

# 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 2023

**BETWEEN** the Owner:

Petersburg Medical Center, a component of the Petersburg Borough  
103 Fram St.  
Petersburg, AK 99833

and the Construction Manager:

Dawson Construction, LLC  
405 32<sup>nd</sup> St.  
Bellingham, WA 98225  
for the following Project:

New Petersburg Medical Center  
Petersburg, Alaska

The Architect:

Bettisworth North Architects and Planners, Inc.  
212 Front Street, Ste. 200  
Fairbanks, AK 99701

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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### EXHIBIT B INSURANCE AND BONDS

#### ARTICLE 1 INITIAL INFORMATION

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

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

Petersburg Medical Center (PMC) plans to construct a new Critical Access Hospital to replace the existing 12-bed, 50,000 sq. ft. facility which is now at the end of its useful life. The project will include outpatient clinic space and a Long Term Care wing. The primary governing code and design guidelines will be the 2021 International Building Code (IBC) and the 2022 Guidelines For Design and Construction Of Health Care Facilities published by the Facility Guidelines Institute (FGI) .

§ 1.1.2 The Project's physical characteristics:

A 17 acre site has been identified for the project near North Haugen Dr. and Excel St. The property is owned by the Petersburg Borough (reference Plat No. 77-2). See Section 1.1.15 for a list of other pertinent information.

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

The Owner's budget for the Cost of the Work will be determined at the end of the Preliminary Design Phase.

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

The Owner's anticipated design and construction milestone dates are summarized in a draft Master Project Schedule dated 18 November 2022 attached to this Agreement, subject to the availability of funds. The parties contemplate that

the Master Project Schedule may be modified from time to time if such modified version has been approved by Owner, and in such event, the modified Master Project Schedule will replace and supersede all previous versions of the Master Project Schedule.

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

The requirements for accelerated or fast-track design and construction, or phased construction are set forth in the Master Project Schedule. In particular, it is anticipated that the Project may require separate off-site improvement and site work packages and/or a procurement package for long lead materials/equipment. These packages may require issuing a limited Notice-To-Proceed to the Construction Manager prior to executing the formal Guaranteed Maximum Price Amendment.

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:

No formal certification.

§ 1.1.6.1 Not Used

§ 1.1.7 Other Project information:

None at this time.

§ 1.1.8 The Owner identifies the following representatives in accordance with Section 4.2:

Project Manager  
Jay Farmwald  
JAF, LLC  
6600 Gunnison Dr.  
Anchorage, AK 99516

The individual who has the express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization is Philip Hofstetter, CEO, Petersburg Medical Center.

§ 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:

The Architect

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

- .1 Architect: Bettisworth North
- .2 Geotechnical Engineer: RESPEC
- .3 Land Surveyor: RESPEC
- .4 Environmental Services: RESPEC
- .5 IBC Required Special Inspections and Material Testing Laboratory: TBD
- .6 Commissioning Agent: TBD

§ 1.1.11 The Architect's representative:

Roy Rountree, AIA  
2600 Denali St., Suite 710  
Anchorage, AK 99503

and

Juli Suver, AIA  
2600 Denali St., Suite 710  
Anchorage, AK 99503

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

Kendall Nielsen  
[knielsen@dawson.com](mailto:knielsen@dawson.com)  
Ph: 360.756.1000

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

Senior Project Manager – Ryan Binning  
Construction Manager – Chris Gilberto  
Project Manager – Ben Coon  
Estimator – Ben Coon  
Superintendent – Les Hostetler

The persons listed in Sections 1.1.12 and 1.1.13 are referred to hereunder as "Key Personnel."

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

Subcontractors and vendors shall be selected using a best value RFP process. The Owner shall participate in determining best value. Upon request by Owner, Construction Manager shall obtain proposals for work contemplated to be self-performed by Construction Manager. In such situations, Owner reserves the right to evaluate all proposals to determine overall best value.

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

- a. Preliminary Geotechnical Investigation (September 2022)
- b. Preliminary Site Survey (September 2022)
- c. Phase I Environmental Site Assessment (September 2022)
- d. Preliminary Utility and Access Assessment (November 2022)
- e. Concept Design Submittal (January 2023)

§ 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 shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

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

## ARTICLE 2 GENERAL PROVISIONS

### § 2.1 The Contract Documents

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

## § 2.2 Relationship of the Parties

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

## § 2.3 General Conditions

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

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

## ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

## § 3.1 Preconstruction Phase

### § 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager.

§ 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. 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.

