities.
  - Underground phone, water, gas, sewage lines and underground electric lines were not located as a part of this boundary survey.
  - No features located other than those shown.
  - This survey was performed without the benefit of a title research.
  - Property is subject to setbacks and restrictive covenants of record, if applicable.
  - Tax Map or Tax Pin information shown hereon is for tax purposes only.
  - This tax information shown on this plat is subject to change and should not be construed or used as a survey or in legal descriptions or contracts.
  - Area by coordinates
  - The unit for distances is the US Survey Foot.
  - All distances displayed on this drawing are "ground" distances.

BOUNDARY SURVEY FOR  
**RUTHERFORD COUNTY  
BOARD OF EDUCATION**

DEED BOOK 294, PAGE 48, DEED BOOK 83, PAGE 21,  
DEED BOOK 2024, PAGE 4139, DEED BOOK 301, PAGE 284  
TAX MAP 53, BLOCK 3, LOT 3, 4, 5, 6  
PARCEL NUMBER: 1615344, 1607645, 1211234, 1615345  
ZONED: CIV  
RUTHERFORDTON TOWNSHIP RUTHERFORD COUNTY, NC  
FIELD: E. GONZALEZ, R. OWENBY, I. GARRETT  
MAP: E. HERNANDEZ & G. BROWN & K.S. WALKER  
DATE: JUNE 24, 2024 MAP#: 24882

GRAPHIC SCALE  
60 0 30 60 120 240  
1 INCH = 60 FEET

**PROFESSIONAL SURVEYING**  
[FIRM LICENSE NO. P-1138]  
202 N. MAIN STREET  
P.O. BOX 1161  
RUTHERFORDTON, NC 28139  
PHONE: (828) 287-7059

**MAP#: 24882Topo**



## Appendix E: Trade Secrets and Confidentiality

As a general rule, all submissions to the City are available to any member of the public. However, if materials qualify as provided in this section, the City will take reasonable steps to keep Trade Secrets confidential.

**(a) Designation of Confidential Records.** The terms “Trade Secrets” and “record” are defined in (a)(1) (Definitions). To the extent that the candidate wishes to maintain the confidentiality of Trade Secrets contained in materials provided to the City that will or may become a record, the candidate shall prominently designate the material as “Trade Secrets” at the time of its initial disclosure to the City. The candidate shall not designate any material provided to the City as Trade Secrets unless the candidate has a reasonable and good-faith belief that the material contains a Trade Secret. When requested by the City, the candidate shall promptly disclose to the City the candidate’s reasoning for designating material as Trade Secrets. In providing materials to the City, the candidate shall make reasonable efforts to separate those designated as Trade Secrets from those not so designated, both to facilitate the City’s use of records and to minimize the opportunity for accidental disclosure. For instance, if only a sentence or paragraph on a page is a Trade Secret, the page must be marked clearly to communicate that distinction. To avoid mistake or confusion, it is generally best to have only Trade Secret information on a page and nothing else on that page. To the extent authorized by applicable state and federal law, the City shall maintain the confidentiality of records designated “Trade Secrets” in accordance with this section. Whenever the candidate ceases to have a good-faith belief that a particular record contains a Trade Secret, it shall promptly notify the City.

(1) Definitions.

“Trade secret” means business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that:

- a. Derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and
- b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The existence of a trade secret shall not be negated merely because the information comprising the trade secret has also been developed, used, or owned independently by more than one person, or licensed to other persons.

“Record” means all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, received by the City of Durham in connection with the candidate’s proposal.

**(b) Request by Public for Access to Record.** When any person requests the City to provide access to a record designated as Trade Secrets in accordance with subsection (a), the City may

- (1) decline the request for access,
- (2) notify the candidate of the request and that the City intends to provide the person access to the record because applicable law requires that the access be granted, or
- (3) notify the candidate of the request and that the City intends to decline the request.

Before declining the request, the City may require the candidate to give further assurances so that the City can be certain that the candidate will comply with subsection (c) (Defense of City).

**(c) Defense of City.** If the City declines the request for access to a record designated as Trade Secrets in accordance with subsection (a), the candidate shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of the City’s non-disclosure of the records. In providing that defense, the candidate shall at its sole expense defend Indemnitees with legal counsel. The legal counsel shall be limited to attorneys reasonably acceptable to the City Attorney.

Definitions. As used in this subsection (c), “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, fines, penalties, settlements, expenses, attorneys’ fees, and interest.



Indemnitees" means the City, and officers, officials, independent contractors, agents, and employees, of the City. "Indemnitees" does not include the candidate. The City may require the candidate to provide proof of the candidate's ability to pay the amounts that may reasonably be expected to become monetary obligations of the candidate pursuant to this section. If the candidate fails to provide that proof in a timely manner, the City shall not be required to keep confidential the records whose non-disclosure gives rise to the potential monetary obligation. Nothing in this agreement shall require the City to require any natural person to be imprisoned or placed in substantial risk of imprisonment, being found by a court to be in contempt, or being in violation of a court order as a result of alleged nondisclosure of records or for alleged noncompliance with a court order respecting disclosure of records. This subsection (c) is separate from and is to be construed separately from any other indemnification and warranty provisions in the contract between the City and the candidate.