Twin Falls City Council
Agenda

Monday, December 22, 2025, 5:00 PM

Council Chambers
203 Main Avenue East, Twin Falls, Idaho

Members: Mayor Ruth Pierce, Vice Mayor Jason Brown, Council Members Craig Hawkins, Spencer Cutler, Christopher Reid, Grayson Stone, Cherie Vollmer

1) Call Meeting to Order/Confirmation of Quorum

2) Executive Session

   a) **ACTION ITEM:** Request to adjourn to Executive Session pursuant to Idaho Code § 74- 206(1)(B)(C)(F) (b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student;(c) To acquire an interest in real property not owned by a public agency;(f) To communicate with legal counsel for the public agency to discuss thelegal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement.

3) Pledge of Allegiance

4) Consent Calendar

   a) **ACTION ITEM:** Request to approve City Council December 08, 2025, minutes.
   By: Rachael Long, Deputy City Clerk

   b) **ACTION ITEM:** Request to approve Accounts Payable for December 11-17, 2025.
   By: Amy Luna, City Clerk

   c) **ACTION ITEM:** Request to approve December 17, 2025, Travel Requests.
   By: Amy Luna, City Clerk

   d) **ACTION ITEM:** Request to approve 2025 October Wells Fargo Credit Card Summary.
   By: Amy Luna, City Clerk

   e) **ACTION ITEM:** Request to terminate an airport hangar ground lease (Blk 13 Lot 1) with Gary Wolverton Jr.
   By: Bill Carberry, Airport Manager

   f) **ACTION ITEM:** Request to approve an airport hangar ground lease (Blk 13 Lot 1) with Rebecca L. Jones
   By: Bill Carberry, Airport Manager

   g) **ACTION ITEM:** Request to approve an Alcohol License for St. Luke's. By:
   Amy Luna, City Clerk

5) Items of Consideration

   a) **ACTION ITEM:** Request for the Council to approve the contract between the City of Twin Falls and Starr Corporation for the CM/GC services on the Twin Falls Animal Shelter expansion project and to authorize the Mayor to sign the contract.

   By: Mandi Thompson, Assistant to the City Manager

   b) **ACTION ITEM:** Request for the Council to approve the contract between the City of Twin Falls and Starr Corporation for the CM/GC services on the remodel of Fire Station 1 and to authorize the Mayor to sign the contract.

   By: Mandi Thompson, Assistant to the City Manager

   c) **ACTION ITEM:** Request to use up to $225,000 of water reserves to pay for design services and temporary stormwater repairs for the HMI remediation project.

   By: Erin Steel, Assistant Public Works Director

   d) **ACTION ITEM:** Request to allocate $76,372.03 Shoshone Falls/Dierkes Lake cash reserves for emergency road repair and dock ramp purchase.

   By: Wendy Davis, Parks and Recreation Director

e) **<u>ACTION ITEM:</u>** Request to authorize the use of a cooperative purchase agreement for $351,409 to rebuild the Harmon Park west tennis courts and authorize the director to sign the proposal.

By: <u>Wendy Davis, Parks and Recreation Director</u>

f) **<u>ACTION ITEM:</u>** A request for $70,000 of additional funding for architectural services associated with the City Pool addition and remodel project.

By: <u>Mitch Humble, Deputy City Manager</u>

6) <u>General Public Input</u>

7) <u>Advisory Board Report/Announcements</u>

8) <u>Adjournment</u>

Any person needing special accommodation to participate in the above-noticed meeting could contact Josh Palmer (208) 735-7312 at least two working days before the meeting. Si Desae Esta information in Español, Por favor llama a Josh Palmer al telephone (208) 735-7312.

Public Input Procedures

1. Individuals wishing to provide public input regarding matters relevant to the City of Twin falls shall:
   - **a.** Wait to be recognized by the Mayor or Chairman.
   - **b.** Approach the microphone/podium.
   - **c.** State their name, and whether they are a resident or property owner of the City of Twin Falls and proceed with their input.

2. All public input will be limited to two (2) minutes. Individuals are not permitted to give their time to other speakers.

3. All presenters shall remain respectful.

Public input will not be about any of the items that were on this agenda, personnel, or a personnel-related issue. All issues involving City personnel should be directly communicated with the mayor and/or the City Manager.

Anyone failing to follow these rules will be provided with one (1) warning. Should the speaker continue to disregard these rules after the warning, they will have the microphone muted and they will be asked to return to their seats.

Public Hearing Procedures for Zoning Requests

1. Prior to opening the first Public Hearing of the session, the Mayor or Chairman shall review the public hearing procedures.

2. Individuals wishing to testify or speak before the City Council or Planning & Zoning Commission shall wait to be recognized by the Mayor or Chairman, approach the microphone/podium, state their name, and then proceed with their comments. Following their statements, they shall write their name and address on the record sheet(s) provided by the staff. The staff should make an audio recording of the Public Hearing.

3. A City Staff Report shall summarize the application and history of the request.

4. The Applicant, or the spokesperson for the Applicant, will make a presentation on the application/request (request). No changes to the request may be made by the applicant after the publication of the Notice of Public Hearing. The presentation should include the following:
   - A complete explanation and description of the request.
   - Why is the request being made.
   - Location of the Property.
   - Impacts on the surrounding properties and efforts to mitigate those impacts.

5. Applicant is limited to 15 minutes, unless a written request for additional time is received, at least 72 hours prior to the hearing, and granted by the Mayor or Chairman.

6. The City Council or Planning & Zoning Commission may ask questions of staff or the applicant pertaining to the request.

7. The general public will then be given the opportunity to provide their testimony regarding the request. The Mayor or Chairman may limit public testimony to no less than two (2) minutes per person.
   - Individuals are not permitted to give their time to other speakers.
   - However, five (5) or more individuals that received written notice of the public hearing may appoint, by written petition, a spokesperson. The written petition must be received at least 72 hours prior to the hearing and must be granted by the Mayor or Chairman. The spokesperson shall be limited to 15 minutes.
   - The written comments, including e-mail, received by 12:00 p.m. on the date of the hearing should be either read into the record or displayed to the public on the overhead projector.

8. Following the Public Testimony, the applicant is permitted five (5) minutes to respond to Public Testimony.

9. Following the Public Testimony and Applicant's response, Council or Commission members, as recognized by the Mayor or Chairman, shall be allowed to question the Applicant, Staff or anyone who has testified. Responses shall be limited to answering the questions asked. The Mayor or Chairman may limit the time permitted for the answer.

10. The Mayor or Chairman shall close the Public Hearing. The City Council or Planning & Zoning Commission shall deliberate on the request. Deliberations and decisions shall be based upon the information and testimony provided during the Public Hearing. Once the Public Hearing is closed, additional testimony from the staff, applicants or public is not allowed. Legal or procedural questions may be directed to the City Attorney.

* Any person not conforming to the above rules may be prohibited from speaking. Persons refusing to comply with such prohibitions may be asked to leave the hearing and, thereafter removed from the room by order of the Mayor or Chairman

Twin Falls City Council
Minutes

Monday, December 15, 2025, 5:00 PM

Council Chambers
203 Main Avenue East, Twin Falls, Idaho

1) Call Meeting to Order/Confirmation of Quorum

Present: Mayor Ruth Pierce, Vice Mayor Jason Brown, Council Members Craig Hawkins, Christopher Reid, Spencer Cutler, Cherie Vollmer

Absent: Grayson Stone

Staff Present: City Manager Travis Rothweiler, Deputy City Managers Mitch Humble & Gretchen Scott, City Attorney Bruce Castleton, City Clerk Amy Luna, Deputy City Clerk Rachael Long, Police Chief Matthew Hicks, Fire Chief Mitchell Brooks, Police Captain Brent Wright, Police Captain Terrance Theuson, CFO Breanna Howard, Public Information Coordinator Joshua Palmer, Desktop Support Analyst Brettrick Barker, Utility Billing Manager Chelsea Ross, Parks and Recreation Director Wendy Davis, Senior Planner William Klaver, Planning and Zoning Director Jonathan Spendlove, Public Works Director Joshua Baird

Mayor Pierce called the meeting to order at 5:00 PM. A quorum was present.

2) Pledge of Allegiance

Mayor Pierce invited all present, who wished, to recite the Pledge of Allegiance to the Flag.

3) Consent Calendar

MOTION: Council Member Reid moved to approve the Consent Calendar as presented, adding item 4C from Items of Consideration. **Council Member Hawkins** seconded the motion. The roll call vote showed all members present voted in favor of the motion, 5 to 0.

a) Request to approve City Council 2025 December 08, Minutes.
b) Request to approve Accounts Payable for December 04-10, 2025.
c) Request to approve December 10, 2025, Travel Requests.
d) Request to approve a Trust Agreement for the **Western Horizon Subdivision**, placing all lots in trust.
e) Consider a recommendation from the Parks and Recreation Commission to accept a tree donation from the Twin Falls Parks and Recreation Department to be planted at Thomsen Park in memory of Jacob Thompsen.

4) Items of Consideration

a) A request to swear in the six newest Twin Falls Police Department police officers: Malakai Brune, Joshua Gonzalez, Luke Heninger, Colton Michilizzi, Eric Ryan and Owen Shields.
Police Chief Hicks requested the swearing in of six new Twin Falls Police Department Police Officers and introduced the Police Department.

New Officers Malakai Brune, Joshua Gonzalez, Luke Heninger, Colton Michilizzi, Eric Ryan, Owen Shields were sworn in by Mayor Pierce.

b) Presentation of POST Basic Communications Certification to Jessica Burgess, Hannah Smith, and Logan Wilcox, POST Intermediate Communications Certification to Jamie Thomas (Quesnell), and POST Basic Peace Officer Certification to Cesar Cervantes Jr.

Communications Manager Cates made a presentation of POST Basic Communications Certification to Jessica Burgess, Hannah Smith, and Logan Wilcox, POST Intermediate Communications Certification to Jamie Thomas (Quesnell), and POST Basic Peace Officer Certification to Cesar Cervantes Jr.

Mayor Pierce congratulated all the members.

c) Purchase of a New 420 CAT Backhoe/Loader budgeted in the Fiscal Yr 2026 CIP Water Fund

Public Works Director Baird requested approval for the purchase of a new 420 CAT Backhoe/Loader budgeted in the Fiscal Yr 2026 CIP Water Fund.

Discussion ensued on the following:
Council Member Reid, how long will it be before it gets here.
Council Member Cutler stated, "Thank you for purchasing the right brand.

MOTION: Vice Mayor Brown moved to approve the request to purchase of a new 420 CAT Backhoe/Loader budgeted in the Fiscal Yr 2026 CIP Water Fund**. Council Member Vollmer** seconded the motion. The roll call vote showed all members present voted in favor of the motion, 6 to 0.

d) Consideration of a request to enter into contract negotiations for the Solid Waste contract beginning January 1, 2027, to PSI Environmental Systems.

Utility services manager, Ross, requested to enter into contract negotiations for the Solid Waste contract beginning January 1, 2027, with PSI Environmental Systems.

Discussion ensued on the following:
Council Member Reid says that the base bid is the option he thinks most citizens would like.
Mayor Pierce asked for clarification on what we are voting on.
Vice Mayor Brown seconded the base bid that it is the best option and to remove recycling.

MOTION: Council Member Reid moved to approve the request to enter into contract negotiations for the Solid Waste contract beginning January 1, 2027, with PSI Environmental Systems with the base bid option without recycling**. Vice Mayor Brown** seconded the motion. The roll call vote showed all members present voted in favor of the motion, 6 to 0.

e) A request to adopt Ordinance 0-2025-028 amending City Code related to appeals of staff decisions.

