REQUEST FOR QUALIFICATIONS AND PROPOSALS	ADDENDUM NO.
ADDENDUM Construction Manager at Risk Services, Hatchery Upgrade Program	**01**

PROJECT / RFP TITLE	RFP NO.
Construction Manager at Risk Services for the Battle Creek Hatchery and Lower Tulalip Creek Hatchery Upgrade Program	2026-22
OWNER Tulalip Tribes of Washington, Natural Resources Department	DATE OF ADDENDUM November ___, 2026
ISSUED BY Crain Advisors, on behalf of the Tulalip Tribes of Washington	ORIGINAL RFP ISSUE DATE October 13, 2026
TO All prospective proposers of record	PROPOSAL DUE DATE As stated in the RFQ/P (no change)

NOTICE TO PROPOSERS

This Addendum is issued before the proposal due date and forms part of the Request for Proposals and its Exhibits. It modifies and supplements the original RFP documents, including any previously issued Addenda, only as described below. Where this Addendum conflicts with the original RFP documents, this Addendum governs. Items not mentioned remain unchanged and in full force.

Each proposer must acknowledge receipt of this Addendum in its Cover Letter and by completing the Acknowledgment of Receipt on the last page of this Addendum. Failure to acknowledge may result in the proposal being deemed non responsive.

PART 1. CHANGES TO THE RFP

The following changes are made to the Request for Qualifications and Proposals document. Each change is effective as if it appeared in the original document:

NO.	LOCATION	CHANGE
1.1	Section 6, RFQ/P Timeline	In the timeline table, the entry for “RFQ/P issued” is corrected to read “Tuesday, October 13, 2026.” The issue date is unchanged. Only the day of the week is corrected.
1.2	Section 7, Minimum Qualifications, Experience and comparable work	The Experience and comparable work bullet is deleted and replaced with the following: Experience and comparable work. At least three (3) projects completed within the last ten (10) years, at least two (2) of which are projects on which the proposer served as Construction Manager at Risk, comparable at risk CM/GC, or design builder under a contract that included preconstruction or design phase services and a guaranteed maximum price or lump sum price. One (1) of the three projects may instead be under contract with construction underway on the proposal due date. At least one (1) of the three projects must be a fish or shellfish hatchery project or other similar aquaculture project, which may have been delivered by any method, including collaborative delivery, design bid build, or design build. All three (3) projects must be fish hatchery, aquaculture, water or wastewater treatment, or similarly complex process facilities that included concrete structures, process piping and pumping, electrical and controls, and civil site work. At least one (1) project must have included work in or adjacent to fish bearing waters under federal or state environmental permits, and at least one (1) project must have been constructed while the owner kept an existing facility in operation. The proposer may meet this requirement through its own experience, the experience of a

		joint venture partner that will be a member of the proposer's team, or the experience of the key personnel named below, who must be employees of the proposer or of a joint venture member, including on projects completed with other firms, provided the proposal states which applies. The proposal must identify each project and provide an owner reference, including contact information.
1.3	Section 7, Minimum Qualifications, Scale	The Scale bullet is deleted and replaced with the following: Scale. Each project must be comparable in scope and complexity to the Program, and at least two (2) of the three must have an Adjusted Construction Cost of at least $10,000,000. Adjusted Construction Cost is the project's final construction cost increased by three percent (3%) per year, compounded annually, for each whole year from the date of Substantial Completion to the proposal due date. For a project under contract with construction underway, the project's current contract value, including executed change orders, is used in place of final construction cost, and no escalation is applied.
1.4	Section 7, Minimum Qualifications, Key personnel	The brackets are removed from the numbers in this bullet, and the numbers are confirmed as stated. The words "of the kind described above" are revised to read "of the kind and scale described above." No other change is made to this bullet.
1.5	Section 9, Proposal Content and Evaluation Criteria, Experience and Comparable Work	The following sentence is added at the end of the Proposal Content for this criterion: "The Evaluation Committee will also consider the extent to which the individuals who delivered the projects offered are proposed for the Program."
1.6	Section 9, Proposal Content and Evaluation Criteria, Cover Letter and Firm Background	The following is added at the end of the Proposal Content for this criterion: "If the proposer is a joint venture, the proposal must include the legal name of the joint venture and of each member; each member's percentage interest and its role on the Program; a copy of the executed joint venture agreement or a letter of intent signed by an authorized representative of each member stating that the members will be jointly and severally liable to Tulalip for the Work; and, for each member, a qualification statement (A305 or equivalent), Washington contractor registration, and confirmation that it is not debarred, suspended, or excluded. The surety's letter must confirm capacity to bond the joint venture. For every proposer, the Staffing Plan must state the employer of each named key person. These documents do not count toward the page limit."

PART 2. CHANGES TO THE EXHIBITS

The following changes are made to the Exhibits. Each change is effective as if it appeared in the original document:

NO.	LOCATION	CHANGE
2.1	Exhibit A.4, Supplementary Conditions, Part VII, Section 7.6, Temporary Utilities and Contractor Yard	In the first paragraph of Section 7.6, the sentence "Consumption from existing Owner meters is paid by the Owner." and the sentence that follows it, which begins "The Contractor shall obtain any temporary hydrant meter," are deleted and replaced with the following: Temporary utilities used by the Contractor, including consumption from existing Owner meters and temporary hydrant meters, are paid by the Contractor. Before using any temporary utility service, the Contractor shall establish an account with the Tulalip Utilities Department, and the Contractor shall obtain any temporary hydrant meter from Tulalip Utilities before use. Utility charges, including meter and usage charges, are General Conditions costs reimbursed at actual cost under Section 7.1.5(d) of the A133 and are included in the Fee Base.

2.2	Exhibit B, Fee Matrix, Anticipated GC List; new Exhibit Q	Exhibit Q, Owner Office Trailer Floor Plan, is added to the RFQ/P exhibits and is attached to this Addendum. Each Proposer shall add a line item titled "Owner Office Trailer" to the Anticipated GC List in Exhibit B and shall price in that line item the Owner office trailer described below and shown in Exhibit Q, for the duration stated. The Fee Matrix is not otherwise changed. As with every priced line, the line item requires a note in the Clarifications column. Owner Office Trailer. The Contractor shall furnish, deliver, set up, maintain, and remove an Owner office trailer of approximately 8 feet by 28 feet, and shall keep it available for the same duration as the Contractor's field office trailer. The trailer shall be placed at the office site shown in Exhibit I or as directed by the Owner. It shall contain a private office and an open work area with three workstations, furnished as shown in Exhibit Q. The trailer shall have two exterior doors, one at each end, and each door shall have steps, a landing, and railings that meet applicable code requirements. The Contractor shall furnish keyed locks on both exterior doors and an exterior sign on the trailer, as shown in Exhibit Q, that identifies it as the Owner's office and shows the Tulalip logo, the Program name, the Owner's Representative's name and telephone number, and an emergency telephone number, all as furnished by the Owner. The Contractor shall make all utility connections, including electrical, water, sewer, and data and internet service, and shall pay all utility charges for the full duration. The Contractor shall provide weekly cleaning of the trailer and weekly trash removal for the full duration. The cost of the trailer, furnishings, connections, locks, sign, steps, utilities, weekly cleaning, and trash removal is a General Conditions cost and shall be included in the Owner Office Trailer line item.
2.3	Exhibits A.1, A.2, and A.3, Contract Documents	Exhibit A.1 (AIA A133-2019 Agreement and AIA A201-2017 General Conditions), Exhibit A.2 (A133 Exhibit A, Guaranteed Maximum Price Amendment), and Exhibit A.3 (A133 Exhibit B, Insurance and Bonds) are revised and reissued. The revised exhibits are attached to this Addendum and replace the versions issued with the RFQ/P in their entirety. Proposers should review the revised exhibits closely. Any requested changes to them must be submitted with the proposal as Section 7 of the RFQ/P provides. Exhibit A.4, Supplementary Conditions, is not reissued and is changed only as Item 2.1 states. All other terms of the RFQ/P related to the Contract Documents are unchanged.

PART 3. RESPONSES TO PROPOSER QUESTIONS

The following questions were received during the question period and are restated generally. Responses are binding only to the extent stated in this Addendum. Oral statements and informal responses are not binding.

NO.	QUESTION	RESPONSE
Q1.	Will Tulalip accept a design build shellfish hatchery project, with a contract value of more than $10 million, located adjacent to fish bearing waters, that is under contract with construction underway but not yet complete?	Yes. A shellfish hatchery project satisfies the hatchery project requirement, and one (1) project may be under contract with construction underway, as provided in Items 1.2 and 1.3 of this Addendum. The proposal must show which of the other elements of the requirement the project demonstrates.
Q2.	Does the sentence allowing a proposer to rely on a joint venture partner or key personnel apply to the entire Experience and comparable work requirement, or only to the fish bearing waters and	Yes. The sentence applies to the entire Experience and comparable work requirement, as stated in Item 1.2 of this Addendum. The proposal must state which source applies to each project.

	operating facility conditions?	
Q3.	May a proposer rely on a prime subcontractor, under a subcontract agreement rather than a joint venture, to supply aquaculture experience, if the parties agree to be bound to the Tribe?	No. Tulalip will contract with a single Construction Manager, which may be a joint venture. That entity remains solely responsible for the Work and for furnishing the required bonds and insurance. The minimum qualifications may be met only through the sources stated in Section 7, as revised in Item 1.2 of this Addendum. The experience of a firm working under subcontract to the proposer does not count toward the minimum qualifications.
Q4.	Would Tulalip consider scoring direct fish hatchery experience under Experience and Comparable Work rather than making it a minimum qualification?	No. Hatchery experience remains a minimum qualification, as clarified in Item 1.2 of this Addendum.

PART 4. SCHEDULE AND SUBMISSION

No change. This Addendum does not change the proposal due date, the date of the mandatory preproposal meeting, the question deadline, interview dates, or any other date or submission requirement in the RFQ/P.

PART 5. ATTACHMENTS

Exhibit Q, Owner Office Trailer Floor Plan (new exhibit, see Item 2.2).

Exhibit A.1, AIA A133-2019 Agreement (revised, see Item 2.3).

Exhibit A.1, AIA A201-2017 General Conditions (revised, see Item 2.3).

Exhibit A.2, A133 Exhibit A, Guaranteed Maximum Price Amendment (revised, see Item 2.3).

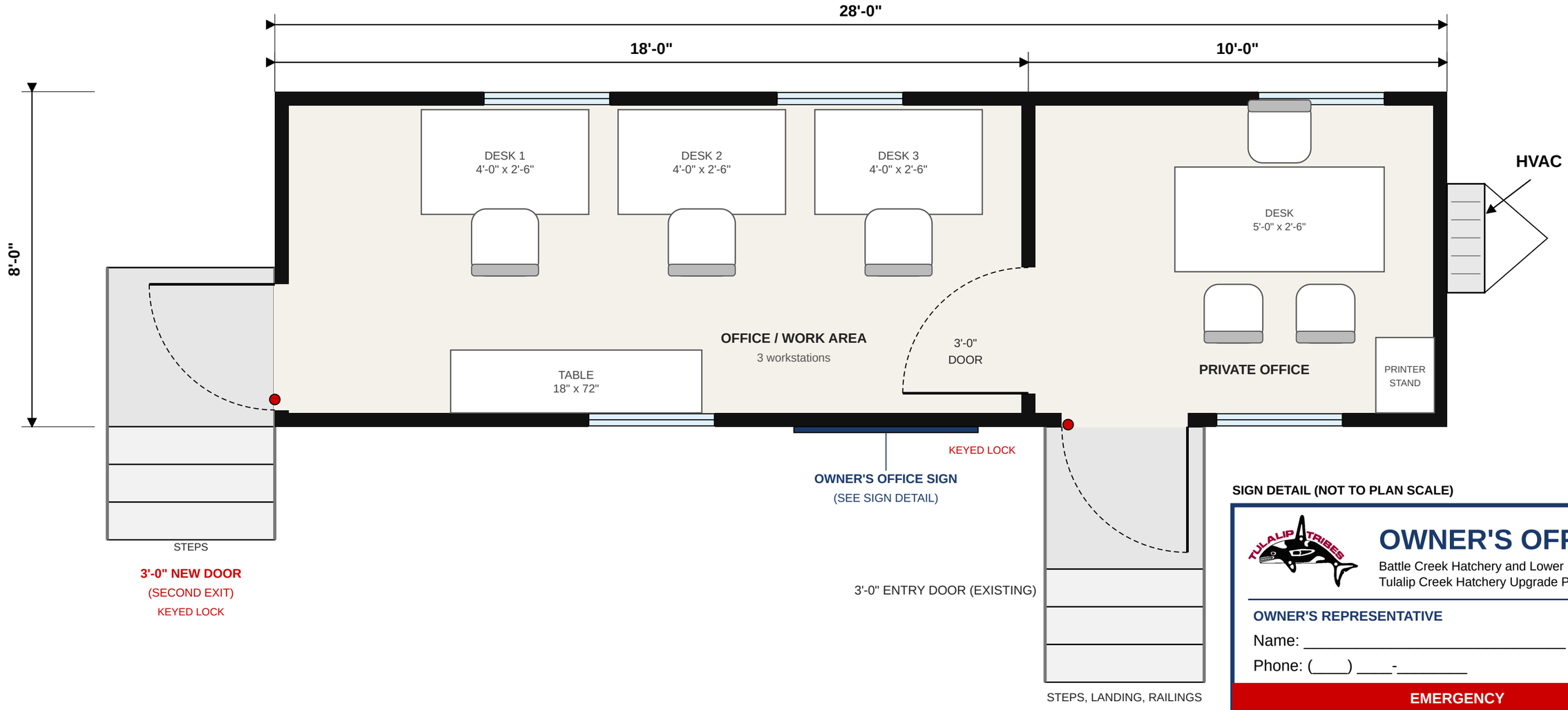
Exhibit A.3, A133 Exhibit B, Insurance and Bonds (revised, see Item 2.3).

Pre-Proposal Meeting Minutes, October 29, 2026 (informational only).

Pre-Proposal Meeting Sign-In Sheet, October 29, 2026.

ISSUED BY (SIGNATURE)	DATE ISSUED
_____ Jason Gobin, Executive Director, Natural and Cultural Resources Tulalip Tribes of Washington	November ___, 2026

End of Addendum 01



SIGN DETAIL (NOT TO PLAN SCALE)

TULALIP TRIBES

OWNER'S OFFICE

Battle Creek Hatchery and Lower
Tulalip Creek Hatchery Upgrade Program

OWNER'S REPRESENTATIVE

Name: _____

Phone: (____) ____-_____

EMERGENCY

(_____) _____-_____

EXHIBIT Q, OWNER OFFICE TRAILER FLOOR PLAN

DRAFT

8'-0" x 28'-0" trailer, plan view, private office plus 3 workstations, two exterior doors with steps

Date: 11/04/2026

1. Furniture: one desk and chair per workstation (3), private office desk, chair, and two guest chairs, and one 18" x 72" table for miscellaneous use.
2. Utilities: Construction Manager makes all utility connections and pays all utility charges.
3. Steps, landing, and railings at both exterior doors.
4. Trailer remains for the same duration as the CM trailer.
5. Exterior sign: Tulalip logo, project name, Owner's Representative name and phone, and emergency phone. Keyed locks on both exterior doors.

Hatchery CMAR RFP, Tulalip Tribes. Concept layout, drawn to scale.

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, address and other information)

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

« »

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

«[insert] »

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

«[Battle Creek and Lower Tulalip Creek Hatcheries]»

The Architect:
(Name, address and other information)

«[McMillen
1471 Shoreline Drive Ste. 100
Boise, ID 83702
208-342-4214]»

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.

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DRAFT

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.)

«See Request for Qualifications/Proposal ("RFQ/P") set forth in **Exhibit J**.

§ 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.)

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«See RFQ/P, **Exhibit J.**

§ 1.1.3 The Owner's budget for the Project:
(Provide total and, if known, a line item breakdown.)

$39,000,000 to be verified prior to execution

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

.1 Design phase milestone dates, if any:

«[Construction Documents Complete by 12/31/26] »

.2 Construction commencement date:

« Tentatively June 1, 2027 »

.3 Substantial Completion date or dates:

«[The Construction Manager will develop a comprehensive schedule that is coordinated with the project requirements, current operational needs of the Hatcheries including phasing to support ongoing operations, and any funding constraints during the pre-construction phase of the contract. Substantial Completion dates and interim Milestone Dates for each site will be established as Section 6.1.6.2 provides and stated in Section A.2.3 of the GMP Amendment (A133 Exhibit A).] »

.4 Other milestone dates:

« Milestone Dates for each site, as stated in Section A.2.3 of the GMP Amendment (A133 Exhibit A) »

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

«[None] »

§ 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.)

«[None] »

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

«[None] »

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

«[TBD prior to Execution] »

§ 1.1.8.1 The Owner's Representative may designate project manager to perform some of the obligations of the Owner's Representative. Such designation shall be in writing and may be changed upon written notice to the Construction Manager.

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

.1 Geotechnical Engineer:

«[Stantec »

.2 Civil Engineer: Subconsultant to Architect

«[McMillen] »« »

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

«[Special Inspections - TBD]»

Surveyor:

«[insert]»

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

«[Dave Whitbeck, P.E.
McMillen] »

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

«[insert] »

§ 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.)

« **Exhibit E (Preconstruction Team)**. »

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

« **Supplementary Conditions listed in Section 15.2.4** »

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

«[insert] »

§ 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

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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. Notices under the Contract Documents, other than Notices of Claim under Section 15.1 of the A201, may be given by email to the designated representative of the receiving party at the email address(es) stated in Section 1.1.8 or 1.1.12, as applicable. An email notice is effective on the day it is sent if sent before 5:00 p.m. Pacific Time on a business day, and otherwise on the next business day.

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 and exhibits 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 each of the Construction Manager's Guaranteed Maximum Price (GMP) proposals as provided in Article 5, the Contract Documents will also include the documents described in Section 3.2.3 and identified in each 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. Any Amendments to the A133-2019 or A201-2017, or any Exhibits attached thereto, however, may only be made via Modification signed by both parties and may not be accomplished through the GMP Amendment process. In entering into this Agreement or any Guaranteed Maximum Price Amendment, neither party has relied upon any statement, estimate, forecast, projection, representation, warranty, action, or agreement of the other party except for those expressly contained in this Agreement. The Contract may not be amended except by Change Order or other written Modification executed by the Owner and Construction Manager.

§ 2.1.1 The Drawings and Specifications issued with the Request for Qualifications and Proposals (Exhibit J) are the basis for this Agreement and for the Construction Manager's Guaranteed Maximum Price proposal. The Owner and Construction Manager acknowledge that the Drawings and Specifications issued with the Request for Qualifications and Proposals are not a final or complete set of Construction Documents and will be superseded by the Issued for Construction set referenced in Section 3.2.2. The Construction Manager's responsibility for identifying and addressing gaps, conflicts, and missing information in the Drawings and Specifications during preconstruction and Guaranteed Maximum Price development is as set forth in the Request for Qualifications and Proposals.

§ 2.1.2 In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based upon the following priorities in descending order:

- **.1** Contract Modifications;
- **.2** Change Orders
- **.3** The GMP Amendment;
- **.4** **This Agreement;**
- **.5** Approved revisions and addenda, with those of a later date taking precedence over those of earlier date or original documents;
- **.6** **The Supplementary Conditions** listed in Section 15.2.4;
- .7 The General Conditions of the Contract for Construction (AIA A201-2017 as revised);
- **.8** **Exhibits to the Agreement including Exhibits listed in GMP Amendment.**

In the case of a conflict or ambiguity between the Drawings and Specifications or within either document not clarified by Addendum, the Drawings shall govern Specifications for quantity, arrangement, details and location, and the Specifications shall govern Drawings for materials, quality, workmanship, installation, and performance). In the event of ambiguity in quality or quantity that is not resolved by the order of precedence above, the Construction Manager shall (i) provide the best quality and the most reasonable quantity as applicable; and (ii) follow the stricter standard requiring the greatest measure of performance on Construction Manager.

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§ 2.2 Relationship of the Parties

§ 2.2.1 The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Owner, Architect, and consultants, 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.

§ 2.2.2 Covenant of Good Faith and Fair Dealing. By entering into this Agreement, as part of the covenant of good faith and fair dealing, Construction Manager agrees to function within the laws, and statutes, and building codes applicable to its duties and responsibilities, proceed to fulfill its obligation under this Agreement diligently and honestly, and that it will supply accurate, complete, and current cost or pricing data for purposes of supporting or documenting Construction Manager's requests for contract modification, compensation, and/or payments under this Agreement.

§ 2.3 General Conditions

The general conditions of the contract shall be as set forth in A201–2017, as modified by the parties, which document is incorporated herein by reference. The terms "Contractor" and "Construction Manager" mean the same party wherever they appear in the Contract Documents, including the A201, the Supplementary Conditions, each GMP Amendment, and all exhibits. An obligation, right, or remedy stated for one applies equally to the other.

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 incorporated under Section 2.3. 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.

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§ 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, and fully comply with the requirements of AIA Document A201-2017, as revised. The updated Project schedule shall fully comply with the requirements of AIA Document A201-2017, as revised and 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 reviewing 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.

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§ 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 Construction Manager shall procure all such items using a Letter of Authorization.

§ 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.)

« [insert if applicable]»

§ 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 ("Scope of Work") for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal for the Work 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 for the Work 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 and from the Construction Manager's involvement in preconstruction services for the Project. The parties understand that a Guaranteed Maximum Price for the Work may be established prior to issuance of the Issued for Construction set of Construction Documents (IFC Set) for the Work. Within fifteen (15) days of issuance of the IFC Set, Construction Manager shall inform the Owner of any changes in the IFC Set that it believes were not reasonably inferable from the Contract Documents or from Construction Manager's involvement in preconstruction services. Construction Manager's failure to so notify the Owner is waiver of any claims, costs, or Change Orders arising out of the issuance of an IFC Set. After receipt of any notice required under this Section, Owner and Construction Manager shall meet to discuss the changes in the IFC Set. Owner and Construction Manager may amend any GMP to include changes set forth in the IFC Set. The GMP as amended after issuance of the IFC Set (if applicable) shall include costs reasonably inferable from the Contract Documents as established by the IFC Set.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal for the Work 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 and the Construction Contingency; General Conditions**

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(staff and Major Equipment as rates, quantities, and months; small tools, consumable supplies, and personal protective equipment as a not to exceed amount; and other General Conditions as an itemized estimate); and the Construction Manager's Fee;

.4 A list of all Work Construction Manager plans to self-perform;

.5 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and

.6 A date by which the Owner must accept the Guaranteed Maximum Price.