### § 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall attend 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 and general sustainability issues. 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/delegated design services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing Building Information Modeling (BIM) and digital data protocols for the Project. The Construction Manager shall review and analyze BIM reports to identify and resolve conflicts in collaboration with the Architect and Owner.

§ 3.1.3.4 Construction Manager shall actively participate as an engaged member of the project team to advise on design concepts and schedules including reviewing in-progress design documents and providing advice and recommendations with respect to completeness, clarity, construction feasibility, alternative materials/methods and long-lead material procurements. Construction Manager shall assist the Architect in the development of the design documents required to be prepared by the Architect pursuant to the Agreement between the Architect and the Owner (“Design Documents”) for the Project by making recommendations and providing advice directly to the Architect, but shall not provide professional services which constitute the practice of architecture or engineering. All recommendations and advice of Construction Manager or any specialty subcontractors concerning the Design Documents including without limitation any proposed modifications or alternatives, shall be subject to the review and approval of the Architect in consultation with the Owner. The Architect shall have final decision authority on whether to include or incorporate any such recommendations and advice into the Design Documents.

§ 3.1.3.5 Construction Manager shall provide information on construction materials, methods, systems, phasing and costs to assist in determinations aimed at providing Owner with the highest quality facility, consistent with the budget, schedule, design intent and program requirements.

§ 3.1.3.6 Construction Manager shall recommend strategies for the division of work to facilitate bidding and award of trade contracts, considering such factors as the sequence of construction, funding availability, improving or accelerating construction completion, and other related issues.

§ 3.1.3.7 Construction Manager shall establish procedures for the preparation of all shop drawings, submittals, requests for information and related documents prepared by or for the Construction Manager, and expediting the Architect’s and Owner’s review of same.

#### § 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare, maintain, and update a Critical Path Method (CPM) Project schedule for the Architect’s and Owner’s review, and the Owner’s acceptance. The Construction Manager shall maintain and update the Project schedule on a monthly basis and make the most recent version of the Project schedule available to the Architect and Owner. The Construction Manager shall obtain the Architect’s approval for the portion of the Project schedule relating to the performance of the Architect’s services. The Project schedule shall coordinate and integrate the Construction Manager’s services, the Architect’s services, other Owner consultants’ services, and the Owner’s responsibilities; and identify items that affect the Project’s timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner. Construction Manager shall monitor the Project schedule and recommend adjustments to ensure completion of the Project within the approved construction schedule.

#### § 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect and Owner, 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 and Owner’s review, and the Owner’s approval, preliminary Open Book estimates of the Cost of the Work. 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 each of these intervals and other appropriate intervals agreed to by the Owner, Architect, and Construction Manager, 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 estimates shall be provided for the Architect's and Owner'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. As the Project progresses through the Construction Documents phase, the Construction Manager shall continue to review costs jointly with the Owner and Architect, with the objective of maintaining the cost estimate within the budget through exploring alternatives and other options.

§ 3.1.6.3 If 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 Not Used

#### § 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 The Construction Manager shall provide a subcontracting plan for the Owner's review and approval; provided that at a minimum the subcontracting plan shall address the Owner's requirements in Section 1.1.14 and include specialty subcontractors for design advice and estimating services during the Pre-Construction Phase..

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

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

#### § 3.1.12 Procurement

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

#### § 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, and all other legal requirements 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

- .1 Assist Owner and Architect in the preparation of Building Permit applications and resolution of issues.
- .2 Other services TBD based on Construction Manager's proposal and subsequent negotiations.

### § 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, and in consultation with the Architect, the Construction Manager shall prepare an Open Book Guaranteed Maximum Price proposal based on the rates/markups in Section 6.1 or as otherwise mutually agreed for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of

the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

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

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price, which shall be no less than thirty days (30) after the delivery of the Guaranteed Maximum Price proposal to the Owner.

**§ 3.2.4** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. The Owner must approve the amount of GMP Contingency, and the GMP Contingency amount shall be included in the Guaranteed Maximum Price Amendment. The meaning, use, and any potential savings split of the GMP Contingency shall be as provided for in Section 7.5 of AIA Document A201-2017, as amended by the parties.

**§ 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. The time for Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal shall be tolled up to an additional 30 days (for a total open period of 60 days) during the interval from the Owner's notice of inconsistencies or inaccuracies and the Construction Manager's re-delivery of the adjusted Guaranteed Maximum Price proposal.

