


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 26th day of September in the year 2023
(In words, indicate day, month, and year.)

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

Utah Transit Authority
669 West 200 South
Salt Lake City, Utah 84101

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

Okland Construction Company, Inc.
1978 S. West Temple
Salt Lake City, Utah 84115

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

UTA Headquarter Redevelopment Project

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

Skidmore, Owings & Merrill
1700 K. Street NW, Ste. 1000
Washington, D.C. 20006

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

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

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

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

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ARTICLE 1 REPRESENTATIVES OF THE PARTIES

§ 1.1 The Owner identifies the following representative in accordance with Section 4.2:

Sean Murphy, Facility Development Manager
 Utah Transit Authority
 669 W. 200 S.
 Salt Lake City, UT 84101
 smurphy@rideuta.com
 (801) 712-9612

(Paragraphs deleted)

§ 1.2 The Architect's representative for the Project shall be:

Audra Herriges, Associate Project Manager
 Skidmore, Owings & Merrill
 1700 K. Street NW, Ste. 1000
 Washington, D.C. 20006
 Audra.herriges@som.com
 (202) 937-6306

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

Zach Lewis, Project Director
 Okland Construction Company, Inc.

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1978 S. West Temple
Salt Lake City, UT 84115
Zach.lewis@okland.com
(801) 870-1523

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. If the Owner accepts 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 an agreed upon Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.7. 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 ("General Conditions"), 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 the General Conditions shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the General Conditions are fully incorporated herein by reference. The term "Contractor" as used in the General Conditions 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 the General Conditions 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

Effective January 1, 2024, the Construction Manager is authorized to proceed only with subphase 1a of the Preconstruction Phase services described in Exhibit B. The Construction Manager will not be obligated, and is not authorized by this Agreement, to perform subphase 1b of the Preconstruction Phase services described in Exhibit B unless and until the Owner delivers to the Construction Manager an additional or amended notice to proceed (with a schedule for performance) for the Preconstruction Phase services in subphase 1b. 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

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Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information. In addition, Owner acknowledges and agrees that any review Construction Manager may do of the Drawings and Specifications is made solely in Construction Manager's capacity as a "construction manager" and not as a licensed design professional unless otherwise specifically provided for in the Contract Documents (e.g., for specific design-build scopes of the Work). Construction Manager shall not be liable to Owner for damages resulting from the failure of the Drawings and Specifications to comply with applicable laws, statutes, ordinances, building codes, or rules and regulations unless Construction Manager should have recognized such discrepancy or non-conformity with the exercise of reasonable care and fails to do so and report it to the Owner. Owner acknowledges that the services to be provided by Construction Manager under the Contract Documents shall not constitute the Construction Manager an architect or engineer, nor impose on the Construction Manager any obligation to assume or perform on behalf of the Owner the professional responsibilities, duties, services, and activities for which Owner has contracted with the Architect.

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

§ 3.1.3 Consultation

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

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

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

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall, to the extent information is timely provided to Construction Manager, 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 or trade; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

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

§ 3.1.6 Cost Estimates

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

suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

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

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

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

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

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

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

§ 3.1.11 Subcontractors and Suppliers

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

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

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

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the 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 and the Construction Manager shall discuss assignment from Owner to Construction Manager of all contracts for these items where reasonable and necessary to perform the Work.

§ 3.1.13 Compliance with Laws

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

(Paragraphs deleted)

§ 3.2 Guaranteed Maximum Price Proposal

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

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Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2. Notwithstanding other requirements in this Agreement applicable to the Guaranteed Maximum Price, the Guaranteed Maximum Price proposal will be prepared as follows:

- .1 The Guaranteed Maximum Price will be based on the actual cost of work, including labor, expenses, materials, equipment, and production rates for self-performed services, combined with stand-alone subcontractor quotes obtained through a best-value, competitive bidding approach. All expenditures will be clearly itemized without any add-ons, and underlying assumptions will be transparently identified and explained.
- .2 The Guaranteed Maximum Price will encompass all overhead costs, including operating costs, burdens, encumbrances, profit, turnover, mark-ups, fees, charges, levies, incentives, and any other relevant items.
- .3 The Guaranteed Maximum Price will adhere to the following principles: (a) Open Book Transparency: All costs will be developed and disclosed transparently and confidentially, allowing third-party verification. Actual spending during construction will be monitored openly with proper documentation; (b) Accurate, Complete, and Fair: All cost and price items will be itemized comprehensively, including estimates, expenses, and indirect costs. They will be realistic and fair to both parties; and (c) Contingencies: Risks or opportunities that are undefined or unidentifiable will be assessed and evaluated as project contingencies before the application of add-ons to determine the final price.