The Construction Manager shall attach to each Guaranteed Maximum Price Amendment (Exhibit A) the documents listed in this Section 3.2.3, the Project schedule for the Work, the Guaranteed Maximum Price summary and Schedule of Values, and the Construction Manager's estimate of the Cost of the Work, and these documents form part of the Contract Documents for the Work as Section 2.1 provides.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency, not to exceed five percent (5%) of the Cost of the Work, 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 (the "Construction Manager's Contingency"). The Construction Manager's Contingency is an amount to cover unforeseen conditions and events not apparent as of the date of the establishment of the Guaranteed Maximum Price by Owner and Construction Manager. The Construction Manager will obtain the Owner's prior written authorization before applying the Construction Manager's Contingency (or any part of it) to a cost, will supply the Owner with detailed information about the proposed use. When the Construction Manager's Contingency is applied, the Construction Manager may bill Fee at the Change Fee Rate on the cost applied, subject to reconciliation under Section 6.1.2.2, and that Fee is drawn from the Construction Contingency together with the cost, as Section 6.2.3 provides. Requests for the use of the Construction Manager's Contingency shall be submitted by the Construction Manager within thirty (30) days of the event which caused such Cost of Work to be incurred, or as soon as the need is apparent. The Construction Manager's Contingency shall not be used for payment of Changes to the Work that the Owner would otherwise be obligated to pay pursuant to this Agreement. Any unused balance of the Construction Manager's Contingency shall be credited to the Owner as Section 6.2.3 provides. The Construction Manager shall also provide the Architect and Owner documented status of the contingency amount on a monthly basis with each payment application. The Construction Manager's Contingency is the Construction Contingency described in Section 6.2.3; the two Sections shall be read together.

§ 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 for the Work, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement for the Work, a copy of which the Owner shall provide to the Architect. Each 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 for 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 may authorize preparation of revisions to the Contract Documents for the Work that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish any 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 for the Work.

§ 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 for the Work.

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§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment for the Work 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.

§ 3.3.1.3 Construction Manager's representatives shall be [Senior Project Manager] [Project Manager], [Superintendent], [Assistant Superintendent] or other individuals as approved by the Owner. The Construction Manager shall cause Construction Manager's representative to be on the Project site at all times when Work is being performed and shall authorize Construction Manager's representative to receive and act on the Construction Manager's behalf upon instructions from the Owner given pursuant to the Contract Documents. Notice from the Owner or the Architect to Construction Manager's representative in connection with defective Work, or instructions for performance of the Work, shall be deemed notice of such issues to the Construction Manager.

§ 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 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 including, but not limited to, status of cost/budget, schedule, and any other outstanding issues requiring resolution. The Construction Manager shall maintain a daily log containing a record of weather, hours of all workers, Subcontractors working on the site, number of workers, number of TERO 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. Construction Manager shall prepare, circulate, and maintain weekly meeting minutes, including 3-week look-ahead schedules, in addition to separate logs for RFIs, Submittals, Change Orders, contingency use, buyout, critical delivery tracking, and permit tracking.

§ 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, hours of all workers, number of workers and number of TERO workers on site, Subcontractors working on the site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries. 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. Construction Manager shall prepare, circulate, and maintain weekly meeting minutes, including 3-week look-ahead schedules, in addition to separate logs for RFIs, Submittals, Change Orders, contingency use, buyout, critical delivery tracking, and permit tracking.

§ 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. Reporting of variances is for accounting purposes only and shall not constitute a Notice of Claim.

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 Not Used.

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§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the entire Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, (3) Owner's budget, and (4) 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 and if applicable, 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 reasonably 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.

§ 4.2 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 has retained McMillen, a professional engineering firm licensed in the State of Washington ("Engineer"), as the prime design professional for the Project. Wherever this Agreement, AIA Document A201-2017, or any Exhibit refers to "Architect," that term means the Engineer. The Engineer holds the rights, duties, and administrative authority assigned to the Architect under the Contract Documents. Stantec is retained as a subconsultant to the Engineer and to the extent that Stantec performs the architectural portion of the design services, neither that retention of Stantec nor Stantec's performance of such services create a separate or independent "Architect" relationship between the Owner and Stantec.

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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 a lump sum of $_____, as set forth in the Construction Manager's Preconstruction Phase proposal dated _____. The lump sum shall be paid in monthly installments based on the percentage of Preconstruction Phase services completed and shall be fully earned upon the Owner's execution of the Guaranteed Maximum Price Amendment under Section 3.3.1.2. This amount is not subject to credit, offset, or reduction against the Construction Manager's Fee or any other compensation under this Agreement. Bid packages issued after execution of the Guaranteed Maximum Price Amendment are Construction Phase activities under Article 9 and are not Preconstruction Phase services compensated under this Section.

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

«See **Exhibit F, Section B**, Construction Manager Preconstruction Phase Hourly Rates »

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager for the Project, 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, but only for that portion of their time required for the Work.

§ 5.1.3 Should the Owner direct a change in the scope or duration of the Preconstruction Phase services described in Sections 3.1 and 3.2, the Construction Manager shall notify the Owner in writing of the anticipated additional cost or time before incurring it. Additional compensation for Owner-directed changes in Preconstruction Phase scope or duration shall be calculated using the hourly billing rates set forth in Section 5.1.2, and is subject to the Owner's prior written authorization.

§ 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 within thirty (30) days after receipt of Construction Manager's invoice. Amounts unpaid «sixty » («60») days after the invoice date shall bear interest at the rate entered below.
(Insert rate of monthly or annual interest agreed upon.)

«Three percent» (3%) « per annum »

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment for the Work. 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.)

§ 6.1.2.1 The "Fee Percentage" is [insert] percent ([insert]%), as stated in the Construction Manager's Proposal and set forth in Exhibit F. The Fee Percentage is a pricing rate used only to calculate fixed dollar amounts of Fee under this Agreement. The Fee is a lump sum fixed in dollars at each Guaranteed Maximum Price Amendment and is adjusted only as Section 6.1.2.2 and Section 6.1.3 provide. The Construction Manager's Fee is expressly understood to include, but is not limited to, any and all home office costs and overhead, margins, profit, and economic impact associated with the Project and Work. The Fee also includes Project Executive and principal time, corporate administrative, accounting, and safety functions, and the Construction Manager's software.
§ 6.1.2.2 Upon acceptance of each Guaranteed Maximum Price Amendment, the Construction Manager's Fee for the Work in that Amendment is fixed as a lump sum in dollars equal to the Fee Percentage multiplied by the Fee Base identified in that Amendment.

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The "Fee Base" is the estimated Cost of the Work for the scopes of Work (including self-performed Work and Allowances), General Conditions, and other Costs of the Work carried in the Amendment, including items reimbursed at actual cost, excluding (a) the Construction Contingency, (b) premiums for insurance and bonds, (c) TERO fees and permit fees paid by the Construction Manager, (d) items provided or paid by the Owner, and (e) any cost that is not a Cost of the Work. After each Guaranteed Maximum Price Amendment is accepted, the Fee is adjusted only at the Change Fee Rate stated in Section 6.1.3. At final accounting, the Fee for the Work in each Guaranteed Maximum Price Amendment is adjusted by the Change Fee Rate multiplied by the difference between (1) the final Cost of the Work for that Work, excluding the items excluded from the Fee Base and any cost that is not reimbursable under this Agreement, and (2) the Fee Base as adjusted by the net change in the Cost of the Work from Change Orders. That adjustment increases the Fee for Construction Contingency applied under Section 6.2.3, and decreases the Fee for savings, including unused Allowances, buyout savings under Section 6.2.4, and General Conditions costs below the amounts carried. The Fee does not otherwise change because of actual cost, extended duration, or delay, except as Section 13.3 provides. Unused Construction Contingency carries no Fee and is credited to the Owner in total under Section 6.2.3.

§ 6.1.2.3 There shall be no Construction Manager's Fee or mark-up paid on the value of Work attributable to errors, omissions, or fault of the Construction Manager.

§ 6.1.2.4 All self-performed Work must be agreed upon in advance and in writing by Owner and shall be either negotiated with the Owner or procured by competitive bid, as Section 9.1.3 provides. The overhead and profit included in the price of bid for self-performed Work shall be: priced as the market allows, part of the fixed price of the scope, and shall not be limited to the Fee Percentage. Negotiated self-performed Work shall be priced at the actual Cost of the Work not to exceed an agreed price, shall not include separate overhead or profit, and shall return any saving to the Owner, as Section 9.1.3 provides. The Construction Manager's Fee applies to self-performed Work, whether negotiated or bid, as it applies to Work performed by Subcontractors, is calculated on the fixed price or agreed not-to-exceed price of the scope as part of the Fee Base under Section 6.1.2.2, and is in addition to, and not part of, that overhead and profit. Self-performed Work shall have dedicated supervision, meaning foremen and superintendents assigned to that Work and not drawn from the General Conditions staff priced in Exhibit F, so that self-performed Work does not reduce the capacity of the Project team. Self-performed Work that is bid shall be bid as Section 4.6 of the Supplementary Conditions provides.

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

The Construction Manager's Fee shall be increased or decreased by the lesser of two and one-half percent (2.5%) and the Fee Percentage (the "Change Fee Rate") multiplied by the net change in the Cost of the Work from each change in the Work, as stated in the Change Order or Construction Change Directive.

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

At any tier, a Subcontractor's markup shall not exceed 10% on its own labor and 5% on materials and equipment of or procured by such Subcontractor; if there are multiple tiers, then the upper tier Subcontractor's fee for supervision of the lower tier shall not exceed a 5% charge on top of the lower tier Subcontractor's charge, and in any event shall not exceed fifteen percent (15 %) in aggregate without prior written approval by Owner. These limits apply to increases in the cost of a Subcontractor's portion of the Work by Change Order. They apply to Work performed by Subcontractors at any tier and to Work the Construction Manager performs under a bid it submitted and was awarded under Section 4.6 of the Supplementary Conditions, as if the Construction Manager were a Subcontractor. They do not apply to, and do not limit, the overhead and profit included in the price of a bid or Subcontract at the time it is awarded.

§ 6.1.5 Rental rates for Construction Manager-owned Major Equipment (as defined in Section 7.5.2.2) are set forth in Exhibit F and shall be based on the Rental Rate Blue Book for Construction Equipment (EquipmentWatch), including its published rate adjustment factors for equipment age and region. Each rate shall be stated in the Proposal as a percentage of the Blue Book monthly ownership rate, which shall not exceed [seventy percent (70%)], and shall not exceed the rate at which comparable equipment is available from a third-party rental source at the place of the Project, as shown by a written quotation if the Owner requests one. Rates under this Section are unoperated, dry rates as defined in Section 7.5.2.4.

§ 6.1.6 Liquidated damages, if any:

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«**§ 6.1.6.1** The parties agree that (a) Owner will be damaged if Construction Manager does not achieve a Milestone Date, including the date for Substantial Completion, for a site, (b) such damages will be difficult to ascertain, and (c) the amounts set forth below are a reasonable approximation of the damages that Owner would sustain if a Milestone Date is not achieved. The sums described below are: (1) liquidated damages and not a penalty, and (2) agreed to in order to avoid costly and lengthy litigation which would otherwise be required. The Construction Manager understands that the Work will be performed at operating hatcheries and that delays or disruptions to hatchery operations, fish production, or regulatory in-water work windows may cause the Owner to incur significant damages. The Owner may deduct all damages due it under this Section from any unpaid amounts then or thereafter due to the Construction Manager under this Agreement. Any damages over and above unpaid amounts, and not so deducted, shall be payable by Construction Manager to Owner upon Owner's demand. The liquidated damages provision herein is intended to be in addition to every other remedy enforceable at law, equity, or under this Contract, including without limitation the right to collect actual damages in any case where liquidated damages are unenforceable or otherwise unavailable. This Section 6.1.6 shall survive termination of this Agreement.

§ 6.1.6.2 The Work includes two hatchery sites, Battle Creek Hatchery and Lower Tulalip Creek Hatchery (each a "site"), and each site will have its own Milestone Dates. For each site, the Milestone Dates will include Substantial Completion and as many interim milestones as are needed to address the constraints of that site. These constraints may include site conditions, the Owner's ongoing hatchery operations, fish production cycles, in-water work windows, seasonal and weather limitations, permit conditions, utility outages, and phasing or access requirements. The Owner and Construction Manager anticipate that key, high-stakes operational milestones may be identified as Critical Milestone Dates. Notwithstanding anything to the contrary in the liquidated damages section herein or Section 15.1.7 of the A201, the Construction Manager's failure to meet Critical Milestone Dates shall entitle the Owner to seek actual and consequential damages. The Owner and the Construction Manager will set the Milestone Dates, including Critical Milestone Dates, if any, for each site during the Preconstruction Phase and state them in the GMP Amendment. A Milestone Date, including Critical Milestone Date, if any, applies only after it is stated in the GMP Amendment. Final Completion of each site is governed by Section 6.1.6.3.

If the Construction Manager does not achieve a milestone by its Milestone Date, the Construction Manager shall pay the Owner liquidated damages of five hundred dollars ($500) for each calendar day after the Milestone Date until the milestone is achieved. Liquidated damages for any one milestone will not exceed seven thousand dollars ($7,000) for an interim milestone or ten thousand dollars ($10,000) for Substantial Completion.

Liquidated damages are calculated separately for each Milestone Date at each site. A missed Milestone Date does not increase, reduce, delay, or otherwise affect the liquidated damages for any other Milestone Date at either site. If more than one Milestone Date is missed at the same time, liquidated damages accrue for each of them.

§ 6.1.6.3 Construction Manager understands that if Final Completion of a site is not achieved within thirty (30) days after Substantial Completion of that site, Owner will suffer damages which are difficult to determine and accurately specify. Construction Manager agrees that if Final Completion of a site is not achieved within thirty (30) days after Substantial Completion of that site, Construction Manager shall pay to Owner liquidated damages of two hundred dollars ($200) per calendar day for that site for each calendar day that Final Completion is delayed beyond those thirty (30) days, up to a limit of five thousand dollars ($5,000) for the site. These damages are in addition to any liquidated damages assessed under Section 6.1.6.2.

§ 6.1.6.4 Such liquidated damages are not a penalty but are the Owner's remedy for Construction Manager-caused delay. For purposes of assessment of liquidated damages under this Section, the Construction Manager will be considered to have achieved Substantial Completion of a site upon the earlier of Owner's issuance of a Certificate of Substantial Completion for the site or issuance of a Temporary Certificate of Occupancy for the site by the appropriate authority having jurisdiction. An interim milestone is achieved when the Work described for it in the GMP Amendment is complete as described there. A certificate of occupancy is not required for an interim milestone because the hatcheries remain in operation. The limits in Section 6.1.6.2 and Section 6.1.6.3 apply only to liquidated damages. They do not limit the Owner's other remedies under the A133 and the A201, including termination for default and recovery of the cost to complete the Work.

§ 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.)

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«[insert] »

§ 6.2 Guaranteed Maximum Price

§ 6.2.1 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.

§ 6.2.2 Should the Construction Manager become aware of cost saving opportunities during the performance of the Work, the Construction Manager shall so advise the Owner in writing in order to provide the Owner the option to minimize the final Cost of the Work. Examples include, but are not limited to, vehicles, equipment, or tools purchase versus rental, resale of structural preload materials, or surplus or recyclable consumable materials or supplies.

§ 6.2.3 The Guaranteed Maximum Price shall include a maximum construction contingency of five percent (5%) of the Cost of the Work, which is for the Construction Manager's use in addressing unanticipated Costs of the Work within the scope of the Construction Manager's responsibility ("Construction Contingency"). The actual Construction Contingency for each Phase of the Work shall be set forth in the GMP Amendment. The Construction Manager may, upon prior written authorization by the Owner before incurring the cost or performing the Work, apply an amount up to the Construction Contingency towards cost overruns, circumstances in which actual cost of an item exceeds the amount allocated to such item in the Guaranteed Maximum Price, warranty costs prior to final completion, and all costs allowed by this Agreement. The Construction Manager shall provide the Owner with monthly accounting of the Construction Contingency. Documentation for contingency expenditures shall be separate from Change Order documentation. The expensing of Construction Contingency budget funds does not alter the Guaranteed Maximum Price. When Construction Contingency is applied, the Construction Manager may bill Fee at the Change Fee Rate on the cost applied, subject to reconciliation under Section 6.1.2.2, and that Fee is drawn from the Construction Contingency together with the cost. Any unused Construction Contingency funds shall be credited to the Owner in the form of a reduction to the Contract Sum and Guaranteed Maximum Price.

§ 6.2.3.1 Any and all costs authorized and actually incurred by signed Letters of Authorization by Owner preceding the execution date of this Agreement, including preconstruction services, are to be included in the Guaranteed Maximum Price.

§ 6.2.4 Review and Adjustment to the Guaranteed Maximum Price After Subcontractor Buyout

Within ninety (90) days execution of the Guaranteed Maximum Price Agreement for the Work, the Construction Manager shall confirm and buyout all major Subcontractors and Suppliers ("Subcontractor Buyout"). During this period, as the Construction Manager enters into written subcontracts for the Work with fixed pricing terms, the Construction Manager shall prepare and maintain a Buyout Log on a line item basis that (a) identifies the specific scope of Work and Construction Manager or Subcontractor or Supplier in each line item for which the pricing has been fixed, (b) the amount of such pricing, (c) the scope, (d) estimated cost of the Work for line items that are not yet fixed by written agreement, and (e) any savings or overages from the Guaranteed Maximum Price. To the extent that the fixed Cost of the Work for a specific line item is less than the estimated cost of the work in the Guaranteed Maximum Price, such line item shall be decreased to account for the difference in the Subcontractor Buyout. To the extent that the fixed Cost of the Work is greater than the estimated Cost of the Work for a respective line item, such line item shall be increased by such amount, if available, from an established "savings" from another line item. Any savings from buyout after adjusting all such line items at the end of the period for Subcontractor Buyout shall be transferred as follows: 50% to reduce the overall GMP and 50% transferred to the Construction Contingency. To the extent there are no savings at the end of the period for Subcontractor Buyout, the Construction Manager may transfer from the Construction Contingency to "true up" the line items. Increases in excess of the Construction Contingency shall be borne by the Construction Manager. The Construction Manager shall provide an updated Schedule of Values showing the reduction or increase in each line item of the Schedule of Values, and shall provide an updated Contingency Transfer Log showing the changes set forth in this Section.

§ 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.

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§ 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, as revised.

§ 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, as revised.

§ 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 revised, 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 fixed under Sections 6.1.2 and 6.1.3 of this Agreement.

§ 6.3.5 In no event shall the Construction Manager receive any payment or compensation which would cause the Guaranteed Maximum Price to be exceeded nor shall the Construction Manager be entitled to receive any compensation for extra Work, whether partially or fully completed or simply proposed, unless such additional Work is authorized by a written Change Order or Construction Change Directive signed by the Owner. The Construction Manager waives the right to receive any additional compensation for extra Work which is not authorized by Change Order signed by the Construction Manager and the Owner or Construction Change Directive or Unilateral Change Order signed by the Owner. This Section does not preclude the Construction Manager from filing a claim for changed or differing conditions to the extent expressly allowed under other provisions of this Agreement.

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 the net costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only those 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 this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing any Guaranteed Maximum Price Amendment.

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

§ 7.1.4 Throughout the performance of the Work, the Construction Manager will seek to identify and work with the Architect and Owner in implementing cost savings opportunities to reduce the Cost of Work.

§ 7.1.5 The Construction Manager shall price General Conditions in its Proposal as stated in Exhibit F, as follows:

(a) Staff: rates, months, and percentage of time, as stated in Exhibit F.

(b) Major Equipment and facilities for general site use: rates, quantities, and months, as stated in Exhibit F.

(c) Small tools, consumable supplies, and personal protective equipment: actual cost, not to exceed the amount stated in the Guaranteed Maximum Price Amendment. That amount equals the percentage stated in Exhibit F multiplied by the staff cost carried under subsection (a), and is adjusted in proportion to Change Orders that change the staff cost carried under subsection (a). These costs are billed and tracked as incurred, consistent with other reimbursable Costs of the Work. Amounts below the stated amount are reimbursed at actual cost only; the stated amount is a cap on reimbursement, not a guaranteed payment.

(d) All other General Conditions: Costs of the Work at actual cost, for temporary facilities and services, site wide logistics, security, safety administration, cleanup, utilities, communications, and other items for general site use that are not included in a Subcontract. These costs are carried in the Guaranteed Maximum Price as the Construction Manager's itemized estimate, using unit costs where

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practical, and include the Contractor yard as the Owner decides it under Section 7.6 of the Supplementary Conditions. They are not a lump sum, are paid at actual cost, and are part of the Fee Base.

The rates in subsections (a) and (b) include all escalation and are fixed upon acceptance of the first Guaranteed Maximum Price Amendment (Section 7.2.6). When the schedule is set at each Guaranteed Maximum Price Amendment, Each Guaranteed Maximum Price carries an estimate for staff under subsection (a) equal to those rates multiplied by the estimated months and percentage of time, and for Major Equipment and facilities under subsection (b) equal to those rates multiplied by the estimated quantities and months. Staff are billed at those rates for the time actually charged to the Project, and Major Equipment and facilities are billed at those rates for the quantities and months actually used, subject to Section 7.5.2. Exhibit F states where items such as mobile telephones, vehicles assigned to individuals, laptops and tablets, and temporary facilities are included. An item included in a rate or in the Fee shall not be charged again under subsection (c) or (d). The Construction Manager is not required to identify every General Conditions cost in Exhibit F beyond the Anticipated General Conditions List it submits with its Proposal. Omission from that list does not bar reimbursement of a recognized and reasonably necessary General Conditions cost that Section 6.1.2.1 and Section 7.9 do not exclude. Charges for utility consumption on existing Owner meters are paid by the Owner. Utility consumption, hydrant meter deposit, rental, and usage charges, and temporary broadband service are Costs of the Work reimbursed at actual cost and are included in the Fee Base. Permit and other fees paid to governmental authorities by the Construction Manager are Costs of the Work reimbursed at actual cost and are excluded from the Fee Base under Section 6.1.2.2.

§ 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. All labor costs shall be based upon the standard rates as set forth in **Exhibit D**.

§ 7.2.1.1 It is the intent of the parties that neither wages nor labor burden of construction workers will include a mark-up, or an adder, for small tools or consumable supplies or any other non-labor related element of cost. The parties agree that those costs are to be directly charged to the Project at actual cost or as provided in Articles 7 and 8 of this Agreement, which shall be the same for Work under any Change Order. Construction Manager shall not authorize any overtime, whether of its own workers or of its Subcontractors of any tier and their workers, without the prior written consent of the Owner. Such overtime will not increase the Construction Manager's Fee under this Agreement without Owner's prior written approval. The Construction Manager shall include a comparable provision in its subcontracts with its Subcontractors. See **Exhibit D** hereto for approved labor/trade rates.

§ 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.)

«[insert] »

§ 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 TERO, 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 Costs for vacations, holidays, and sick leave shall be prorated to the Cost of the Work based on the time spent by each person on the Project as opposed to other projects each person worked on during the same time period and the total work hours available in a year. Example: If a person works 100 days on this Project during a year then the prorated percentage of costs shall be 100 days/total work days in a year.

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§ 7.2.6 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. For all items over $1,000, Construction Manager shall provide an itemized list to the Owner detailing all such items, including a full description and cost. 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. Items included in a rate under Section 7.1.5(a) or (b), in the Fee, or under Section 7.1.5(c) are not reimbursable under this Section.

§ 7.5.2 The cumulative rental cost billed to the Project for any Construction Manager-owned item of Major Equipment, calculated at the unoperated, dry ownership rate under Section 6.1.5, shall not exceed [ninety percent (90%)] of that item's replacement cost as published in the Rental Rate Blue Book for Construction Equipment. Once cumulative billings for a billing position (Section 7.5.2.3) reach that amount, the rate for continued use of equipment in that position shall be reduced to [fifty percent (50%)] of the Blue Book monthly ownership rate for the remainder of the Work. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined herein, shall be subject to the Owner's prior approval. Within fourteen (14) days after the Notice to Proceed, Construction Manager shall provide Owner a schedule of Construction Manager owned equipment intended for use on the Project, including rental rates, replacement cost, the billing position each item serves, date on, date off, and cumulative charges from inception of the Work through Substantial Completion.