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

**§ 3.2.6.1** In the event of the Owner and Construction Manager fail to timely execute a GMP Amendment, the Owner reserves the right to negotiate and contract for the construction of the Project with another contractor or take other action as it deems appropriate. In the event the Owner elects to contract the Construction Phase Work with an alternate contractor, the Construction Manager shall not be entitled to any lost profits, consequential damages or other damages, but shall be entitled only payment for Pre-Construction Phase services under section 3.1 satisfactorily performed under this Agreement. This section 3.2.6.1 does not preclude the Owner from terminating this Agreement pursuant to the terms of this Agreement.

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



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

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

### § 3.3 Construction Phase

#### § 3.3.1 General

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

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

§ 3.3.1.3 Following the execution of the Guaranteed Maximum Price Amendment, the Owner and Construction Manager may mutually decide to negotiate and agree on a lump sum price for the Contract Sum. In that event, Owner and Construction Manager shall execute a Change Order which will specify the Contract Sum including any revisions to relevant contractual terms and provisions.

§ 3.3.1.4 The Contract Time shall be measured by the date of commencement of the Work.

§ 3.3.1.5 The Construction Manager shall achieve Substantial Completion of the Work not later than \_\_\_\_\_ days from the date of commencement of the Work, or as follows:

*[To be negotiated in the GMP Amendment.]*

subject to adjustment of the Contract Time as provided in the Contract Documents.

#### § 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 (both overall and look ahead), and status of the Work, Commissioning and pay applications. Up to date logs related to submittals, RFI’s, change orders, and quality control issues shall be presented at each meeting. During active construction, such meetings shall include a site walk-through and inspection on the progress, quantity and quality of the Work. The Construction Manager shall prepare and promptly distribute draft minutes of the meetings for Owner’s and Architect’s review. Final corrected minutes shall be promptly distributed to Owner and Architect. Construction Manager shall also promptly distribute all other relevant/updated information to the Owner and Architect, including but not limited to submittals, RFI’s, daily logs, CPM schedule updates, pay applications, reports, test and inspection results, etc.

§ 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 CPM construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

#### § 3.3.2.3 Monthly Report

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

#### § 3.3.2.4 Daily Logs

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

#### § 3.3.2.5 Cost Control

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

#### § 3.3.2.6 Permits, Tests and Inspections

The Construction Manager shall coordinate and secure all permits required to construct the Project. The Construction Manager shall also coordinate and schedule all code required and other inspections and tests required by the Contract Documents, and inform the Owner and Architect in a timely manner so they have a reasonable opportunity to observe all inspections and tests.

§ 3.3.2.7 The Construction Manager shall designate in writing a representative who shall have the express authority to bind the Construction Manager with respect to all matters requiring the Construction Manager's approval and authorization. This representative shall have the authority to make decisions on behalf of the Construction Manager concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the performance of the Work. Key Personnel shall remain the same during the Preconstruction and Construction Phases and shall not be replaced on the Project without the Owner's written consent, which shall not be unreasonably withheld.

### ARTICLE 4 OWNER'S RESPONSIBILITIES

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

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

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

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

§ 4.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish certain structural and/or environmental information or services as mutually agreed between the Construction Manager and Owner with reasonable promptness. While the Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner, the Construction Manager must still comply with all requirements of the Contract Documents, including taking proper precautions relating to the safe performance of the Work. In particular, the Owner shall furnish the following:

§ 4.1.4.1 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 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 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, as mutually agreed between the Construction Manager and Owner, with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.6 Not Used

#### § 4.2 Owner's Designated Representative

The Owner's Representative (aka Project Manager) identified in Section 1.1.8 is authorized to act on the Owner's behalf on issues directly related to the Project. Except as otherwise provided in Section 4.2.1 of the General Conditions, the Architect does not have such authority. References to the Owner in this Agreement, with respect to the submittal of documents, reviews, inspections, meeting attendance, etc. shall mean both personnel with Project responsibilities employed directly by the Owner, and Owner's Representative identified in Section 1.1.8. However, when this Agreement stipulates "Owner approval", such approvals are reserved for and shall only be made by authorized individuals who work directly for the Owner, unless specifically stated otherwise in this Agreement or otherwise delegated in writing to the Representative identified in Section 1.1.8. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay and sequential progress of the Work.

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

#### § 4.3 Architect

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

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

#### § 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, including subcontractor personnel, the Owner shall compensate the Construction Manager a lump sum fixed fee of \$175,000.

§ 5.1.2 If the Preconstruction Phase services have not been completed within twelve (12) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

#### § 5.2 Payments

§ 5.2.1 Payments for Pre-Construction services shall be made in 12 equal monthly installments. The first installment shall be due on 2023.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid 60 days after the invoice date shall bear interest at a rate of 5% per year.

## ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

### § 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee of 5.5%.

§ 6.1.2 The costs for General Condition items included in the GMP shall be consistent with the General Conditions Cost on the Price Proposal Form included with the Construction Manager's Proposal submitted on 10 February 2023 in response to the CMAR Request For Proposals dated 20 December 2022.

§ 6.1.3 The cost for the Construction Manager's Key Personnel included in the GMP shall be based on the following hourly rates.

Senior Project Manager:	\$140
Project Manager:	\$110
Superintendent:	\$130
Asst. Project Manager:	\$90
Estimator:	\$100
Project Administrator:	\$65
Quality Control Officer:	\$80
Safety Manager:	\$95
Construction Manager:	\$140
Project Engineer:	\$85

§ 6.1.4 Rental rates for Construction Manager-owned equipment included in the GMP shall be an open-book negotiation but shall not exceed local market values. Rental rates for rented equipment included in the GMP shall be an open-book negotiation with the Owner. The Construction Manager shall advise the Owner's Project Team if the anticipated total rental cost for any Construction Manager-owned equipment is likely to exceed the total purchase price of the equipment. If the purchase of such equipment is likely to produce Project cost savings, the Construction Manager shall recommend equipment purchases, with title taken by the Owner or the Construction Manager as appropriate. In no event shall the total rental cost exceed the fair market value of the Construction Manager-owned equipment as identified in the Construction Manager's accepted proposal, and all rent shall be abated if this limit is reached.

§ 6.1.5 Markup, if any, in addition to the fee stipulated in Section 6.1.1 above, that will be applied to self-performed work shall not exceed ten percent (10%).

§ 6.1.6 The total aggregate markup that will be used by all first-tier subcontractors in the GMP, to cover profit and home office overhead costs for the first-tier subcontractor and all lower-tier subcontractors that perform work for them shall not exceed ten percent (10%) without prior written consent of the Owner. Maximum markup rates shall be reflected, for each trade category and subcontract, in the approved GMP Amendment.

§ 6.1.7 Fees to cover profit, home/field office overhead (including key personnel time), and General Condition costs for Change Order Work, in the event the Cost of the Work is increased or decreased through a Change Order signed by both parties, shall be as follows:

Construction Manager Fee on Direct Change Order Work:	10%
Construction Manager Fee on Subcontract Change Order Work:	5.5%
Aggregate Subcontractor Fee on First-Tier and all Lower-Tier Subcontract Change Order Work:	10%

§ 6.1.8 Liquidated damages for delay are set out in Section 8.4 of the A201 General Conditions.

§ 6.1.9 Sharing of Savings with Construction Manager are set out in Section 8.5 of the A201 General Conditions.

### § 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 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 6.2.3 The Construction Manager shall not use any funds from the Construction Manager's contingency without the prior written approval of the Owner. The Construction Manager shall keep a Contingency Log up to date and review it with the Owner on a monthly basis. If the Owner and Construction Manager disagree on the use of the contingency for any item and the parties are not able to resolve the dispute, the matter will be resolved as provided in Article 15 of AIA Document A201-2017, as amended by the parties.

§ 6.2.3.1 During the review of the Contingency Log, the parties will discuss opportunities to release a portion of the contingency to the Owner for the Owner's use in connection with the Project before Substantial Completion.

### § 6.3 Changes in the Work

Change Order procedures are set out in Article 7 of the A201 General Conditions.

## ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 7.1 Costs to Be Reimbursed

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

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

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

### § 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops. Quantities, roles and unit rates for these personnel are dependent upon the exact scope of work for the Project (including the scope of work which will be self-performed by Construction Manager), and will be memorialized in the Guaranteed Maximum Price Amendment. As of the date of this Agreement, the Owner's Project funding does not require prevailing wages nor is otherwise subject to the federal Davis-Bacon Act. (For the avoidance of doubt, the Little Davis-Bacon Act, Alaska Statutes Title 36, does apply to this Project.) If, based on future funding sources, the federal Davis-Bacon Act does apply, the Owner will notify the Construction Manager of such application, and the Construction Manager shall pay its employees, and shall require its subcontractors to pay their employees, prevailing wages, as required by and in compliance with applicable state and/or federal law and/or regulations, for all Work on the Project performed by Construction Manager and Construction Manager's employees and subcontractors. In the event that the federal Davis-Bacon Act does apply, as contemplated in the prior sentence, prior to final payment under this Contract, Construction Manager shall certify in writing that prevailing wages have been paid for all Work performed on the Project by Construction Manager and Construction Manager's employees and subcontractors. The Owner is responsible for providing the Construction Manager with documentation of the prevailing wage and/or federal Davis-Bacon wage that would be applicable to the project. The Construction Manager will be entitled to a Change Order if state prevailing or federal Davis-Bacon wages become part of the project after execution of any GMP Amendment.