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

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

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

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

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

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall negotiate and execute one or more Guaranteed Maximum Price Amendments amending this Agreement. Any Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. If the Owner notifies the Construction Manager that the Owner has rejected the Guaranteed Maximum Price proposal or if the Owner does not otherwise accept the Guaranteed Maximum Price proposal before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed rejected by the Owner, and this Agreement shall terminate automatically upon the Construction Manager's completion of all Preconstruction Phase services and, if applicable, Construction Services authorized in accordance with this Agreement.

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§ 3.2.7 The Owner shall authorize preparation of revisions to the Drawings and Specifications that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Drawings and Specifications to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any known inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications. Construction Manager's review under this Section 3.2.7 shall be in the Construction Manager's capacity as a "construction manager" and not as a licensed design professional.

§ 3.2.8 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 but shall take into account UTA's sales tax exemption.

(Paragraph deleted)

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of the General Conditions, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

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

§ 3.3.2 Administration

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

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

§ 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.

(Paragraphs deleted)

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 any 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 Section 2.2 of the General Conditions.

§ 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, may thereafter agree to a corresponding change in the Project's scope and quality with corresponding changes to the Contract Time and Guaranteed Maximum Price where impacted.

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

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

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

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

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

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

§ 4.2 Owner's Designated Representative

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

§ 4.2.1 **Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, which 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 B103™-2017, Standard Form of Agreement Between Owner and Architect for a Complex Project, and/or 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 Phase services 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.

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ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

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

(Paragraph deleted)

In accordance with the billable rates set forth in Exhibit C and subject to a total not-to-exceed amount equal to the \$861,486 ("Total NTE Budget") based on the staffing commitments set forth in Exhibit C. The Preconstruction Phase services shall be delivered in two subphases as described in Exhibit B, subject to the following terms. Effective January 1, 2024, the Construction Manager is authorized to proceed with only subphase 1a of the Preconstruction Phase services described in Exhibit B. Under this limited authorization, the Construction Manager’s billings for subphase 1a of the Preconstruction Phase services may not exceed \$145,840, and the Construction Manager is at risk to the extent it exceeds the expenditure amount of this limited authorization. The Construction Manager must receive an additional or amended notice to proceed (with a schedule for performance) before it is entitled to compensation for any of the \$715,646 of the Total NTE Budget for the Preconstruction Phase services in subphase 1b described in Exhibit B. For the avoidance of doubt, the Construction Manager shall not be entitled to compensation for any of the Total NTE Budget allocated for the Preconstruction Phase services in subphase 1b described in Exhibit B unless the Owner issues an additional or amended notice to proceed for the subphase 1b services.

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

(Paragraphs deleted)

Billing rates shall be in accordance with Exhibit C, as applicable.

(Table deleted)

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed for the Preconstruction Phase services in subphase 1a described in Exhibit B or the Preconstruction Phase services in subphase 1b described in Exhibit B by the respective end of year budgets specified in Exhibit C through no fault of and for reasons beyond the control of the Construction Manager, the Construction Manager’s Total NTE Budget for Preconstruction Phase services may be equitably adjusted. The Total NTE Budget for Preconstruction Phase services will also be subject to adjustment if additional Preconstruction Phase services are added to the scope of the services described in Exhibit B.

§ 5.2 Payments

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

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

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 Fee’s shall be paid based on supported and verifiable Progress Billing.

§ 6.1.2 The Construction Manager’s Fee:

The Construction Manager’s Fee shall be set forth in the Guaranteed Maximum Price Amendment.

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Unless otherwise identified as a stipulated sum amount in the Guaranteed Maximum Price Amendment, self-performed concrete trade work will be performed on a cost-plus basis and subject to a separate and additional overhead and profit rate of seven and one-half percent (7.5%) percent.

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

The same percentage as set forth in Section 6.1.2 above.

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

Not applicable.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall be in accordance with Exhibit C. Any Construction Manager-owned equipment that is not specifically identified in Exhibit C shall be rented at rates consistent with the standard rental rate(s) paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:
(Paragraph deleted)

Contractor's failure to timely perform the Work in accordance with the completion milestones shall result in the assessment of liquidated damages in accordance with the rates and terms identified in the Guaranteed Maximum Price Amendment.