§ 7.5.2.1 Each item on **Exhibit F** shall include adequate identifying information, such as use, manufacturer, make, model, dimensions/length, blade size, capacity, fuel usage, horse power, voltage/amperage, weight, etc., such that accurate identification can be determined. These descriptors shall match Construction Manager's owned equipment rental log. Repair and/or maintenance of Construction Manager's equipment are/is not intended to restore Construction Manager's equipment to a condition better than it was when it initially came to the Project. The Construction Manager's owned rental equipment rates shall be based upon monthly rates, prorated on a daily basis (monthly rate divided by 30.4). Days used to prorate monthly rates to daily rates shall be consistent with the calculation of days to charge each piece of equipment. Each piece of Construction Manager owned equipment rented to the Project shall be identified by a unique number, and the use of each piece of equipment shall be tracked by that number on Construction Manager's owned equipment rental log. The Construction Manager's owned equipment rental log shall include a unique equipment identification number, a definitive equipment description, date on site, date off site, replacement costs, stand-by rate, monthly rate pro-rated to daily, days billing per month, this month billing calculation and cumulative billing to date, maximum rental allowed and shall be available in Excel format if requested by Owner.

§ 7.5.2.2 Major Equipment. Sections 6.1.5 and 7.5.2 through 7.5.2.5 apply to Major Equipment, meaning any item of Construction Manager owned equipment for which a rate is published in the Rental Rate Blue Book for Construction Equipment. Hand tools, small power tools, personal protective equipment, and consumable supplies are reimbursed only under Section 7.1.5(c), regardless of

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ownership or value. Other general site equipment and facilities that are not Major Equipment, such as trailers, containers, and pool vehicles, are priced under Section 7.1.5(b) where Exhibit F lists them and otherwise reimbursed under Section 7.1.5(d). None of these items is separately reimbursable under this Section 7.5.

§ 7.5.2.3 Billing Positions and Substitution. A "billing position" is a defined category of Major Equipment performing a given function or scope of Work (for example, the mass excavation excavator or the standby generator). The cumulative cap and the resulting rate under Section 7.5.2 apply to each billing position, not to an individual serial numbered item. If the Construction Manager substitutes one Construction Manager owned item for another performing the same or a substantially similar function, the replacement item's billings shall be added to, and shall not restart, the cumulative total for that position and shall be billed at the rate that then applies to that position. The Construction Manager shall notify the Owner in writing before any substitution, identifying the item replaced and the position it fills. The Owner may audit the equipment log at any time and disallow any billing charged to circumvent this Section.

§ 7.5.2.4 Unoperated Rates. All rates in Exhibit F for Construction Manager owned Major Equipment are unoperated, dry rates that cover ownership cost only (depreciation, financing, insurance, and storage). They do not include fuel, lubricants, filters, wear parts, scheduled maintenance, or an operator. Fuel, lubricants, and routine maintenance for Major Equipment are reimbursed as Cost of the Work at actual invoiced cost, without regard to the cap in Section 7.5.2 or the rate reduction it describes. Operator labor is reimbursed under Section 7.2. Equipment that is idle at the written direction of the Owner is paid at [fifty percent (50%)] of the applicable ownership rate. Equipment that is idle for any other reason is not billed.

§ 7.5.2.5 Major Repairs. The cost of repairing or replacing a major component of Construction Manager owned equipment (including an engine, transmission, hydraulic pump, or comparable major system) because of failure, breakdown, or wear is the Construction Manager's sole responsibility and is not reimbursable as Cost of the Work. This Section does not apply to damage caused by the Owner, or by conditions the Owner specifically directed the Construction Manager to work under, which are addressed under the provisions of the Contract Documents that govern such claims.

§ 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. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior written approval. Costs of the Construction Manager's liability insurance shall be charged at actual costs, not to exceed ___% of the Cost of the Work. Builder's Risk and Pollution Liability insurance are procured and paid by the Owner and are not a Cost of the Work. No Fees shall be paid on insurance costs.

§ 7.6.1.1 Construction Manager may be required to procure and maintain a subcontractor-default insurance policy covering all subcontractors. If Owner requires Construction Manager to procure such a policy, this scope shall be set forth in the GMP Amendment and the policy shall include a Financial Interest Endorsement in favor of the Owner. The premium for such insurance coverage shall not exceed the actual cost charged to Construction Manager and shall be added as a separate line item in the Schedule of Values and included in each pay request/application for all of the subcontracted work in that pay period. Construction Manager shall be responsible for payment of the deductible, if any, which shall not be a Cost of the Work. No Fees shall be paid on such cost. Any deductible under such subcontractor-default insurance policy shall not exceed $50,000, without prior written approval of the Owner prior to execution of the GMP. No Construction Manager Fee shall be paid on such insurance costs.

§ 7.6.1.2 Should Owner add the requirement of Payment Performance, and Maintenance Bond(s), as set forth in **AIA A133-2019 Exhibit B**, the cost thereof shall be charged at actual cost not to exceed _____ % in total of the Cost of the Work. No Fees shall be paid on Bond costs.

§ 7.6.2 No sales, use, or similar taxes shall be charged to the Project.

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§ 7.6.3 Fees and assessments for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay. Construction Manager shall pay for the building permit as a Cost of the Work. Owner shall pay for building plan review fees, street improvement fees and permits, and city connection and utility franchise connection fees. For permits that are not issued by the Tulalip Tribes, Construction Manager shall pay for all trade-related and permits and deferred submittals as well as all permits related to site utilization. TERO fees or costs imposed by a governmental authority that are related to the Work are the Construction Manager's responsibility and are a Cost of the Work. No Fee shall be paid on TERO fees. The TERO fee is due on the total construction cost, as the TERO Code provides.

§ 7.6.4 Owner shall pay Fees of laboratories for tests and inspections required by the Contract Documents, which may include those required by the Owner's testing agents, geotechnical inspections required by the Owner's testing agents, environmental testing for soils and dewatering, window, envelope, waterproofing, ADA, and other similar tests/inspections required for the Work (if any), except those specifically required by the contract documents or 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. All other tests and inspections required by the Contract Documents are Construction Manager's responsibility.

§ 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. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2017 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 7.6.6 Except to the extent already included in a rate under Section 7.1.5 or in the Fee, costs for communications services, including temporary broadband service, and electronic equipment directly related to the Work and located at the site, with the Owner's prior approval. Software and software licenses are included in the Fee under Section 6.1.2.1.

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

§ 7.6.8 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 written approval.

§ 7.6.9 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 if, and to the extent, approved in advance by the Owner.

§ 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 shall not be a reimbursable cost. However, the correction of any work which is damaged by any event actually covered by any available insurance will be paid for from the proceeds of such insurance.

§ 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,

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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** Costs due to the default, 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, except to the extent any such costs are covered by available insurance;
- **.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.

In no event shall the Cost of the Work include the cost of any item more than once.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Construction Manager shall provide Owner with seven (7) days' prior written notice of any potential discounts, rebates, or refunds and an opportunity to furnish funds necessary to obtain the same. Cash discounts, rebates, and refunds 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 by 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. Unless otherwise provided for by TERO, the Construction Manager, for Work exceeding $25,000 in value and where possible, shall obtain bids from at least three (3) qualified 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, unless otherwise agreed to by the Owner. Subcontract awards are subject to funding, the Tribes' current procurement code, and the TERO Code, and Part IV of the

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Supplementary Conditions states the further procurement requirements. 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. In addition, Construction Manager shall provide a detailed bid analysis and bid comparison from each trade in excess of $25,000. 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. The Construction Manager shall not execute any agreements with Subcontractors or suppliers of material or equipment prior to receiving written approval from Owner that Construction Manager has been released to buy out the work and execute agreements with Subcontractors and suppliers of material or equipment. 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.

§ 9.1.1 Bids shall only be obtained from companies pre-qualified by Construction Manager to ensure the company is financially responsible, has successfully completed equivalent work for others in a quality manner, and has adequate resources and staff. Construction Manager will provide to Owner a monthly buyout log of subcontracts. The Owner shall then determine, with the advice of the Construction Manager and Architect, which bids will be accepted. 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, provided the Construction Manager objects in writing within seven (7) days.

§ 9.1.2 Relative to the Owner's receipt of the bid analysis spreadsheets, as described in in this Section, it shall be understood that the Owner will not have responsibility to review or respond to any of the technical aspects of the bids or bidders qualifications, or determine whether all bids are complete and in compliance with the Contract Documents. The Owner is relying exclusively on the Construction Manager's expertise in such review and analysis, and filling holes, coordination of bids with other trades, and establishing the GMP. Under no circumstance shall any Owner review relieve the Construction Manager of obligations under the Contract Documents.

§ 9.1.3 The Construction Manager shall notify the Owner if it intends to self-perform any portion of the Work and shall obtain the Owner's prior written consent in accordance with this Agreement. The Owner may, at its sole discretion, negotiate with the Construction Manager to self-perform a scope of Work where the Owner determines that doing so is in the best interest of the Tribes, including a tangible benefit to schedule, cost, performance, or quality, and does not conflict with the requirements of the Project funding sources or applicable TERO requirements. Self-performed Work negotiated under this Section is priced at the actual Cost of the Work under Article 7, subject to Section 7.9, not to exceed a price that the Owner and the Construction Manager agree in writing for the scope. The agreed price is included in the Guaranteed Maximum Price as a fixed line item and is adjusted only by Change Order. The amount by which the actual Cost of the Work for the scope is less than the agreed price is a saving to the Owner, and the Construction Manager bears any cost above the agreed price. Negotiated self-performed Work shall not include any separate overhead or profit, the Construction Manager's Fee under Section 6.1.2 applies to it as Section 6.1.2.4 provides. With the Owner's prior written approval, the Construction Manager may instead bid a scope of Work as Section 4.6 of the Supplementary Conditions provides, and the overhead and profit in its bid price is priced as the market allows and is not limited to the Fee Percentage. The Construction Manager's Fee applies to bid self-performed Work as Section 6.1.2.4 provides. All self-performed Work shall have dedicated supervision as Section 6.1.2.4 requires.

§ 9.1.4 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.

§ 9.1.5 The Construction Manager shall provide all General Conditions Work, including field supervision and administration, site wide logistics, temporary facilities and services, security, safety administration, cleanup, and equipment for general site use, as provided in Section 7.1.5, under Article 7. The Construction Manager shall not include General Conditions Work in any Subcontract bid package, or engage a Subcontractor, labor supplier, or related party to provide it, without the Owner's prior written approval. Equipment included in a Subcontract is for the exclusive use of that Subcontractor, except for incidental use by others at no charge, and the Construction Manager shall not place in a Subcontract equipment needed for general site use.

§ 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

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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 concerning all aspects of the Work 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 project records and accounts, including, but not limited to, complete documentation supporting accounting entries, books, job cost reports, correspondence, e-mails, photos, schedules, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract and the Work. The Construction Manager shall be required to provide job cost transaction detail in a form compatible with Microsoft Excel. The Construction Manager shall preserve these records for a period of three (3) years after final payment, or for such longer period as may be required by law. Additionally, at any time during this Agreement or up to one (1) year following termination or completion of this Agreement, Owner may request copies of any portion of Construction Manager's financial books and records pertaining to the Project and/or elect to conduct an audit of such books and records. All such books and records of the Construction Manager must be made available for inspection and copying by Owner at an office of Construction Manager within ten (10) miles of the Project and will be subject to audit examination by the Project auditor designated by Owner. The cost of the audit will be paid for by Owner unless the audit reveals an overpayment by Owner of more than one-half percent (0.5%) in the reported Cost of Work, in which case the Construction Manager will pay for all costs associated with the audit. In the event the Construction Manager submits a Claim under the terms of this Agreement and the Owner requests an audit in response to such Claim, should Construction Manager fail to provide the information set forth in this Section within thirty (30) days' of Owner's request, Construction Manager's failure shall result in a complete waiver and release of any claimed amount for costs for which back-up documentation was not provided.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect and Owner by the Construction Manager, and Certificates for Payment, 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 a draft Application for Payment is provided by the Construction Manager not later than the 25th day of the month and a final and approved Application for Payment is received by the Owner not later than the last day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the « 25th » day of the « next » month. In ordered to be deemed "received by the Owner" under this Section, all final and approved Applications for Payment must be sent to the Owner and Architect. If a final, approved Application for Payment is received by the Architect and Owner after the application date fixed above, payment shall be made by the Owner not later than « thirty » («30 ») days after the Owner 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 or Owner's lender 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. Each Application for Payment shall be accompanied by Construction Manager's Interim Lien/Claim Waiver. The Interim Lien/Claim Waiver shall be in a form acceptable to Owner and include a Conditional Release for labor, services, equipment, materials furnished and/or claims for which the Construction Manager is entitled to be paid and an Unconditional Release for the entire amount for which the Construction Manager has received payment.

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§ 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 or Owner 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 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 for the Work 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 the Work allocated to that portion of the Work in the most recent Schedule of Values;
- **.2** That portion of the Guaranteed Maximum Price for the Work 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 Owner determine 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 or Owner 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 or Owner 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.

Following Final Completion, Construction Manager shall be paid all retainage along with Owner's final payment, exclusive of sums legitimately withheld.

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§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

« 5% »

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

« N/A»

§ 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.)

« Early release of retention may be granted on a case-by-case basis, subject to Owner's approval and reasonable discretion. Any such early release of retention shall only be made after satisfactory completion and acceptance of the Work by the Owner and Architect, sign-off on all inspections associated with such work, and receipt and acceptance of all required close-out documents specific to the individual scope of work for early trades, including certificates of insurance for completed operations and final unconditional lien releases. Any warranty time periods related to any such Subcontractor's Work or Supplier's materials and/or equipment, however, shall not begin until all Work for the entire Project (all Phases) has achieved Substantial Completion, regardless of whether final payment has been made by Owner or Construction Manager to such Subcontractor or Supplier. All Subcontractors and Suppliers shall be bound to the provisions of the Contract Documents related to correction of Work prior to Substantial Completion, regardless of whether retention has been released and final payment to that Subcontractor made. »

§ 11.1.9 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.

§ 11.1.10 Each Application for Payment shall be accompanied by Construction Manager's Interim Lien/Claim Waiver. The Interim Lien/Claim Waiver shall be in a form identical to that shown in **Exhibit I** hereto and include a Conditional Release for labor, services, equipment, materials furnished and/or claims for which the Construction Manager is entitled to be paid and an Unconditional Release for the entire amount for which the Construction Manager has received payment. The Interim Lien/Claim Waiver shall not include any retainage or items furnished after the period covered by the Application for Payment.

All documentation required for each Application for Payment for Progress Payments may include:

- **.1** Schedule of Values coordinated with back-up and the approved Certificate for Payment;
- **.2** labor substantiation in the form of an accounting reports with names, weekly hours and dates;
- **.3** material substantiation in the form of an actual invoice;
- **.4** Subcontractor substantiation in the form of copies of their pay applications;
- **.5** retention report showing owed, released, proposed for that current month;
- **.6** executed Interim Lien Waiver and Releases in a form approved by Owner from each first tier Subcontractors and suppliers, all those sending right to lien notices and any others the Owner may reasonably request;
- **.7** updated Schedule;
- **.8** buyout log;
- **.9** Progress Report with pictures;
- **.10** deficiency log;
- **.11** cost variance or other documents requested by Owner; and
- **.12** detail job cost report.

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§ 11.1.11 The Owner and the Construction Manager shall agree in writing upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, which shall not exceed the amount set forth above, and the Construction Manager shall execute subcontracts in accordance with those agreements. The holdback required by Section 7.7.7 of the Supplementary Conditions is not retainage and is not subject to the limit in this Section.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect and/or Owner's Representative 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 the Architect/Owner's Representative (1) 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) has made exhaustive or continuous on-site inspections; or (3) t 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.

§ 11.1.13 In addition to its other rights of withholding, if Construction Manager has not achieved Substantial Completion of the entire Work by the time required, Owner may withhold and retain all further payments until Substantial Completion is achieved.

§ 11.1.14 If Owner obtains construction financing, Pay Application submission and payments date, as well as information and documentation required to be provided by Construction Manager, shall be coordinated with the lending requirements of Owner's lender or financing partner, including any required procedures regarding loan draws. Construction Manager agrees to be bound by any such procedures and this Agreement shall be deemed to fully incorporate such requirements, which shall supersede any contradictory provisions of this Section 11.1 such that the more stringent condition or longer periods of time shall apply.

§ 11.2 Final Payment

§ 11.2.1 Final payment for the entire Project (all Phases), 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 (including but not limited to those items set forth in Section 9.10 of AIA Document A201-2017) and all other closeout requirements, 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, including final lien releases from itself and all Subcontractor and suppliers;
- **.3** Construction Manager has completed all requirements and submitted all documentation required by the Contract Documents for close out;
- **.4** All warranties, as-built drawings, and operation and maintenance manuals have been completed and delivered to the Owner; and
- **.5** a final Certificate for Payment has been issued in accordance with Section 11.2.2.2.

§ 11.2.2 The Owner will review and report in writing on the Construction Manager's final accounting after delivery of the final accounting by the Construction Manager, which will occur no later than 45 days after the later of: (a) the date the Owner received a final billing statement from the Construction Manager, (b) the date that a certificate of occupancy is issued on the Project or if no certificates of occupancy are to be issued, then the date all final inspections have been passed), (c) the date of Final Acceptance, (d) the date the permitting authority allows complete occupancy or use of the Project, or (e) the date the Construction Manager accepts the final pay quantities. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, 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 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.

§ 11.2.2.1 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.

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§ 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 audit 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 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 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 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 Construction Manager's satisfaction of this Section 11.2 and corresponding provision sin the A201-2017. Invoices submitted after Final Payment shall not be paid and shall be deemed waived by the Construction Manager, who shall indemnify, defend, and hold Owner harmless from such invoices.

§ 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.)

« Three » (3%) «per annum »

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017.

§ 12.1.2 Not used.

§ 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

[« X »] Litigation in a court of competent jurisdiction, conditioned on compliance with Article 15 of A201-2017, as revised.

[« »] 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.

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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 initial Guaranteed Maximum Price for the Work, the Owner may terminate this Agreement in whole or in part upon not less than seven days' written notice to the Construction Manager.

§ 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 initial Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement in whole or in part upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause. After execution of the initial Guaranteed Maximum Price Amendment but prior to the execution of any subsequent Guaranteed Maximum Price Amendment, the Owner may terminate the preconstruction services for the Owner's convenience and without cause.

§ 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 this Agreement in whole or only for the Work 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 or credit toward 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 in whole, or for the Work, by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

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§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract in whole or only for the Work 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 for the terminated Scope(s) of 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 rates stated in this Agreement or, if such Fees are stated as a fixed sum in that Section, an amount that bears the same ratio to the fixed-sum Fees 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 or credit toward 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.

§ 13.3 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, and the adjustment shall include Fee only on extended General Conditions actually incurred, priced at the Exhibit F rates for staff and Major Equipment and at actual cost for other General Conditions, calculated at the Change Fee Rate under Section 6.1.3.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017, as revised. 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 another entity owned or related to Owner, or a lender providing construction financing for the Project, if the assignee 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 Only

The Construction Manager shall maintain the following insurance for the Project and shall maintain such insurance until the expiration of the applicable statute of repose. 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.

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§ 14.3.1.1 Commercial General Liability with policy limits of not less than [amount in words] ($ [amount]) for each occurrence and [amount in words] ($ [amount]) in the aggregate for bodily injury and property damage, with an umbrella or excess policy of no less than $[amount] per occurrence and in the aggregate.

§ 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 [amount in words] ($ [amount]) 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 [amount in words] ($ [amount]) each accident, [amount in words] ($ [amount]) each employee, and [amount in words] ($ [amount]) 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 [amount in words] ($ [amount]) per claim and [amount in words] ($ [amount]) in the aggregate.

§ 14.3.1.6 Pollution Liability insurance for the Project is procured and paid by the Owner, as Section 7.6.1 provides, and the Construction Manager is not required to procure it. If the Work involves the transport of pollutants, the Construction Manager shall provide proof of Auto Pollution coverage.

§ 14.3.1.6.1 Not used.

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

Coverage	Limits

§ 14.3.1.8 Additional Insured Obligations. To the fullest extent permitted by law and in addition to those required to be added under the AIA A201-2017, as revised, the Construction Manager shall cause the primary and excess or umbrella polices for Commercial General Liability and Automobile Liability to include the Owner and the Additional Insureds listed in **Exhibit H** 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.

§ 14.3.1.9 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 Required Property Insurance. the Owner will purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" for Special Form, course of construction, or equivalent policy form in the amount of the first GMP, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the Work at the site on a replacement cost basis. Such property insurance amounts shall be increased or added (as the case may be) sufficient to cover all on-going Work under this Agreement. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in the Contract Documents or until no person or entity other than the Owner has an insurable interest in the property required by this Section 14.3.2 to be covered, whichever is later. This insurance shall include interests of the Owner, the Construction Manager, Subcontractors and Sub-subcontractors in the Project.

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§14.3.2.1 Property insurance shall be on an "all-risk", Special Form, or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Construction Manager's services and expenses required as a result of such insured loss.

§ 14.3.2.2 Deductibles and self-insured retentions under the property insurance are governed by Section B.2.3.1.4 of Exhibit B. A deductible that the Construction Manager is required to pay under that Section is not a Cost of the Work, shall not be taken from the contingency, and earns no Fee. The waiver of subrogation in Section 11.3.1 of the General Conditions does not apply to the deductible for which the Construction Manager is responsible. Any portion of a deductible for which the Owner is responsible under Exhibit B may be taken from the contingency without Fee and shall not increase the Guaranteed Maximum Price.

§ 14.3.2.3 This property insurance shall cover portions of the Work stored off the site, and portions of the Work in transit.

§ 14.3.2.4 The Owner and the Construction Manager shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 14.3.3 Construction Phase

After execution of the first 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.

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

§ 14.4 Other provisions:

«**§ 14.4.1** A warranty walk through will be conducted by the Owner and Construction Manager at 11 months after the date of Substantial Completion.

§ 14.4.2 Counterparts And Signatures.

This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document. Owner and Construction Manager consent to execution of this Agreement being accomplished and evidenced by their handwritten signatures, or alternatively, by their electronic or digital signatures pursuant to the Uniform Electronic Transaction Act or, in the event the Uniform Electronic Transaction Act is found not to apply, any other applicable federal, state, or local statute or ordinance permitting the use of electronic or digital signatures for the purpose of conducting transactions such as those evidenced by this agreement. The parties acknowledge and agree that such electronic or digital signatures shall have the same legal effect as a written signature. Either party may copy this completed Agreement and other documents for electronic storage in a non-editable format. Owner and Construction Manager each agree that following the electronic storage of these documents, any fully executed hard copy printout of the electronically stored information will constitute an original document.

§ 14.4.3 Construction Manager shall not cause or permit, except as required by the Specifications or other Contract Documents, the presence, use, generation, release, discharge, storage, or disposal of any Hazardous Materials on, under, in or about, or the transportation of any Hazardous Materials to or from the Project, except in strict accordance with all applicable laws and regulations.