§ 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 that are not already covered by the overhead component of the Construction Manager's Fee:

To be determined during GMP negotiations, which per Dawson's proposal, will have a 5% annual escalation rate.

§ 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, with Owner's prior approval.

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

### § 7.3 Subcontract Costs

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

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

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

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

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

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

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

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

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

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

### § 7.6 Miscellaneous Costs

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

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. In the event that the Construction Manager self-insures risks associated with the Work, the Construction Manager's costs of insurance for the risk shall be deemed to be the lowest guaranteed cost then available to the Construction Manager under a fully insured program.

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

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

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

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

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

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. Notwithstanding the foregoing, such costs shall be limited to the amount of insurance proceeds or other indemnification from the Architect actually received by the Owner related to such claims, suits, or judgments.

§ 7.6.5.2 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. These costs will be paid to the Construction Manager outside of the Agreement.

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

§ 7.6.7 Costs of document reproductions and delivery charges.

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

§ 7.6.9 Not Used

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

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

## § 7.7 Other Costs and Emergencies

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

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

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work did not violate the standard of care and was not otherwise caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, or the Construction Manager's subcontractors or suppliers or anyone for whom the Construction Manager is responsible, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

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

#### § 7.8 Related Party Transactions

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

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

#### § 7.9 Costs Not To Be Reimbursed

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

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

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

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

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

#### ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager’s own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager



shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Owner. The Construction Manager shall conduct a Subcontractor prequalification process, which has been reviewed and approved by the Owner, and the Construction Manager may in its sole discretion reject bids from Subcontractors which are incomplete, nonresponsive, or bids from Subcontractors whose prequalification documentation is not acceptable to the Construction Manager. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

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

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

#### **ARTICLE 10 ACCOUNTING RECORDS**

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

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

##### **§ 11.1 Progress Payments**

§ 11.1.1 Based upon Applications for Payment submitted to the Owner's Representative by the Construction Manager, and Certificates for Payment issued by the Owner's Representative, 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.

§ 11.1.3 Provided that an Application for Payment is received by the Owner's Representative not later than the 7th day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the 7th day of the following month. If an Application for Payment is received by the Owner's Representative after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty (30) days after the Owner's Representative receives the Application for Payment.

§ 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 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. The level of detail of each Application for Payment shall be as mutually agreed between the parties.

§ 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 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 the GMP Contingency to another line item in the schedule of values, the Construction Manager shall request approval from, submit supporting documentation to the Owner.

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

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

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

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

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Owner's Representative 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 Owner's Representative may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

## **§ 11.1.8 Retainage**

**§ 11.1.8.1** For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold five percent (5%), as retainage, from the payment otherwise due. If retainage is not held by the Lender, it will be deposited monthly to an Escrow Account.

**§ 11.1.8.1.1** Bond premiums and mobilization costs are not subject to retainage.

**§ 11.1.8.2** At any time after completion of fifty percent (50%) of the Work, the Owner, at its sole discretion, may authorize a reduction in the retainage percentage or the method whereby the retainage is calculated. Owner may consider, at Owner's sole discretion, a release of retainage for early completion subcontractors.

**§ 11.1.8.3** Except as set forth in this Section 11.1.8.3, upon Final Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. At any time after completion of the Substantial Completion inspection, the Owner, in its sole discretion, may authorize a reduction of the retainage.

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

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

**§ 11.1.11** The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements. Subcontractors performing early-release work packages may be eligible for full and final payment upon completion and acceptance of their work. The Owner, in its sole judgment, will decide whether to release retainage held on account of such subcontractors' work to permit final payment to be made to such subcontractors as requested by the Construction Manager. Subcontractor payment is contingent upon the Subcontractor's waiver of its lien rights. The Construction Manager shall provide in all of its subcontracts for the Subcontractor to submit, with its application for payment, a written lien release for that percentage of the work completed. Full and final payment to Subcontractors will not be made until all lien rights have been waived.