§ 6.1.7

(Paragraphs deleted)

For deductive scope changes in the Guaranteed Maximum Price or for partially used or unused allowances, Construction Manager's Fee will be decreased by that same percentage that is defined as the Construction Manager's Fee. For deductive changes resulting from recommendations brought forward by Construction Manager for cost savings, value engineering, or Savings (as such term is defined in Section 6.3 below) against the Guaranteed Maximum Price, there shall be no change in the Construction Manager's Fee.

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. This Contract is not a line-item guaranteed maximum price contract and any overages in a specific line-item of the Guaranteed Maximum Price can be addressed by savings in other line items or through the contingency line item (as set forth in the following paragraph). The Construction Manager shall not be entitled to payment for any portion of the Contract Sum that exceeds the Guaranteed Maximum Price (inclusive of any adjustments made or required pursuant to the terms of the Contract Documents).

The Guaranteed Maximum Price includes a budgeted contingency for the exclusive use of the Construction Manager as identified in the specific Amendments to this Agreement. The Construction Manager is authorized to use the contingency as follows:

1. To carry out the full original intent of the documents, including Architect's supplemental instructions, request for information responses, or other design coordination that may generate extra costs from time to time. This would not include any change in scope or other items that the Construction Manager could not have reasonably inferred from the Contract Documents.
2. Pay for performance of work within the scope of the contract including work that was unallocated or not included in the scope of the subcontracts.
3. Unforeseen delays.
4. Weather protection and repairing damage done by weather.
5. Payment of deductibles under any builder's risk policies maintained by Construction Manager.
6. Other Cost of the Work included in Section 6.1 that has not been included as a specific item in the Guaranteed Maximum Price.
7. Other unforeseen costs related to the project.

Any balance remaining in the Contingency line item will be used in the calculation in Savings (as such term is defined in Section 6.3 below) against the Guaranteed Maximum Price.

§ 6.3 Savings Relative to Guaranteed Maximum Price

To the extent the Contract Sum is less than the Guaranteed Maximum Price, then the difference (herein called "Savings") shall be shared Seventy-Five percent (75%) to Owner and Twenty-Five percent (25%) to Construction Manager. Savings shall be paid at the time of Final Payment on the Contract.

(Paragraphs deleted)

§ 6.4 Changes in the Work

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

§ 6.4.1.1 The Architect may order minor changes in the Work as provided in Article 7 of the General Conditions.

§ 6.4.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of the General Conditions.

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

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

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

§ 6.4.6 The Construction Manager shall also be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work as provided in the Contract Documents.

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.

(Paragraph deleted)

§ 7.2 Labor Costs

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

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel whether or not they are stationed at the site but only for the time they actually spend related to the Project.

(Paragraphs deleted)

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

§ 7.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations, retirement plans, training costs, and safety incentives shall be included in the fixed unit rates which: (i) for the preconstruction phases, are included in Exhibit C; and (ii) for the construction phase, will be agreed upon and included in the Guaranteed Maximum Price Amendment.

§ 7.2.5 The wages and salaries of Construction Manager's personnel shall be determined in accordance with the fixed unit rates which: (i) for the preconstruction phases, are included in Exhibit C; and (ii) for the construction phase, will be agreed to between Owner and Construction Manager and attached to the Guaranteed Maximum Price Amendment. Construction Manager's supervisory and administrative personnel who are assigned full time to the Project shall be billed at the weekly rate.

§ 7.2.6 Performance accrual for project management employees only, foreman level and above at eight percent (8%) of the wage rate as shown on the attached wage rate schedule (Exhibit C). The performance accrual actually charged to the Project and paid by the Owner will be deducted from the Cost of the Work if the Substantial Completion Date as adjusted per the Contract Documents is not achieved.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement plus, in lieu of subcontractor bonds, subcontract default insurance at a premium rate agreed to between Owner and Construction Manager and identified in the Guaranteed Maximum Price Amendment.

§ 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.

(Paragraph deleted)

§ 7.4. Unused excess materials, if any, are the Construction Manager's property unless the Owner directed ordering excess or incorrect materials.

