

DRAFT AIA® Document A133® – 2019

Exhibit B

Insurance and Bonds

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

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

«[Battle Creek and Lower Tulalip Creek Hatcheries]»

THE OWNER:
(Name, legal status and address)

«The Tulalip Tribes of Washington
6406 Marine Dr.
Tulalip, WA 98271
Toll Free 1-800-869-8287 »

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

«[insert]»
« »

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ARTICLE B.1 GENERAL

The Owner and Construction Manager shall purchase and maintain insurance, and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail.

ARTICLE B.2 OWNER'S INSURANCE

§ B.2.1 General

The Owner shall be responsible for purchasing and maintaining the following insurance:

§ B.2.2 Liability Insurance

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

§ B.2.3 Required Property Insurance

§ B.2.3.1 The Owner shall obtain, purchase, and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is

ADDITIONS AND DELETIONS:

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

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

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

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located, property insurance written on a builder's risk Special Form Policy or equivalent policy form (the "Builder's Risk Insurance"). The Builder's Risk Insurance shall be sufficient to cover the initial GMP Amendment, plus the value of subsequent GMP Amendments and Contract Modifications and labor performed and materials or equipment supplied or installed by others, comprising the total value of the entire Project at the site on a replacement cost basis, subject to Section B.2.3.1.3 below. The Builder's Risk Policy shall be maintained until Substantial Completion of all Work and thereafter as provided in Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. Owner shall add Construction Manager and Subcontractors as additional insureds or additional named insureds on the Builder's Risk Insurance policy, but not as loss payees. Owner, or Owner's lender, shall be the sole loss payee.

§ B.2.3.1.1 Causes of Loss. The insurance required by this Section B.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. Sub-limits, if any, are as follows:
(Indicate below the cause of loss and any applicable sub-limit.)

Cause of Loss

Sub-Limit

Refer to Policy for Applicable Sub-limit

§ B.2.3.1.2 Specific Required Coverages. The insurance required by this Section B.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Construction Manager's services and expenses required as a result of such insured loss, including claim preparation expenses. The Builder's Risk Insurance policy will not provide coverage for loss of, theft of, or damage to, any tools, and other personal property and/or equipment, whether owned, rented, leased or in the care, custody or control of Construction Manager or any Subcontractor, or Sub-subcontractor, that are used in the performance of the Work, but are not actually incorporated into the Work. Additionally, the Builder's Risk Insurance policy will not provide coverage for loss or damage caused directly or indirectly by (i) defective or faulty workmanship, materials, design, plans or specifications, (ii) normal subsidence, (iii) normal settling, cracking, shrinkage, bulging, expansion, contraction, or deterioration of walls, floors, ceiling, buildings, foundations, patios, walkways, driveways or pavements, (iv) wear and tear, (v) acts of terrorism, war, or hostile or warlike actions, (vi) infidelity, dishonesty or fraudulent activity of the named insured or any additional insured, (vii) shortage or mysterious disappearance, (viii) underground structures that are not part of the Work, (ix) mold, mildew or fungus or (x) subsurface conditions. Sub-limits, if any, are as follows:
(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage

Sub-Limit

Refer to Policy for applicable sub-limits

§ B.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section B.2.3.1 or, if necessary, replace the insurance policy required under Section B.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ B.2.3.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section B.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions, however, Construction Manager shall be responsible to pay, or otherwise satisfy, the deductible portion of any loss, claim or occurrence under the Builder's Risk Insurance policy that arises out of, or relates to, any act, omission, fault, default or negligence of Construction Manager or a Subcontractor, a Sub-subcontractor, or their employees, agents, or representatives, or any other person for whom Construction Manager is or may be responsible. A deductible for which the Construction Manager is responsible under this Section is not a Cost of the Work and earns no Fee, and the waiver of subrogation in Section 11.3.1 of the General Conditions does not apply to it. With the exception of earth movement and flood coverage, deductibles shall not exceed \$25,000. Deductibles for earth movement and flood shall not exceed 3% of the value of the property at the time of loss subject to minimum deductible of \$100,000 for earth movement and \$50,000 for flood. Construction Manager shall, at all times, comply with the terms of the Builder's Risk Insurance policy. In addition, Construction Manager shall be responsible for any losses, claims, damages, costs and expenses that are not indemnified under the Builder's Risk Insurance policy due to Construction Manager's failure to perform its obligations under the Builder's Risk Insurance policy. Construction Manager shall defend, pay, discharge, satisfy, indemnify and hold harmless Owner and Owner's lender from any and all losses, arising, in whole or in part, from Construction Manager's failure to pay, or otherwise satisfy, those Builder's Risk Insurance claim deductibles for which Construction Manager is responsible pursuant to this Section.