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

**§ 11.1.13** Subject to any applicable prompt payment statute, all retainage shall be released upon Substantial Completion of the Work except for a reasonable reserve to cover incomplete items. Such reserve shall be at least equal to One Hundred Fifty percent (150 %) of the reasonable value of the incomplete work items. The Construction Manager shall propose to the Owner and Architect a list of items to be completed or corrected with a proposed money reserve for each item to assure the Owner the completion of such items. If the Owner finds such reserve reasonable, the Owner shall release to the Construction Manager all retainage in excess of such reserve. If the Owner deems the Construction Manager's list to be incomplete or insufficient in the amount reserved, the Owner shall develop a fair and reasonable list and reserve and pay all contract sums, including retainage, then earned in excess of such reserve to the Construction Manager. As items of work covered by the reserve are completed or otherwise agreed upon and settled between the Owner and Construction Manager, the sum withheld for such items shall be paid over to the Construction Manager.

## **§ 11.2 Final Payment**

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

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment;
- .3 a final Certificate for Payment has been issued by the Owner's Representative in accordance with Section 11.2.2.2; and
- .4 all requirements in Section 9.10.2 of AIA Document A201-2017 have been met.

§ 11.2.1.1 At the time of final payment, the Construction Manager shall submit to the Owner a complete report detailing the Cost of the Work incurred in the actual performance of the Work, together with a summary of all payments received from the Owner.

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

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

§ 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 Owner's Representative 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 Representative'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 Owner's Representative and/or Architect are not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager may commence the Dispute Resolution process in accordance with the General Conditions at Article 15 of AIA Document A201–2017. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Owner Representative's final Certificate for Payment.

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

§ 11.2.4 Notwithstanding any other provision of this Agreement to the contrary, any rights of the Owner or Project Manager to audit the Construction Manager's records shall pertain at any time during construction and within one (1) year following Final Completion of the Work, or such longer period required by a grant or other funding source.

### § 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at a rate of five percent (5%) per year. The parties understand and agree that any interest amounts under the Contract, including any subcontractor interest, shall be subject to the provisions of AK Stat. § 45.45.010 to the extent applicable.

## ARTICLE 12 DISPUTE RESOLUTION

### § 12.1 Initial Decision Maker

§ 12.1.1 Not Used

§ 12.1.2 The Owner's Representative will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Pre-Construction and Construction Phase services.

### § 12.2 Mediation

§ 12.2.1 Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Construction Manager's services, the Construction Manager may proceed in accordance with

applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

**§ 12.2.2** The Owner and Construction Manager shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution 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, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

**§ 12.2.3** 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 any court having jurisdiction thereof.

### **§ 12.3 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:

- Arbitration pursuant to Article 15 of AIA Document A201–2017
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

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

## **ARTICLE 13 TERMINATION OR SUSPENSION**

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

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

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

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

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

**§ 13.1.5** If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase (where Construction Phase services have been authorized pursuant to a limited Notice to Proceed) but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

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

**§ 13.1.6** The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1, but not for any consequential, special, or punitive damages. 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 reasonable costs incurred by the Construction Manager because of such termination.

### **§ 13.2 Termination Subsequent to Establishing, and Following Execution of, Guaranteed Maximum Price**

#### **§ 13.2.1 Termination Subsequent to Establishing Guaranteed Maximum Price**

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 13.2.1.2 and 13.2.1.3 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2017.

**§ 13.2.1.2** If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2017 shall not exceed the amount the Construction Manager would otherwise have received.

**§ 13.2.1.3** If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2017 shall not exceed the amount the Construction Manager would otherwise have received. The Construction Manager shall not be entitled to receive the Construction Manager's fee for Work not actually completed.

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

##### **§ 13.2.2.1 Termination**

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

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

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

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

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

**§ 13.2.2.3 Termination by the Owner for Convenience**

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

There shall be no other termination fee in addition to the Construction Manager’s Fee, computed upon the Cost of the Work to the date of termination pursuant to section 13.2.2.1, above.

**§ 13.3 Suspension**

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

**ARTICLE 14 MISCELLANEOUS PROVISIONS**

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

**§ 14.2 Successors and Assigns**

**§ 14.2.1** The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, as amended, neither party to the Contract shall assign the Contract or any of its rights or obligations hereunder, nor may it contract with third parties to perform any of its obligations hereunder except as contemplated in this Agreement as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

**§ 14.3 Insurance and Bonds**

**§ 14.3.1 Preconstruction Phase**

See Exhibit B, Insurance and Bonds, which shall apply equally during the Preconstruction Phase, except for Builders Risk insurance.

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

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

**§ 14.3.2 Construction Phase**

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in Exhibit B, Insurance and Bonds. The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in Exhibit B.