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

§ 7.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are purchased by the Construction Manager for the Project and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools purchased by the Construction Manager for the Project that are not fully consumed shall be based on the purchase cost of the item less the value of the item when it is no longer used at the Project site. Costs for items previously used by the Construction Manager that are being purchased for the Project shall be at 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 costs of transportation, installation, fuel, maintenance, sales/use tax, prorated personal property tax, licenses, fees, registration, damage insurance, minor repairs, dismantling and removal. Rates of Construction Manager-furnished equipment shall be charged in accordance with fixed unit rates agreed to between Owner and Construction Manager and attached to the Guaranteed Maximum Price Amendment. If the applicable rate schedule does not contain the item being rented, the rental charges shall be at rates not higher than the standard paid at the location of the Project. Rental charges for items provided by others shall be at the invoiced cost. As part of the Guaranteed Maximum Price proposal set forth in Section 3.2, Construction Manager will provide Owner with an equipment usage plan that describes the temporary facilities, machinery, equipment and tools that Construction Manager intends to use with respect to the Project and the intended durations of such usage. Such plan shall be subject to the approval of Owner, such approval not to be withheld unreasonably.

§ 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 Premiums for liability insurance costs will be billed at a fixed percentage rate agreed to between Owner and Construction Manager and identified in the Guaranteed Maximum Price Amendment.

(Paragraph deleted)

§ 7.6.1.2 Premiums for builder's risk property insurance costs will be billed at a fixed percentage rate agreed to between Owner and Construction Manager and identified in the Guaranteed Maximum Price Amendment.

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

§ 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 the General Conditions 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 the General Conditions. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for all electronic equipment, connectivity, email services, data storage, data back-up, maintenance, support, data security, data recovery, disaster mitigation/recovery and software used in the performance of the Work at a rate agreed to between Owner and Construction Manager and identified in the Guaranteed Maximum Price Amendment

§ 7.6.7 Costs for shop overhead allocable to the Project for Work performed at Construction Manager's offsite fabrication facility, such costs to be calculated at an incremental hourly rate of \$20 added to the labor rate of Construction Manager employees identified in Section 7.2 above (but only while such employees are engaged in Project Work at the offsite fabrication facility).

§ 7.6.8 [Intentionally omitted.]

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

§ 7.6.10 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work, without the fault or negligence of the Construction Manager, and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.11 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.

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§ 7.6.12 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.

§ 7.6.13 Costs for cellular smart phone equipment and service at a rate agreed to between Owner and Construction Manager and identified in the Guaranteed Maximum Price Amendment

§ 7.6.14 Costs for warranty management at a rate agreed to between Owner and Construction Manager and identified in the Guaranteed Maximum Price Amendment.

§ 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 the General Conditions.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager or its subcontractors or suppliers, 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 the General Conditions 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, except as otherwise provided in the Contract Documents;
- .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;

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- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

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

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

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

ARTICLE 10 ACCOUNTING RECORDS

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

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect or Owner by the Construction Manager, and Certificates for Payment issued by the Architect or Owner, 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 Architect or Owner not later than the 5TH day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the 5th days of the subsequent month .. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment.

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

§ 11.1.4 Each Application for Payment shall be submitted electronically in PDF format as follows:

- Application for Payment Continuation sheet shall itemize the Project costs to show sufficient line item detail as required by the Owner or Architect.
- Allowances, contingency and Construction Manager's fee shall be shown as separate line items.
- The original Guaranteed Maximum Price breakdown shall be shown in a separate column and shall not be altered in that column. Change Orders shall be shown as a separate column. Any adjustments to individual line item budgets shall be shown in a separate column.

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

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

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

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

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

§ 11.1.7 In accordance with the General Conditions and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

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

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

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Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

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

§ 11.1.8 Retainage

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

Five percent (5%)

§ 11.1.8.1.1 The following items are not subject to retainage:

General Conditions costs.

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

Not applicable.

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

Up to two hundred percent (200%) of the reasonably estimated value of remaining Work items, and any additional amounts subject to a reasonable dispute under the terms of the Contract Documents.

§ 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 the General Conditions.

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

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

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

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§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum (including all retainage and any savings owed), 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 the General Conditions, and to satisfy other requirements, if any, which extend beyond final payment.
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

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

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

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

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

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

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

§ 11.3 Interest

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

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

Six Percent (6 %) per annum

ARTICLE 12 DISPUTE RESOLUTION**§ 12.1 Binding Dispute Resolution**

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of the General Conditions, the method of binding dispute resolution shall be as follows:

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- Arbitration pursuant to Article 15 of the General Conditions
- Litigation in a court of competent jurisdiction
- Other: Not Applicable

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.