§ B.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ B.2.3.3 Insurance for Existing Structures

The Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, its standard property insurance protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ B.2.4 Pollution Liability Insurance

§ B.2.4.1 The Owner shall purchase and maintain Pollution Liability insurance covering pollution conditions arising from the Work, whether occurring on-site or off-site, with policy limits of not less than [Five Million Dollars] (\$[5,000,000]) per claim and [Five Million Dollars] (\$[5,000,000]) in the aggregate. Such insurance may be provided on a claims made basis so long as the policy is maintained for a period of at least [six (6) years] following issuance of a final certificate of occupancy for the entire Project.

§ B.2.4.2 [The Owner shall cause the Construction Manager and its Subcontractors to be included as insureds under the policy with respect to the Work, subject to the terms of the policy.]

§ B.2.4.3 [The Owner is responsible for any deductible or self-insured retention under the policy, except that the Construction Manager shall pay the deductible portion of any loss, claim or occurrence to the extent it arises out of or relates to any act, omission, fault, default or negligence of the Construction Manager or a Subcontractor, a Sub-subcontractor, or their employees, agents, or representatives, as provided in Section B.2.3.1.4 for the Builder's Risk Insurance deductible.]

[Owner's insurance advisor to confirm the policy form, limits, policy period, insureds, and deductible allocation before this Section is released.]

§ B.2.5 Operation of Project Systems After Substantial Completion. The Construction Manager's responsibility to operate, or supervise the operation of, Project systems until the Owner accepts training, under Section 11.2 of the Supplementary Conditions, addresses operating responsibility only. It does not change the insurance responsibilities of the Owner and the Construction Manager that apply after Substantial Completion under this Exhibit.

ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

§ B.3.1 General

§ B.3.1.1 Certificates of Insurance. The Construction Manager shall provide certificates of insurance and endorsements acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate and endorsements evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates and endorsements will show the Owner, Owner's agents or representative, the entities identified in Exhibit K, and any subsequent owner of or lender to the Project, and their respective officers, directors, members, agents, employees and volunteers ("Owner-Related Parties"), the Architect and Architect's consultants as an additional insured on the Construction Manager's and any Subcontractor's Commercial General Liability, Umbrella, Automobile, Worker's Compensation (to the extent allowed by law), and excess or umbrella liability policy or policies. Information concerning reduction of coverage on account of revised limits, significant claims paid under the general aggregate or both, shall be furnished by the Construction Manager with reasonable promptness.

§ B.3.1.2 Deductibles and Self-Insured Retentions. The Construction Manager shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Construction Manager. Any deductible or self-insured retention in excess of \$25,000 must be approved by Owner in writing.

§ B.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage to include (1) the Owner, Owner-Related Parties, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner and Owner-Related Parties as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04. No insurance that is required to add Owner or Owner-Related Parties shall contain a cross-suit exclusion. The Construction Manager shall obtain the written agreement on the part of each insurance company to notify Owner at least thirty (30) days prior to cancellations or non-renewal of any such insurance, except ten (10) days' notice of cancellation due to

non-payment of premium. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

All certificates, endorsements, or policy termination notices should be delivered to the Owner, in addition to those entities listed below:

The Tulalip Tribes of the Tulalip Reservation, Washington
6404 Marine Drive
Tulalip, WA 98271
Attn: Norma Napeahi
nonapeahi@tulaliptribes-nsn.gov