**§ 14.3.2.1** The Construction Manager shall provide bonds and Builders Risk coverage as set forth in Exhibit B. Additional requirements for Subcontractor bonding shall be determined prior to memorialization of the Guaranteed Maximum Price.

**§ 14.4 Notices.** All notices, demands or other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given when delivered personally to the recipient or when sent by email upon electronic confirmation thereof, three business days after being sent to recipient by U.S. First Class mail (postage prepaid), or one business day after being sent to the recipient by reputable overnight courier service (charges prepaid) at the appropriate address indicated below or to such other address as may be given in a notice sent to all parties hereto:

If to Owner: Petersburg Medical Center  
Attn: President/CEO  
103 Fram St.  
PO Box 589  
Petersburg, AK 99833

If to Construction Manager: Todd Rawls  
405 32<sup>nd</sup> St., Ste. 110  
Bellingham, WA 98225

**§ 14.5** Construction Manager shall comply with, and shall ensure each of its subcontractors, suppliers, and persons for whom they are responsible shall comply with, the Owner’s Ethics and Compliance Program and its Fraud, Waste, and Abuse Policy, in addition to any other applicable policies which may be adopted or amended from time to time by the Owner.

**§ 14.6** The Construction Manager certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Alaska. The term “principal” for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Construction Manager. The Construction Manager certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Construction Manager shall immediately notify the Owner if any subcontractor becomes debarred or suspended, and shall, at the Owner’s request, take all steps required by the Owner to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.



**§ 14.7** The Parties believe and intend that this contract complies with all relevant federal and state laws as well as relevant regulations and accreditation standards, including but not limited to Federal Health Care Program (as defined under 42 U.S.C. § 1320a-7b(f)) Fraud and Abuse laws (including the Anti-Kickback Statute and the Stark Law), and all of the rules and regulations promulgated pursuant to, and all of the cases or opinions interpreting such statutes and laws (collectively, “Laws”). Should either Party have a good faith belief that this contract creates a material risk of violating any such Laws, or any revisions or amendments thereto, that Party shall give written notice to the other Party regarding such belief. The Parties shall then make a good faith effort to reform the contract to comply with such Laws, and, to the extent possible, to carry out the original intention of the Parties. If, within thirty (30) days of either Party first providing notice to the other Party of the need to amend this contract to comply with the Laws, the Parties, acting in good faith, are (i) unable to mutually agree upon and make amendments or alterations to this Agreement to meet the requirements in question, or (ii) alternatively, the Parties determine in good faith that amendments or alterations to the requirements are not feasible, then Owner at its sole discretion may terminate this Contract per Article 10 herein.

**§ 14.8** If this Agreement is a contract within the purview of Section 1861(v)(1)(I) of the Social Security Act (Section 952 of the Omnibus Reconciliation Act of 1980) and the regulations promulgated at 42 C.F.R. Part 420 in implementation thereof, the Parties agree to make available to the Comptroller General of the United States (“Comptroller General”), the Secretary of the Department of Health and Human Services (“Secretary”) and their duly authorized representatives, for four (4) years after the latest furnishing of services pursuant to this Agreement, access to the books, documents and records and such other information as may be required by the Comptroller General or Secretary to verify the nature and extent of the costs of services provided by each Party, respectively. If either Party, upon the approval of the other Party, carries out the duties of this Agreement through a subcontract worth \$10,000.00 or more over a 12-month period with a related organization, the subcontract will also contain an access clause to permit access by the Secretary, Comptroller General and their representatives to the related organization’s books and records.

**§ 14.9** Each Party represents and warrants to the other Parties that it (and, with respect to the Construction Manager, including itself and its subcontractors and suppliers) is not excluded from participation in any Federal Health Care Programs; debarred, suspended or otherwise excluded from participating in any other federal or state procurement or non-procurement program or activity; or designated a Specially Designated National or Blocked Person by the Office of Foreign Asset Control of the U.S. Department of Treasury. Each Party further represents and warrants that to the Party’s knowledge, there are no pending or threatened governmental investigations that may lead to such exclusion. Each Party shall notify the other in writing upon the commencement of any such exclusion or investigation within seven (7) business days of receiving first notice of such exclusion or investigation. Each Party shall have the right to terminate this Agreement immediately upon learning of any such exclusion and shall be kept informed of the status of any such investigation. Construction Manager shall take reasonable steps to ascertain and ensure that its subcontractors and suppliers are not excluded from participation in any Federal Health Care Programs; debarred, suspended or otherwise excluded from participating in any other federal or state procurement or non-procurement program or activity; or designated a Specially Designated National or Blocked Person by the Office of Foreign Asset Control of the U.S. Department of Treasury.