(Paragraphs deleted)

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 in whole or in part prior to receipt of a notice of termination, in accordance with Section 13.1.4 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 the General Conditions.

§ 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.

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

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

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

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

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terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

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

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of the General Conditions.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of the General Conditions, the amount, if any, to be paid to the Construction Manager under Article 14 of the General Conditions 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 the General Conditions.

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

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of the General Conditions, then the Owner shall pay the Construction Manager a termination fee as follows:

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

Not applicable.

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of the General Conditions; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of the General Conditions, 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 the General Conditions. Where reference is made in this Agreement to a provision of the General Conditions 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 the General Conditions, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 14.3 Insurance and Bonds

§ 14.3.1 Required Insurance and Limits

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance as set forth in Exhibit D to this Agreement.

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

§ 14.4 Notices

(Paragraph deleted)

§ 14.4.1 Notice in electronic format may be given in accordance Article 1 of the General Conditions to the email addresses included in Article 1 of this Agreement.

§ 14.5 Other Provisions:

None

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price (forthcoming)
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction
- (Paragraph deleted)
- .4 Exhibit B, Scope of Work for Preconstruction Phase Services
- .5 Exhibit C, Fee and Schedule for Preconstruction Phase Services
- .6 Exhibit D, Project Insurance Requirements

This Agreement is entered into as of the last day and year written below.

UTAH TRANSIT AUTHORITY:

OKLAND CONSTRUCTION COMPANY, INC

Jay Fox
Executive Director
Date: _____

DocuSigned by:
Brett Okland 12/1/2023
Brett Okland
President
Date: _____

David Hancock
Chief Capital Services Officer
Date: _____

Exhibit B:
Scope of Work for Preconstruction Phase Services
RFQU: 23-03693

1. Project Description

The SLCentral project is a mixed-use transit-oriented development to be constructed on a portion of the 7+acre SL Central assemblage in the southwest quadrant of the intersection of W 200 S and S 600 W in downtown Salt Lake City (the “Project”).

2. Services

The nomenclature of the services described below is not intended to indicate priority or sequence, as many items will be performed concurrently and will be interrelated.

The Construction Manager's Preconstruction Phase services will be as set forth below and will be provided under this contract in two phases:

Subphase 1a: Preconstruction Phase services during the Project's programming and conceptual planning, during which concept plans will be prepared, and the building elements of the Project will be delineated and defined. (Estimated January 1 – March 31, 2024)

Subphase 1b: Preconstruction Phase services during the Project's design development through the preparation of construction drawings. (Estimated December 31, 2024)

1. Overall Services: In addition to the services outlined below, the Construction Manager’s overall preconstruction responsibilities will be to:

- a. Evaluate the Project’s design as it is originally intended and comparing it to the scope of the Project with both the required budget and schedule to determine if the Project scope can be executed within those constraints. This includes providing feedback to the Architect and the Owner regarding the feasibility of the design in terms of budget and schedule.
- b. Offer ideas and cost information to the Architect and the Owner, with the goal of improving the design's constructability and cost-effectiveness. The Construction Manager will provide suggestions and recommendations for alternative approaches or materials that could potentially enhance the Project's efficiency.
- c. Participate in structured brainstorming sessions with the Architect and the Owner to identify potential improvements, value engineering opportunities, and cost-saving measures. The Construction Manager will collaborate with the Architect, the Owner, and other stakeholders to generate innovative ideas that align with the Project's objectives.
- d. Review the plans and documents to identify potential ambiguities that could impact the construction process. The Construction Manager will focus on improving the constructability and economy of the design by highlighting potential issues and proposing alternative solutions.

2. Preconstruction Phase services: The Construction Manager’s preconstruction responsibilities will include those outlined in AIA Document A133-2019 (Standard Form of Agreement Between Owner and Construction Manager as Constructor), Sections 3.1 and 3.2, and, for the avoidance of doubt, will include the following:

- a. Consultation with and advising Architect and the Owner regarding issues relating to site use and improvements.
- b. Selection of materials, equipment, finishes, and color schedules.
- c. Construction feasibility and issues relating to the constructability of various designs and alternatives.