§ B.3.2 Construction Manager's Required Insurance Coverage

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

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

«Six (6) years after the issuance of the final certificate of occupancy for the entire Project. »

Insurance effected or procured by Construction Manager shall not reduce or limit the Construction Manager's obligation to indemnify or defect the Owner or an indemnified party for claims made or suits brought which result from or are in connection with the performance of the Work. If the Construction Manager maintains higher insurance limits than the minimums shown herein, the Owner shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Construction Manager, irrespective of whether such limits maintained by the Construction Manager are greater than those required by this Contract or whether any certificate of insurance furnished to the Owner evidences limits of liability lower than those maintained by Construction Manager.

§ B.3.2.2 Commercial General Liability

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form. Such Commercial General Liability shall have policy limits of not less than «One Million Dollars» (\$ «1,000,000») each occurrence, «Two Million Dollars» (\$ «2,000,000») general aggregate, and «Two Million Dollars» (\$ «2,000,000») aggregate for products-completed operations hazard, providing coverage for claims including

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

Coverage will extend to the indemnification by Construction Manager as set forth in the Contract Documents subject to specific policy conditions, limitations and exclusions. Any deductible or self-insured retention must be commercially reasonable, disclosed, and is subject to written approval of Owner. The policy for the Construction Manager shall include without limitation coverage for the hazards commonly referred to as "XCU" and shall contain a severability of interests provision.

Construction Manager shall provide umbrella and/or excess liability coverage as set forth in Section B.3.2.4.

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

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Construction Manager's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.

- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

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

§ B.3.2.4 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance. Construction Manager shall also carry excess/umbrella insurance over its Employer's Liability, Commercial General Liability, and Automobile Liability Policies, in an amount not less than \$25,000,000 per occurrence and in the aggregate, such that there is a minimum of \$26,000,000 in primary and excess or umbrella coverage (\$1,000,000 primary/\$25,000,000 umbrella/excess). Such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section B.3.2.2 and B.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ B.3.2.5 Workers' Compensation at statutory limits.

§ B.3.2.6 Employers' Liability with policy limits not less than « » (\$ « ») each accident, « » (\$ « ») each employee, and « » (\$ « ») policy limit.

§ B.3.2.7 Property Insurance. A policy covering all material, equipment, and tools (owned, borrowed, or leased) of the Construction Manager or its employees for one hundred percent (100%) of the full replacement value thereof. The insurance policy shall be written under a standard Special causes of Loss perils insurance policy.

§ B.3.2.8 The Construction Manager shall procure Professional Liability insurance covering performance of professional services, including preconstruction (design-assist) services and design-build, delegated design, or deferred submittals, with policy limits of not less than Five Million Dollars (\$5,000,000) per claim and Five Million Dollars (\$5,000,000) in the aggregate, with a maximum deductible of one hundred thousand dollars (\$100,000) and all coverage retroactive to the date of commencement of services on the Project. All Mechanical, Plumbing, Electrical, and Fire Protection design-build Subcontractors shall have similar professional liability coverages. All other design-build Subcontractors shall carry a minimum of two million dollars (\$2,000,000) per claim and in the aggregate, unless approved by Owner in writing. Coverage shall be either on an "occurrence" form or on a "claims made" form. If coverage is on a "claims made" form, said coverage shall be maintained for a minimum of six (6) years after issuance of a final certificate of occupancy for the entire Project. Any loss within the deductible shall be borne by the Construction Manager. .

§ B.3.2.9 Intentionally omitted. The Owner purchases Pollution Liability insurance under Section B.2.4.

§ B.3.2.10 Intentionally omitted.

§ B.3.2.11 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than «One Million Dollars» (\$ «1,000,000») per claim and «One Million Dollars» (\$ «1,000,000») in the aggregate.

§ B.3.2.12 Primary Coverage/A.M. Best Rating. Construction Manager's insurance shall be primary and not contributory to that carried by any additional insured. The company or companies writing any insurance that Construction Manager is required to maintain under this Agreement, as well as the form of such insurance, shall at all times be subject to Owner's approval, and any such company shall be licensed to do business in Washington State. Such insurance companies shall have an A.M. Best rating of A VIII, or better, or subject to Owner's approval.