Police Captain Wright requested to adopt Ordinance O-2025-028 amending the City Code related to appeals of staff decisions.

MOTION: Council Member Reid made a motion to dispense with reading the rules and put Ordinance #O-2025-028 on third and final reading by title only. **Council Member Vollmer** seconded the motion. The Roll call vote showed all members present voted in favor of the motion. Approved 6 to 0.

Mayor Pierce read Ordinance #2025-028 by title only.

Discussion ensued on the following: none

MOTION: Council Member Reid moved to approve the request to adopt Ordinance O-2025-028 amending the City Code related to appeals of staff decisions**. Council Member Vollmer** seconded the motion. The roll call vote showed all members present voted in favor of the motion, 6 to 0.

f) Request to adopt ordinance #O-2025-030 for Vacation of a portion of a waterline easement on property located in a portion of Lot 9, 10, and 11 of Block 2 of Sun West Subdivision #2. (PZ25-0110)

Planning and Zoning Director Spendlove requested to adopt ordinance #O-2025-030 for Vacation of a portion of a waterline easement on property located in a portion of Lot 9, 10, and 11 of Block 2 of Sun West Subdivision #2. (PZ25-0110)

MOTION: Council Member Reid made a motion to dispense with reading the rules and put Ordinance #O-2025-030 on third and final reading by title only. **Vice Mayor Brown** seconded the motion. The Roll call vote showed all members present voted in favor of the motion. Approved 6 to 0.

Mayor Pierce read Ordinance #2025-030 by title only.

Discussion ensued on the following: none

MOTION: Council Member Reid moved to approve the request to adopt ordinance #O-2025-030 for Vacation of a portion of a waterline easement on property located in a portion of Lot 9, 10, and 11 of Block 2 of Sun West Subdivision #2. (PZ25-0110)**. Vice Mayor Brown** seconded the motion. The roll call vote showed all members present voted in favor of the motion, 6 to 0.

g) Authorization to Proceed with the Refunding (Refinancing) of the City's 2014A Wastewater Revenue Bond through the Idaho Bond Bank Authority.

City Financial Officer Howard requested authorization to proceed with the Refunding (Refinancing) of the City's 2014A Wastewater Revenue Bond through the Idaho Bond Bank Authority.

Discussion ensued on the following:
Council Member Cutler asked if this is authorized. This will give her a timeframe window if its worth it.

MOTION: Council Member Cutler moved to approve the request for authorizationto proceed with the Refunding (Refinancing) of the City's 2014A Wastewater Revenue Bond through the Idaho Bond Bank Authority. **Council Member Reid** seconded the motion. The roll call vote showed all members present voted in favor of the motion, 6 to 0.

h) A presentation on the finances of the City of Twin Falls for the 4th quarter of fiscal year 2024-2025. This presentation will be an overview of the tax-supported funds and the three major enterprise funds: Water, Wastewater and Sanitation.

City Financial Officer Howard gave a presentation on the finances of the City of Twin Falls for the 4th quarter of fiscal year 2024-2025. This presentation will be an overview of the tax-supported funds and the three major enterprise funds: Water, Wastewater and Sanitation.

Mayor Pierce asked if the state budget issue would affect the city.
City Manager Rothweiler brought up that the state does have to share money from the street funds.

Mayor Pierce thanked Howard for her presentation.

5) General Public Input

6) Advisory Board Report/Announcements

Craig Hawkins said that they still have 1 position on the Arts Commission.
Mayor Pierce stated that the New County building will be opening on Wednesday, and they will be doing ribbon cutting.

7) Adjournment
The meeting adjourned at 06:15 PM

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Rachael Long, Deputy City Clerk

**If you wish to have a full accounting of this meeting, please listen to the recording that is located on our website. ** Tfid.org

Date: Monday, December 22, 2025

To: Honorable Mayor and City Council

From: Bill Carberry, Airport Manager

Consent Calendar

Termination of an airport ground lease

Request: Request to terminate an airport hangar ground lease (Blk 13 Lot 1) with Gary Wolverton Jr.

Background: The airport has been working with Gary Wolverton Jr to develop the attached termination of ground lease agreement due to his desire to sell his hangar and terminate the ground lease with the airport. The hangar will be sold to Rebecca L. Jones, and the airport will prepare a new ground lease for her.

Approval Process: A majority vote of the Council is needed to approve the request.

Budget Impact: The approval will allow the airport to transfer the parcel to a new lessee and receive the ground rent.

Regulatory Impact: The termination agreement allows the airport to end one lease and issue a new lease agreement for the parcel. The City Attorney has reviewed and prepared the agreement.

Conclusion: Staff recommend that the City Council approve the request for an airport ground lease termination agreement with Gary Wolverton Jr and authorize the mayor to sign the agreement.

Attachments: Airport Ground Lease Termination Agreement

<u>TERMINATION OF AIRPORT LEASE AGREEMENT</u>

THIS AGREEMENT is made effective the November 1, 2025, by and between the **CITY OF TWIN FALLS**, **IDAHO,** and hereinafter referred to as "Lessor," and **WOLVERTON DEVELOPMENT AND CONSTRUCTION, INC.,** an Idaho corporation, hereinafter referred to as "Lessee."

WHEREAS, the parties hereto entered into an Airport Lease Agreement ("Lease") effective November 1, 2016.

WHEREAS, a sale of the Premises as described in the lease, Blk 13 Lot 1, 1102 Airport Loop, was transferred via a Bill of Sale from Lessee to Rebecca L. Jones on the 24th of October 2025. (See Exhibit A).

WHEREAS, Lessee has requested that the lease agreement be terminated, and a new lease issued to Rebecca L. Jones Revocable Trust, for the Premises Blk 13 Lot 1, 1102 Airport Loop, effective November 1, 2025.

NOW THEREFORE, the parties agree as follows:

1. The Airport Lease Agreement effective November 1, 2016, and any amendments thereto, is terminated effective November 1, 2025.

2. In consideration for the issuance of a new lease to the Rebecca L. Jones Revocable Trust for the Premises effective November 1, 2025, Lessee warrant and affirm that Lessee are in compliance with all terms of the existing lease.

IN WITNESS WHEREOF, the Lessor and Lessee execute this agreement.

LESSOR:

CITY OR TWIN FALLS, IDAHO a Municipal Corporation,

____
Ruth Pierce- Mayor

LESSEE:

Wolverton Development and Construction, Inc.

____
Gary Wolverton Jr.- President

Date: Monday, December 22, 2025

To: Honorable Mayor and City Council

From: Bill Carberry, Airport Manager

Consent Calendar

Request: Request to approve an airport hangar ground lease (Blk 13 Lot 1) with Rebecca L. Jones

Background: The airport has been working with Rebecca L. Jones to develop a new ground lease associated with the purchase of an aircraft hangar from Gary Wolverton Jr. This agenda item is accompanied by the associated ground lease termination agreement with Gary Wolverton Jr.

Approval Process: A majority vote of the Council is needed to approve the request.

Budget Impact: The approval will allow the airport to receive ground rent associated with the parcel.

Regulatory Impact: The airport's ground lease agreements are prepared by the City Attorney and terms of the agreement range in the requirements to protect the interests of both parties. The agreements are subject to the federal, state, and local laws and regulations required of the airport and the tenants.

Conclusion: Staff recommends that the City Council approve the request for a hangar ground lease (Blk 13 Lot 1) agreement with Rebecca L. Jones and authorize the mayor to sign the agreement.

Attachments: Airport ground lease agreement

AIRPORT GROUND LEASE AGREEMENT – PRIVATE HANGAR

THIS AIRPORT LEASE AGREEMENT ("Lease") is made effective 1st day, of November 2025, by and between the **CITY OF TWIN FALLS**, **IDAHO,** hereinafter referred to as "Lessor," and **REBECCA L. JONES REVOCABLE TRUST**, hereinafter referred to as "Lessee."

The parties hereto agree as follows:

1. Description of Property. In consideration of the rental payments specified below, the Lessor hereby leases to the Lessee the below-described property, hereinafter called the "Premises":

> Block 13, Lot 1 consisting of 10,500 square feet at Joslin-Field – Magic Valley Regional Airport ("Airport"), as depicted on Exhibit A attached hereto.

2. Inspection of the Premises. Lessee acknowledges and agrees that Lessee has inspected the Premises, is thoroughly familiar with its condition and accepts the Premises in its present condition, and further acknowledges and agrees that Lessor has not made, and does not hereby make, any representations, warranties, or covenants of any kind or character whatsoever with respect to the condition of the Premises, either express or implied, and, in addition, Lessee hereby represents that Lessee is not relying on any warranties, promises, guaranties, or representations made by Lessor or anyone acting or claiming to act on behalf of Lessor in leasing the property. Lessee is satisfied with the condition of the property and leases the Premises "AS IS" for all purposes, including all unknown environmental problems and latent defects

3. Use of Premises. Lessee may use and occupy the leased Premises for the sole purpose of the construction, maintenance and operation of an aircraft hangar facility. The facility must be used primarily for aviation purposes, with other private purposes allowed concurrently. The Premises herein leased is to be used solely for the personal use of the Lessee and Lessee's property. Commercial operations are not authorized. Lessee is prohibited from developing residential living quarters on the Premises. Further, Lessee shall not permit any person to use any part of the Premises for either permanent or temporary residential purposes. The unauthorized use or development of residential living quarters on the Premises shall be an event of default and Lessor may declare this Lease and/or any noncomplying subleases null and void.

Premises are to be operated for aeronautical purposes only. Aeronautical uses include, but are not limited to storage of active aircraft, final assembly of aircraft under construction, maintenance, repair, or refurbishment of aircraft, and storage of aircraft handling, equipment tools and materials necessary to support aeronautical uses. (See FAA Hangar Use Policy)

4. Right of Access. Throughout the Term and any extension or renewal thereof, Lessee shall have the nonexclusive right of ingress and egress to the Premises by way of access roads, runways, taxiways, and aprons pursuant to applicable Federal Aviation Administration rules and regulations and rules and regulations promulgated by Lessor. Lessee hereby agrees not to use the runways, taxiways, and aprons or access roads in such a manner as to obstruct or prevent others from the right of use or travel.

5. Term of Lease. The initial term of this Lease shall commence on the 1st day of November, 2025 , and end on the 1st day of October, 2050. At the expiration of the initial term, Lessee may extend this Lease for one (1) additional fifteen (15) year period on such terms and conditions as the parties may agree, after giving written notice to Lessor three hundred sixty-five

(365) days prior to the expiration of the initial term. If no agreement is reached as to terms and conditions prior to the expiration of the initial term, this Lease shall terminate as provided herein.

In the event Lessee shall continue to occupy the leased Premises beyond the initial term of the Lease or any extension thereof and/or the parties are unable to agree as to the terms and conditions of any renewal, continued occupancy of the Premises by Lessee shall not constitute a renewal or extension of the Lease, but shall create a tenancy from month-to-month on the same terms and conditions of the expired initial term, which tenancy may be terminated at any time by Lessor giving thirty (30) days written notice to Lessee.

6. Rent.

(a) Rent. The parties agree that rent for the period November 1, 2025, through September 30, 2026, is $1,900.50, of which Lessor acknowledges receipt, The rent was calculated by multiplying the base rent rate effective October 1, 2025, of $.181 per square foot per year by 10,500 square feet divided by twelve months, then multiplied by eleven.