- d. Consultation to Architect and the Owner on budget and schedule and will provide recommendations to the Owner and the Project team on how to reduce costs while maintaining design intent to remain on budget and on schedule.
 - e. Constructability of Project documents regarding life safety requirements and requirements of the Americans with Disabilities Act (ADA), including, means and methods required to construct the Project in accordance with these requirements or the Project documents.
 - f. Provide a complete set of comments at the conclusion of each preconstruction milestone to the Owner and the Architect to incorporate into the design documents.
 - g. Review design development drawings, contract document drawings, and specifications and construction design drawings and specifications for bidding and competitive procurement clarity and propose revisions that reduce construction costs and time of performance.
 - h. Preparation of and consultation on construction cost estimates and actual costs, including costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.
 - i. Analysis and recommendations for Project services and systems, including mechanical, electrical, plumbing, and computer, phone, and cabling systems.
 - j. Consultation on Project risks and ongoing monitoring and management of risk factors.
 - k. Consultation on availability of materials and labor and projected lead times.
 - l. Consultation on time requirements for procurement, installation, and construction completion, with a special emphasis on long-lead-time items
 - m. Consultation on strategies for managing competitive bidding for the Project, including generating subcontract and vendor interest in the Project.
 - n. Coordination with Architect, governmental authorities, and utility providers to determine utility capacities and requirements for the Project and obtain approval of utility construction documents and utility plans.
 - o. Consultation regarding construction issues relating to the Project
 - p. Attending meetings to review and discuss construction procedures, progress, coordination, and scheduling of the construction of the Project.
 - q. Coordination of minutes of meetings with the Project team and Architect.
 - r. Coordination with the Owner's Project team and the Architect to avoid duplication of effort or tasks.
 - s. Engagement of services of sub-consultants or third parties to assist selected Respondent, as needed.
 - t. Preparation and presentation of proposed construction schedules and preliminary construction cost estimates for the Project at appropriate milestones during preconstruction with increasing detail and refinement.
 - u. Leading value engineering for the Project during preconstruction.
 - v. Securing of permits and approvals for construction of the Project and representation of the Owner at meetings of governmental agencies with jurisdiction over the Project.
 - w. Developing preliminary cost control and cost reporting procedures for the Project construction.
 - x. Creating a preliminary construction schedule.
 - y. Establishing preliminary quality control and assurance, construction management, safety and security, and HUB participation plans, if required, along with a preliminary staffing plan for construction.
3. Additional Preconstruction Phase services: The following additional services may be required by the Owner during the Preconstruction Phase and prior to construction and are included in the initial services description for informational purposes only. If one or more additional services or other services are required, the Owner and the Construction Manager will amend the Agreement to add the additional services:
- a. Utility Relocation:
 - i. Coordinate with utility companies to identify existing utilities within the planned construction area.
 - ii. Develop a utility relocation plan, including timelines, cost estimates, and phasing.
 - iii. Obtain necessary permits and approvals for utility relocation.
 - iv. Coordinate with utility companies and contractors to ensure smooth relocation and minimal disruption to construction activities.

- v. Monitor and inspect utility relocation work to ensure compliance with specifications and standards.
- vi. Document and report any issues or conflicts that arise during utility relocation.
- b. Soil, Geotechnical, and Seismic Studies:
 - i. Review and analyze existing soil reports, geotechnical studies, and seismic assessments.
 - ii. Coordinate with geotechnical and seismic experts to conduct additional studies as needed.
 - iii. Provide recommendations based on the findings to mitigate potential risks and ensure a solid foundation for construction.
 - iv. Collaborate with Architect to incorporate geotechnical and seismic requirements into the construction plans and specifications.
 - v. Monitor and inspect soil preparation activities to ensure compliance with recommendations and specifications.
 - vi. Maintain regular communication with geotechnical and seismic experts throughout planning and construction.
- c. Demolition:
 - i. Develop a demolition plan, including sequencing, safety measures, and waste management.
 - ii. Obtain necessary permits and approvals for demolition activities.
 - iii. Solicit bids from qualified demolition contractors and assist in the selection process.
 - iv. Coordinate with the selected contractor to ensure compliance with safety protocols and Project schedule.
 - v. Monitor and inspect demolition activities to ensure compliance with specifications and safety regulations.
 - vi. Coordinate debris removal and disposal in accordance with environmental guidelines.
 - vii. Document and report any unforeseen conditions or issues encountered during demolition.
- d. Supplemental and Additional Surveying:
 - i. Collaborate with design professionals to identify any additional surveying requirements for construction.
 - ii. Obtain additional surveys of the construction site, including topographic and boundary surveys, as needed.
 - iii. Coordinate with surveying subcontractors to conduct supplemental surveys, as needed.
 - iv. Verify and validate survey data and provide accurate information to the design and construction teams.
 - v. Monitor and inspect surveying activities to ensure compliance with specifications and accuracy standards.
 - vi. Address any discrepancies or conflicts identified during the surveying process.