§ 14.4.4 Construction Manager agrees that its Project team shall be of the highest capabilities, and Construction Manager shall staff the Project with capable employees to whom Owner has no reasonable objection for the duration of the Project, including through all punch list work and Final Completion. Construction Manager shall endeavor to maintain the continuity of the key project team members and, to the extent within Construction Manager 's reasonable control, Construction Manager shall not change or remove keyproject team members until Final Completion without the written approval of the Owner.

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§ 14.4.5 Construction Manager shall at all times conduct its business in an ethical manner in compliance with all applicable laws and regulations (including, without limitation, all laws and regulations relating to corruption and bribery, importing and exporting, competition, privacy, product and consumer safety, environmental compliance, gaming, labor, wages, TERO, and worker health and safety). Construction Manager acknowledges and understands that Owner is subject to laws prohibiting Owner, or those who perform services for Owner, from offering or paying any bribe or giving gifts or hospitality to anyone for the purpose of obtaining an improper business advantage. Construction Manager also understands that these laws may apply regardless of where the activity occurs. Accordingly, Construction Manager shall not, directly or indirectly through a third party, offer, pay, promise or authorize the offer or payment of, any financial or other benefit or advantage, or anything of value, to any person or entity: (i) to improperly obtain a business advantage or to obtain or retain business; (ii) induce the person to perform any function or activity improperly, or to provide a reward for doing so; or (iii) to corruptly influence, directly or indirectly, any act or decision of any government or Tribal official, employee, candidate for public office, Tribal council member, government or Tribal controlled entity, or political party. Construction Manager agrees to annually certify in writing upon request its compliance with this Section 14.4.5, and report to Owner immediately any actual or suspected violations. Construction Manager shall, upon request of Owner, make its managers, representatives, or employees reasonably available to complete any training regarding bribery laws and gift policies. Owner or its auditors or representatives may at any time audit Construction Manager's compliance with this Section, and Construction Manager shall cooperate fully with any audit, or investigation of suspected violations.

§ 14.4.6 Indian Traders License

Construction Manager shall obtain an Indian Traders License and comply with any requirements related thereto in order to conduct business with the Tulalip Tribes of Washington.

§ 14.4.7 Operation of Project Systems Until Owner Training Is Accepted

Construction Manager shall continue to operate all Project systems until the Owner has accepted training of the Owner's personnel on each system, as provided in Section 11.2 of the Supplementary Conditions, regardless of the date of Substantial Completion or any occupancy or use of the Work by the Owner.

»

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 Supplementary Conditions for the Hatchery Program Construction Manager at Risk contract

.5 AIA Document A201™–2017, General Conditions of the Contract for Construction, as revised

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

Exhibit C Form Notice to Proceed
Exhibit D Preconstruction and Construction Labor/Trade/Salary Rates
Exhibit E Preconstruction Team identified under Section 1.1.13
Exhibit F **Fee Matrix:**
Exhibit H Owner Indemnified Parties [to be provided by the Owner]
Exhibit I Construction Manager's Interim Mechanical and Final Lien/Claim Waiver
Exhibit J Request for Qualifications and Proposals (select portions)

.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

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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)*	**CONSTRUCTION MANAGER** *(Signature)*
« »« »	« »« »
(Printed name and title)	*(Printed name and title)*

DRAFT

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AIA® Document A201® – 2017

General Conditions of the Contract for Construction

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 98271Toll Free 1-800-869-8287

»

THE ENGINEER (referred to herein as the Architect):
(Name, legal status and address)
« [McMillen, as the Engineer identified in Section 4.3 of the Agreement] »

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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.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Owner Related Parties

The entities set forth in **Exhibit H of the A133** and their members, affiliates, subsidiaries, and lenders shall be Owner-Related Parties.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The ownership of the Instruments of Service is set forth in the agreement between Owner and Architect. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Owner's, Architect's, or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.5.3 The Owner, through the Architect, may from time to time make certain base documents available in conventional or electronic media form to the Contractor and its Subcontractors and consultants for use in preparing shop drawings and submittals or in providing professional design services, delegated design services, or certifications required under the Contract Documents. These base documents may include building information modeling software. Base documents shall be issued for recipient's convenience only. Such base documents are not Contract Documents, are not intended for use in construction, and may be used only at the user's risk subject to the Architect's reasonable restrictions, waivers, releases, and disclaimers.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery. In order to be effective, notice to Owner of any Notice of Claim shall be provided to Owner, the representative of Owner, Owner's Representative (if any), and to Carson Cooper, Office of the Reservation Attorney, Tulalip Tribes, 6406 Marine Drive, Tulalip, WA 98271 The date of actual receipt by Owner of any Claim by certified or registered mail, or by courier, shall be date such Notice of Claims was received.

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§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form and establish the protocols for the development, use, transmission, and exchange of digital data. If Contractor requests electronic formats for the Instruments of Services, it shall execute any releases or documentation requested by the Architect or its consultants associated with any such use.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in a subsequent agreement, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. Contractor understands that the Owner is a governmental entity. For any acts or omissions of the Owner under of this Agreement, the Owner shall be considered the Tulalip Tribes of Washington, acting through the Contracting Officer, the Owner's Representative, and their employees and agents for this Project, and shall not include the acts or omissions of any other departments, governmental agencies, or quasi-governmental agencies of the Tulalip Tribes of Washington, such as police, utilities, building department, permitting, TERO, etc.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights.

§ 2.2 Not Used

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities and shall provide such reasonable assistance as the Contractor may request in securing such documents. Should any re-testing or re-inspection of work be required due to the fault of the Contractor, the cost of such work, or costs of any schedule delay resulting therefrom, shall be reimbursed by the Contractor and shall not be considered as part of the Cost of the Work.

§ 2.3.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site if requested by Contractor. The Contractor shall be entitled to reasonably rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work, and Contractor shall notify the Owner promptly if the Contractor knows or has reason to know any documents furnished by the Owner contain errors. Notwithstanding the foregoing sentence, the Contractor shall be fully responsible for confirming the Owner's investigations of utilities locations and verifying utilities locations prior to commencing the Work. The Contractor shall assume that the locations of any hidden utilities, plumbing or electrical runs indicated in the surveys or Contract Documents are shown in approximate locations only, and the Contractor is responsible for making all utility location checks. The Contractor shall exercise the greatest care possible not to damage or interrupt utilities or utility services of any and every kind or nature.

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

§ 2.3.4 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

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§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents or fails to release, discharge or post a surety bond with the time period required in the Contract Documents if a lien is filed upon the property by anyone claiming by, through, or under Contractor, then the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3 and provided further that any such order to stop the Work shall not cause a compensable extension in the Contract Time.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. The Owner or Architect, pursuant to Section 9.5.1, may withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the costs of correcting such deficiencies, including all costs and expenses (personnel, labor, materials, supplies, compensation for the Architect's additional services, and the like) incurred by Owner as a result of such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. No adjustment to the Contract Sum or Contract Time shall be made on account of Contractor's failure to acquaint itself with conditions of the Site and the sources of supplies, labor, or materials which are evident or discoverable through normal preconstruction diligence and through its role in providing preconstruction services on the Project to the Owner, Architect, and the design team.

§ 3.2.1.1 Execution of the Contract, or GMP Amendment a the case may be, by the Contractor is a representation that the Contractor believes the Contract Documents are sufficient to have enabled the Contractor to determine the Cost of the Work therein, to enter into the Contract, and to accomplish the Work for an amount not in excess of the Guaranteed Maximum Price or Stipulated Contract Sum within the Contract Time provided for in the Contract Documents. The Contractor further represents and warrants that prior to execution of the Contract it has visited and examined the Project site, examined all readily ascertainable physical, legal, and other conditions affecting the Work and is fully familiar with all of the conditions thereon affecting the same, including (1) the nature, location and character of the Project site, including all readily visible structures and obstructions thereon, both natural and man-made; (2) the nature, location, and character of the general area in which the Project is located, including without limitation, its climatic conditions, available labor supply and labor costs, and available equipment supply and equipment costs; and (3) the quality and quantity of all materials, supplies, tools, equipment, labor, and professional services necessary to complete the Work in the manner and within the cost and time frame required by the Contract Documents. THE FAILURE OF THE CONTRACTOR FULLY TO ACQUAINT ITSELF WITH ANY PROVISION OF THE CONTRACT DOCUMENTS OR OTHER MATTER SHALL NOT IN ANY WAY RELIEVE IT FROM THE RESPONSIBILITY FOR PERFORMING THE WORK IN ACCORDANCE WITH THE

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CONTRACT DOCUMENTS, AND WITHIN THE CONTRACT SUM AND THE CONTRACT TIME AS PROVIDED FOR IN THE CONTRACT DOCUMENTS.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents, except for any systems which are designed (design-build, deferred submittal, delegated design, or other) by the Contractor and or its Subcontractors; however, the Contractor shall promptly report to the Architect and Owner in writing any errors, inconsistencies or omissions, or variances from applicable laws, codes or regulations, discovered by or made known to the Contractor as a request for information in such form as the Architect and Owner may require and sufficiently in advance of the planned work to allow for a response prior to the day the work is to be performed, except for any systems which are designed (design-build, deferred submittal, delegated design, or other) by the Contractor and or its Subcontractors which shall be directed to such Subcontractors. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Should a conflict be discovered within the Contract Documents, the Contractor shall be deemed to have agreed to perform the most stringent or highest quality way of performing the work unless it shall have asked and received, in writing, a decision from Architect or Owner before performing the work. Incorporation of any design work performed or prepared by Contractor or its Subcontractors (including delegated design, design-build, or deferred submittals) into the Construction Documents by the Architect for the purpose of permitting or providing the Contractor with a bid set or issued for construction set of Construction Documents for the Project shall not relieve the Contractor of its responsibility for such design services.

§ 3.2.2.1 The Contractor shall not scale the Drawings to determine any dimensions, grades or elevations. If the Contractor chooses to measure distance by scaling from the Drawings, it is completely at its risk and is not considered by Owner to be an accurate measurement. The Contractor shall do field work necessary to lay out and maintain the Work.

§ 3.2.2.2 In all cases of interconnection of Work with existing or other work, the Contractor shall verify at the site all dimensions relating to such existing or other work.

§ 3.2.3 Except for any delegated design, deferred submittals or design-build services or as part of its obligations during preconstruction services, The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities. If the Contractor performs any construction activity and knows or, using due care, should have known, that the Contract Documents contained an error, inconsistency or omission, the Contractor shall be responsible for the performance and shall bear the cost and time for its correction.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the

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Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. Contractor has the responsibility to ensure that all material suppliers and Subcontractors, their agents, and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions and that they provide materials on time. Contractor shall coordinate its Work with that of all others on the Project including deliveries, storage, installations, and construction utilities.

§ 3.3.2.1 Contractor shall be responsible for the space requirements, locations, and routing of its equipment. In areas and locations where the proper and most effective space requirements, locations and routing cannot be made as indicated. Contractor shall meet with Architect and all others involved, before installation, to plan the most effective and efficient method of overall installation. The Contractor shall exercise its best care to not damage or interrupt utilities or utilities services of any and every kind or nature, unless the interruption is required to perform a portion of the Work. Subject to Section 3.2, unforeseen utilities that are encountered will be addressed with the Owner as Changes in the Work. The Contractor shall have the responsibility to coordinate the Contractor's work with the utility service providers, municipal and/or off-site contractors related to the Project and in the absence of other special provision of Contract Documents to the contrary, shall be required to coordinate, to the extent reasonably possible, with said entities the physical street/ROW work and connection to the structures and/or extensions from the structures to the off-site and/or on-site utilities provided so that the work constructed by the Contractor is properly sequenced, and functional for the intended use and purpose thereof. Such coordination and supervision costs incidental thereto, are incidental to the Work and part of the Contract Sum.

§ 3.3.2.2 The Contractor shall also create and submit to the Owner a utility shut-down schedule, which provides anticipated dates when utilities will need to be shut-down to allow for tie-in to existing services. These dates should be incorporated into the Construction Schedule.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 If any of the Work is required to be inspected or approved by any local, county or state authority, the Contractor shall cause such inspection or approval to be performed. No inspection performed or failed to be performed by the Owner or Architect hereunder shall be a waiver of any of the Contractor's obligations hereunder or be construed as an approval or acceptance of the Work or any part hereof.

§ 3.3.5 The Contractor shall comply with and shall be responsible for ensuring that Contractor's employees and Subcontractors, and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors comply with all applicable building efficiency standards, recycling, and/or other similar sustainability standards required by the Contract Documents and all applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.1.1 The Contractor's obligations under Section 3.4.1 shall include without limitation the obligation to pay all Subcontractors and any other person or entity having construction lien rights regarding the Project due to their performance of the Contractor's obligations under the Contract. The Contractor agrees to keep the Project and the Project site free and clear of any and all such lien claims filed by any person or entity at any tier performing the Work or the Contractor's obligations under the Contract, excluding any lien filed by Contractor. The foregoing obligation to keep the Project free of liens shall also apply when Contractor has a dispute with a Subcontractor where Contractor has not included payment for the Subcontractor in an Application for Payment.

§ 3.4.1.2 In the event a claim of lien referenced in Clause 3.4.1.1 is filed, whether due to nonpayment of the claimant or otherwise, and whether contested or not, the Contractor within ten (10) days after receipt of the Owner's demand and at the Contractor's expense

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shall cause the lien to be removed from the Project property by payment, compromise or the furnishing and perfection of a release bond or deposit pursuant to applicable law. If the Contractor fails to perform its obligation under the prior sentence, the Owner, without waiving or limiting its rights or remedies or those of any interested persons or entities, and at the Owner's sole discretion, may cause the lien to be removed by paying the claimant directly, by paying the Contractor and claimant with a multiple-payee check, or by furnishing and perfecting a lien release bond or deposit pursuant to applicable law; provided that in such instance the Owner shall be entitled to retain from any payments then due or which otherwise will become due to the Contractor, whether under the Contract or otherwise, an amount sufficient to hold the Owner harmless considering such payment or such furnishing and perfecting a release bond or deposit and any and all related costs and expenses incurred by the Owner, including without limitation attorneys' fees.

§ 3.4.1.3 The Contractor agrees to indemnify, hold harmless, reimburse, and defend (with counsel approved by the Owner) the Owner and any other person or entity with an interest in the Project or Project site from, for, and against any and all liens referenced in Clause 3.4.1.1, actions, suits, or proceedings relating to such liens, and any and all related costs and expenses incurred by the Owner, including without limitation attorneys' fees.

§ 3.4.1.4 Nothing in this Section 3.4.1 shall limit the Owner's rights or the Contractor's obligations under other provisions of this Agreement.

§ 3.4.1.5 The Contractor shall not be obligated to perform the obligations related to liens set out in this Section 3.4.1 to the extent such liens are the result of the Owner's failure to pay amounts due under the terms of the Contract.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the written consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. After the GMP Amendment has been executed, the Owner and Architect will consider a formal request for the substitution of products in place of those specified. By making requests for substitution without prior written consent of the Owner that specifically identifies that it is a substitution and how the substituted product or material deviates from the specification in terms of cost, quality, warranty, durability, impact on schedule, and availability such that Owner can make an informed decision regarding the cost and benefits of each substitution, the Contractor:

.1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;

.2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;

.3 certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs (which will be paid for by Contractor), if any, and waives all claims for additional costs related to the substitution which subsequently become apparent; and

.4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects, will assume all responsibility for the failure of the substitute product to perform as well as or better than the originally specified product and shall bear the risk of any delay in performance caused by submitting substitutions.

§ 3.4.2.5 Inclusion of any item in either Contractor's Qualification and Assumption or a Subcontractor's proposal, regardless of whether Owner has approved of such Qualification and Assumption or proposal, shall not satisfy the "prior written consent" obligation of this Section 3.4.2. Any proposed substitutions shall be included as Alternates. Contractor shall be fully responsible for any product or material installed at the Project that is not specified or has not been approved as set forth in this Section 3.4.2 and such product or material shall be subject to removal as set forth in Section 12.3.

§ 3.4.2.6 This provision shall not apply to value engineering options identified by the Contractor for review and approval of the Owner, if such value engineering options have been approved by the Owner in writing.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

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§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements shall be deemed defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Contractor shall pay, defend, indemnify, and hold harmless Architect, Owner, Owner's Representative (if any), and Owner-Related Parties for, from, and against any claims, demands, actions, damages, or costs and expenses, including attorneys' fees and costs, arising from or in any way connected with breach of warranty. Warranties provided herein are in addition to rights and remedies provided by law and nothing in this Section 3.5 shall be construed to vitiate, void, limit or adversely affect any rights or remedies otherwise available to Owner by law.

§ 3.5.2 Contractor shall secure and furnish directly to Owner written warranties first executed by each Subcontractor and those material suppliers identified by Owner after Contractor furnishes Owner with a written list of all material suppliers, which shall extend to Owner all rights, claims, benefits, and interests the Contractor may have under express or implied warranties against Subcontractors or material suppliers for defective or non-conforming Work. Contractor shall secure, assign, and furnish directly to Owner, subject to approval by Architect before acceptance by Owner, all written guarantees and warranties which apply to any product which is part of or incorporated into the Work, or which is otherwise called for in the Contract Documents. Prior to final acceptance of the Project by the Owner, the Contractor shall deliver to the Owner three (3) bound volumes of all guarantees and warranties on material furnished by all manufacturers and suppliers to the Contractor and all its Subcontractors, with duly executed instruments properly assigning the guarantees and warranties to the Owner. The guarantees and warranties in each bound volume shall be grouped together by trade and properly indexed. The Contractor shall obtain from manufacturers and suppliers guarantees and warranties according to the Contract terms. The documentation must also clearly describe proper operational and maintenance activities required to sustain said warranties.

§ 3.5.3 The Contractor warrants that all portions of the Work that will be covered by a manufacturer's or supplier's warranty shall be performed in such a manner so as to preserve all rights under such warranties. The Contractor hereby assigns to the Owner, effective upon the termination of the Agreement or upon Substantial Completion of the Work, all manufacturer's and supplier's warranties related to the Work, and the Contractor shall, upon request of the Owner, execute any document reasonably requested by Owner to effectuate such assignment. If the Owner attempts to enforce a claim based upon a manufacturer's or supplier's warranty and such manufacturer or supplier refuses to honor such warranty based, in whole or in part, on a claim of defective installation by the Contractor, the Contractor shall be responsible for any resulting loss or damage incurred by the Owner as a result of the manufacturer's or suppliers' refusal to honor such warranty. The Contractor's obligations under this Section shall survive the expiration or earlier termination of the Contract. Notwithstanding any assignment, Contractor shall remain responsible for administering warranties. If, after the warranty period, Contractor's Subcontractors are non-responsive to a warranty request from the Owner, the Contractor shall make good faith efforts to assist the Owner in obtaining such Subcontractor to respond to the Owner's warranty request.

§ 3.5.4 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner and to any future purchaser of the Project, and shall commence in accordance with Section 9.8.4. Contractor shall secure, assign and furnish directly to Owner, subject to approval by Architect before acceptance by Owner, all written guarantees and warranties which apply to any product which is part of or incorporated into the Work, or which is otherwise called for in the Contract Documents. Notwithstanding any assignment, Contractor shall remain responsible for administering warranties.

§ 3.6 Taxes

No sales, consumer, use and similar taxes, including any state or local B&O taxes, shall be passed through to the Owner or included in the Contract Sum or in Contractor's fee, nor shall Owner reimburse such costs. Contractor shall provide reseller permits to all Subcontractors who are purchasing materials or providing Work on the Project.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 The building permit and other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work shall be secured and paid for by the party to which Section 7.6.3 of the Agreement assigns them. The costs of licenses and fees for any Subcontractors are included in the pricing for such Work.

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§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work, including but not limited to ADA and other accessibility regulations. Contractor shall include reasonable tolerances in construction with regard to any applicable or announced accessibility regulations to ensure that as-built conditions comply with all such accessibility codes and regulations. The Contractor shall require its Subcontractors and Design-Build Subcontractors, such as mechanical, electrical, and plumbing (MEP), and subcontractors responsible for delegated design and/or deferred submittals, to coordinate with Architect to ensure that their design and work meet all accessibility requirements and take into account framing tolerances, acoustical considerations, and obstructions, such as countertops, backboard, tile, etc.). If applicable, the Contractor shall further coordinate with the design build steel stud subcontractor, and require it to coordinate with the Architect, to ensure that its design and work meet all accessibility requirements and take into account framing tolerances, acoustical considerations, wall backing and obstructions.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear all costs and damages attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents that could not reasonably have been discovered by the Contractor, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 24 hours after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15. No adjustment in the Contract Time or Contract Sum shall be submitted or allowed, however, in connection with concealed or unknown conditions which do not differ materially from those conditions disclosed or which reasonably should have been disclosed by the Contractor's prior inspections, tests, reviews and preconstruction services for the Project.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.7.6 Intentionally omitted.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Allowances amounts shall be a reasonable estimate by the Contractor of the actual cost of each allowance item based upon the information known as of the date of the GMP Amendment and through Contractor's preconstruction services. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- **.1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- **.2** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;

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.3 whenever costs are more than or less than allowances and such changes are due to changes in scope by the Owner, the Contract Sum shall be adjusted accordingly by Change Order. Otherwise, the Guaranteed Maximum Price will not be increased due to the cost of an allowance item being more than the allowance. Contractor, however, may use savings generated by subcontractor buy-out, contingency (subject to the Owner's written authorization under Section 6.2.3 of the Agreement), or with the prior written approval of the Owner, savings from other allowance line items; and

.4 weekly, during the course of construction, representatives of the Contractor shall advise the Owner of the cost status of each Allowance. The Contractor shall provide this information in a timely manner, but always prior to the termination of the allowance Work. The intent of this subparagraph is to identify possible cost overrun exposure and bring same to the attention of the Owner as soon as possible.

§ 3.8.3 If Work covered by an allowance is on-going over the course of the Project, the Contractor shall provide the Owner a monthly update of all Allowance expenditures and forecast of projected savings or over-run in the allowance sum. In order to increase an allowance, An allowance may not be transferred or aggregated with other allowances without prior written consent of Owner.