(b) Rent Escalation. The parties agree that rent for the Premises shall be subject to escalation on October 1 of each year following the commencement of this Lease. For purposes of determining future rents, the base rent payment effective October 1, 2025, shall be $.181 per square foot per year (Annual index base period for 2003 of 184.0=100). The annual change in the rent payment shall be directly proportional to the percent change in the Annual Average Consumer Price Index (CPI) for all urban consumers (CPI-U, U. S. City Average, all items, unadjusted basis, index base period (1982-84=100)). For example, the rent payment effective October 1, 2025, was calculated as follows:

Annual CPI for 2024	313.689
Less Annual CPI for 2023	304.702
Equals index point change	8.987
Divided by Annual CPI for 2023	304.702
Equals X	0.0295
X multiplied by 100	(0.0295) x 100)
Equals percent change	2.95%

Prior rent (effective 10/1/2024)		0.176
Add percentage change	2.95%	4
New rent per square foot (effective 10/1/2025)		**$0.181**

Future rents shall be calculated in accordance with the above formula. The rent payment shall be increased each October 1 if there is a positive percent change, but never decreased; provided, however, if the rent increase in any given year exceeds five percent (5%), then the proposed rent increase shall be presented to the City Council for hearing and approval pursuant to I.C. § 63-1311A.

In the event that the Consumer Price Index becomes unavailable during the term of this lease or any renewal, the parties agree that its closest successor index in the judgment of Lessor shall be applied to calculate the annual rent payment.

7. Outside Storage. Lessee is prohibited from storing any personal property outside the buildings on the Premises except operable equipment and vehicles owned by Lessee. Such storage shall comply with all city, county and state codes and National Fire Protection Association Standard 409. Business or commercial storage of any kind is strictly prohibited.

8. **Signage.** Lessee shall not erect, maintain, or display upon the outside of any improvements on the leased Premises any signs unless permitted by Twin Falls City Code.

9. **Utilities.** Throughout the Term, Lessee agrees to pay for all water, gas, electricity, power and other utilities used on the Premises.

10. **Premises Improvements.**

A. **Maintenance.** Lessee shall have sole responsibility for maintenance of the Premises. All personal property, including buildings and structures, on the Premises, shall be at the risk of Lessee. Lessee shall keep and maintain the Premises and all improvements thereon, in good and substantial repair and condition, including the exterior thereof, and shall make all necessary repairs and alterations thereto.

Lessee shall provide proper containers for trash and garbage, and shall keep the Premises free and clear of rubbish, debris, litter and weeds. In the event that Lessor determines that Lessee has failed to comply with the terms of this Section, Lessor may, but shall have no obligation to, take such action as is required by this Section, and charge Lessee the actual cost incurred to comply with this Section or a reasonable fee for the services.

Snow removal on the Premises is the sole responsibility of Lessee. Snow removal may be performed by Lessor as a courtesy to Lessee on a fee or non-fee basis unless Lessee instructs Lessor in writing that Lessee does not desire to have Lessor remove snow. Lessor may cease to provide snow removal to Lessee or snow removal may not be provided on a particular occasion at Lessor's sole discretion.

Lessee shall not permit parking on the Premises unless the parking areas have been excavated to the proper subgrade and backfilled with an amount of gravel as specified by Lessor. Lessee shall keep the Premises in good maintenance and repair, and shall repair at Lessee's sole cost and expense, all property, ground, runways, taxiways, and any and all property belonging to Lessor that is damaged or altered by Lessee in maintaining or operating on the Premises.

Lessee shall also have sole responsibility for the maintenance of the access apron adjacent to the Premises, if any, that provides the Premises with access to airport taxiways. Lessee shall be liable for any claim, liability, loss, or damage arising by reason of the injury to or death of any person or persons or by reason of damage to any property, caused by the condition of the access apron, or the acts or omissions of Lessee, its agents, invitees, licensees, subtenants, assignees, occupants and users of the Premises or any person in or on the access apron with the express or implied consent of the Lessee. Lessee shall indemnify and hold the Lessor harmless from all such liability.

In the event that Lessee's personal property is damaged by Lessor's equipment or personnel, Lessor agrees to reimburse Lessee reasonable repair or replacement costs for any such damages incurred.

B. **Construction.** Lessee shall not alter, replace, demolish or add to existing facilities or construct new facilities on the Premises, or make any contract therefor, without first demonstrating compliance with the Airport Development Guidelines in effect or as hereinafter adopted and procuring Lessor's written consent.

In the event that Lessee desires to alter, replace, demolish, or add to existing improvements or construct new improvements on the Premises, all alteration, replacement, demolition, addition or new improvement final plans and specifications, site-use plans and architectural renderings thereof shall be submitted to, and approved by Lessor, and the Federal Aviation Administration, if applicable, prior to the commencement of any construction. All new construction, demolition and construction of alterations, replacements or additions to existing improvements must be substantially completed within one (1) year of the date of Lessor's approval and fully completed within eighteen (18) months of the date of Lessor's approval. The demolition of existing buildings and all alterations, replacements, additions and new facilities shall comply with all laws and ordinances relating thereto. All work with respect to any alterations, additions, or new improvements must be done in a good and workmanlike manner and diligently prosecuted to completion. Lessee shall see to it that such construction shall not cause dust outside the Premises or be a nuisance to any other Lessee.

C. **Damage or Destruction of Premises Improvements.** If any improvement upon the Premises is damaged or totally destroyed, Lessor shall give Lessee written notice of such damage or destruction within 30 days. Lessee shall commence repair or restoration of the improvement within six (6) months from the date of such notice and complete the repair or restoration within one (1) year from the date of such notice. If Lessee fails to comply with the terms of this Section, Lessor shall have the option of demolishing the damaged or destroyed improvement at the expense of Lessee.

D. **Relocation or Removal of Improvements.** Lessor, in its sole discretion, reserves the right to further develop or improve the Airport facilities and property, including the right to cause any structure or improvement to be removed or relocated on the Airport, as Lessor sees fit, to take any action Lessor considers necessary to protect the instrument approaches of the Airport against obstructions, to prevent Lessee from erecting or permitting to be erected, any building or other structure on the Airport which, in the opinion of Lessor would limit the usefulness of the Airport or constitute a hazard to aircraft.

In the event Lessor elects to have a structure or improvement owned by Lessee removed or relocated, Lessor shall give Lessee six (6) months prior notice and offer Lessee an alternative site if in the opinion of Lessor, a suitable site is available on Airport property. If no alternate site is offered or Lessee chooses not to relocate, this Lease may be terminated by either party.

If Lessor exercises its right under this Section to cause Lessee to remove its hangar from the Premises and relocate it to another location on the Airport, Lessor agrees to pay Lessee the cost of relocating the hangar. If Lessor causes Lessee to remove its hangar from the Airport, Lessor agrees to pay Lessee the fair market value of Lessee' hangar, at which time the hangar shall become the property of Lessor.

11. **Liens.** Lessee shall keep the Premises free and clear of any and all liens in any way arising out of the construction, improvement or use of the Premises by Lessee.

12. **Taxes and Assessments.** Lessee shall pay all taxes and assessments of any kind levied against the Premises during the Term of this Lease and any extension thereof. Further, Lessee shall promptly pay any personal property taxes and assessments of any kind levied against Lessee's personal property as the same becomes due.

13. **Fire Hazards.** Lessee shall not do anything on the Premises or bring or keep anything thereon that will increase the risk of fire, or which will conflict with the regulations of the Twin Falls City Fire Department.

14. **Waste Prohibited**. Lessee shall not commit any waste or damage to the Premises hereby leased nor permit any waste or damage to be done thereto.

15. **Compliance With Law.** Lessee agrees to comply with all municipal, state and federal laws, rules, regulations and ordinances. Lessee further agrees to comply with all current Joslin Field - Magic Valley Regional Airport Rules and Regulations, Minimum Standards, and applicable sections of the Airport Security Plan now in existence, or as hereafter adopted and/or amended during the Term of this Lease. By signing this agreement, Lessee acknowledges receipt of a current copy of the Airport Rules and Regulations.

16. **<u>Indemnity - Hazardous Substances.</u>** Lessee shall not engage in, and shall not permit its agents, subtenants, assignees or others under its control to engage in, an operation on the Premises or related airport facilities that involves the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of "hazardous substances" or "hazardous wastes" without the prior written consent of Lessor, which may be withheld or granted in Lessor's sole discretion.

As used herein, the term "hazardous substance" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the state of Idaho or the United States government, including but not limited to: (A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act [33 U.S.C. 1321(b)(2)(A)]; (B) any element, compound, mixture, solution, or substance designated pursuant to 42 U.S.C 9602; (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. 6921] (but not including any waste the regulation of which under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] has been suspended by Act of Congress); (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act [33 U.S.C. 1317(a)]; (E) any hazardous air pollutant listed under section 112 of the Clean Air Act [42 U.S.C. 7412]; (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act [15 U.S.C. 2606]; and (G) any substance that may in the future be defined as "hazardous" by amendment to existing federal, state and local laws and regulations. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this Section, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). The term "environmental law(s)" as used herein shall include, without limitation, the foregoing listed laws, regulations and ordinances and state analogs of such laws.

Lessee shall indemnify, defend and save Lessor harmless from all cleanup costs, investigation and monitoring costs, costs of providing alternative sources of drinking water to neighbors, property damage costs, injury/health-related costs, litigation costs (including, but not limited to attorney's fees, accountant's fees, consultant's fees, costs on appeal, expert witness costs), losses and damages related to third parties, all fines, suits, procedures, claims and actions of any kind arising out of or in any way connected with any spills or discharges of hazardous substances or wastes by Lessee, its employees, agents, invitees, licensees, subtenants or assignees and others under its control, in or about the Premises and related airport facilities or arising under or on account of any environmental law or similar applicable laws or regulations that occur during the term of this Lease, and from all fines, suits, procedures, claims and actions of any kind arising out of Lessee's failure to provide all information and take all actions required by any Federal, state or local authority, or arising out of Lessee's failure to cause its employees, agents, invitees, licensees, subtenants, assignees or others under its control to do the same. Lessee's obligations and liabilities under this paragraph shall survive the expiration or early termination of this Lease and continue so long as Lessor remains responsible for any spills or discharges of hazardous substances or wastes in or about the Premises that occur during the Term.

17. <u>Care of Petroleum Products and Other Material by Lessee</u>. Lessee shall handle, use, store and dispose of petroleum products, and all other materials (including but not limited to hazardous materials) owned or used by it on the Airport in accordance with all applicable federal, state, local and Airport Rules and Regulations. Lessee shall, at Lessee's own expense, comply with, and cause all its employees, agents, invitees, licensees, subtenants, assignees and others under its control on the Premises and related airport facilities to comply with, all local and state environmental laws, rules and regulations, the Comprehensive Environmental Response, Compensation & Liability Act (42 U.S.C. § 9601 *et seq.*), and all other applicable federal laws, rules and regulations, and any and all amendments thereto, or hereafter promulgated.

Lessee shall not cause or suffer to occur, a release, discharge, spillage, uncontrolled loss, seepage or filtration of oil or petroleum or chemical liquids or solids, liquid or gaseous products or hazardous substance as defined in Section 16 at, upon, under or within the Premises, or related airport facilities, including the storm sewer, or any contiguous real estate. Lessee shall not permit its employees, agents, invitees, licensees, subtenants, assignees or others under its control on the Premises and related airport facilities to engage in any activity that could lead to the imposition of liability under any environmental laws or similar applicable laws or regulations. Should "hazardous substances" and/or "hazardous wastes" be released, spilled or escape from storage or in any way contaminate the Airport or property adjacent to the Airport through activities of the Lessee, its employees, agents, invitees, licensees, subtenants, assignees or others under its control on the Premises or related airport facilities, Lessee shall be responsible for the cleanup, containment and abatement of such contamination at Lessee's sole cost and expense. Should Lessee fail to do so within a reasonable time frame, Lessor, at its option, but without obligation, may take any reasonable and appropriate action in Lessee's stead. Lessee shall pay the cost of such remedial action upon delivery to Lessee of an itemization of the costs incurred.