§ B.3.2.13 Insurance effected or procured by Construction Manager shall not reduce or limit the Construction Manager’s obligation to indemnify and defend the Owner or any indemnified party for claims made or suits brought which result from or are in connection with the performance of this contract or the Work.

§ B.3.2.14 **Subcontractor Insurance.** The Construction Manager shall require each Subcontractor, of every tier, to purchase and maintain, at its own cost, for the duration of its Work and for the completed operations period stated in Section B.3.2.1, insurance that is adequate for the nature and risk of that Subcontractor’s Work. At a minimum, each Subcontractor shall carry commercial general liability insurance (including products and completed operations) with limits of not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate, automobile liability insurance with a limit of not less than \$1,000,000 per accident, and workers’ compensation and employer’s liability insurance as required by law. The Construction Manager shall require Subcontractors whose Work presents elevated risk, such as earthwork, dredging, work in or near water, and work performed while hatchery systems are in operation, to carry umbrella or excess liability insurance in amounts approved by the Owner [amounts to be confirmed with Tulalip risk management]. The Owner may approve lower limits for a Subcontractor in writing. Each Subcontractor’s commercial general liability coverage shall include the Owner, Owner-Related Parties, and the other additional insureds identified in Section B.3.1.3, on the terms of that Section, and shall be primary and non-contributory. Insurance companies shall meet the requirements of Section B.3.2.12. The Construction Manager shall obtain and review each Subcontractor’s certificates of insurance and endorsements before the Subcontractor begins Work, keep them current for the duration of the Work, and provide them to the Owner on request. A Subcontractor’s insurance does not reduce the Construction Manager’s insurance or indemnity obligations. The Construction Manager is responsible to the Owner for any loss, claim, or cost that is not covered because a Subcontractor failed to maintain the insurance required by this Section.

§ B.3.3 **Performance Bond, Maintenance Bond, and Payment Bond**

§ B.3.3.1 The Construction Manager shall provide surety bonds covering faithful performance all Work under the Agreement, including all warranty obligations, and payment of obligations arising thereunder. Such bonds shall, at a minimum, be issued by a surety having a Best’s rating of no less than A VIII, be issued from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, and must be acceptable to Owner, and shall include the dispute resolution process set forth in this Agreement. The penal sum of the bonds as follows:

Type	Penal Sum (\$0.00)
Payment Bond	100% of total Contract Amount as set by the GMP Amendment
Performance & Maintenance Bond	100% of total Contract Amount as set by the GMP Amendment

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement, subject to the first paragraph in this Section B.3.3.1. The Maintenance Bond shall be on a form agreeable to Owner. An increase in the Guaranteed Maximum Price for the entire Project that exceeds ten percent (10%) in aggregate shall require a rider to each Bond increasing the penal sum accordingly. The Construction Manager shall endeavor to keep its surety(ies) advised on changes potentially impacting the Guaranteed Maximum Price and Contract Time, but shall require that its surety(ies) waive any requirement to be notified of any alteration of extension of time within the scope of the Agreement. Construction Manager shall attach a current copy of the power of attorney indicating authority and any limitations on all such bonds, and display the surety bond number on each bond.

§ B.3.3.2 Each party agrees that electronic signatures (whether digital or encrypted) and/or scanned copies of original signatures on any such bond is intended to authenticate the bond and shall have the same force and effect as manual signatures and original copies. Such electronically signed or scanned/PDF versions of the AIA Document A312™, Payment Bond and Performance Bond shall be fully enforceable against the surety.

§ B.3.3.3 The Construction Manager shall include the following or similar language in any surety bond: “Surety agrees that electronic signatures (whether digital or encrypted) and/or scanned copies of original signatures on this document is intended to authenticate this bond and shall have the same force and effect as manual signatures and original copies. Such electronically signed or scanned/PDF versions of the AIA Document A312™, Payment Bond and Performance Bond shall be fully enforceable against the Surety.”

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

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