3. Deliverables

Throughout subphases 1a and 1b, the Construction Manager will prepare and deliver written reviews, reports, requests for information, cost estimates, and other evaluative materials to facilitate and support the design of the Project by the Architect and as contemplated in the above services.

Exhibit C
Fee for Preconstruction Phase Services

**UTA HEADQUARTERS REDEVELOPMENT
PRE CONSTRUCTION SERVICES**



	SUB PHASE 1A	SUB PHASE 1B
SERVICES:		
ESTIMATING	\$81,491	\$337,758
FIELD MANAGEMENT	\$45,622	\$129,149
SELF PERFORMED CONCRETE	\$0	\$52,758
SUPPORT (BIM,SCHEDULIING,SPECIALISTS,ACCOUNTING)	\$18,727	\$195,981
TOTAL	\$145,840	\$715,646
DESIGN PHASES:		
CONCEPTUAL PHASE	\$145,840	
SCHEMATIC PHASE		\$148,049
DESIGN DEVELOPMENT PHASE		\$212,729
CONSTRUCTION DOCUMENTS PHASE		\$230,749
EARLY BID PACKAGING		\$0
CONTRACT AND BUYOUT		\$124,119
OTHER		\$0
TOTAL	\$145,840	\$715,646

Inclusions & Clarifications:

- 4 Milestone Estimates at Typical Design Phases
- Weekly Design Meeting Attendance & Participation
- Construction Systems Analysis
- Design Document Reviews - Means & Methods / Constructability
- Specialist Involvement at Design Phases (Incl. Structural, MEP, Envelope)
- Competitively Bidding of Work Scopes
- Engaging Design Assist Trade Partners
- Project Master Schedule Management
- Participate in/Facilitate Design Pull Plans
- Site Logistics Planning

Fixed Unit Rates for 2023-2024 Preconstruction Period

Senior Project Director	
Project Director	\$ 7,166
Senior Project Manager	\$ 6,530
Project Manager	\$ 5,724
Assistant Project Manager	\$ 4,834
Field Director	\$ 7,335
Senior Project Superintendent	\$ 6,742
Project Superintendent	\$ 5,597
Assistant Project Superintendent	\$ 4,537
Senior Project Engineer	\$ 4,113
Project Engineer	\$ 3,562
Assistant Project Engineer	\$ 3,138
Sr. Quality Control Manager	\$ 5,766
Quality Control Manager	\$ 5,258
Senior Project Controls Manager	\$ 6,657
Project Controls Manager	\$ 5,554
Senior Field Engineer	\$ 4,113
Field Engineer	\$ 3,562
Assistant Field Engineer	\$ 3,138
Preconstruction Manager	\$ 6,699
Senior Estimator	\$ 6,275
Estimator	\$ 5,173
Cost Engineer	\$ 4,198
Assistant Estimator	\$ 3,562
MEP Specialist	\$ 6,614
Senior Scheduler	\$ 5,385
Scheduler	\$ 4,791
Senior BIM Manager	\$ 6,614
BIM Manager	\$ 5,300
BIM Engineer	\$ 4,494
BIM Coordinator	\$ 3,858
Corporate Safety	\$ 6,699
Senior Safety	\$ 6,021
Safety	\$ 4,706
Senior Project Accountant	\$ 4,198
Project Accountant	\$ 3,519
Project Clerk - Assistant/Intern	\$ 2,798

Rates are shown in weekly increments and will be prorated on an hourly basis for personnel who do not bill full time to the project during any such period

Exhibit D

PROJECT INSURANCE REQUIREMENTS

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The Utah Transit Authority in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage with limits of liability not less than those Stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a “following form” basis.