Lessee shall comply strictly and in all respects with the requirements of all applicable environmental laws and with all similar applicable laws and regulations and shall notify appropriate governmental agencies, Lessor and the Airport Manager promptly in the event of any spill or release, or hazardous substance upon the Premises or related airport facilities and shall promptly forward to the Lessor and the Airport Manager copies of all orders, notices, permits, applications, or other communications and reports in connection with any such spill or release, or any other matters relating to environmental laws or related regulations or any similar applicable laws or regulations, as they may affect the Premises.

18. <u>Hold Harmless</u>. Lessee shall indemnify and hold the Lessor and the property of the Lessor, including the Premises, free and harmless from any and all claims, liability, loss, damage or expense, except in the event of the Lessor's sole negligence or willful misconduct, resulting from Lessee's occupation and use of the Premises and related Airport facilities and Lessee's business operations conducted at Joslin Field – Magic Valley Regional Airport, including any claim, liability, loss, or damage arising by reason of injury to or death of any person or persons or by reason of damage to any property caused by Lessee's business operations at Joslin Field- Magic Valley Regional Airport, the condition of the Premises, the condition of any of Lessee's improvements or personal property in or on the Premises or Airport related facilities, or the acts or omissions of any person in or on the Premises or Airport related facilities with the express or implied consent of the Lessee including but not limited to the Lessee, its employees, agents, invitees, licensees, subtenants, assignees, concessionaires, occupants and users of the Premises. Provided however, Lessee shall have no obligation to indemnify and hold the Lessor harmless for claims, liability, loss, damage or expense directly resulting from Lessor's negligence or willful misconduct except by way of liability insurance required in Section 19. Lessor shall not be liable for any personal injury or property damage which may be sustained by Lessee, its employees, agents, invitees, customers or other persons, that occurs on the Premises, or at Joslin Field – Magic Valley Regional Airport that are the direct result of the activities of the Lessee, its employees, agents, invitees, licensees, subtenants, assignees, concessionaires, occupants and users of the Premises, and Lessee agrees to indemnify and hold Lessor harmless from such liability.

Lessor shall not be liable for injury to Lessee's business or any loss of income there from or for damage to the property of Lessee, Lessee's employees, invitees, customers, or any other person in or about the Premises or related Airport facilities for purposes of Lessee's business.

Lessor shall not be liable for any damages arising from any act or neglect of any other tenant of Lessor.

19. **Insurance.** At all times during the Term of this Lease, Lessee shall, at its expense, keep property insurance in force insuring all the improvements on the Premises against loss and damage (including but not limited to coverage for damage due to fire, windstorm, hail, or other weather-related cause) in an amount of the replacement cost of all the improvements, with Lessor designated as loss payee, as Lessor's interests may appear.

Lessee shall also maintain, at its expense, a policy of public liability insurance covering Lessee's occupation and use of the Premises at Joslin Field-Magic Valley Regional Airport, designating Lessor as an additional insured and protecting Lessor and Lessee against all claims for personal injury, death and property damage occurring upon, in or about the Premises and related Airport facilities relating to or arising out of Lessee's occupation and use of the Premises, with limits of at least $1,000,000.00 combined single limit each occurrence for personal injury and property damage. All such insurance shall protect, hold harmless, and indemnify Lessor not only against any and all such liability, but also against all loss, expense and damage of any and every sort and kind, including costs of investigation, attorneys' fees and other costs of defense, subject to policy terms, conditions, limitations and exclusions. With respect to the coverages required in this Section, the parties agree that Lessee's policy or policies shall be primary to any other valid and collectible insurance available to Lessor.

The above required insurance shall be maintained with an insurance carrier, or insurance carriers, satisfactory to Lessor and shall not be subject to cancellation except after at least ten (10) days' prior written notice to Lessor. Lessee shall provide Lessor with copies of the policy or policies for said insurance, or duly executed certificate or certificates for the same, showing full compliance to date with the requirements of this Section, and shall at all times keep current policies or certificates on deposit with Lessor.

20. **Right of Inspection.** Lessor shall have the right to enter the Premises at any reasonable time to examine the same and to ensure compliance with this Lease.

21. **Security.** Throughout the Term of this Lease and any extension or renewal thereof, Lessee shall have the use of, and access to, the Air Operations Area and agrees to comply with all federal security regulations.

22. **Licenses, Fees and Permits.** Lessee shall purchase and maintain all licenses and permits, and pay all fees required of Lessee, under any federal, state and local law or regulation to occupy and use the Premises at Joslin Field-Magic Valley Regional Airport.

23. **Lessee's Default**. Time and the strict and faithful performance of each and every one of the terms, covenants and conditions of this Lease is expressly made the essence of this agreement.

A. Events of Default. The following shall constitute a default of the Lease.

i. Failure of Lessee to pay rent or any other charge within thirty (30) days after the same is due.

ii. Failure of Lessee to comply with any term, covenant or condition of the Lease, other than specified in paragraph i above, within thirty (30) days after written notice by Lessor to Lessee specifying the nature of the term, condition or obligation breached.

iii. Abandonment of the Premises for a period of ninety (90) consecutive days and Lessee's failure to reoccupy the Premises within ten (10) days after written notice by Lessor to Lessee of the abandonment.

Lessor shall be entitled to recover from Lessee the reasonable amount of attorney's fees and costs incurred by Lessor in determination of a breach and Lessor's notification of that breach to Lessee, which fees and costs shall be paid to Lessor within thirty (30) days after Lessee's receipt of Lessor's written demand therefor.

B. Remedies upon Default. If there is a default by Lessee under this Lease, Lessor may, at Lessor's election, either in law or equity, seek performance of the term, condition or obligation of this Lease or without further notice or demand, declare this Lease terminated and re-enter the Premises to repossess and enjoy the same.

C. Damages. In the event of termination, Lessor shall be entitled to recover as damages the reasonable costs of re-entry and reletting, including without limitation the reasonable attorney's fees and costs incurred to regain possession of the Premises, the cost of any clean up, refurbishing, removal of Lessee's improvements, fixtures and personal property, and to pay all other reasonable and necessary expenses or commissions paid by Lessor in re-leasing the Premises.

D. Cure. In the event of notification of a breach of any term, condition or obligation by Lessee and Lessee does in fact cure such breach, then and in that event Lessee shall pay all reasonable attorney's fees and costs incurred by Lessor in determination of the breach and notification of the breach to Lessee. If Lessee shall have defaulted in the performance of any (but not necessarily the same) terms, conditions or obligations for two or more times during any five-year-period during the Term or any renewal thereof, then such conduct shall, at the election of the Lessor, represent a separate event of default which cannot be cured by Lessee. Lessee acknowledges that the purpose of this provision is to prevent repetitive defaults which work a hardship upon Lessor and deprive it of timely performance by Lessee hereunder.

24. Termination. In addition to the right to terminate this Lease as provided in Section 23, Lessor shall have a right to terminate this Lease upon thirty (30) days written notice for any of the following reasons:

A. If Lessor determines that the Premises is necessary or required for developing or maintaining the Airport or Lessor determines in accordance with the Airport Master Plan and FAA-approved Airport Layout Plan, to construct, repair, alter, develop or improve Magic Valley Regional Airport – Joslin Field, including but not limited to the buildings, parking, lighting, runways, airspace designation, which alteration, development or improvement requires Lessee to remove any structure from the leased Premises. If Lessor exercises its right under this paragraph to cause Lessee to remove Lessee's hangar from the Premises and relocate it to another location, Lessor agrees to pay Lessee the cost of relocating the hangar. If Lessor causes Lessee to remove its hangar from the Airport, Lessor agrees to pay Lessee the fair market value of Lessee's hangar, at which time the hangar shall become the property of Lessor.

B. If any federal, state or local court or authority mandates a change in the operations of the Airport facility which necessitates the removal of any structure on the leased Premises.

C. The permanent abandonment of the Airport as an air terminal.

D. The lawful assumption by the United States Government or any authorized agency thereof, of the operation, control, or use of the Airport, or any substantial part or parts thereof, in such a manner as substantially to interfere with Lessee's use and enjoyment of the Premises for a period of at least ninety (90) days.

E. To terminate or amend this Lease to bring it into compliance with any requirements of the state of Idaho or the federal government to obtain or retain eligibility for government loans, grants, aid or funding.

F. Issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport, and the remaining in force of such injunction for a period of at least ninety (90) days.

G. Lessee's failure to replace any improvements which may have been destroyed within the time allowed in Section 10C.

The parties agree that Lessor shall have no liability to Lessee for damages or costs incurred by Lessee if termination of this Lease occurs under paragraphs B through G.

25. <u>Lessee's duties upon Termination or Expiration</u>.

A. <u>Lessee's Personal Property</u>. Upon the termination or expiration of this Lease, Lessee agrees to remove all of Lessee's personal property at Lessee's sole cost and expense, including but not limited to:

i. All fuel storage tanks used by Lessee or under its control in accordance with all applicable statutes or regulations shall be removed prior to the termination or expiration of this Lease;

ii. All personal property, including trade fixtures, owned or leased by Lessee and used upon the Premises, shall be removed prior to the termination or expiration of this Lease.

B. <u>Lessee's Improvements</u>. All improvements, including but not limited to, all structures and buildings, shall be removed and the real property restored to a condition acceptable to Lessor within one hundred eighty (180) days of the termination or expiration of this Lease ("Removal Period). During the Removal Period, Lessee shall continue to pay Lessor rent for the Premises on a prorated daily basis which rent shall be due and payable on the 1st day of each month for the previous month.

C. <u>Removal or Sale</u>. Prior to and within the Removal Period, Lessee shall have the right to sell Lessee's personal property, including improvements, (hereafter collectively referred to as the "Property"), to a third party, however, the Property must be removed from the Premises or a new Lease executed with Lessor within the Removal Period. If Lessee fails to remove all the Property, and restore the Premises within the Removal Period, Lessor shall have the right, but not the obligation, to purchase the Property for the sum of One and No/100 ($1.00) Dollar. Lessee agrees to execute all documents necessary to transfer title to the Property from Lessee to Lessor and thereafter Lessee shall have no further right, title or interest in the above-described Property and Lessor shall be entitled to possession and ownership of the Property. In the alternative, Lessor may remove the same and restore the Premises, at Lessee's sole cost and expense, which amount shall be due and payable to Lessor within thirty (30) days after Lessee's receipt of Lessor's demand therefore.

D. **Environmental Condition.** Lessee further agrees to surrender the Premises free from environmental contamination of any kind caused by Lessee, its employees, agents, invitees, licensees, concessionaires, subtenants, assignees, occupants and users of the Premises during the term of this Lease.

26. **Lessee's Right To Terminate.** Lessee shall have the right to terminate this Lease upon the following events:

A. default by Lessor in the performance of any covenant or agreement herein required to be performed by Lessor and Lessor's failure to cure said default within sixty (60) days after Lessee having first given Lessor written notice of the default;

B. permanent abandonment of the Airport; or,

C. a final court order prohibiting Lessee from conducting all of the permitted uses of the Premises described in this Lease.