§ 3.8.4 Contractor shall provide deadlines for Owner decisions related to each allowance selection. Once so informed, materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent approved by Owner and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The superintendent and project personnel identified in the RFP shall not be substituted with other personnel without Owner's prior written consent. Contractor warrants project staff shall devote sufficient time to complete the Work in a timely manner. The Superintendent shall devote total and full-time attention to the requirements of the Construction Documents until Final Completion of the last phase of or Scope of Work for the Project. The Contractor's superintendent shall be responsible for the Work at all times and shall have authority to furnish estimates and to approve on behalf of Contractor changes in the Work. Owner and Contractor may rely upon the signature of the superintendent as binding as to any matter requiring the signature of Contractor. Communications given to the superintendent in writing shall be as binding as if given to the Contractor. In all instances, the Contractor's project manager, superintendent, and other project representatives shall be subject to the reasonable approval of Owner. The Contractor shall replace the superintendent, project manager, or other project representatives assigned to the Project upon Owner's reasonable request. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

§ 3.9.1.1 The Superintendent shall keep an electronic daily journal describing in detail all construction activity, weather conditions, persons entering the job site, and all other information important to the construction process. The daily journal shall be available upon request to the Owner and Architect, and upon request copied in its entirety and delivered to each. All photos/videos and all other records documenting progress, quality of work, concealed work, etc. shall be available for copy by Owner and Architect upon request.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of the proposed superintendent. Within 14 days of receipt of the information, the Architect or Owner may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect or Owner to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's written consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, within ten (10) days after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule ("Schedule") for the Work in MS Project or similar. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates ("Milestone Dates"), duration, percentage complete, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; (3) the time required for completion of each portion of the Work; (4) logic / logic ties; and (5) float. The schedule shall provide for the orderly progression of the Work to completion, shall not exceed time limits current under the Contract

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Documents, and shall be submitted in updated form with Contractor's monthly payment applications. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project to demonstrate the Project will be completed within the Contract Time, shall maintain the same logic as originally accepted by the Owner in the Schedule, shall resolve any conflict between actual work progress and schedule logic, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. When out of sequence activities develop because of actual construction progress, Contractor shall submit revisions to schedule logic to conform to current job status and directions, without changing the Construction Schedule activity identification or Contract Time. In no event shall Contractor be entitled to an adjustment of the Contract Sum for non-realization of an anticipated early completion prior to the Contract Time. Contractor shall provide Owner with an electronic version of the original Construction Schedule, including all subsequent electronic schedule revisions and updates (by disk or CD), created without any password protection, in a format approved by Owner. Such schedules shall be capable of being fully reviewed and inspected by the Owner and Owner's Representative. Upon review and approval by the Owner of the Milestone Dates, the Construction Schedule shall be deemed part of the Contract Documents. If not accepted for reasonable cause, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and Architect and resubmitted for acceptance.

§ 3.10.2 The Owner may authorize construction activities to commence prior to completion of the Drawings and Specifications. If the Drawings and Specifications require further development at the time an initial construction schedule is prepared, the Contractor shall (1) allow time in the schedule for further development of the drawings and Specifications by the Architect, including time for review by the Owner and the Contractor and for the Contractor's coordination of Subcontractor's Work, and (2) furnish to the Owner in a timely manner information regarding anticipated market conditions and construction costs; availability of labor, materials and equipment; and proposed methods, sequences and time schedules for construction of the Work.

§ 3.10.3 The Contractor shall prepare a submittal schedule within the timeframe set forth by the Owner and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's and Owner's approval. Activities on the Construction Schedule that are dependent on submittal acceptance and/or material delivery shall not be scheduled to start earlier than the expected acceptance or delivery dates set forth in the submittal schedule. The submittal schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The Architect's or Owner's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, (2) allow the Architect or Owner reasonable time to review submittals, and (3) provide a date for when decisions of the Owner or Architect need to be provided in order to maintain the proposed Project Schedule. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals and shall be responsible for any additional costs paid to the Architect as a result of such failure to follow the submittal schedule.

§ 3.10.4 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to and approved by the Owner and Architect.

§3.10.5 The Construction Schedule shall be in an appropriately detailed precedence-style critical path method (CPM), time-scaled network diagram type format which shall provide a graphic representation of activities and events that will occur during performance of the Work and shall establish interim dates that are critical in insuring the timely and orderly completion of the Work. No activity on the Construction Schedule shall have duration longer than fifteen (15) calendar days, except fabrication and procurement activities, which may have longer durations if acceptable to Owner. The Construction Schedule shall include, but not be limited to, separate work activities for each level, including roof(s). The Contractor shall perform the Work in accordance with the construction schedule as well as within the dates specified in this Agreement.

§ 3.10.6 In addition to any other schedule required by the Contract Documents, the Contractor shall provide the Owner the following:

.1 At, or by the first meeting to review Contractor's draft Application for Payment, provide for the Owner's overall monitoring purposes, a project CPM schedule, satisfactory to the Owner, on one page, showing the critical path activities and milestones for each phase of construction and occupancy of the entire Project. Such milestones shall include, but not be limited to, the start and substantial completion of: (i) site preparation, clearing, and erosion control, (ii) mass excavation and earthwork, (iii) in-water work and dewatering, including any regulatory in-water work windows, (iv) foundations and structural concrete, (v) site and buried utility construction, (vi) building framing, envelope, and roofing, (vii) process piping, mechanical, and electrical rough-in, (viii) permanent power energizing, (ix) installation of hatchery process and life-support systems, (x) inspections by the Authorities Having Jurisdiction, (xi) anticipated permit sign-off, (xii) testing, startup, and commissioning, (xiii) training of Owner's personnel, and (xiv) Substantial and Final Completion.

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.2 Upon further Owner comment and Subcontractor input but not later than prior to the third Application for Payment, provide an updated Schedule with the information set forth in Section 3.10.7 below.

§ 3.10.7 Periodically, as required by the Architect or Owner, the Contractor shall report on the status of the Work on duplicate marked copies of the current Construction Schedule. The current Construction Schedule shall reflect (1) the as-built activities performed as of the effective date of the updated schedule; and (2) the Contractor's plans for the continued prosecution of the remainder of the Work. The Contractor shall indicate in the status report any Work that is not proceeding according to the current construction schedule and shall provide a written plan of action to bring the Work into compliance with the schedule or to modify the schedule. Any modifications to the Contractor's schedule notwithstanding, the Contractor shall remain responsible to complete the Work within the time specified in this Agreement and all requirements stated in this Section 3.10 shall equally apply to all updates to the Contractor's Schedule.

§3.10.8 Recovery Plan. In the event that the Owner reasonably determines that Contractor is two (2) weeks (or more) behind the approved Schedule, Contractor shall, within seven (7) days after the Owner's written request, furnish to Owner at its own cost and expense, a Recovery Schedule, which depicts the Contractor's plans and measures the Contractor will take for achieving the completion of the Work in accordance with the Contract Time. Such measures may include an increase in: (a) the number of construction workers, equipment, materials, (b) in the number of shifts, (c) use of overtime operations, (d) supplement any lagging crew or sub-trade, or (e) re-sequencing Work. If the Contractor desires to carry on Work at night or outside the normal working hours the Contractor must obtain approval from the appropriate jurisdiction. Owner has the right to direct Contractor to take such measures, and other reasonable acceleration measures deemed necessary by Owner. Prior to accelerating its forces, the Contractor shall submit to the Owner and Architect such supplementary schedule or schedules to demonstrate the manner in which the agreed rate of progress will be regained and the anticipated costs of such acceleration. The Contractor's Recovery Schedule shall be subject to reasonably approval of the Owner. Contractor will be entitled to an extension of time, as provided elsewhere in this Agreement, only if Owner approves of the extension and adjustment through the Change Order process. Providing a Recovery Schedule as set forth in this Paragraph shall not be deemed as notice of any delays. All notice of delays must comply with Article 15. For delays that are not excusable under the terms of this Agreement, any and all costs related to delays, or the costs of any acceleration, disruptions, or inefficiencies due to such delay(s) shall be borne by the Contractor. Contractor's refusal to make reasonable efforts to complete the Work within the Contract Time is a material breach of this Agreement and a basis for Owner terminating Contractor for cause.

§3.10.9 The Contractor shall manage savings realized in the performance of activities and events detailed in the Schedule for the overall benefit of the Project. In the event that Contractor is ahead of schedule with respect to certain activities or events detailed in the Schedule, such time savings shall benefit Owner and shall not work to allow additional time for the completion of other activities or events without Owner's prior approval.

§3.10.10 Owner's and Architect's review, comment, and/or approval of the Contractor's Construction Schedules, updated schedules, or Recovery Schedule(s) shall not constitute a change of any portion of the Work or the Schedule or relieve Contractor of any of its obligations. Failure of the Contractor to include any element of the Work required by the Contract Documents in its construction schedules shall not relieve the Contractor from completing the Work in full accordance or compliance with the Contract Documents. The Contractor alone shall remain responsible for the workflow and schedule logic, how early to start activities, adjusting forces, equipment, and work schedules to ensure completion of the Work within the time(s) specified in the Contract.

§ 3.11 Documents and Samples at the Site

The Contractor shall maintain at the Project site for the Owner one copy of the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. Contractor shall maintain and update as the Work progresses as-built drawings depicting the as-built elements and conditions of the Project. Contractor shall provide the then-current version of the as-built drawings to the Owner upon request. Upon completion of the Work and before final payment is made, Contractor shall furnish to the Owner a professional and legible copy of the Drawings and Specifications that depict the locations of the as-built elements of the Work to the extent the as-built conditions differ from the Contract Documents, as well as any and all field changes made to the Work.

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§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved in writing by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect or Owner has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof. The Contractor shall be solely responsible for errors or omissions in its and its Subcontractor's submittals and Shop Drawings, whether or not the submittals and Shop Drawings have been reviewed or approved by the Architect or Owner.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work (such as design-build, delegated design, or deferred submittals) or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services, design-build, deferred submittals, delegated design services, or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, unless otherwise indicated the Owner and the Architect will specify all performance and design criteria that such services must satisfy. Contractor shall coordinate, and shall require its Subcontractors to coordinate, with the Architect to review the delegated design, design-build, and deferred submittal services required by the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings,

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calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. Contractor shall cause such portions of the Work to be designed, engineered, and permitted, and to construct such Work in accordance with all such criteria, in accordance with all applicable laws and codes, and in a manner such that these systems are functioning and properly integrated into the remainder of the Work. The Contractor and Contractor's design-build Subcontractors shall advise the Owner and Architect of any discovered conflicts or potential conflicts in the Architect's design criteria. Owner will be the owner of all design and engineering documents so generated for the Work. They are not to be used by Contractor or its Subcontractors on any other project and shall be given to Owner or destroyed upon completion of the Work, at Owner's discretion. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. Contractor shall comply with all stormwater discharge and mitigation laws and ordinances, and as set forth in the civil engineering design documents and any applicable permits.

§ 3.13.2 The Contractor shall send proper notices, make all necessary arrangements, and perform all other services required in order to protect and maintain all marked, identified, locatable, or known public entities such as fire lines and hydrants, electric, gas, water lines, sewer pipes, mechanical systems, public pedestrian and street easements, and all other items of this nature, and assume all responsibility and pay all costs and damages for which the Owner may be liable if said services are interrupted by actions of the Contractor or Subcontractor. Contractor shall provide three weeks' (21 days) prior notice of any impacts or interruptions to such systems, services, public areas. Contractor shall test all utilities prior to performing work to ensure compliance with design and applicable laws, codes, ordinances and other requirements of the Project.

§ 3.13.3 The Contractor shall bring and store on the Project site only materials and equipment which are to be used directly in the Work. After such equipment is no longer required for the Work, it should be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage and other similar occurrences are solely the responsibility of the Contractor and the Contractor shall mitigate any adverse impacts to the Project, including those caused by authorized changes, which may affect cost, schedule, or quality. The Contractor shall not erect or permit the erection of any sign on the Project site without the prior written consent of the Owner, which consent may be withheld or revoked in the Owner's sole direction. The Contractor shall not, without the Owner's review and prior written approval, which approval may be withheld or revoked in the Owner's sole discretion, reference or identify any entity in any representation of the Project, photographs of the exterior or interior of the Project, or references to the fact that the Contractor is constructing the Project in the Contractor's promotional or advertising materials.

§ 3.13.4 Without limitation of any other provision of the Contract Documents, the Contractor shall use best efforts to minimize any interference with the occupancy or beneficial use of (i) any areas and buildings adjacent to the site of the Work, and (ii) the building in the event of partial occupancy as more specifically described in Paragraph 9.9.

§ 3.13.5 The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, and any building materials, or equipment likely to cause hazardous conditions. Contractor shall, where practical, keep the main entry roadway open and accessible for public use. Contractor shall protect the adjacent property and the public at all times from hazards from their work in a manner conforming to all agencies of jurisdiction.

§ 3.13.6 Without prior approval of the Owner, the Contractor shall not permit any workers to use any newly constructed/existing facilities at the Project site including, without limitation, lavatories, toilets, and parking areas other than those designated by the Owner.

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§ 3.13.7 The Contractor's fence, scaffold and/or building signs on the Project shall be coordinated with and have the prior written consent of the Owner except as required for safe site operations.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work. Fitting of all materials shall be done to preserve the strength and durability of the material and to present a clean, well-worked appearance.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project. In addition to general broom cleaning, the Contractor shall perform minimum final cleaning for all trades at completion of the Work in accordance with the specifications and the following:

- **.1** remove temporary protections;
- **.2** remove marks, fingerprints and other soil or dirt from painted, decorated and natural-finished woodwork and other Work;
- **.3** remove spots, plaster, soil and paint from ceramic tile, marble and other finished materials, and wash or wipe clean;
- **.4** clean fixtures, cabinet work and equipment, removing stains, paint, dirt and dust, and leave same in undamaged, new condition;
- **.5** clean aluminum in accordance with recommendations of the manufacturer; and
- **.6** window cleaning (exterior and interior sides).

§ 3.15.2 The Contractor shall maintain streets and sidewalks around the Project site in a clean condition and shall comply with all erosion control, storm water runoff, recycling and composting ordinances and regulations. The Contractor shall remove all spillage and tracking arising from the performance of the Work from such areas and shall establish a regular maintenance program to minimize accumulation of dirt and dust upon such areas. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from or offset against the Contractor.

§ 3.16 Access to Work

§ 3.16.1 The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.16.2 Owner shall have the right to access any part or parts of the Project in order to do whatever work is necessary to perform the Owner's own work and to install Owner-furnished fixtures and equipment provided Owner has given ample notice and Owner's work will not impact progress on the work of this Contract. All work within the construction site shall be coordinated through the jobsite superintendent. The Contractor shall cooperate with the Owner, Owner's employees, hatchery operations staff, service providers, Separate Contractors, and other authorized users prior to Substantial Completion in accordance with the accepted schedule. The Contractor shall coordinate its efforts with the Owner's occupancy of the premises and ongoing hatchery operations under this Section in such a way as to minimize impact of all parties; however, the overall Project schedule and Contractor's work shall always take precedence.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall indemnify and hold the Owner, Owner-Related Parties, the Owner's Representative, Owner's Project Managers,

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and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law and in addition to any other indemnification obligations set forth in the Contract Documents, the Contractor shall defend, indemnify and hold harmless the Owner, the Owner Related Parties, the Owner's lender, Owner's Representative, Owner's Project Managers, Architect, Architect's consultants, and agents, members, affiliates, subsidiaries, employees, officers, principals, board members, and directors of any of them "(Indemnified Party") from, for, and against every kind and character of claims, damages, losses, actions, causes of action, liabilities, costs, and expenses, (including but not limited to actual attorneys' and expert fees and costs, and costs and expenses of consultation, preparation, and review of claims and related documents and in enforcing the defense and indemnity obligations hereunder, and including those events covered by any blanket contractual liability coverage required under the Contract Documents) ("Loss"), arising out of or resulting from performance of the Work including the work of all Subcontractors and their employees or anyone for whom they are legally liable, provided any such Loss is caused in whole or in part by (i) the negligent or wrongful acts or omissions of the Contractor, a Subcontractor, and their employees or the agent of anyone directly or indirectly employed by them, or anyone for whose acts any of them may be liable, (ii) any determination by a court or agency that Contractor is not an independent contractor or that Owner is the employer or joint employer of any of Contractor's or any Subcontractor's employees or personnel, (iii) any claim, action, suit or proceeding by Contractor or a Subcontractor's employees, including but not limited to worker's compensation, unemployment and wage-and-hour claims, (iv) any violation or infraction by Contractor of any law, order, citation, rule, regulation, standard, ordinance or statute in any way relating to the occupational health or safety of employees, regardless of whether or not such Loss is caused in part by a party indemnified hereunder. Contractor's obligation to defend, indemnify, and hold harmless under this Section applies regardless of whether or not such Loss is groundless, false, or fraudulent. The Contractor shall defend all actions brought upon such matters to be indemnified hereunder and pay all costs and expenses incidental thereto, but the Owner shall have the right, at its option, to participate in the defense of any such action without relieving the Contractor of any obligation hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other rights or obligations of indemnity which would otherwise exist as to any party or person under the Contract Documents. The indemnification and defense provisions of this Agreement shall survive any termination of this Agreement. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts. For the purposes of the foregoing indemnification provision only, and only to the extent of claims against Contractor by and Indemnified Party under such indemnification provisions, Contractor and its Subcontractors specifically waive any immunity it or they may be granted under applicable workers' or workmen's compensation act, including the Washington State Industrial Insurance Act, Title 51 RCW.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the Engineer identified in Section 4.3 of the Agreement. Wherever these General Conditions refer to the Architect, the term means the Engineer, as Section 4.3 of the Agreement provides. The Owner's Representative, at Owner's discretion, may provide some of the obligations required by Architect in this Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect, with Owner's direction, will provide administration of the Contract as described in the Contract Documents. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

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§ 4.2.2 The Architect or Owner's Representative will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The presence of the Architect, Owner, or Owner's Representative (if any) at the Site shall not in any manner be construed as assurance that the Work is completed in compliance with the Contract Documents, nor as evidence that any requirement of the Contract documents of any kind, including Notice, has been met or waived.

§ 4.2.3 On the basis of the site visits, the Architect or Owner's Representative will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall communicate directly with each other. The Owner and Contractor shall include the Architect and Owner's Representative in all communications that relate to or affect the Architect's services or professional responsibilities and the Owner shall be copied on all communications and notices required to be provided to the Architect. The Owner may promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's and/or Owner's Representative's evaluations of the Contractor's Applications for Payment, the Architect's and/or Owner's Representative will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect or Owner Representative has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect or Owner Representative considers it necessary or advisable, the Architect and/or Owner's Representative will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect and/or Owner's Representative nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or Owner Representative to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. The Owner has the same authority to reject Work, require inspection or testing, and reject Applications for Payment as does the Architect.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or Owner Representative or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents (provided this sentence does not exonerate Architect for responsibility to Owner for failing to report any such discrepancies observed by the Architect). The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Article 3 or elsewhere in the Contract Documents. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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§ 4.2.8 The Contractor will prepare Change Orders and the Architect or Owner will prepare Construction Change Directives and Unilateral Change Orders. The Architect, Owner's Representative, or Owner may order minor changes in the Work as provided in Section 7.4. The Architect or Owner Representative will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect or Owner Representative will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will make recommendations to the Owner concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor.

§ 4.2.12 Recommendations of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings.

§ 4.2.13 The Architect or Owner Representative will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 4.2.14 No action, approval, omission to act, or failure to advise the Contractor as to any matter by the Owner or the Architect shall in any way relieve the Contractor from its responsibility for the performance of the Work in accordance with the Contract Documents. In reviewing the quality and progress of the Work and submittals received from the Contractor, the Architect and/or Owner Representative is acting solely for the convenience of the Owner. Neither the Owner nor the Architect nor Owner Representative has any responsibility, duty, or obligation to the Contractor to assist the Contractor in the supervision or performance of the Work.

§ 4.2.15 Any reference in the Contract Documents to the Architect's or Owner's taking action or rendering a decision within any "reasonable promptness" is understood to mean no more than fifteen calendar days, unless a shorter review time is necessary to maintain the project Schedule as approved by the Owner, and Contractor gives notice to Architect and Owner that a shorter review time is necessary; provided, however, that the time for review shall be extended for reasonable review time in the event submittals are returned to Contractor because of incomplete submittals. Each party will instruct their respective representatives to act reasonably and promptly when reviewing and approving/rejecting submittals. Such shorter review periods shall be on a limited occasion, and not made routine.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify

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the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. Owner shall be promptly advised of any changes in the information given pursuant to this Section.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.2.5 Contractor shall provide Owner within 10 days of execution with a true and complete copy of any executed subcontract(s) or supply contract(s), including scoping documents and modifications thereto. Such Subcontracts shall include all provisions and flow down obligations set forth in this Agreement.

§ 5.3 Subcontractual Relations

§ 5.3.1 By appropriate written agreement, prior to performance of the applicable Work, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 The Contractor shall schedule, supervise and coordinate the operations of all Subcontractors of any tier, including any suppliers of early procurement items. Subcontracting of any of the Work shall not relieve the Contractor from its responsibility for the performance of the Work in accordance with the Contract Documents or from its responsibility for the performance of any other of its obligations under the Contract Documents. The Contractor is responsible for the timely, accurate and appropriate Subcontractor coordination of the Work of lower tier Subcontractors in accordance with the overall Work, including communications, meetings, drawings, illustrations, and other necessary associated activities required for the successful coordination of all trades, schedules, materials and workmanship.

§ 5.3.3 The Contractor agrees to diligently, and using its best efforts, cause each Subcontractor to correct, at the Subcontractor's own expense, all Work performed by the Subcontractor that is defective in material or workmanship or otherwise fails to conform to the Contract Documents, including all necessary removal, replacement and/or repair of any other portion of the Project which may be damaged in removing, replacing or repairing any portion of the Project. If any Subcontractor defaults in its obligation promptly to correct any such deficiency, the Contractor shall be responsible for correcting the deficiency as a Cost of the Work within the Guaranteed Maximum Price.

§ 5.3.4 In addition to the above, contracts between Contractor and its Subcontractors shall include the following: (1) the Subcontractor shall defend, indemnify, and hold harmless the Owner and Indemnified Parties to the same extent and for the same duration as Contractor has agreed to indemnify and defend Owner and Owner Related Parties, including the waiver of employer immunity under worker's compensation laws; (2) the Subcontractor shall subordinate its lien rights in the same manner and degree as Contractor

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subordinates its lien rights as provided in this Agreement; (3) the Owner shall be an intended third party beneficiary of such subcontracts; and (4) each Subcontractor shall maintain the insurance in accordance with the requirements of Exhibit B and Contractor shall submit proof of such insurance to the Owner prior to each such Subcontractor commencing any Work on the Project.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

.1 assignment is effective only after termination of the Contract by the Owner and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

If the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract for the period after such acceptance.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. A Separate Contractor shall not include utility service providers or similar vendors. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall submit a Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. Contractor will be compensated for any additional work or time required to accommodate the work of others outside of this Contract provided Contractor submits a notice of claim, and otherwise complies with the notice requirements of this contract. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Notwithstanding anything to the contrary contained in Section 6.1.3 above, Owner and Contractor agree and acknowledge that regardless of what party is responsible for the installation of utilities (including, but not limited to, gas, electric, sewer, water, cable and communications) at the Project, the Contractor is responsible for scheduling and coordinating such installation with the Separate Contractor's Work.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect and Owner of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent

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discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner may be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction that Contractor establishes could not have been avoided through Contractor's reasonable mitigation measures and provided Contractor complies with the Claim procedures set forth in this Agreement.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. No additional work shall begin and no additional costs or time shall be incurred without Owner's prior written approval.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner and Contractor. A Construction Change Directive requires execution by the Owner and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Owner alone or by the Architect with written permission from the Owner.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument signed by the Owner, Contractor, and (if applicable) Architect stating their agreement upon all of the following:

- **.1** The change in the Work;
- **.2** The amount of the adjustment, if any, in the Contract Sum; and
- **.3** The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Within ten (10) days of first notification of a potential Change Order, unless otherwise agreed to in writing by Owner, Contractor shall provide an ROM (rough order of magnitude) estimate of the amount of the adjustment in Contract Time and/or Contract Sum. Within thirty (30) days of first notification of a potential Change Order, unless otherwise agreed to in writing by Owner, Contractor shall provide Owner with a final estimate of the amount of adjustment in Contract Time and/or Contract Sum and with all backup necessary to verify any adjustment in Contract Sum or Contract Time. Failure to give the amount of the adjustment or estimate thereof or backup as required in this Agreement, as set forth in this Section, shall constitute an absolute and complete waiver, bar, and release of such right to seek an increase in Contract Sum or Contract Time for Work related to or arising under any potential Change Order.