1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate \$4,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Each Occurrence \$2,000,000

- a. The policy shall be endorsed to include the following additional insured language: "The Utah Transit Authority shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".
- b. The policy must also contain the following endorsement, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: “Contractual Liability Railroads” ISO from CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing “Utah Transit Authority Property” as the Designated Job Site

2. Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

- Combined Single Limit (CSL) \$2,000,000

- a. The policy shall be endorsed to include the following additional insured language: "The Utah Transit Authority shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including automobiles owned, leased, hired or borrowed by the Contractor".

3. Worker's Compensation and Employers' Liability

Workers' Compensation Statutory

Employers' Liability

- Each Accident \$100,000
- Disease – Each Employee \$100,000
- Disease – Policy Limit \$500,000

- a. This requirement shall not apply when a contractor or subcontractor is exempt under UCA, AND when such contractor or subcontractor executes the appropriate waiver form.

4. Professional Liability (Errors and Omissions Liability)

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

- a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under this Contract is completed.

5. Railroad Protective Liability Insurance (RRPLI) –

During construction and maintenance within fifty (50) feet of an active railroad track, including but not limited to installation, repair or removal of facilities, equipment, services or materials, the Contractor must maintain “Railroad Protective Liability” insurance on behalf of UTA only as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000.

If the Contractor is not enrolling for this coverage under UTA’s blanket RRPLI program, the policy provided must have the definition of “JOB LOCATION” AND “WORK” on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this Agreement.

6. Contractors’ Pollution Legal Liability and/or Asbestos Legal Liability (if project involves environmental hazards) with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate. *(NOTE: Projects over \$10,000,000 will require limits of \$2,000,000 per occurrence and \$4,000,000 aggregate; Projects over \$40,000,000 will require limits of \$5,000,000 per occurrence and \$5,000,000 aggregate)*

7. Builder’s Risk: Builder’s risk (course of construction) insurance, covering the risk of loss for any damage or loss to the building or structure by any means or occurrence until the final completion of the contract work. Coverage shall utilize an “All Risk” (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions. The coverage shall include mechanical breakdown, property in transit, property at temporary storage locations, earthquake damage and flood damage insuring the interests of UTA, SLCDA and their respective subcontractors of any tier providing equipment, materials or services for the project.

B. ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include the following provisions:

- 1. On insurance policies where the Utah Transit Authority is named as an additional insured, the Utah Transit Authority shall be an additional insured to the full limits of liability purchased by the Contractor. Insurance limits indicated in this agreement are minimum limits. Larger limits may be indicated after the contractor’s assessment of the exposure for this contract; for their own protection and the protection of UTA.

2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
 3. Policy shall contain a waiver of subrogation against the Utah Transit Authority.
 4. Contractor and their insurers shall endorse the required insurance policy(ies) to waive their right of subrogation against UTA. Contractor's insurance shall be primary with respect to any insurance carried by UTA. Contractor will furnish UTA at least thirty (30) days advance written notice of any cancellation or non-renewal of any required coverage that is not replaced.
- C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, or canceled except after thirty (30) days prior written notice has been given to the Utah Transit Authority, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to (Utah Transit Authority agency Representative's Name & Address).
- D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the State and with an "A.M. Best" rating of not less than A-VII. The Utah Transit Authority in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the Utah Transit Authority with certificates of insurance (on standard ACORD form) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- All certificates and any required endorsements are to be sent to jhiggins@rideuta.com and received and approved by the Utah Transit Authority before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.
- All certificates required by this Contract shall be emailed directly to Utah Transit Authority's insurance email address at jhiggins@rideuta.com. The Utah Transit Authority project/contract number and project description shall be noted on the certificate of insurance. The Utah Transit Authority reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE UTAH TRANSIT AUTHORITY'S CLAIMS AND INSURANCE DEPARTMENT.**
- F. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as additional insureds under its policies or subcontractors shall maintain separate insurance as determined by the Contractor, however, subcontractor's limits of liability shall not be less than \$1,000,000 per occurrence / \$2,000,000 aggregate. Sub-contractors maintaining separate insurance shall name Utah Transit Authority as an additional insured on their policy. Blanket additional insured endorsements are not acceptable from sub-contractors. Utah Transit Authority must be scheduled as an additional insured on any sub-contractor policies.
- G. **APPROVAL:** Any modification or variation from the insurance requirements in this Contract shall be made by Claims and Insurance Department or the Office of General Counsel, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.