27. **Condemnation.** In case of a taking by eminent domain ("Taking") by the United States of America, other than for temporary use, of either (a) the entire Premises, or (b) such a substantial part of the Premises as shall have the result that the portion of the Premises remaining after such Taking (even if restoration were made) will be economically unsuitable for the uses to which the Premises was put prior to the Taking, this Lease shall terminate as of the date of the transfer of possession to the United States of America. In the event of a Taking of a portion of the Premises that is not a Total Taking, then and in that event this Lease shall remain in full force and effect as to the portion of the Premises remaining immediately after such Taking and rent shall be reduced on a square footage basis at the then applicable rental rate provided for in Section 6 of this agreement. In no event shall Lessor be liable to Lessee for any damages sustained by Lessee as a result of a taking by eminent domain by the United States of America.

Neither the execution of this Lease, nor any provision of this Lease shall affect in any way Lessor's right to condemn the Premises herein granted under its power of eminent domain.

28. **Future Construction by Lessor**. Lessor reserves the right to enter upon that portion of the leased Premises outside of the structures and perform whatever construction is necessary to provide a concrete or asphalt surface at no cost to the Lessee. Lessor also retains that portion of the leased Premises, outside the structures, as a general utility easement and any surface disturbed by the Lessor in constructing a utility shall be restored to its original condition by Lessor.

29. **Inconvenience during Construction.** Lessee recognizes that from time to time during the Term of this Lease it will be necessary for Lessor to initiate and carry forward programs of construction, reconstruction, expansion, relocation, maintenance and repair in order that the Airport and its facilities may be suitable for the volume and character of air traffic and flight activity which will require accommodation, and that such construction, reconstruction, expansion, relocation, maintenance, and repair may inconvenience or interrupt operations at the Airport. Lessee agrees that no liability shall attach to Lessor, its officers, agents, employees, contractors, subcontractors, and representatives by reason of such inconveniences or interruption, and for and in further consideration of the premises, Lessee waives any right to claim damages, provided, however, that this waiver shall not extend to, or be construed to be a waiver of, any claim for physical damage to property resulting from Lessor's negligence or willful misconduct.

30. **Non-exclusive Right.** Nothing contained in this Lease shall be construed to grant or authorize the granting of an exclusive right to provide aeronautical services to the public at the Airport, and Lessor reserves the right to grant to others the privilege and right of conducting any one or all activities of an aeronautical nature.

31. Nondiscrimination.

(a) Lessee, its successors in interest and assigns, hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the Premises for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, Lessee shall maintain and operate such facilities and services in compliance with all requirements imposed pursuant to 49 C.F.R. Part 21, Non-discrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

(b) Lessee, its successors in interest and assigns, hereby covenants and agrees, as a covenant running with the land, that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of any facilities on the Premises; (2) that in Lessee's construction of any improvements on, over, or under such land for the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be discriminated against and Lessee shall comply with all other requirements imposed by, or pursuant to, Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended; and, (3) that in the event of breach of any of the preceding nondiscrimination covenants, Lessor's shall have the right to terminate this Lease, and to re-enter and repossess the Premises and the facilities thereon, and hold the same as if said Lease had never been made or issued. In the event of noncompliance with the preceding nondiscrimination covenants, Lessee hereby authorizes Lessor to take such action as the federal government may direct to enforce this covenant, and Lessee also authorizes the federal government to take appropriate action to enforce compliance, including the right to seek judicial enforcement.

Further, with respect to the Premises, Lessee agrees to undertake any corrective action or affirmative action required of Lessor or Lessee by the Federal Aviation Administration because of Lessee's actions or inactions.

32. Subordination. This Lease shall be subordinate to the provisions of any existing or future agreements between Lessor and the United States, relative to the operation and maintenance of the Airport, the terms and execution of which have been or may be required as a condition precedent to the expenditure or reimbursement of Lessor for federal funds for the development of the Airport.

33. No Partnership. Nothing contained in this Lease shall create or be construed as creating a partnership, joint venture, or employment relationship between Lessor and Lessee. Neither Lessor nor Lessee shall be liable, except as otherwise expressly provided in this Lease, for any obligations or liabilities incurred by the other. Lessee expressly agrees to indemnify and hold Lessor, and the property of the Lessor, including the Premises, free and harmless from any and all obligations and liabilities incurred by Lessee in conducting aviation-related activities or any other activities on the Premises.

34. Assignments and Subleases. Lessee may sublease Premises square footage for no more than one non-owned aircraft or assign the entire Lease, for the uses described in Section 3 after first obtaining Lessor's written consent. Said consent will not be unreasonably withheld.

A. After any permitted assignment, the assignee shall be considered the Lessee and accorded the rights conferred upon the assignor by this Lease. However, the assignor shall not be released from any past, present or future obligations under the terms of this Lease resulting from

Lessee's occupation and use of the Premises and related Airport facilities prior to the effective date of the assignment.

B. Any sublease or assignment permitted must comply with the following terms and conditions:

(i) all subleases and assignments must comply with the terms of this Lease;

(ii) any sublease of hangar square footage must be used for the storage of one aircraft with other uses occurring concurrently;

(iii) all subleases for private uses must comply with the terms of the standard lease agreement for private hangars approved for use at the Airport at the time of the sublease,

(iv) no construction of additional facilities is allowed by a sublessee; and

(vii) subleasing by a sublessee is prohibited.

35. Attorney's Fees. In the event that any controversy relating to this Lease is brought in a court of law, including any bankruptcy or appeal proceeding, the prevailing party shall be awarded its attorney fees and costs.

36. Waiver. Waiver of a breach of any provision of this Lease by any party in any particular instance shall not be deemed a waiver of any other breach of this Lease.

37. Notices. All notices required to be given to each of the parties hereto under the terms of this Agreement shall be given by depositing a copy of such notice in the United States mail, postage prepaid and certified, return receipt requested, to the respective parties hereto at the following address:

Lessor: Joslin Field, Magic Valley Regional Airport
c/o City of Twin Falls
P.O. Box 1907
Twin Falls, Idaho 83303-1907

Lessee: Rebecca L. Jones Revocable Trust
61451 SW Skene Trail
Bend, OR 97702
(Ph-541-639-2345)

or to such other address as may be designated in writing and delivered to the other party. All notices given by certified mail shall be deemed completed as of the date of mailing.

38. Survival of Obligations. In the event of early termination of this Lease by either party as permitted under this Lease, neither party shall accrue any further obligations under this Lease as of the effective date of such early termination; provided, however, the obligations of a party that are expressly stated in a provision of this Lease as surviving expiration or sooner termination thereof shall continue in accordance with the terms of that Lease provision.

39. Entire Agreement. This Agreement constitutes the entire understanding between the parties and supersedes all prior agreements or understandings between the parties relating to the subject matter. Any modifications or amendments to this agreement must be made in writing and signed by both parties.

40. Binding Effect. The provisions and stipulations hereof shall inure to the benefit of and bind the assigns and successors in interest of the respective parties hereto.

41 **Idaho Law** The laws of the State of Idaho shall govern the enforcement, interpretation, and validity of this lease. The Parties agree that that venue for any action concerning this lease shall be brought and maintained exclusively in the Fifth Judicial District, Twin Falls, State of Idaho.

42. **State required certifications**: Due to the Lessor acting as a political subdivision of the state of Idaho, Lessor is subject to certain contractual constraints imposed by law, that if not agreed to, may render this lease void. For purposes of compliance, Lessee certifies and agrees as follows:

A. **Anti-Boycott:** To the extent required by Idaho Code § 67-2346, Lessee certifies that, as of the Effective Date, it is a Company that is not engaged in a Boycott of goods or services from Israel or territories under Israel's control and Lessee agrees that it will not engage in such a Boycott for the duration of the Agreement. As used in this particular provision, "Boycott" and "Company" shall be defined as stated in Idaho Code § 67-2346(3)(a) and(b).

B. **Boycott of Particular Business Sector:** To the extent required by Idaho Code § 67-2347A, Lessee certifies that, as of the Effective Date, it is a Company that is not engaged in, and will not for the duration of the Lease engage in, a Boycott of any individual or company because the individual or company engages in or supports the (a) exploration, production, utilization, transportation, sale, or manufacture of fossil fuelbased energy, timber, minerals, hydroelectric power, nuclear energy, or agriculture; or (b) manufacture, distribution, sale, or use of Firearms. As used in this particular provision, "Firearms" is defined as stated in Idaho Code § 18-3302(2)(d) and the terms "Boycott" and "Company" are defined as stated in Idaho Code § 67-2347A(4).

C. **Government of China Certification:** Lessee certifies that, as of the Effective Date, it is a Company that is not owned or operated by the Government of China and Lessee agrees that it will not be so owned or operated for the duration of the Lease. As used in this particular provision, "Government of China" and "Company" are defined.

D. **Funds for Abortion Certification:** (per I.C. 18-8705): Lessee certifies that it is not an Abortion Provider nor an Affiliate of an Abortion Provider such that entry into this Lease is not prohibited by Idaho Code § 18-8703. For purposes of this provision, "Abortion Provider" and "Affiliate of an Abortion Provider" are defined as stated in Idaho Code § 18-8702.

******End of Agreement*******

IN WITNESS WHEREOF, Lessor and Lessee have executed this Airport Lease Agreement-Private Hangar, as of, but not necessarily on, the day and year first above written.

LESSOR:
CITY OF TWIN FALLS, IDAHO,
a municipal corporation,

By_____________________________
Mayor – Ruth Pierce

LESSEE:

REBECCA L. JONES REVOCABLE TRUST

By__________________________________
Rebecca L. Jones - Trustee

Date: Monday, December 22, 2025

To: Honorable Mayor and City Council

From: Mandi Thompson, Assistant to the City Manager

ACTION ITEM

Request:

Request for the Council to approve the contract between the City of Twin Falls and Starr Corporation for the CM/GC services on the Twin Falls Animal Shelter expansion project and to authorize the Mayor to sign the contract.

Time Estimate:

5 minutes for presentation and questions from Council

Background:

People for Pets, the organization that operates the animal shelter for the City of Twin Falls, has been fundraising for several years to fund an expansion of the animal shelter that will include a cat colony, surgical suite and an additional canine kennel area. Because the building is owned by the City, staff will oversee the project. An RFQ was issued on September 2, 2025, and we received 9 responses to the solicitation. Those proposals were evaluated by a team of four and six firms were invited to interview on October 22. From that interview process, the top three firms were ranked — Starr Corp, Suburban Construction and HCC.

Staff requested Council approval to enter into negotiations with the top-ranked firm, Starr Corporation. The negotiated contract is attached for the Council's review. Starr is proposing a 7.5% CM/GC fee for their services on this project, with no additional costs for pre-construction services. This fee is competitive with comparable fees in the market right now. Therefore, staff recommend that the Council approve the attached contract as presented.

Approval Process:

Majority approval by Council.

Budget Impact:

Budget impact will be determined by the finalized GMP and the final fundraising efforts by People for Pets.

Regulatory Impact:

None.

History:

N/A

Analysis:

N/A

Conclusion:

Staff recommends that the Council to approve the contract between the City of Twin Falls and Starr Corporation for the CM/GC services on the Twin Falls Animal Shelter expansion project and to authorize the Mayor to sign the contract.

Attachments:

1. A133-2019- City of Twin Falls Animal Shelter Agreement

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 Forth day of December in the year Two Thousand Twenty-Five
(In words, indicate day, month, and year.)