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§ 7.2.3 The execution of a Change Order shall constitute full satisfaction and a waiver of any and all claims, including cumulative impacts, requests for costs, or requests for time by the Contractor arising out of, or relating in any way to, the Work to be performed or deleted pursuant to Change Order, including all direct and indirect costs associated with such change, delay or acceleration damages, and general home office overhead expenses, and any and all adjustments to the Contract Sum and Contract Time, except as specifically described in the Change Order, and shall constitute a final settlement of all such matters, including those related to Subcontractors and Suppliers that are subject of the Change Order.

§ 7.2.4 The Contractor's Fee on a change in the Work is determined as Section 6.1.3 of the Agreement provides, and Subcontractor markup is limited as Section 6.1.4 of the Agreement provides.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive, or Unilateral Change Order, is a written order signed by the Owner, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive or Unilateral Change Order, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- **.1** Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- **.2** Unit prices stated in the Contract Documents or subsequently agreed upon;
- **.3** Cost of the Work as defined in Article 7 of the Agreement, to be determined in a manner agreed upon by the parties, plus the Contractor's Fee under Section 6.1.3 of the Agreement; or
- **.4** As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order, Unilateral Change Order, or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive or Unilateral Change Order, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, the Contractor's Fee under Section 6.1.3 of the Agreement and Subcontractor markup within the limits of Section 6.1.4 of the Agreement, which shall cover any impact damages associated with such additional work. Contractor's entitlement to extended general conditions, if any, shall be governed by Article 8. In such case, and also under Section 7.3.3.3, the Contractor shall segregate at the time incurred, keep, and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- **.1** Costs of labor, including social security, old age and unemployment insurance, applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect or Owner Representative;
- **.2** Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;

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.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others, with Contractor-owned equipment priced at the rates and subject to the limits in Sections 6.1.5 and 7.5.2 of the Agreement;

.4 Costs of premiums for all bonds and insurance, and permit fees, directly related to the change; and

.5 Subject to the Cost of the Work definition in Article 7 of the Agreement, costs of supervision and field office personnel directly attributable to the change, priced at the Exhibit F rates of the A133 under Section 7.1.5 of the Agreement, and when the changes involve an extension of Project schedule for completion and such impact directly solely affects the critical path of the Project (Contract Time).

§ 7.3.8 If the Contractor disagrees with the adjustment in the Contract Time or Contract Sum, the Contractor may make a Claim in accordance with applicable provisions of Article 15. Failure to make a Claim as set forth in Article 15 shall constitute an absolute and complete waiver, bar, and release of such disagreement with the adjustment in the Contract Time or Contract Sum, or both.

§ 7.3.9 Upon receipt of a Construction Change Directive or Unilateral Change Order, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect or Owner Representative of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive or Unilateral Change Order for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.10 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Owner. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit in the form of Contractor's Fee shall be figured on the basis of net increase or decrease, if any, with respect to that change.

§ 7.3.11 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Owner determines to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.12 When the Owner and Contractor agree with a determination concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Contractor will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.13 Contractor shall not be entitled to a Change Order for any change in the Work unless a Change Order has been signed by Owner, a Construction Change Directive or Unilateral Change Order issued, or a similar written Authorization has been issued by Owner, prior to initiation of such Work.

§ 7.4 Minor Changes in the Work

The Architect or Owner Representative may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such an order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and Owner, and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in an order for a minor change without prior notice to the Architect and Owner that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date determined by the Architect in accordance with Section 9.8.

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§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents, as applicable to the Contractor's performance of the Work, are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2.4 The Contractor shall furnish sufficient forces and equipment, and shall work such hours, including night shifts, overtime operations, and weekend and holiday work as may be necessary to perform the Work in accordance with the date of Substantial Completion and the approved Contractor's Construction Schedule. If the Contractor fails to perform in a timely manner in accordance with the Contract Documents and, through the fault of the Contractor or Subcontractor(s) fails to meet the Contractor's Construction Schedule, the Contractor shall take such steps as may be necessary to immediately improve its progress by increasing the number of works, shifts, overtime operations, or days of work, as a Cost of the Work within the Guaranteed Maximum Price and in accordance with the Contract Documents.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by delay authorized by the Owner in writing pending mediation and dispute resolution; or (4) by other causes not otherwise addressed in the Contract Documents, that the Contractor asserts, and the Owner determines, justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine, provided notice of such delay is given as set forth in Article 15. The Contractor shall be required to use best efforts to mitigate both the necessity of the delay and the period of the delay. No delay shall be recognized unless it extends the time required to complete a task that is on the Construction Schedule for the Project, and no delay shall be recognized unless it alone increases the overall critical path duration of the schedule in effect at the time of the delay. Such extension of Contract Time shall not be for any delays caused by or due to the fault or negligence of the Contractor or which are otherwise the responsibility of the Contractor. All Schedule Float shall belong to the Project. The amount of Schedule Float will be identified in Schedule, and use of the Schedule Float must be approved by Owner, approval of which shall not be unreasonably denied. If not specifically noted, the default is no less than ten (10) calendar days. In order to use Schedule Float for any adverse weather condition that does not constitute an "Unusually Severe Weather Condition", Contractor must provide oral notice to and approval from Owner's Representative prior to stopping or delaying Work as the result of any active or forecast adverse weather condition, identifying the Work affected by the weather condition, the anticipated length of the delay to the Work caused by the weather condition, any Work activities that can be performed (whether on or off the critical path), and any other information related to any such weather delay. Any extension of the Contract Time under this Section 8.3 shall be limited to the actual impact on the critical path after consumption of Schedule Float.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 Contractor shall be entitled to an equitable adjustment in the Guaranteed Maximum Price and Contract Time for increased costs directly attributable to a delay set forth in Section 8.3.1, but only to the extent explicitly allowed under Section 8.3 and 8.4, and provided it makes a Notice of Claim in accordance with Article 15. Contractor shall be entitled to an adjustment to the Contract Time for changes made in the time of performance directly attributable to the Force Majeure Event, as defined below, provided it makes a notice of claim in accordance with Article 15. However, Contractor shall not be entitled to any adjustment in the Contract Sum resulting from a Force Majeure Event. Contractor shall not be entitled to any adjustment in Contract Time or in the Contract Sum for any delay or failure of performance to the extent such delay or failure was caused or contributed to by Contractor or anyone for whose acts Contractor is responsible. To the extent any delay or failure of performance was concurrently caused by the Owner and Contractor, Contractor shall be entitled to an adjustment in the Contract Time for that portion of the delay or failure of performance that was concurrently caused, provided it submits notice of claim in connection with Article 15, but shall not be entitled to any adjustment in Contract Sum. Contractor shall make all reasonable efforts to prevent and mitigate the effects of any delay, however

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caused. Contractor's failure to provide Notice of Claim in accordance with Article 15 constitutes a complete waiver and absolute bar to any such Claim.

§ 8.3.4 As used herein, a Force Majeure Event is an event, circumstance or condition that was unforeseeable and beyond the control of either party or their respective contractors, subcontractors, or suppliers at any tier below them. Force Majeure Events include but are not limited to:

.1 Acts of God or public enemy, including terrorism and malicious mischief or riot;
.2 Acts or omissions of any government entity;
.3 Fire or other casualty, such as tornadoes, floods, hurricanes, earthquakes, tidal waves, blizzards or other physical natural disasters, for which Contractor or its subcontractors at any tier were not responsible;
.4 Quarantine, epidemic, or pandemic;
.5 Strike or defensive lockout; and
.6 Unusually Severe Weather Conditions which could not have been reasonably anticipated; and
.7 Unusual disruptions in the supply chain for materials and equipment, which the Contractor has used all reasonable efforts to prevent and avoid, including monitoring supply chain and proposing timely substitutions to mitigate any delays.

§ 8.3.5 "Unusually Severe Weather Condition" as used in this Agreement means weather that is more severe than the adverse weather anticipated for the Project Site during any given season. Unusually Severe Weather Condition as used in the prior sentence means the atmospheric conditions at the definite time and place, as measured by the National Climatic Data Center station closest to the Site, that are unfavorable to construction activities. Unusually Severe Weather Conditions must actually cause a delay to the completion of the Work and the critical path. The delay must be beyond the control and without the fault or negligence of the Contractor. For any Claims related to an Unusually Severe Weather Condition, the Contractor must comply with Article 15 of this Agreement.

§ 8.3.6 No Claim for delay shall be allowed the Contractor on account of the Architect's or Owner's failure to return drawings and shop drawings to the Contractor until the later of (i) ten (10) working days after Architect's receipt of a demand for such drawings or (ii) a reasonable time for review and comment after such demand for such drawings, and not then, unless such claim is just and allowable as provided above. Disapproval of incomplete or defective submittals shall not be a claim for delay.

§ 8.3.7 When the Contract Time has been extended due to a delay set forth in Section 8.3.1 and Contractor is entitled to an increase in the Contract Sum under Section 8.3.3, Contractor's adjustment in Contract Sum for such extension (if any) shall be limited to extended General Conditions for the period of the extension, priced at the Exhibit F rates of the A133 for staff and Major Equipment and at actual cost for other General Conditions actually incurred because of the extension, under Section 7.1.5 of the Agreement, plus the Contractor's Fee under Section 6.1.3 of the Agreement. Owner shall have no other obligation to the Contractor or any Subcontractor for delay-related costs associated with the fault or negligence of the Owner.

§ 8.3.8 Neither the Contractor nor any Subcontractor shall be entitled to damages arising out of actual or alleged loss of efficiency or productivity; morale, fatigue, attitude, or labor rhythm; cumulative impact, constructive acceleration; home office overhead; expectant underrun; trade stacking; reassignment of workers; concurrent operations; dilution of supervision; learning curve; beneficial or joint occupancy; logistics; ripple; season change; extended overhead; profit upon damages for delay; impact damages; or similar theories of damages.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

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§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work (Schedule of Values). The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect or Owner. This schedule, unless objected to by the Architect or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect or Owner and supported by such data to substantiate its accuracy as the Architect or Owner may require, and unless objected to by the Architect or Owner, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment review meeting, the Contractor shall submit to the Architect, Owner and Owner's Representative (if any) an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. Conditional and unconditional claim waiver and release of liens shall be provided by the Contractor and all first tier Subcontractors and suppliers with each pay application. The Application for Payment shall constitute a representation by the Contractor that except as otherwise specifically stated, there are no mechanics', materialmen's or laborers' liens or claims outstanding or known to the exist at the date of the Application; all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current Application, and the waivers and releases have been obtained from the Subcontractors, Sub-subcontractors and suppliers that have provided the Contractor pre-lien notice or whom Contractor has actual knowledge has been on site for Work done and materials furnished. Owner shall issue payment as Article 11 of the Agreement provides, following approval of the Pay Application.

§ 9.3.1.1 The Contractor shall require that Subcontractors prepare and submit pay application breakdowns with work divided in sufficient detail. The monthly billing breakdown shall reflect description of the work, total value, percent of the work complete to date, value of work complete to date, previous amount billed, current amount due, less retainage. Any trade breakdown that fails to include sufficient detail, is unbalanced, or exhibits 'front-loading' of the value of the work shall be rejected. In all cases, sufficient funds shall be withheld from Pay applications to ensure an adequate reserve (exclusive of normal retainage) to complete the work and any punch-list or closeout work.

§ 9.3.1.1 As provided in Section 7.3.11, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier. If such Work has been performed by others whom the Contractor intends to pay, the Contractor must notify the Owner and Architect and obtain prior written consent from the Owner before including such request in an Application for Payment.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site for such materials and equipment stored off the site. Such information shall include, but not be limited to, the following information: cost per unit, quantity of materials stored, dates for storage, location/address for where materials are being stored, photographs of stored materials, and certificates of insurance. In additional, Contractor shall provide information sufficient for Owner and Owner's lender (if any) detailing how the materials are stored and secured, i.e., whether in a climate controlled facility, weather protection, security, whether in a gated/guarded facility, etc.

§ 9.3.3 As the Work progresses, title to each item of material or equipment shall vest in Owner upon the earlier to occur of (a) incorporation of such item into the Work, or (b) payment for such item by Owner. Each such item shall then become the sole property of Owner, subject to the right of Owner to reject the same at any time prior to the date of Substantial Completion for failure to conform to the Contract Documents. Each item of material or equipment that is not rejected prior to the date of Substantial Completion shall be deemed delivered and accepted by Owner. The Contractor warrants that title to all Work covered by an

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Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. Nothing contained in this Section, however, diminishes Contractor's responsibility to replace stolen, defective or vandalized work, materials or equipment. Such responsibility does not diminish Contractors right to recover under insurance provisions.

§ 9.3.4 The Contractor shall notify the Owner immediately of any accidents or delays, or hindrances to the delivery of the store materials to the Project jobsite which the Contractor, its Subcontractors or agents experience or observe, and follow-up with written notification to the Owner within 24 hours of occurrence, together with an action plan to rectify the matter.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect or Owner's Representative will, within seven days after receipt of the Contractor's final and approved Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect or Owner's Representative and Owner determines is properly due, and notify the Contractor and Owner of the Architect's or Owner's Representative's reasons for withholding certification in whole or in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor of the reason for withholding the certification in whole or in part as provided for in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect or Owner's Representative to the Owner, based on the evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's or Owner's Representative's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect or Owner's Representative. However, the issuance of a Certificate for Payment will not be a representation that the Architect or Owner's Representative has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum, or (5) verified definitely that none of the conditions listed in Sections 9.5.1 exist at the time of certification.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect or Owner's Representative may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in its opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect or Owner's Representative is unable to certify payment in the amount of the Application, it will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect or Owner's Representative may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's or Owner's Representative's opinion to protect the Owner from loss for which the Contractor is responsible, including, but not limited, to loss resulting from acts and omissions described in Section 3.3.2, because of:

- **.1** defective Work not remedied (150% of the estimated value of such defective Work may be withheld;
- **.2** third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- **.3** failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment and cause the removal of mechanic's liens as required in the Contract Documents;
- **.4** reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- **.5** damage to the Owner or a Separate Contractor;
- **.6** reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

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.7 failure to carry out the Work in accordance with the Contract Documents;

.8 overpayment of prior amounts included in prior Certificates for Payment;

.9 Claims that the Owner has against Contractor under or in connection with the Contract Documents or Contractor's Work; or

.10 any other reason for withholding allowed by the Contract Documents or to protect the Owner, including failure by the Contractor to comply with the Contract Documents.

Owner or Owner's Representative shall have the same rights of withholding as Architect. If the Owner shall decline to make payment as requested in an Application for Payment because the Owner believes that the Work has not progressed to the point indicated in the Application for Payment, the quality of Work is not in accordance with the Contract Documents, or for any other reason listed in this Section 9.5.1, the Owner shall so notify the Contractor.

§ 9.5.2 If the Contractor disputes any decision regarding a Certificate for Payment or withholding under Section 9.5.1, in whole or in part, the Contractor must submit a Claim in accordance with Article 15. Withholding under this provision shall not be deemed a breach entitling Contractor to terminate or damages, provided that Owner has provided notice in writing to the Contractor of the nature of the default or failure to perform as set forth in this Sections 9.4 and 9.5.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect or Owner's Representative withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint or direct checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint or direct check, the Owner shall notify the Contractor, and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.5.5 To the fullest extent allowed by law, Contractor shall have no right to stop the Work if Contractor is timely paid for all undisputed amounts, and if so paid, Contractor shall proceed with the performance of its obligations hereunder with reservation of all rights and remedies it may have at law or in equity with respect to disputed amounts.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect or Owner's Representative has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than ten (10) days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect or Owner's Representative will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.4.1 The Owner shall have the right to make payments to Subcontractors by multiple-payee, direct, or joint checks of amounts owed to Subcontractors under the governing subcontracts, purchase orders and similar agreements, and then deduct the amount of such payments from the amount of the final payment otherwise owed to the Contractor; provided that, prior to making multiple-payee, direct, or joint check payments under this Clause, the Owner shall provide reasonable written notice to the Contractor.

§ 9.6.4.2 Upon the Owner's written request, the Contractor shall furnish to the Owner with the final Application for Payment information required to facilitate multiple-payee or direct payments pursuant to Section 9.6.4.1, including but not limited to a

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complete listing of the outstanding amounts owed to all Subcontractors and, to the extent known, Sub-subcontractors. The Owner's payment to a Subcontractor pursuant to Section 9.6.4.1 by multiple-payee, direct, or direct check shall not be construed to grant to such Subcontractor any third-party beneficiary or other rights against the Owner.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor. Contractor shall comply with all applicable legal requirements regarding payment of Subcontractors.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.6.9 The Owner may condition any payment otherwise due to Contractor upon the Contractor's prior submission of unconditional lien waivers from Subcontractors and suppliers covering any Work for which Contractor has received payment from the Owner.

§ 9.7 Failure of Payment

If the Architect or Owner's Representative does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of a final and approved Application for Payment, or if the Owner does not pay the Contractor within fourteen days after the date established in the Contract Documents, the amount certified by the Architect or Owner's Representative or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect and Owner's Representative, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. Any such occupancy or use described above shall not negate or change the responsibility of the Contractor to Owner for satisfactory completion of the Work.

§ 9.8.1.1 For Substantial Completion to be achieved, the Owner must have received a temporary or final certificate of occupancy and all other governmental approvals as necessary and required for the Owner to occupy or utilize the Work, or portion thereof which the Owner agrees to accept separately, for its intended purpose. In addition, the Work will not be considered suitable for Substantial Completion review until all Project systems included in the Work are operational as designed, the Contractor has delivered all operation and maintenance manuals for all Project systems to the Owner, and all final finishes are in place. Training of the Owner's personnel is not a condition of Substantial Completion. Training, and the Contractor's responsibility to operate Project systems until the Owner accepts that training, are governed by Section 11.2 of the Supplementary Conditions and Section 14.4.7 of the Agreement. The only remaining Work after Substantial Completion shall be minor and "punch list" in nature, so that the Owner could occupy the Project on that date and the completion of the Work by the Contractor would not materially interfere with or hamper the Owner's normal hatchery operations.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect and Owner's Representative a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

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§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. The Owner or Owner's Representative shall have the same right of inspection and right to demand completion and correction as Architect. If more than two inspections by the Architect or Owner are required to determine Substantial Completion, not due to the fault of either the Architect or Owner, the Contractor shall reimburse Owner for any additional costs associated with such additional inspections, including costs of the Architect.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect or Owner's Representative will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and shall fix the time within which the Contractor shall finish any and all items on the list of non-conforming, defective, or incomplete Work items accompanying the Certificate. The Certificate shall also list each Project system for which the Owner has not accepted training and for which the Contractor remains responsible for operation, as Section 11.2 of the Supplementary Conditions provides. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof, except for non-conforming, defective, or incomplete Work as of the Substantial Completion Date, in which case, warranty periods will commence upon completion of the corrective Work and except as otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, The Owner shall make payment of retainage applying to the Work or designated portion thereof at Final Completion. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work, provided such occupancy or use is authorized by public authorities having jurisdiction over the Project and approved by Builders' Risk Insurance carrier. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise expressly agreed to in writing, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect and Owner will promptly make such inspection. When the Architect or Owner's Representative finds the Work and all punch-list or corrective work complete and acceptable under the Contract Documents, and if the Contractor has submitted all documentation required by the Contract Documents, and the Contract fully performed, including providing all backup required to verify the costs included in the final Application for Payment, the Architect or Owner's Representative will promptly issue a final Certificate for Payment stating that to the best of the Architect's or Owner's Representative's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's or Owner's Representative's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

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§ 9.10.1.1 The term "Final Completion" as used in the Contract Documents shall mean that (1) Substantial Completion of the Work or designated portion thereof has been achieved and the Architect has certified that the Project is finally complete; (2) the Owner has received a final certificate of occupancy and all other governmental approvals as necessary and required for the Owner to occupy or utilize the Work or designated portion thereof for its intended purpose; (3) the Owner's and Architect's punch lists are fully completed; (4) the Owner has accepted in writing the training of the Owner's personnel on every Project system, as Section 11.2 of the Supplementary Conditions provides; and (5) the Contractor has performed all of its obligations under the Contract, except for those obligations which by their nature continue or arise after final payment. Notwithstanding the foregoing, Final Completion shall be deemed achieved if all construction, submittals and other performance by the Contractor has been completed but the permanent certificate of occupancy has not been issued solely because of factors beyond the reasonable control of the Contractor. A delay in the applicable governmental agency's issuance of a certificate of occupancy, following the Contractor's completion of construction, submittals and other performance that is of normal duration for that agency shall not constitute a factor "beyond the reasonable control of the Contractor" as that phrase is used in the prior sentence.

§ 9.10.1.2 Section 9.10.1.1 shall not apply to designated portions of the Work to the extent certificates of occupancy and other approvals are not required by governmental authorities with jurisdiction in order for the Owner to occupy or utilize the designated portions for their intended uses.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and Owner all close out documents required by the Contract Documents that have been received and accepted by Owner and Architect, including (1) an affidavit that to the extent of prior payments by Owner, payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) all O&M's, as-builts, and submittals required by the Owner, (6) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (7) other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner in its sole discretion. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.2.1 Partial release of retention shall not be made by the Contractor to any Subcontractor unless approved by the Owner in writing, and all Owner closeout documentation required by the Contract Documents have been completed, submitted to, and approved by, the Architect and the Owner.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.3.1 If the Owner makes such payment in advance of Final Completion, the Owner shall retain an amount equal to twice the market value of the Cost of the Work for the Contractor or its Subcontractors to finally complete the Work, as determined by the Architect, plus the Contractor's Fee on that Cost of the Work.

§ 9.10.4 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled in and at the time of final Application for Payment.

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ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

§ 10.1.1 The Contractor shall be solely and completely responsible for conditions of the Project site, including safety of all persons and property, during performance of the Work, except that Contractor is not responsible for Owner's Separate Contractors. The Contractor shall maintain the Project site and perform the Work in a manner that meets statutory and common-law requirements for the provisions of a safe place to work. This requirement shall apply continuously and not be limited to working hours. Any review by the Owner or Architect of the Contractor's performance shall not be construed to include a review of the adequacy of the Contractor's safety measures in, on or near the site of the Work. The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract Documents. As part of this responsibility, the Contractor shall develop a specific safety program for the Project, which the Contractor shall submit to the Owner prior to the commencement of Work. The Contractor shall update the safety program on a monthly basis and provide the updates to the Owner upon request. The safety program shall specifically address worker and public safety as related to the Project. The Contractor shall implement, monitor and maintain the safety program in full compliance with all applicable laws. The Contractor shall have on staff a qualified safety officer who shall provide guidance and direction to the Contractor's staff concerning safety-related issues. The safety officer shall inspect the Project at regular intervals.