**§ 14.10** Construction Manager shall not be obligated or required to refer any patients to Owner, or any affiliate of Owner, to obtain or receive any medical diagnosis, care or treatment from Owner, or to purchase any health care related services or products from Owner. Neither Party is entering into this Contract with an expectation that any unlawful patient referrals will occur or develop between Owner and Construction Manager or any subcontractors or suppliers.

**§ 14.11** The Parties agree that each shall comply with the Standards for Privacy of Individually Identifiable Health Information and all other regulations promulgated under Section 264 of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and other state or federal health information privacy and security laws (collectively, “Privacy Laws”). Furthermore, the Parties shall promptly amend the Agreement to conform with any new or revised Privacy Laws in order to ensure that Owner is at all times in conformance with all Privacy Laws. The Parties further agree that work will occur at a hospital where the Construction Manager or subcontractors could inadvertently obtain information protected under the regulations pertaining to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). If Construction Manager, any representative of Construction Manager, or any Subcontractor or Supplier, or any other entity Construction Manager engages for this Project, obtains any information protected under the regulations pertaining to HIPAA, it shall notify Owner immediately and Construction Manager agrees to execute Business Associate Agreement for HIPAA compliance or take any other necessary actions required pursuant to HIPAA upon Owner’s request. Construction Manager shall ensure all subcontracts it enters into for this Project require subcontractors to similarly comply with Owner related to HIPAA issues.

§ 14.12 Construction Manager agrees to immediately report any conflict or potential conflict of Interest to the Owner and to give full disclosure of facts pertaining to any transaction or related activity that may be reasonably construed as a conflict of interest. The Construction Manager further agrees to report to the Owner the description of any influence adversely affecting the decision-making process of the Construction Manager and the performance of services under this Agreement.

§ 14.13 The parties understand and agree that they will comply with and operate subject to: (i) all provisions of 45 CFR part 75, currently in effect or implemented during the period of the Work; (ii) the Build America, Buy America Act, to the extent applicable to the Project due to future funding sources; (iii) Appendix II to Title 2 CFR Part 200, except for paragraph (D) thereof; (iv) the requirements of 2 CFR 200.321; (v) all applicable provisions of the Little Davis-Bacon Act, Alaska Statutes Title 36; (vi) all applicable provisions of Alaska Statutes 36.90.200-290; all applicable provisions of the Little Miller Act, Alaska Statutes 36.25.020; and (viii) other federal and state regulations and HHS policies in effect at the time of the award or implemented during the period of award. To the extent these provisions adjust cost assumptions in the GMP Amendment(s), Construction Manager shall be entitled to an equitable adjustment via Change Order.

## 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 modified or amended only by written instrument signed by both Owner and Construction Manager. Any waiver of a breach of any provision(s) of this Agreement shall not be deemed effective unless in writing and signed by the party against whom enforcement of the waiver is sought.

§ 15.1.1 If any part of this Agreement shall be determined to be invalid, illegal or unenforceable by any valid Act of Congress or act of any legislature or by any regulation duly promulgated by the United States or a state acting in accordance with the law, or declared null and void by any court of competent jurisdiction, then such part shall be reformed, if possible, to conform to the law and, in any event, the remaining parts of this Agreement shall be fully effective and operative insofar as reasonably possible.

§ 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 (or equivalent), Guaranteed Maximum Price Amendment(s), when executed
- .3 AIA Document A133™-2019, Exhibit B, Insurance and Bonds
- .4 Other Amendments to AIA Document A133™-2019, including Change Orders, when executed
- .5 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .6 Project Specifications, as referenced in the GMP Amendment(s)
- .7 Project Drawings, as referenced in the GMP Amendment(s)
- .8 Other Exhibits:
  - Preliminary Master Project Schedule dated 18 November 2022
  - Concept Design Submittal dated 15 March 2023

§ 15.3 Order of Precedence:

In the event of a conflict or inconsistency between or among any of the documents comprising this Agreement, the order of precedence shall be the order in which the documents are listed in Section 15.2.1 through 15.2.8 above, such that the document listed in Section 15.2.1 will have the highest order of precedence and the document listed in Section 15.2.8 will have the lowest order of precedence.

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

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**OWNER**

**Philip Hofstetter**  
**CEO**  
**Petersburg Medical Center**

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**CONSTRUCTION MANAGER**

**Todd Rawls**  
**CFO**  
**Dawson Construction, LLC**