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

City of Twin Falls
203 Main Avenue East
Twin Falls, ID 83301

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

STARR CORPORATION
PO Box 46
Twin Falls, ID 83303

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

Animal Shelter Addition and Renovation

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

Laughlin Ricks Architecture
134 3rd Ave East
Twin Falls, ID 83301

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:
The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes 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 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.

TABLE OF ARTICLES

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

Renovations, addition, and site work at the Twin Falls Animal Shelter

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

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:
(Provide total and, if known, a line item breakdown.)

Budget for construction of project is $1,300,000.00

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

.1 Design phase milestone dates, if any:

.2 Construction commencement date:

.3 Substantial Completion date or dates:

Will be established after plans have been submitted for review.

.4 Other milestone dates:

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

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

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

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

Mandi Thompson
Assistant to the City Manager
203 Main Ave East
Twin Falls, ID 83301
mthompson@tfid.org

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

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

.1 Geotechnical Engineer:

.2 Civil Engineer:

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

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

Colby Ricks
134 3rd Ave East
Twin Falls, ID 83301
208-736-8050

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

Jason Derricott
PO Box 46
Twin Falls, ID 83303
208.733.5695
jason@starrcorporation.com

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

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

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

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

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

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

§ 2.2 Relationship of the Parties

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

§ 2.3 General Conditions

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

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

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

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

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

§ 3.1.3 Consultation

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

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

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing written protocols for the development, use, transmission, reliance, and exchange of digital data, including building information models for the Project.

§ 3.1.4 Project Schedule

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

§ 3.1.5 Phased Construction

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

§ 3.1.6 Cost Estimates

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

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

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

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

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

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

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

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

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

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

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

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

§ 3.1.14 Other Preconstruction Services
Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document
(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

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

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

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

.1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;

.2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;

.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;

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

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

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

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

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

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

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

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

§ 3.3 Construction Phase

§ 3.3.1 General

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

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

Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration

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

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

§ 3.3.2.3 Monthly Report

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

§ 3.3.2.4 Daily Logs

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

§ 3.3.2.5 Cost Control

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

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

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

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

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

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

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

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

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

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

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

§ 4.2 Owner's Designated Representative

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

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

§ 4.3 Architect

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

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

No fee will be charged for preconstruction 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.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Individual or Position	Rate

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

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

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

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

%

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
§ 6.1 Contract Sum
§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

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

The construction manager's fee shall be 7.5% of the cost of construction.

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

The Construction Manager's Fee shall be applied to all changes of work associated with the scope of work included in the GMP.

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

Twelve percent (12%) maximum.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed Ninety percent (90%) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

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

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

§ 6.3 Changes in the Work
§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

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

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

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

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

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

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE
§ 7.1 Costs to Be Reimbursed
§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

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

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

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

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

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:
(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the

Work.)

Lump sum included in CM/GC fee set forth in 6.1.2.

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

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

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

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

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction
§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 7.6.7 Costs of document reproductions and delivery charges.

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

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

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

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

§ 7.7 Other Costs and Emergencies

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

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

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

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

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

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

§ 7.9 Costs Not To Be Reimbursed
§ 7.9.1 The Cost of the Work shall not include the items listed below:

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

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS
§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS
§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that

portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

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

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

ARTICLE 10 ACCOUNTING RECORDS

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

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

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

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the 30th day of the following 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 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

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

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

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

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

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

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

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

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

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

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

§ 11.1.8 Retainage

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

Five Percent (5%)

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

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

At the discretion of the owner.

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

All closeout documents including warranties must be submitted and approved before retainage is released.

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

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

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

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

§ 11.2 Final Payment

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

.1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and

.3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

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

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

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

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

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

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

§ 11.3 Interest
Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

%

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

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 12.2 Binding Dispute Resolution
For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

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

[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

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

ARTICLE 13 TERMINATION OR SUSPENSION
§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment
§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

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

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

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

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

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

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

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

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment
§ 13.2.1 Termination
The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

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

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

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

§ 13.2.3 Termination by the Owner for Convenience
If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:
(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

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

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

§ 14.2 Successors and Assigns

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

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

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

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

§ 14.3.1.1 Commercial General Liability with policy limits of not less than One Million ($1,000,000.00) for each occurrence and Two Million ($2,000,000.00) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than One Million ($1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

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

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than One Million ($1,000,000.00) each accident, One Million ($1,000,000.00) each employee, and One Million ($1,000,000.00) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than One Million ($1,000,000.00) per claim and One Million ($1,000,000.00) in the aggregate.

§ 14.3.1.6 Other Insurance

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

Coverage	Limits
Builders Risk Insurance	Full value of the project(s)

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

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

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

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

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with a building information modeling exhibit, if completed, or as otherwise set forth below:
(If other than in accordance with a building information modeling exhibit, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 14.5 Other provisions:

ARTICLE 15 SCOPE OF THE AGREEMENT
§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

.1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
.2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
.3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds
.4 AIA Document A201™–2017, General Conditions of the Contract for Construction
.5 Building Information Modeling Exhibit, if completed:

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

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

[ ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

.7 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, portions of Addenda relating to

bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

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

OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
BY: RUTH PIERCE	BY: MICHAEL ARRINGTON
(Printed name and title)	*(Printed name and title)*
Ruth Pierce, Mayor City of Twin Falls	Michael Arrington, President

Date: Monday, December 22, 2025

To: Honorable Mayor and City Council

From: Mandi Thompson, Assistant to the City Manager

ACTION ITEM

Request:

Request for the Council to approve the contract between the City of Twin Falls and Starr Corporation for the CM/GC services on the remodel of Fire Station 1 and to authorize the Mayor to sign the contract.

Time Estimate:

5 minutes for a presentation and questions from Council.

Background:

In 2021, the City entered into an agreement with Pivot North Architecture and Starr Corporation and for the design and CM/GC services (respectively) for the construction of fire station 2, fire station 3, the fire training facility and improvements to fire station 1. Due to budget constraints, improvements to fire station 1 were removed from the original scope.

Idaho Statute allows cities to rehire a CM/GC to complete additional phases of a project without going through the entire qualification-based selection process again. We reviewed this allowance with the City Attorney, and he agreed that this project could be considered an additional phase of both the fire station projects. Starr Corporation was an excellent partner in the training center and two new fire stations. As a result, we reached out to them directly to negotiate a CM/GC contract for the next phase of the overall project. The contract is attached for the Council's review. Starr is proposing a 7.5% CM/GC fee for their services on this project, with no additional costs for pre-construction services. This fee is competitive with comparable fees in the market right now.

Approval Process:

Majority approval by Council.

Budget Impact:

Budget impact will be determined upon establishment of the GMP at a future date.

Regulatory Impact:

History:

N/A

Analysis:

N/A

Conclusion:

Staff recommends that the Council approve the attached contract as presented and authorzie the Mayor to sign.

Attachments:

1. A133-2019- City of Twin Falls FS No. 1 Agreement

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 Forth day of December in the year Two Thousand Twenty-Five
(In words, indicate day, month, and year.)

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

City of Twin Falls
203 Main Avenue East
Twin Falls, ID 83301

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

STARR CORPORATION
PO Box 46
Twin Falls, ID 83303

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

Fire Station No. 1 Renovation

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

Laughlin Ricks Architecture
134 3rd Ave East
Twin Falls, ID 83301

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:
The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes 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 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.

TABLE OF ARTICLES

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

Renovations and upgrades throughout Fire Station No. 1.

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

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:
(Provide total and, if known, a line item breakdown.)

Budget for construction of project is $1,000,000.00

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

.1 Design phase milestone dates, if any:

.2 Construction commencement date:

.3 Substantial Completion date or dates:

Will be established after plans have been submitted for review.

.4 Other milestone dates:

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

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

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

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

Mandi Thompson
Assistant to the City Manager
203 Main Ave East
Twin Falls, ID 83301
mthompson@tfid.org

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

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

.1 Geotechnical Engineer:

.2 Civil Engineer:

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

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

Colby Ricks
134 3rd Ave East
Twin Falls, ID 83301
208-736-8050

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

Jason Derricott
PO Box 46
Twin Falls, ID 83303
208.733.5695
jason@starrcorporation.com

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

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

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

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

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

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

§ 2.2 Relationship of the Parties

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

§ 2.3 General Conditions

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

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

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

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

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

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

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

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing written protocols for the development, use, transmission, reliance, and exchange of digital data, including building information models for the Project.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 3.1.14 Other Preconstruction Services
Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document
(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

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

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

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

.1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;

.2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;

.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;

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

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

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

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

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

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

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

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

§ 3.3 Construction Phase

§ 3.3.1 General

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

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

Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

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

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

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

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

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

ARTICLE 4 OWNER'S RESPONSIBILITIES
§ 4.1 Information and Services Required of the Owner
§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
§ 5.1 Compensation
§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

No fee will be charged for preconstruction 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.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Individual or Position	Rate

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

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

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

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

%

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

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

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

The construction manager's fee shall be 7.5% of the cost of construction.

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

The Construction Manager's Fee shall be applied to all changes of work associated with the scope of work included in the GMP.

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

Twelve percent (12%) maximum.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed Ninety percent (90%) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

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

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

§ 6.3 Changes in the Work
§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

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

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

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

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

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

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE
§ 7.1 Costs to Be Reimbursed
§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

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

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

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

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

§ 7.2.2.1 Wages or salaries of the Construction Manager’s supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:
(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the

Work.)

Lump sum included in CM/GC fee set forth in 6.1.2.

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

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

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

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

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction
§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 7.6.7 Costs of document reproductions and delivery charges.

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

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

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

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

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

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

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

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

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

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

§ 7.9 Costs Not To Be Reimbursed
§ 7.9.1 The Cost of the Work shall not include the items listed below:

.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;

.2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;

.3 Expenses of the Construction Manager's principal office and offices other than the site office;

.4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;

.5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;

.6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;

.7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;

.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and

.9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS
§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS
§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that

portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

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

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

ARTICLE 10 ACCOUNTING RECORDS

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

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

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

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the 30th day of the following 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 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

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

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

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

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

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

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

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

.1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;

.2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and

.4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;

.3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;

.5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.6 Retainage withheld pursuant to Section 11.1.8.

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

Five Percent (5%)

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

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

At the discretion of the owner.

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

All closeout documents including warranties must be submitted and approved before retainage is released.

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

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

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

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

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

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

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

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

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

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

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

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

§ 11.3 Interest
Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

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

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 12.2 Binding Dispute Resolution
For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

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

[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

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

ARTICLE 13 TERMINATION OR SUSPENSION
§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment
§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

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

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

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

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

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

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

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

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment
§ 13.2.1 Termination
The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

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

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

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

§ 13.2.3 Termination by the Owner for Convenience
If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:
(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

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

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

§ 14.2 Successors and Assigns

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

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

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

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

§ 14.3.1.1 Commercial General Liability with policy limits of not less than One Million ($1,000,000.00) for each occurrence and Two Million ($2,000,000.00) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than One Million ($1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

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

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than One Million ($1,000,000.00) each accident, One Million ($1,000,000.00) each employee, and One Million ($1,000,000.00) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than One Million ($1,000,000.00) per claim and One Million ($1,000,000.00) in the aggregate.