§ 10.1.2 No action or inaction of the Owner or the Architect relating to safety or property protection or a violation thereof will (1) relieve the Contractor of sole and complete responsibility for the violation and the correction thereof, or of sole liability for the consequences of said violation; (2) impose any obligation upon the Owner or Architect to inspect or review the Contractor's safety program or precautions or to enforce the Contractor's compliance with the requirements of this Article 10; (3) impose any continuing obligation upon the Owner or Architect to ensure the Contractor performs the Work safely, (4) affect the Contractor's sole and complete responsibility for performing the Work safely or the Contractor's responsibility for the safety and welfare of its employees; or (5) affect the Contractor's responsibility for the protection of persons and property.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- **.1** employees on the Work and other persons who may be affected thereby;
- **.2** the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- **.3** other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible for all measures necessary to protect any property, and improvements thereon, adjacent to the Project. Any damage to such property or improvements caused by construction of the Project shall be promptly remedied by Contractor without cost to the Owner. These repairs will under no circumstances increase the Contract Sum.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not

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attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.6.1 The Contractor shall, and shall require its Subcontractors, to: (1) be responsible for the adequate strength and safety of all scaffolding, staging and hoisting equipment and for temporary shoring, bracing and tying; (2) furnish approved hard hats, other personal protective equipment as required, approved first aid supplies, the name of an individual on each shift who has completed the OSHA Supervisory Training Course and a posted list of emergency facilities; (3) take prompt action to correct any hazardous conditions reported; (4) comply with the requirements of the Occupational Safety and Health Act ("OSHA") and all other applicable federal, state and local worker safety laws, rules and regulations, including all standards and regulations which have been promulgated by the governmental authorities which administer such acts and said requirements, standards and regulations are incorporated herein by reference. The Contractor shall be directly responsible for compliance therewith on the part of its agents, employees, Subcontractors, Sub-subcontractors, and materialmen and shall directly receive and be responsible for all citations, assessments, fines or penalties which may be incurred by reason of the failure of its agents, employees, materialmen, Subcontractors or Sub-subcontractors to so comply. Contractor shall provide adequate fire protection procedures during the use of cutting torches, welding equipment, plumber's torches and other flame and spark producing apparatus and comply with NFPA Standard No. 51B, as amended, or its replacement.

§ 10.2.6.2 The Contractor, in all cases, shall comply and cause its Subcontractors at all tiers to comply with all Governmental Requirements. The term "Governmental Requirements" as used in the Contract Documents shall mean any and all building, traffic, environmental, occupancy health, accessibility for disabled and other applicable laws, statutes, ordinances, regulations or decrees, of any federal, state, county, municipal, or other governmental or quasi-governmental authority or agency pertaining (a) to the Project or the Work, (b) to the use and operation of the Project or the Work for their intended purposes, or (c) if the context of the sentence establishes this term is being used in connection with a different subject than those described in clauses (a) or (b), then to the subject matter described in the Section in which the term is used.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 Wastewater/Stormwater Contractor shall comply with all state, federal, Tribal, and local rules, regulations, laws, and ordinances and/or any required permits related to limitations, special conditions, monitoring, reporting obligations, or other requirements related to water or stormwater.

§ 10.3 Hazardous Materials, Archeological Sites

§ 10.3.1 The Contractor is responsible for compliance with any requirements of any applicable laws and restrictions included in the Contract Documents regarding hazardous materials and archeological sites. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. If Contractor encounters items or circumstances which it reasonably believes could be an archeological site, Contractor shall immediately stop work in the area and inform the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory or inspector to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. When the material or substance has been rendered harmless, Work in the affected area

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shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, after notice from Contractor as provided above, provided that such claim, damage, loss, or expense (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) and (ii) is not covered by insurance, except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are specifically required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances specifically required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall not use, generate, transport, dispose of, or install, any materials containing asbestos, lead or hazardous materials, and shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of any material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred, unless those costs are otherwise included in the Contractor's scope of work.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7. Contractor shall provide notice to Owner and Architect of such emergency as soon as practical, but in no event more than 24 hours after such emergency.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain at Contractor's expense insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Owner's Representative, the Owner's lender, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the

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Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Contractor waives all rights against (1) of the Owner, Owner's Representative, and its agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project or Work, except such rights as they have to proceeds of such insurance. The Contractor shall require similar written waivers in favor of the individuals and entities identified above from its Subcontractors, and sub-subcontractors, and agents and employees of any of them. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property. This waiver does not apply to a deductible for which the Contractor is responsible under Section 14.3.2.2 of the Agreement.

§ 11.4 Adjustment and Settlement of Insured Loss

§ 11.4.1 A loss insured under the property insurance shall be adjusted by the Owner and made payable to the Owner for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.4.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.4.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change

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Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or contrary to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum or Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.1.3 Owner and Owner's Representative shall have the same rights to have Work uncovered and replaced as Architect.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect, Owner, or inspection agencies or governmental inspections having jurisdiction over the Work, for failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within two years after the date of Substantial Completion of the entire Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly at its sole cost and expense and without reimbursement after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect or Owner's Representative, the Owner may correct it in accordance with Section 2.5 and seek reimbursement from Contractor for all such costs and damages.

§ 12.2.2.2 The period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The period for correction of Work shall be extended for corrective Work performed by the Contractor pursuant to this Section 12.2, but only for that portion of the corrected Work so that such corrective Work itself receives at least a one-year warranty from the date of correction.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

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§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made or whether or not this Agreement has been terminated. Owner shall not be obligated to accept defective or non-conforming Work, or damages for the difference in value between conforming and defective or nonconforming Work, and in all cases Owner, in its sole and absolute discretion, shall be entitled to full removal and correction of defective or non-conforming Work. At all times, Owner shall be entitled to offset against any sum due and owning Contractor amounts associated with the removal and correction of defective or non-conforming Work.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the Tulalip Tribes and all applicable federal laws and regulations. Should any conflict arise between such laws, the following precedence shall apply: (i) Tribal law then (ii) Federal law. The Owner does not hereby consent to jurisdiction under any tribal, state or federal law that would not otherwise apply to the Owner as a Tulalip Tribes governmental entity or activity occurring within Indian Country.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor 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 13.2.2, 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.

§ 13.2.2 Notwithstanding 13.2.1 above, The Owner may, without consent of the Contractor, assign the Contract to a purchaser, another entity owned or related to Owner or a lender providing construction financing for the Project, if the assignee assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require. Should any re-testing or re-inspection of work be required attributable to the Contractor for any reason, the cost of such work, including any associated schedule delay, shall be reimbursed by the Contractor and shall not be considered a part of the Cost of the Work.

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§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures, compensation for the Architect's services and expenses, and schedule delay, shall be at the Contractor's expense and not be a Cost of the Work.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in this Agreement.

§ 13.6 No Personal Liability of Owner

No personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforced against any affiliate, partner, volunteer, member, officer, director, council member, trustee, beneficiary of Owner , Owner's Representative, or other representative of the Owner, or Architect on account of any agreement contained in the Agreement or any other Contract Documents, whether expressed or implied. Liability with respect to the entry and performance of this Agreement and all other Contract Documents, however it may arise, with respect to Owner shall be asserted and enforced only against Owner, and Contractor shall have no recourse to any assets of any affiliate, partner, member, director, officer, employee, trustee, beneficiary or other representative of Owner. Any and all personal liability, if any, beyond that which may be asserted against Owner is expressly waived and released by Contractor and by all persons or entities claiming by, through and under Contractor.

§ 13.7 Interpretation

The Contract Documents have been carefully reviewed and negotiated by both parties at arm's length and they shall be given fair and reasonable interpretation in accordance with the words contained in them without any weight being given to whether a provision was drafted by one party or its counsel. Paragraph headings are for convenience only and shall not be a part of the Contract Documents or considered in their interpretation. The Exhibits attached hereto are made a part hereof.

§ 13.8 Waiver, Amendment, and Extension

No waiver, amendment, extension, or variation in the terms of the Contract Documents shall be valid against a party unless in writing and signed by such party and then only to the extent specifically set forth in the writing. No failure or delay on the part of a party in exercising any right, power or privilege under the Contract Documents, nor any course of dealing between the parties, will waive, amend or vary the terms of the Contract Documents.

§ 13.9 Relationship

Contractor at all times is acting as an independent contractor under the Contract Documents. Nothing in the Contract Documents is intended or shall be construed as creating any other relationship or designating Contractor as an agent for or joint venturer with Owner.

§ 13.10 Severability

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If any clause or provision of the Contract Documents is determined to be illegal, invalid, or unenforceable under present or future laws, the remainder of the Contract Documents shall not be affected by such determination, and in lieu of each clause or provision that is determined to be illegal, invalid or unenforceable, there shall be added as a part of the Contract Documents a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

§ 13.11 Counterparts

This Contract may be executed in counterparts, a complete set of which shall be considered an original.

§ 13.12 Survival

If the full performance of an obligation is not required prior to the termination of this Contract, such obligation shall survive the termination and be fully enforceable thereafter.

§ 13.13 Funding Source and Lender Requirements

§ 13.13.1 This Agreement may be amended in any respect, including without limitations procedures for payment, assignment, change orders, lien releases, and termination, as may be reasonably required by any construction or permanent lender who may from time to time have a mortgage or deed of trust on the jobsite or have outstanding a loan commitment on the jobsite upon agreement by the Contractor, such agreement to not unreasonably be withheld. Contractor also agrees to timely provide any such lender with any documents and information it reasonably requires within the limits afforded the Owner in this Agreement. The Contractor shall make every reasonable effort to conform its documentation in support of progress payments to the requirements of the lender under the construction loan agreement. If requested by the Owner, Contractor agrees to (a) execute a "Contractor's Letter of Consent of Assignment," and (b) provide to the construction lender such certificates or such other reasonable documents relating to the completion of the Work in compliance with applicable codes, ordinances, rules and regulations, in such form as may be required by the Owner's lender.

§ 13.13.2 It is understood that funding to pay the Contractor under this Contract is or will be subject to the terms and conditions of the Project's funding sources, including the federal funding requirements in Part IV of the Supplementary Conditions and any construction loan agreement between the Owner and a lender. However, nothing therein shall reduce the Owner's obligations in strict accordance with the Contract requirements, or appreciably change the terms and conditions of payment under this Agreement. The Contractor agrees to cooperate with the Owner, its funding agencies, and any lender to the extent administratively possible in meeting their requirements.

§ 13.13.3 Contractor hereby subordinates all contractual and statutory liens and security interests (whether choate or inchoate) which Contractor may be (or may become) entitled to assert against the Property to all of the liens and security interests securing any financing obtained by Owner, and Contractor fully and completely waives any and all rights that the Contractor may have, now or in the future, to claim, directly or indirectly, a priority of lien or security interest, in whole or in part, against or in the Property over any assignments, liens and security interests that Owner's or Owner's lender may claim against the Property under the lender's applicable security instruments (including any future amendments thereto). This subordination shall be self-operative, and no further instrument of subordination shall be required. However, in further confirmation of such subordination, Contractor shall promptly, upon the request of Owner or its lender(s), execute, acknowledge and deliver such additional instruments as may be reasonably required to confirm such subordination. Contractor shall obtain subordination of lien rights in substantially the same form (as herein) from each of its Subcontractors.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the entire Work is stopped for a period of 90 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

.2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or

.3 Because the Certificate for Payment has not been timely issued after receipt of all information required in the Contract Documents and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not, with an additional 15 day period follow receipt of written notice to cure by Contractor, made payment on the undisputed amount of the Certificate for Payment within the time stated in the Contract Documents.

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§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon fourteen (14) days' prior written notice or longer period to the extent required by Owner's lender (as applicable) to the Owner, Owner's lender, and Architect, terminate the Contract and recover from the Owner payment for Work executed, plus the Contractor's Fee earned on such Work under Section 6.1.2 of the Agreement, and costs incurred by reason of such termination. In no event shall the total amount of the costs recovered exceed the balance due of the Stipulated Contract Sum or Guaranteed Maximum Price, including any revisions by Change Order, and the Contractor shall not be entitled to payment for overhead, profit or Fee on unperformed Work.

§ 14.1.4 If the entire Work is stopped for a period of 90 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven (7) additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- **.1** refuses or fails to supply enough properly skilled workers or proper materials;
- **.2** fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or Suppliers;
- **.3** disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority ;
- **.4** otherwise is guilty of substantial or material breach of a provision of the Contract Documents;
- **.5** refuses to comply with requests to cure from the Owner or Architect;
- **.6** is adjudged bankrupt or insolvent or makes a general assignment for the benefit of Contractor's creditors, or a trustee or receiver is appointed for Contractor or for any of its property, or files a petition to take advantage of any debtor's act, or to reorganize under bankruptcy or similar law;
- **.7** fails to timely provide a Recovery Schedule when requested by the Owner; or
- **.8** for any other reason provided for under the Contract Documents.

§ 14.2.2 For any of the reasons described in Section 14.2.1 Owner may, upon seven (7) days' notice to Contractor and Contractor's surety, if any, and without prejudice to any other rights or remedies of the Owner, terminate employment of the Contractor and may:

- **.1** Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned or rented by the Contractor;
- **.2** Accept assignment of subcontracts pursuant to Section 5.4; and
- **.3** Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

If the Contractor has secured a surety bond and such surety elects to complete the Project, it shall notify Owner of such election within 14 days. The surety's failure to provide such election within this time period shall entitle the Owner to proceed as set forth in this Section 14.2.2 and pursue a direct claim against the Contractor's surety for all costs incurred by Owner after the 14-day period.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished. If a court of competent jurisdiction determines that Owner did not have justification to terminate this Agreement for cause under this Section 14.2, any termination by the Owner shall be treated as a termination for convenience subject to Section 14.4.

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§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The obligation for payment and the amount to be paid to the Contractor or Owner, as the case may be, shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part, for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include Fee only as Section 13.3 of the Agreement provides. No adjustment shall be made to the extent

- **.1** that performance is, was, or would have been so suspended, delayed, or interrupted by another cause for which the Contractor is responsible; or
- **.2** that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- **.1** cease operations as directed by the Owner in the notice;
- **.2** take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- **.3** except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs actually incurred by reason of such termination. In no event shall the total amount of the costs recovered exceed the balance due of the Stipulated Contract Sum or Guaranteed Maximum Price, including any revisions by Changer Order, nor shall Contractor be entitled to payment for overhead, profit or Fee on unperformed Work, nor any shared savings or early completion bonus (if any). Termination of this Agreement under this Section 14.4.1 shall not relieve the Contractor for Work performed prior to the date of termination, including any warranty obligations associated with such Work.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract or the Work. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract, including any disagreements with any direction provided by Owner or Architect. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose or assess liquidated damages or to withhold payment in accordance with the Contract Documents.

§ 15.1.2 Notice of Claims

§ 15.1.2.1 In the event that the Contractor believes it has a Claim against Owner for additional compensation, additional time or some other remedy arising out of or in connection with the Contract, the Work or the actions or omissions of Owner (or the parties for whom Owner is responsible), Contractor shall give notice to Owner of such Claim within fourteen (14) days of when the Contractor first knew or reasonably should have known, of the event, condition, action or inaction giving rise to the apparent claim ("Initial Notice of Claim"). The Initial Notice of Claim shall describe the nature of the Claim along with a reasonable ROM estimate of the amount of the adjustment in Contract Sum and/or Contract Time sought by the Contractor, along with any backup known to the Contractor as of the date of the Initial Notice of Claim.

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§ 15.1.2.2 Within thirty (30) days' of providing the Initial Notice of Claim, the Contractor shall supplement its Notice of Claim by providing the following information, to the extent ascertainable by the Contractor: (1) a description of the date and time of the event giving rise to the request for an adjustment or interpretation of Contract terms, payment of money, an extension of time, or other relief with respect to the terms of the Contract; (2) a statement to the nature of the impacts to the Contractor and its Subcontractors, if any; (3) the amount of the adjustment or an estimate thereof in Contract Sum and/or Contract Time, if any, sought by the Contractor; (4) the contractual provisions on which the Claim is based; and (5) if the Claim includes any pass-through of claims and/or damages incurred, to be incurred, or alleged to be incurred by a Subcontractor or Supplier of any tier such that the Contractor is sponsoring the pass-through claim or damage, the Contractor shall certify that it has performed due diligence on the validity of Subcontractor's or Supplier's claim and that the amount requested by the Subcontractor or Supplier has appropriate supporting documentation and that there is good ground under the Contract Documents to support its claim against the Owner. If the Contractor is unable to provide any of the aforementioned information because such information is not ascertainable the Contractor shall explicitly state why or how such information is not ascertainable and provide monthly updates to the Owner of the status of such information.

§ 15.1.2.3 The Contractor shall provide the following certification on any Claim over $100,000: "I certify that the Claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the Tulalip Tribes of Washington is liable; and that I am duly authorized to certify the Claim on behalf of the Contractor." The certification shall be executed by an officer or partner of the Contractor with proper authority.

§ 15.1.2.4 Failure to give an Initial Notice of Claim within the fourteen (14) day period and in strict compliance with this paragraph and/or failure to supplement and provide all of the information required herein, shall constitute an absolute and complete waiver, bar, and release of such Claim.

§ 15.1.3 Audit of Claims

All claims made against the Owner by Contractor shall be subject to audit at any time following the receipt of the Notice of Claim. Failure of the Contractor, Subcontractors, or sub-tier subcontractors to maintain and retain sufficient records to allow the auditor to verify all or a portion of the Claim or to permit the auditor to timely access to the books and records of the Contractor, Subcontractors, or sub-tier subcontractors shall constitute an absolute waiver of the Claim and shall bar any recovery thereunder.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, a Notice of Claim as provided in Section 15.1.2 must be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, in addition to the information required above for the supplemental Notice of Claim, a Notice of Claim for an increase in the Contract Time shall also set forth in detail the circumstances that form the basis for the Claim, the date upon which each cause of delay began to affect the progress of the Work, the date upon which each cause of delay ceased to affect the progress of the Work, and the number of days' increase in the Contract Time claimed as a consequence of each such cause of delay, the usage of any Project Schedule Float as of the date of the Notice of Claim, and shall contain a complete time impact analysis based upon a fragmentary CPM analysis (Fragnet) illustrating how Contractor proposes to incorporate the change or alleged delay into the current updated Construction Schedule. Within 14 days of providing the Notice of Claim, the Contractor shall provide such additional supporting documentation as the Owner may require including, where appropriate, a revised construction schedule indicating all the activities affected by the circumstances forming the basis of the Claim. Failure to comply with this Section or to provide this additional information provide this additional information within 14 days of a request from the Owner shall result in an absolute bar, release, and waiver of the Claim.

§ 15.1.6.2 The Contractor shall not be entitled to a separate increase in the Contract Time for each one of the numbers of causes of delay which may have concurrent or interrelated effects on the progress of the Work, or for concurrent delays due to the fault of the Contractor.

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§ 15.1.6.3 Requests for extension of construction time due to Unusually Severe Weather Conditions shall include the monthly issue of "Local Climatological Data" for the months involved plus the "Normals, Means and Extremes" table from the latest "Annual Summary of Local Climatological" published by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Climatic Data Center for the station closest to the Project Site. No such Claim shall be valid unless so made. No Schedule Float shall be used without Owner's prior approval. Unless prescribed in the Owner or otherwise agreed upon by the Owner and Contractor, the "Normals, Means and Extremes" table will be the basis for determining the number of adverse weather days in excess of the total number of days prescribed by the Owner or otherwise agreed upon by the Owner and Contractor or, if not prescribed by the Owner or otherwise agreed upon, in excess of normally expected lost time; provided, however, if the Owner determines that the seasonal average of adverse weather days during construction is less than would be normally expected, no Change Order shall be issued and request for extension of time shall be denied.

§ 15.1.6.4 If Unusual Severe Weather Conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 CLAIMS FOR CONSEQUENTIAL DAMAGES

To the extent uninsured and except as provided below, the Contractor and Owner waive Claims against each other for uninsured consequential damages arising out of or relating to this Contract. This mutual waiver includes

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, business reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit.

This mutual waiver is applicable to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to waive or preclude (i) the assessment of the Liquidated Damages amount, if applicable, in accordance with the requirements of the Contract Documents; or (ii) any claims, losses, damages or other liabilities covered or that would be covered by the insurance required to be maintained by Contractor pursuant to the Contract Documents; or (iii) or for claims by Owner for loss revenue or income to the extent arising out of or related defects in construction discovered after Final Completion. In addition, and notwithstanding anything to the contrary contained herein, the foregoing waiver shall not apply to, limit, or affect either party's express indemnity obligations under the Contract to the extent such indemnity obligations relate to a Loss asserted by third parties against the indemnified party. In addition, and notwithstanding anything to the contrary contained herein, the foregoing waiver shall not apply to, limit, or affect the Owner's entitlement to seek consequential damages when Critical Milestone Dates are not achieved.

§ 15.2 Meet and Confer

§ 15.2.1 Any dispute between the Contractor and the Owner arising at any time during or after to construction of the Project shall be resolved, if possible, by negotiations between a principal or owner or member on behalf of the Contractor and on behalf of the Owner. The meet and confer requirement is a condition precedent to Contractor initiating any litigation for any Claim related to or arising out of this Agreement or the Work.

§ 15.2.2 If the officers designated above are unable to resolve the dispute within sixty (60) days after submission to them, either party may file for mediation in accordance with Section 15.3 below.

§ 15.2.3 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.4 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract shall be subject to mediation as a condition precedent to binding dispute resolution.

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§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Judicial Arbitration and Mediation Services' (JAMS) Mediation procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in accordance with applicable law. If the Tulalip Tribes of Washington is a party to such settlement agreement, enforcement shall be in accordance with the applicable law in the Tribal Court of the Tulalip Tribes of Washington.

§ 15.4 Binding Dispute Resolution

§ 15.4.1. Any Claim arising out of or related to the Contract or the Work performed by the Contractor, except Claims waived as provided in this Agreement, shall be subject to this Section 15.4. Prior to seeking claim resolution through mediation or litigation, the Contractor shall proceed under the administrative procedures of Sections 15.1 through 15.3. The provisions of these sections must be complied with in full, as a condition precedent to the Contractor's right to seek claim resolution through arbitration or litigation.

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DRAFT AIA® Document A133® – 2019 Exhibit A

Guaranteed Maximum Price Amendment

This GMP Amendment No. ____, dated the « » day of « » in the year « », is incorporated into the accompanying AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the « » day of « » in the year « » (the "Agreement")
(In words, indicate day, month, and year.)

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

«[Battle Creek and Lower Tulalip Creek Hatcheries]»
« »

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

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

»

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

«[insert]»

TABLE OF ARTICLES

A.1 GUARANTEED MAXIMUM PRICE

A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

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

A.5 EXHIBITS

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.

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ARTICLE A.1 GUARANTEED MAXIMUM PRICE

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 3.2.6 of the A133, the Owner and Construction Manager hereby amend the A133 to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price for this Scope of Work is an amount that the Contract Sum shall not exceed. The Contract Sum for this Scope of Work consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 7 of the A133.