§ 14.3.1.6 Other Insurance

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

Coverage	Limits
Builders Risk Insurance	Full value of the project(s)

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

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

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

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

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with a building information modeling exhibit, if completed, or as otherwise set forth below:
(If other than in accordance with a building information modeling exhibit, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 14.5 Other provisions:

ARTICLE 15 SCOPE OF THE AGREEMENT
§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

.1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
.2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
.3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds
.4 AIA Document A201™–2017, General Conditions of the Contract for Construction
.5 Building Information Modeling Exhibit, if completed:

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

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

[ ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

.7 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, portions of Addenda relating to

bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

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

OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
BY: RUTH PIERCE	BY: MICHAEL ARRINGTON
(Printed name and title)	*(Printed name and title)*
Ruth Pierce, Mayor City of Twin Falls	Michael Arrington, President

Date: Monday, December 22, 2025

To: Honorable Mayor and City Council

From: Erin Steel, Assistant Public Works Director

ACTION ITEM

Request:

Request to use up to $225,000 of water reserves to pay for design services and temporary stormwater repairs for the HMI remediation project.

Time Estimate:

5 Minutes

Background:

On June 15, 2018, a significant break developed in one of the city's water transmission mains, necessitating excavation and repairs on the Hamilton Manufacturing Inc. (HMI) property located near the HMI facility. The property is situated on Market Avenue, between Rock Creek Canyon and South Park Avenue West. During repair efforts, unintentional damage occurred to the surrounding property. Consequently, the City of Twin Falls and HMI entered into an agreement on August 9, 2022, to address and rectify the damage caused by the waterline break.

In May of 2025, the council approved the use of reserve funds in fiscal year 2025 for a design contract with ABCO Engineering in the amount of $136,200. As this is still an unbudgeted request and design is ongoing, staff is requesting council approval to use water reserve funds in the current fiscal year (2026). This request also includes $88,000 for contingency and temporary stormwater remediation while the designer works through the permanent stormwater solution.

Approval Process:

A majority vote of approval by the council will allow staff to pay invoices for the design and temporary stormwater repairs while the project is still in the design phase.

Budget Impact:

The request will allow the use of up to $225,000 from water reserves to cover design costs and temporary stormwater repairs for the slope remediation project.

Regulatory Impact:

None

History:

Analysis:

Conclusion:

Staff recommends authorizing the use of up to $225,000 from water reserves to fund design and stormwater repairs for the HMI project.

Attachments:

None

Date:	Monday, December 22, 2025
To:	Honorable Mayor and City Council
From:	Wendy Davis, Parks and Recreation Director, Parks and Recreation Director

ACTION ITEM

Request:

Request to allocate $76,372.03 Shoshone Falls/Dierkes Lake cash reserves for emergency road repair and dock ramp purchase.

Time Estimate:

Allow approximately 5 minutes for presentation of request, questions and deliberation.

Background:

On November 17, 2025, Mayor Ruth Pierce declared an emergency allowing staff to contract with PMF Construction to repair the culvert and catch basin on Shoshone Falls Grade Road. Work began on Tuesday, November 18 and was completed on Monday December 1. The total for this work is $65,000.

Additionally, staff identified two failing ramps that connect the deck to the floating docks at the swimming area at Dierkes Lake. The attached quote for $11,372.03 includes purchase of the ramp and connection parts and installation. This ramp is the same material as the new dock system and is designed to connect well. It is durable material and should not rust like the existing ramp has.

Staff is requesting council allocate $76,372.03 from Shoshone Falls/Dierkes Lake cash reserves to cover these two un-budgeted projects. Please see attached documents.

Approval Process:

A simple majority will approve this request.

Budget Impact:

Approval will allocate $76,372.03 from Shoshone Falls/Dierkes Lake cash reserves to be used for the road repair and the ramp replacement.

Regulatory Impact:

Approval will allocate funds and allow staff to proceed with payment and purchase.

History:

N/A

Analysis:

N/A

Conclusion:

Shoshone Falls/Dierkes Lake cash reserve fund has approximately $2.3 million, more than adequate to cover these identified expenses.

Attachments:

1. UPDATED EZ DOCK gangway TwinFalls_Cityof_589950
2. Shoshone Falls

Idaho WATER SPORTS

Burley, ID
(208) 678-7527

Nampa, ID
(208) 467-9450

Idaho Falls, ID
(208) 522-8888

McCall, ID
(208) 634 8888

Est Number	: 589950 Retail
Invoice No.	:
Start Date	: 11/14/2025
Complete	: No
Written by	: Monique Hurst
Customer Id	: 0000044168

City of Twin Falls
4155 Shoshone Falls Grade Rd
Twin Falls, ID 83301

Cell (208) 751 - 1520

Please Remit Payment to:
Idaho Water Sports
2165 Overland Ave
Burley, ID 83318

*PLEASE NOTE: A service fee of 3% will be charged on all credit card transactions.

Please Click Link Below To Pay Deposit
https://clicktopay.dockmaster.com/pay/0000044168/35

Operation	Item / Part#	Description	Qty	Each	Extension
GANGWAY	1st Knight Gangway @ Dierkes lake				
	Labor - 11/14/25		1.00	129.00	129.00
	Labor - 11/14/25		1.00	129.00	129.00
	Labor - 11/14/25		1.00	129.00	129.00
	Labor - 11/14/25		1.00	129.00	129.00
	1044	4 Pocket HD Weld Tab Bracket	1.00	595.00	595.00
	18295	4' (ADA) Transition Plate Beige	1.00	448.00	448.00
	18381	Ramp, 48 x 20' w/1 Rail - Beige	1.00	3989.00	3989.00
	Equipment	Equipment			150.00
	Freight	Freight			172.50
	Mileage	Mileage			100.00
			Labor Total :		516.00
			Parts Total :		5,032.00
			Equipment Total :		150.00
			Freight Total :		172.50
			Mileage Total :		100.00
			Operation Total :		5,970.50

Operation	Item / Part#	Description	Qty	Each	Extension
DOCK	2nd knight gangway @ Dierkes lake				
	Labor - 11/17/25		1.00	129.00	129.00
	Labor - 11/17/25		1.00	129.00	129.00
	Labor - 11/17/25		1.00	129.00	129.00
	Labor - 11/17/25		1.00	129.00	129.00
	1048	Abutment Brkt 3' & 4' Ramps Galv	1.00	453.00	453.00
	PROLLER	Stolz Roller Kit (Single) For Ramp	4.00	72.00	288.00
	18295	4' (ADA) Transition Plate Beige	1.00	448.00	448.00

Burley, ID
(208) 678-7527

Nampa, ID
(208) 467-9450

Idaho Falls, ID
(208) 522-8888

McCall, ID
(208) 634 8888

Est Number	: 589950 Retail
Invoice No.	:
Start Date	: 11/14/2025
Complete	: No
Written by	: Monique Hurst
Customer Id	: 0000044168

;BN	4'x14' ramp w/rails	1.00	3285.53	3285.53
Equipment	Equipment			150.00
Freight	Freight			161.00
Mileage	Mileage			100.00

Labor Total :	516.00
Parts Total :	4,474.53
Equipment Total :	150.00
Freight Total :	161.00
Mileage Total :	100.00
Operation Total :	5,401.53

Charge Customer Summary	
Amount Previously Billed	0.00
Payments Received	0.00
Current Balance	0.00
Total Balance Due	0.00
Deposits Available	

Work Order Price Summary	
Total Parts	9,506.53
Total Labor	1,032.00
Equipment Charges	300.00
Mileage Charges	200.00
Freight Charges	333.50
ID SALES TAX	
Total Work Order	$11,372.03

Upon acceptance by you, Idaho Water Sports will perform the products and services described in the estimate. Any additional services requested by you and not covered by the estimate will incur additional charges.

Customer Signature_____________________________

Date___/___/_____

Due to increased fluctuations of raw material pricing, Estimate good for 30 days

Contractors
Since 1961

PMF Inc.
PO BOX 1412
TWIN FALLS, IDAHO 83301
PHONE (208) 734-6333
Fax (208) 736-0115

Twin Falls Parks & Recreation
PO Box 1907
136 Maxwell Ave
Twin Falls, ID 83303

RE: Shosone Falls Grade Culvert & Shoulder Repair Project

Invoice # 25111

Description of work preformed	Qnty	Unit	Rate
Invoice Per Contract Dated 11/26/25 between Wendy & Darin	1	LS	$65,000.00
			Total

Sub Total
$ 65,000.00
$ 65,000.00

Contractors
Since 1961

PMF Inc.
PO BOX 1412
TWIN FALLS, IDAHO 83301
PHONE (208) 734-6333
Fax (208) 736-0115

RE:

Invoice #

Description of work preformed	Qnty	Unit	Rate

Sub Total

Date:	Monday, December 22, 2025
To:	Honorable Mayor and City Council
From:	Wendy Davis, Parks and Recreation Director, Parks and Recreation Director

ACTION ITEM

Request:

Request to authorize the use of a cooperative purchase agreement for $351,409 to rebuild the Harmon Park west tennis courts and authorize the director to sign the proposal.

Time Estimate:

Allow approximately 20 minutes for presentation, discussion and decision.

Background:

The FY2026 budget includes $351,409 of council-directed capital for rebuilding the Harmon west tennis courts to include two tennis courts and 4 pickleball courts. Staff used a cooperative purchase agreement through Sourcewell for the most recent installation of six pickleball courts at Frontier Field. This approach gave the best price for the installation and staff would like to use this approach for the Harmon Park courts.

In 2019, the City Council adopted Resolution No. 2019-014. (see attached) This resolution authorizes the City to use cooperative purchasing agreements and join cooperative purchasing programs to acquire needed capital infrastructure. Designated city staff can approve purchases up to the informal bid limits. If the purchase will be greater than the informal bid limit, city council must approve the use of a cooperative purchase agreement and authorize the purchase. Staff is proposing to use a cooperative purchase agreement with Sourcewell to install the court improvements at Harmon Park. That agreement is attached for your review.

With time, staff has become aware of noise concerns associated with pickleball courts and has done research to help council make an informed decision. Please see the attached document. Staff is seeking council direction on how to proceed with the project.

Move forward with project as proposed, address noise issues if they arise.
Consider adding $20,000 to the project to reinforce the fence and install sound dampening material
Abandon the pickleball courts and put in a third tennis court

Regardless of how council wishes to move forward with the pickleball piece, staff recommends that the Council approve the agreement authorizing the use of a cooperative purchase agreement (Sourcewell) and authorize the Director to sign the Agreement. Legal staff has reviewed the agreement.

Approval Process:

A simple majority will approve this request.

Budget Impact:

The FY '26 budget includes $351,409 for this project.

Regulatory Impact:

Council approval will authorize the use of a cooperative purchase agreement and authorize staff to sign the proposal.

History:

N/A

Analysis:

N/A

Conclusion:

Staff recommends proceeding with the project as proposed and that council approve the request.

Attachments:

1. Cooperative Purchasing Resolution 2019-014
2. Harmon Park Proposal 11.24.25
3. Pickleball Noise Research Notes and Mitigation Options

RESOLUTION NO. 2019-014

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TWIN FALLS, IDAHO AUTHORIZING THE CITY OF TWIN FALLS TO PARTICIPATE IN COOPERATIVE PURCHASING AGREEMENTS AND PROGRAMS; AND AUTHORIZING CERTAIN CITY OFFICIALS TO ENTER INTO, JOIN, AND APPROVE EXPENDITURES PERTAINING TO COOPERATIVE PURCHASING AGREEMENTS AND PROGRAMS.