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§ A.1.1.1 The Contract Sum for this Scope of Work is guaranteed by the Construction Manager not to exceed « » ($ « »), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price for this Scope of Work organized by trade categories, including Allowances; the Construction Manager's contingency; General Conditions; alternates; the Construction Manager's Fee; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the A133. Each Allowance is stated below as a single line-item amount that covers the total cost to complete the scope of Work it describes, together with a description of that scope sufficiently detailed to show what the Allowance is for. The Construction Contingency is shown as a separate line-item outside the Fee Base. When Construction Contingency is applied, the Fee may be billed as Section 6.2.3 of the A133 provides. General Conditions staff under Section 7.1.5(a) of the A133 are shown as an estimate equal to the Exhibit F rates of the A133 multiplied by the estimated months and percentage of time in this Amendment, billed at those rates for the time actually charged. Major Equipment and facilities under Section 7.1.5(b) of the A133 are shown as an estimate equal to the Exhibit F rates of the A133 multiplied by the estimated quantities and months in this Amendment, billed at those rates for actual use. Small tools, consumable supplies, and personal protective equipment under Section 7.1.5(c) of the A133 are shown as a separate not-to-exceed line-item equal to the Exhibit F percentage of the A133 multiplied by the staff cost under Section 7.1.5(a), reimbursed at actual cost. Other General Conditions under Section 7.1.5(d) of the A133, including the Contractor yard where the Owner has decided it, are shown as the Construction Manager's itemized estimate, reimbursed at actual cost.
(Provide itemized statement below or reference an attachment.)

«See **Exhibit M** »

§ A.1.1.3 The Construction Manager's Fee for this Scope of Work is fixed at $_____, equal to the Fee Percentage of ___% multiplied by the Fee Base of $_____, as Section 6.1.2.2 of the A133 provides.

§ A.1.1.4 The Guaranteed Maximum Price for this Scope of Work includes a Construction Contingency of $_____ (___ percent of the Cost of the Work, which shall not exceed five percent (5%) as Section 6.2.3 of the A133 provides). The Construction Contingency is shown as a separate line-item outside the Fee Base. When Construction Contingency is applied, the Fee may be billed as Section 6.2.3 of the A133 provides.

§ A.1.1.5 Alternates

§ A.1.1.5.1 Alternates, if any, included in the Guaranteed Maximum Price for this Scope of Work:

Item	Price

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

Item	Price	Conditions for Acceptance

§ A.1.1.6 Unit prices, if any:
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit ($0.00)

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ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ A.2.1 The date of commencement of this Scope of Work shall be:
(Check one of the following boxes.)

[« »] The date of execution of this GMP Amendment

[« »] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

« »

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

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

§ A.2.3 Substantial Completion

§ A.2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion:
(Check one of the following boxes and complete the necessary information.)

[« »] Not later than « » (« ») calendar days from the date of commencement of the Work.

[« »] By the following date: « »

§ A.2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve the following interim milestones for this Scope of Work, which the Owner and the Construction Manager established under Section 6.1.6.2 of the A133, by the following dates:

Interim milestone	Milestone Date

§ A.2.3.3 Liquidated damages for failure to achieve a Milestone Date apply to each site (Battle Creek Hatchery and Lower Tulalip Creek Hatchery) and are calculated separately for each Milestone Date, as Section 6.1.6.2 of the A133 provides: $500 per calendar day for each Milestone Date not achieved, until that milestone is achieved, up to $7,000 for each interim milestone and $10,000 for Substantial Completion. Liquidated damages for Final Completion are as Section 6.1.6.3 of the A133 provides.

§ A.2.3.4 Liquidated damages for failure to achieve Final Completion apply to each site (Battle Creek Hatchery and Lower Tulalip Creek Hatchery) independently, as provided in Section 6.1.6.3 of the A133 and are summarized below:

$200 per calendar day for each site until Final Completion of that site is achieved, up to a limit of $5,000 for each site.

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

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

§ A.3.1.1 Not Used

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

«See **Exhibit K** »

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Section	Title	Date	Pages

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

«See **Exhibit K** »

Number	Title	Date

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

Title	Date	Pages

Other identifying information:

§ A.3.1.5 Allowances, if any, included in the Guaranteed Maximum Price:
(Identify each allowance.)
State each Allowance as a single amount that covers the total cost to complete the scope of Work it describes, together with a description of that scope sufficiently detailed to show what the Allowance is for, and the basis of its estimate. Each Allowance amount requires the Owner's written approval under Section 3.8.1 of the A201.

Item	Scope Description	Price

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

«See **Exhibit O** »

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

« »

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

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

« »

§ A.4.2 [*insert if applicable]* Pursuant to Section 7.6.1.1 of the A133, this Scope of Work and Guaranteed Maximum Price includes subcontractor-default insurance as set forth below:
(Identify scoping, costs, limitation, etc. consistent with Section 7.6.1.1 and identify the deductible)

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« »

ARTICLE A.5 EXHIBITS

The below Exhibits are attached to this GMP Amendment and were intentionally not included AIA Document A133™–2019 at the time of execution. The parties agree that the A201-2017 and A133-2019 take precedence over these newly added Exhibits in accordance with A133-2019 Section 2.1.2. Any Amendments to the A133-2019 or A201-2017, or any Exhibits attached thereto, may only be made via Modification signed by both parties. Any Exhibits marked as "No Change" mean that there are no changes in the Exhibits from those included in the AIA Document A133™–2019, which are still in full force and effect.

Exhibit B	Insurance and Bonds, No Change
Exhibit C	Form Notice to Proceed, No Change
Exhibit D	Preconstruction and Construction Labor/Trade/Salary Rates, No Change
Exhibit E	Preconstruction Team, No Change
Exhibit F	Fee Matrix: rates, quantities, and months for staff and Major Equipment for this Scope of Work; the not-to-exceed amount for small tools, consumable supplies, and personal protective equipment; and the itemized estimate of other General Conditions, as Section 7.1.5 of the A133 provides
Exhibit H	Owner Indemnified Parties, No Change
Exhibit I	Construction Manager's Interim Mechanical and Final Lien/Claim Waiver, No Change
Exhibit J	Request for Qualifications and Proposals (select portions), No Change

Exhibits added by this GMP Amendment:

Exhibit K	Drawings and Specifications
Exhibit L	Schedule
Exhibit M	GMP Summary, Schedule of Values
Exhibit N	List of Project Superintendent and Personnel
Exhibit O	Construction Manager Assumptions

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

OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
« »« »	« »« »
(Printed name and title)	*(Printed name and title)*

DRAFT

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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]»
« »

TABLE OF ARTICLES

B.1 GENERAL

B.2 OWNER'S INSURANCE

B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

B.4 SPECIAL TERMS AND CONDITIONS

ARTICLE B.1 GENERAL

The Owner and Construction Manager shall purchase and maintain insurance, and provide bonds as set forth in this Exhibit 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.

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

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

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

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§ B.2.3 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 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

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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 at, on, under, or migrating from the Project sites that arise from the Work, 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. Pollution conditions arising from the transportation of materials or waste, and from disposal away from the Project sites, are covered by the Construction Manager's insurance under Section B.3.2.9, not by the Owner's policy. 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 persons and entities identified in Owner Indemnified Parties, Exhibit H to the A133, 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.

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§ 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;

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.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 $10,000,000 per occurrence and in the aggregate, such that there is a minimum of $11,000,000 in primary and excess or umbrella coverage ($1,000,000 primary/$10,000,000 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. The umbrella or excess liability insurance shall be written on an occurrence form.

§ B.3.2.5 Workers' Compensation at statutory limits.

§ B.3.2.6 Employers' Liability with policy limits not less than «One Million Dollars» ($ «1,000,000») each accident, «One Million Dollars» ($ «1,000,000») each employee, and «One Million Dollars» ($ «1,000,000») policy limit. For Work in Washington State, this coverage may be provided as stop gap employer's liability coverage.

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§ 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 Two Million Dollars ($2,000,000) per claim and Two Million Dollars ($2,000,000) 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 Contractor's Pollution Liability. The Owner's Pollution Liability insurance under Section B.2.4 covers pollution conditions at the Project sites. The Construction Manager shall purchase and maintain Contractor's Pollution Liability insurance covering bodily injury, property damage, and cleanup costs arising from pollution conditions caused by the Construction Manager's operations away from the Project sites, including (1) the transportation of materials, equipment, fuel, waste, spoils, and other cargo to, from, or between the Project sites, including loading and unloading, and (2) the disposal of waste, spoils, and other materials at any site or facility that is not owned or operated by the Construction Manager (non-owned disposal site coverage), with policy limits of not less than Two Million Dollars ($2,000,000) per claim and Two Million Dollars ($2,000,000) in the aggregate. The Construction Manager's Automobile Liability policy under Section B.3.2.3 shall include pollution coverage for covered autos by ISO endorsement CA 99 48 (Broadened Coverage, Pollution) and endorsement MCS-90. If this coverage is combined with professional liability or any other coverage in one policy, the policy shall state the limits that apply to pollution claims. If written on a claims made form, the coverage shall be maintained, or an extended reporting period purchased, for the period stated in Section B.3.2.1. The Owner and Owner-Related Parties shall be additional insureds, and this coverage shall be primary to the Owner's Pollution Liability insurance for pollution conditions arising away from the Project sites. The Construction Manager shall use only licensed transporters and shall dispose of waste only at facilities permitted to receive it. The Construction Manager shall require each Subcontractor that transports or disposes of waste, spoils, fuel, or hazardous materials to carry the same coverage, unless the Construction Manager's policy covers that Subcontractor's operations.

§ 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

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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 and 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 A312TM, 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 and 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 A312TM, 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:

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Meeting Minutes

Hatchery CMAR Pre-Proposal Meeting

Tulalip Tribes, Battle Creek Hatchery and Lower Tulalip Creek Hatchery Upgrade Program

Meeting Information

Meeting #	001	**Meeting Name**	Hatchery CMAR Pre-Proposal Meeting
Meeting Date	10/29/2026	**Time Zone**	Pacific Time (US and Canada)
Start Time	10:00 AM	**End Time**	[End time]
Meeting Format	In person	**Meeting Location**	Marina Conference Room, 7411 Tulalip Bay Dr, Tulalip, WA 98271
Meeting Link (video)	Not applicable	**Project / Program**	Hatchery CMAR RFQ/P, Battle Creek Hatchery and Lower Tulalip Creek Hatchery Upgrade Program
Chair	Jason Crain, Crain Advisors	**Minutes Prepared By**	Jason Crain, Crain Advisors
Minutes Status	Final	**Distribution Date**	Issued with Addendum No. 01

Overview

Purpose: To review the Hatchery CMAR Request for Qualifications and Proposals with prospective proposers, take questions, and tour both hatchery sites. These minutes are informational only. The RFQ/P, its exhibits, and any addenda control.

Attendees/Distribution

Name	Company / Organization	Role
Joe Lupo	IMCO	Business Development (Prime)
Mark Stouder	Strider Construction	Estimator (Prime)
Mitchell Sorestad	IMCO	Project Manager (Prime)
Russell Isam	IMCO	Superintendent (Prime)
Nick Gobin	Gobin Construction	President (Sub / Prime / JV)
TERO Team	Tulalip Tribes	Owner
Ricky Gerber	Garco Construction	Project Manager (Prime)
Alan McDaniel	Korsmo Construction	Superintendent
Ken Poss	Korsmo Construction	Superintendent
Bobby Oman	Andersen Construction	Superintendent
Robert Ekloff	Andersen Construction	Superintendent
Austen Karyic	Ox Concrete	Project Manager (Sub)

Name	Company / Organization	Role
Brandon Young	Andersen Construction	Superintendent
Josh Schoneman	Reece Construction	Estimator (Prime / JV)
Ryder Reece	Reece Construction	Estimator (Prime / JV)
Chris Stack	Harbor Pacific	Division Manager (Prime)
Tyler Kimberly	IMCO	President (Prime)
Jason Crain	Crain Advisors	Chair, procurement contact
Mike Crewson	Tulalip Tribes	Plant processes, site tour leader
John Mahan	Tulalip Tribes	Site tour leader
Dave Witbeck	McMillen Engineering	Engineer of Record

Agenda and Minutes

1. Introduction and Program

1.1 Welcome, introductions, and ground rules — **Assigned To:** Tulalip Tribes, Jason Crain

Notes

The Tulalip Tribes welcomed attendees and introductions were made.

Sign in was required. Attendance is a pass/fail minimum qualification (RFQ/P Section 7).

Oral statements do not modify the RFQ/P. Answers are issued by written addendum (RFQ/P Section 7).

These minutes will be issued with the addenda, which are posted and sent to all attendees of the pre-proposal meeting. The minutes are informational only. The RFQ/P, its exhibits, and any addenda control.

All communications about this procurement are to go in writing to Jason Crain (RFQ/P Section 7). The Owner's Representative is not yet engaged, so questions go to Jason Crain.

Tour leaders will show the sites but will not take procurement questions. Any answer given on a tour is informal.

1.2 Program and contract overview — **Assigned To:** Jason Crain

Notes

A single, integrated CMAR contract covers both hatcheries, with concurrent construction and an estimated construction cost of about $39,000,000 (RFQ/P Sections 1 and 4).

Construction Documents are complete or near complete (Exhibits D and E). Preconstruction focuses on estimating, constructability, long lead items, and GMP development (RFQ/P Section 4). BCH permits are expected in November and LTCH permits by the end of January.

The contract documents are Exhibits A.1 through A.4. Proposers are expected to execute them as written, and they are not returned with the proposal. Requested changes are submitted with the proposal as specific redlines (RFQ/P Section 7).

Addendum 01 will make some minor modifications to the published contract documents. Contract questions are requested in time for an Addendum 01 publish date of November 5. [A-1]

1.3 Schedule — **Assigned To:** Jason Crain

Notes

Key dates are in RFQ/P Section 6: questions due 3:00 PM PT November 13, proposals due 3:00 PM PT November 25, interviews tentatively the week of December 14, and the Board recommendation January 8, 2027.

The goal is to have a contractor selected and under contract, with a Notice to Proceed, no later than the end of February.

Exhibit H is a milestone level summary. The Construction Manager develops the integrated schedule for both sites, and liquidated damages apply per site (RFQ/P Section 6).

The lower pond bypass work is critical to the project schedule.

2. Proposal Requirements

2.1 Fee Matrix — **Assigned To:** Jason Crain

Notes

Exhibit B follows A133 Articles 5 through 7. Submit the signed PDF and the native Excel file, and enter data only in the blue cells (RFQ/P Section 9).

Rates are to be fully burdened and fixed at the first GMP Amendment (Exhibit B, General Rules). Fully burdened means rates include escalation through the Contract Time and each person's phone, computer, and vehicle.

Equipment is priced in Section D as a CM means and methods item. The listed equipment is not a requirement. The equipment rules apply to Proposer owned or related party equipment, which is priced using the Blue Book method in Section D. They do not preclude renting equipment from third parties.

Other general conditions go on the Anticipated GC List. It is information only and is not scored. The GC List does not limit reimbursement. For example, yard establishment is developed with the GMP.

The Total Proposed CM/GC Cost drives the 15 point cost score. Every priced line needs a note in the Clarifications column.

Common errors to avoid: changing formulas or locked assumptions, leaving the Clarifications column blank, putting home office costs in rates instead of the Fee (A133 Section 7.9.1), and charging the same cost in a rate and on the GC List.

Project Executive time: time spent directly supervising the project team may be charged as a Cost of the Work. General internal time, such as internal project reviews, is home office overhead. It is included in the Fee and is not charged as a Cost of the Work or built into rates.

Two sites: general conditions costs are to be prorated between the sites based on the cost of the work at each site. This is current thinking only. Tulalip plans to work out the details with the selected CM.

2.2 TERO and Native preference	Assigned To: Jason Crain

Notes

The RFQ/P and contract are governed by TTC Chapter 9.05. Fifteen of the 100 evaluation points are reserved for Native preference (RFQ/P Section 5).

Proposers do not need to be TERO certified or Native owned to submit. Contract compliance requirements are in Part III of the Supplementary Conditions.

The TERO code is available to proposers. Section 270 does not apply to this project because it has outside funding.

The 1.75 percent TERO fee is paid by the contractor under the Supplementary Conditions and A133 Section 7.6.3. It is the same for all proposers, so it is not priced on the Fee Matrix.

The TERO engagement plan needs to be substantive and will impact scoring. Tulalip will hold the selected CM to the engagement plan in its proposal.

2.3 Procurement and flow through requirements	Assigned To: Jason Crain

Notes

Tulalip Procurement Policy and Federal funding requirements flow down to every subcontract and purchase order (RFQ/P Section 7 and Supplementary Conditions Part IV). Proposers should refer to Part IV for the full flow down list.

The CM competitively procures trade and material scopes with best efforts to obtain at least three bids per package (RFQ/P Section 4 and Supplementary Conditions Section 4.5).

Highlights: sealed bids above $25,000, every package to the TERO Office and NAOB Registry firms, Owner's Representative review of packages and a Tulalip business license for every subcontractor.

2.4 Laydown areas and site logistics	Assigned To: Jason Crain

Notes

Exhibit I shows potential contractor yards and an office site. Locations are pending, and final locations will be set with the CM and Public Works. Yard set-up costs are not in the Fee Matrix and are developed with the GMP, including establishment and restoration (Supplementary Conditions Section 7.6). Office trailer rentals are in the Fee Matrix.

The Owner will add four person office trailer to the project, to be provided by the CM as a General Conditions cost, including connections, utilities and cleaning.

The two sites are about 1.2 miles apart. Both are operating facilities.

Utilities, hydrant meters, and broadband are covered in Section 7.6 of the Supplementary Conditions. The current Supplementary Conditions note that utilities are an Owner cost. That will be changed to a contractor cost in Addendum 01. [A-2]

Water and sewer are available at the office site. Internet installation and the monthly cost are a General Conditions cost.

2.5 Proposal submission and evaluation	Assigned To: Jason Crain

Notes

Proposals are due by email at 3:00 PM PT, Wednesday, November 25, 2026, within the page limit in RFQ/P Section 8.

Minimum qualifications, evaluation criteria, interviews, debriefs, and protests are in RFQ/P Sections 7 and 9. Minimum qualifications are pass/fail. Addendum 01 will update the minimum qualifications to address some unintended restrictiveness. [A-2]

A strong proposal includes a clear plan for staffing and supervising two concurrent sites (Staffing Plan and Approach criteria), identified self-performed scope, a complete and internally consistent Fee Matrix, and a real TERO and NAOB engagement plan.

November 13 is the deadline for questions and for protests of RFQ/P terms. [A-3]

3. Plant Processes, Questions, and Site Tours	
3.1 Review of plant processes	**Assigned To:** Mike Crewson
Notes Mike Crewson presented a PowerPoint presentation of the plant operations. The presentation is to be considered informational only and not to be relied on.	
3.2 Questions and answers	**Assigned To:** Jason Crain
Notes Questions are logged. Responses that change or clarify the RFQ/P are issued by addendum to all proposers. Oral answers are not binding. Formal written questions are due to Jason Crain by 3:00 PM PT, Friday, November 13, 2026. [A-3]	
3.3 Site tours	**Assigned To:** Mike Crewson or John Mahan
Notes Site visits of both facilities are part of the pre-proposal process. No special PPE is required for the tours. Procurement questions are not answered on the tour. Submit them in writing to Jason Crain.	

Action Items

ID	Action Item	Assigned To	Due Date	Status
A-1	Submit contract questions in time for Addendum 01 (1.2).	Proposers	11/05/2026	Open
A-2	Publish Addendum 01: minor contract document modifications, minimum qualification updates, and utilities as a contractor cost (1.2, 2.4, 2.5).	Jason Crain	11/05/2026 (target)	Open
A-3	Submit formal written questions and any protests of RFQ/P terms by 3:00 PM PT (2.5, 3.2).	Proposers	11/13/2026	Open
A-4	Issue Addendum 02 answering written questions (3.2).	Jason Crain	TBD	Open
A-5	Submit proposals by email by 3:00 PM PT (2.5).	Proposers	11/25/2026	Open

Decisions Made

Ref.	Decision	Decided By	Date
D-1	No decisions were made. Oral statements do not modify the RFQ/P.	Not applicable	10/29/2026

Open Issues and Parking Lot

Ref.	Issue / Question	Raised By	Next Step
I-1	Final contractor yard and office locations pending (2.4).	Owner	To be set with the CM and Public Works.
I-2	Proration of general conditions costs	Owner	Details to be worked out with the

Ref.	Issue / Question	Raised By	Next Step
	between the two sites (2.1).		selected CM.
I-3	Minimum qualification updates (2.5).	Owner	Addressed in Addendum 01.

Attachments

File / Document	Description
Sign-in Sheet	Attendee sign-in sheet (2 pages), issued with these minutes as part of Addendum No. 01.

Review and Approval

These minutes are informational only and summarize the meeting. The RFQ/P, its exhibits, and any addenda control. Corrections may be sent in writing to Jason Crain.

Role	Name	Signature	Date
Prepared by	Jason Crain, Crain Advisors		

End of Minutes

SIGN IN

Hatchery CMAR Pre-Proposal Meeting

Battle Creek Hatchery and Lower Tulalip Creek Hatchery Upgrade Program

Thursday, October 29, 2026, 10:00 AM PT, Marina Conference Room, 7411 Tulalip Bay Road, Tulalip, WA

Attendance is logged and is a pass/fail minimum qualification (RFQ/P Section 7). Please print legibly, one line per attendee, and list the proposing firm you represent. Joint venture partners and subcontractors should list the proposing firm in the last column.

Name	Title	Firm	Email	Phone	Role on proposing team (Prime, JV, Sub, Other)
Joe Lupo	Business Development	IMCO	bid@imcoconstruction.com	360 815 6803	Prime
mark stouder	estimator	strider const	bids@striderconstruction	360 380 1234	prime
Mitchell Sorestad	Project Manager	IMCO	bids@imcoconstruction.com	360 305 9869	Prime
Russell Isam	Superintendent	IMCO	bids@imcoconstruction.com	3604100027	Prime
Nick Gobin	President	Gobin Construction	nick.gobinconstruction@gmail.com	360-631-7639	Sub/Prime/JV
TERO		Tulalip Tribes			
Rocky Gerber	PM	Garco const	bids@garco.com	253-6665414	prime

SIGN IN

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Name	Title	Firm	Email	Phone	Role on proposing team (Prime, JV, Sub, Other)
ALAN McDANIEL	SUPERINTENDENT	KORSMO CON.	amcdaniel@korsmo.com	253-625 1532	QA QC
KEN POSS	SUPERINTENDENT	KORSMO CONS.	KPOSS@KORSMO.COM	253-361-6949	SUPER
Bobby Oman	Superintendent	Anderson Const	Boman@Anderson-const.com	425 422 2246	SK Supt
Robert Ekloff	Superintendent	Andersen Cons	rekloff@andersen.construction	206 3794702	Super
Austen Kartic	Project Manager	Ox Concrete	akartic@ox-concrete.com	206-735-5446	Sub
Brandon Young	Superintendent	Anderson Cons	byoung@anderson-const.com	360-941-5567	Supa
Josh Schoneman	Estimator	Reece Construction	bidsereece-construction.com	360-659-9600	Prime/JV
Ryder Reece	Estimator	Reece construction	Bids@reece-construction.com	360-659 9600	Prime/JV
Chris Stack	Division Mgr	Harbor Pacific	bids@harborpacific.com	206 491-9913	Prime
TYLER KIMBERLEY	PRESIDENT	IMCO	TK@IMCOCONSTRUCTION.COM	360-671-3936	PRIME