WHEREAS, Idaho Code §§ 67-2807 authorizes Idaho cities to participate in cooperative purchasing agreements with the state of Idaho, other Idaho political subdivisions, and other government entities; and,

WHEREAS, Idaho Code §§ 67-2807 authorizes Idaho cities to participate in cooperative purchasing programs established by any association that offers its goods or services as a result of competitive solicitation process; and,

WHEREAS, participation in cooperative purchasing agreements or programs requires approval by the City Council; and,

WHEREAS, the State of Idaho determines the value, in terms of dollars, at which an informal bidding process will be followed; and,

WHEREAS, certain city officials are authorized to approve informal bids on behalf of the City of Twin Falls; and,

WHEREAS, the City Manager has requested authorization to allow these same city officials to enter into cooperative purchasing agreements and programs, and to approve expenditures not to exceed the maximum value, in terms of dollars, set by the State of Idaho for the informal bidding process.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TWIN FALLS, IDAHO:

Section 1: That those individuals who are authorized to approve informal bids on behalf of the City of Twin Falls are authorized to enter into cooperative purchasing agreements and join cooperative purchasing programs that offer goods or services as a result of competitive solicitation.

Section 2: That those individuals who are authorized to approve informal bids on behalf of the City of Twin Falls are authorized to approve expenditures as part of a cooperative purchasing agreement or cooperative purchasing program up to, but not to exceed, the maximum amount set by the State of Idaho for the informal bidding process.

PASSED BY THE CITY COUNCIL December 9, 2019.
SIGNED BY THE MAYOR December 10, 2019.

Shawn A Barigar

Mayor

ATTEST:

Leila A Sanchez

Deputy City Clerk

PRICING PROPOSAL

renner
A Tarkett Sports Company

Harmon Park Tennis and Pickleball Courts

November 24, 2025

From	
Contact	Dylan Bird
Company	L.E.R., Inc. dba Renner Sports Surfaces
Address	PO Box 651477
City, State, Zip	Salt Lake City, UT 84165
Country	United States
Phone	801-381-8385

To	
Contact	Stacy McClintock
Company	City of Twin Falls
Address	136 Maxwell Ave.
City, State, Zip	Twin Falls, ID 83301
Phone	208-7362265
Email	smclintock@tfid.org

L.E.R. Inc., dba Renner Sports Surfaces, in conjunction with FieldTurf USA, Inc., is pleased to present the following proposal. FieldTurf pricing is based on the Sourcewell contract. Sourcewell provides predetermined preferential pricing through approved vendors. Since the products have already been bid at the national level, individual municipalities do not have to duplicate the bidding process per Sourcewell Contract # 031622-FTU.

Sourcewell
Awarded Contract

Click on the following Sourcewell hyperlink for contract due diligence documentation: Sourcewell #031622-FTU

Scope of work for the project to be constructed as depicted in the plans and details as described herein, proposal is subject to exclusions that may be listed below:

Inclusions, Exclusions, Clarifications

Inclusions

Demo - By Others

1. **Site access and site access restoration by others.**
2. **Demo, clear and grub, and rough grade by others.**

(2) Post Tensioned Tennis Courts with (4) Post Tensioned Pickleball Courts -

3. Laser Grade and compact existing base material to achieve proper slope under existing tennis court area (140'x121')
4. Supply and install 4" of base, laser grade and compact under expanded area (29'x121').
5. Supply and install (1) layer 6 mil. poly sheeting over sub-grade to reduce friction and vapor retarder.
6. Supply and install industry standard 5" thick post tensioned concrete sports court, (1) post tensioned slab (121'x169'), 4000 PSI design, edges thickened to (12") inches, reinforced with ½" steel tendons, and #4 rebar.
7. Supply and install (2 sets) Douglas Premier tennis net posts and center strap tie downs.
8. Supply and install (4 sets) Douglas Premier pickleball net posts and center strap tie downs.
9. Supply and install (10', 6' and 4') foot high (galvanized) chain link fence with (6) access gates. Top and bottom rails to be (galvanized) (1 5/8") "LG-40" pipe or equivalent. Corner Posts, Terminal Posts and Line Posts to be (2-7/8") inches "LG-40" pipe or equivalent. Tennis court fabric to be 1¾", pickleball courts to be 2" fabric, all fabric to be galvanized 9- gauge.
10. After 30 day curing period, acid wash concrete then apply acrylic primer coat.
11. Apply one (1) coat of acrylic surfacer with silica sand.
12. Apply two (2) coats of acrylic color with silica sand. Colors to be chosen by owner.
13. Paint playing lines as per USTA standards.
14. Supply and install (2) Douglas DMT tennis nets and center straps.
15. Supply and install (4) Douglas Pn-30 pickleball nets and center straps.
16. Clean up job site.

We hereby propose to furnish labor and materials – complete in accordance with the above specifications, for the sum of:
TOTAL: $351,409.00

Note: **Due to the uncertainty and volatility in raw materials supplies, material costs, and shipping delays, this proposal is valid for 30 days. All pricing is based on current market value. Prices subject to change when job materials are ordered at market value.**

Exclusions

All permits, bonds, excavation, site access roads and site access repair, sub-grade and sub-base prep., concrete and compaction testing, winter conditions, site furnishings, caulking joints, sidewalks, patios, viewing area concrete, surveys and staking, landscaping, irrigation, lighting, parking lot, curbing and road damages and all repairs thereof. If permits, bonds and testing are required by the Owner they will be billed at cost in excess of this proposal upon written change order between Renner Sports and GC/Owner.

Bonding, if required, will add approximately 1% to bid total

Clarifications

All material is guaranteed as specified. All work shall be completed in a workmanlike manner according to standard industry practices. Any alteration or deviation from the above specifications will be executed only upon written change orders and may become an extra charge over and above the estimate. All agreements are contingent upon strikes, accidents or delays beyond our control. This proposal is subject to acceptance within **30** days and, if not accepted, is cancelable and voidable thereafter at the option of Renner Sports. Owner to carry fire, flood, earthquake, and other necessary insurance. We are fully covered by Workmen's Compensation Insurance.

Unless otherwise provided herein, all labor and materials will be warranted for a period of one (1) year from date of substantial completion **except for cracking and heaving**, which shall carry no warranty. Should the materials prove to be defective or the workmanship faulty within the **one (1) year warranty** period, the defects will be remedied within a reasonable time from Renner Sports receipt of notice of the defects, subject to weather conditions and crew schedule.

When patching cracks or resurfacing tracks/tennis courts with cracking, Renner Sports guarantees the cracks will reappear, and that they can reappear within 24 hours, depending upon temperature fluctuations.

Concealed, Unforeseen and/or Latent Conditions – Older tracks/tennis courts that have been resurfaced multiple times may experience widespread peeling of the coatings from the substrate following resurfacing. There comes a point where the coatings become too thick and the bond to the substrate is compromised. There is no way to ascertain this condition prior to resurfacing. Should this condition occur, the removal of the old coatings will be accomplished on a time and materials basis and billed to the owner.

For track/tennis court repair work involving asphalt paving in any form, please be aware that we have experienced contamination of asphalt mixes during recent years, and we cannot guarantee against this contamination. Should this condition occur, the owner will be responsible for all associated additional costs and expenses.

If digging is required, Renner Sports shall contact the local buried utility locating service. The owner will be responsible for repairs to any underground lines, if damaged, although reasonable care will be taken when Renner Sports is advised of their presence. This proposal is predicated upon normal digging conditions, and if rocks are encountered, the owner will be response for all associated additional extra time and equipment costs necessitated to complete the work.

The owner shall establish and provide suitable access to the construction site; Renner Sports will not be liable for any damages to the construction site and/or site restoration due to unsuitable access. Potable water will be available within fifty feet (50') of the site (along with a standard ¾" garden hoses)

Payments. The below payment schedule will be required and requires **a down payment/deposit of 0% of the proposed amount prior to ordering materials and scheduling work.** Progress payments will be required according to the following milestones:

- **0% of the proposed amount due upon acceptance**
- **Monthly Progress Payments,**
- **100% upon completion**

Payment requests will be issued in accordance with the above payment schedule and are due within ten (10) days of the date of invoice. Work may be suspended and/or delayed if progress payments are not timely and current. Accounts shall be considered overdue and delinquent thirty (30) days after date of invoice. Delinquent accounts shall bear interest at a rate of 1 ½% per month (18% annually) and will be subject to all charges necessary for collection, including, but not limited to, all attorney's fees and all related legal costs. Final payment shall become due upon completion of contractor's work. Opening or use of an installation by owner shall be considered acceptance. Liens and/or bond claims will be filed on delinquent accounts. In the event of termination by owner, the contractor shall be paid for all work performed to date and for all materials ordered, manufactured and/or procured as of the date of termination.

The contractor is not liable for delays caused by strikes, the inability to secure adequate materials, fuel shortage, weather conditions, mechanical failures, Acts of God, *force majeure* and/or any other cause beyond Renner Sports' control.

Renner Sports is a non-union entity and is not bound by any organized labor agreements and/or collective bargaining agreements.

It is understood that if a soil sterilant is applied, it is in an effort to retard weed growth as much as possible and no guarantee or warranty as to its effectiveness is expressed or implied. Contractor is not responsible for cracks due to heaving, soil expansion, frost, other conditions, *force majeure* and/or Acts of God.

This proposal is predicated upon standard construction and industry practices developed over the past twenty-five (25) years. Be advised that it is inherent in all asphalt and concrete to crack and Renner Sports will not be responsible for all such cracks. Renner Sports cannot be responsible for ground movement and heaving

PRICING PROPOSAL

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or settling of the soils. This proposal does not include soils investigation or extraordinary drainage costs. Because of the possibility of expanding soil problems, the owner is urged to procure a soils investigation by a qualified soils engineer. Renner Sports disclaims any and all liability for soil heaving, but will modify this proposal to include any work, as recommended by the owner's soils engineer.

If the proposed work cannot be performed during the current construction season due to delays caused by the owner, his agents, or employees, this contract shall be valid for the subsequent construction season, subject to possible increases in labor and materials.

The owner may accept this proposal as a binding contract either by signature or by making any payments to Renner Sports in consideration of services, and either of the above modes of acceptance shall be deemed to incorporate all of the terms of this proposal into the contract between the parties thereby formed.

If this proposal is accepted, please sign one copy, indicating which alternates (if any) are accepted, and return it via email or to the office of Renner Sports as soon as possible.

Proposal Details

Authorized

Signature: ______________________________

Acceptance of Proposal:

The above prices, specifications and conditions are satisfactory and hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.

Signature: ______________________________

Date of Acceptance: ______________________________

Print Name: ______________________________

If you have questions regarding the FieldTurf and Beynon SmartBuy Cooperative Purchasing Program, please contact Eric Fisher at: eric.fisher@smartbuycooperative.com.

If the price above is approved please make the PO or contract out to L.E.R. Inc. dba Renner Sports Surfaces 3096 S. Davis Dr. Salt Lake City, UT 84115.

Pickleball Noise Research Notes and Mitigation Options

Staff consulted with others and conducted research to help inform a recommendation and decision.

What we know

Pickleball in general:

- Is social, generally played as doubles, with more players waiting to rotate in
- Is 20 dB louder than tennis.
- Will average 10 to 15 or more hits per minute per court
- Has extended hours of play
    - often 10 – 12 or more hours a day, longer with lighting and during longer summertime days.
- Noise exposure can be year-round unless it snows
- Average game decibels range from 60 to 100
- Mean noise measurements at 100' distance from center of court were between 58 and 70 dB.

This noise has become a source of concern for adjacent homeowners and has on occasion become a legal issue for communities.

- A recent lawsuit in the City of Boise resulted in the City's decision to remove the courts. The courts were placed 50' from residences creating intolerable noise for adjacent homeowners.

Research suggests that noise levels only reduce by 6 dB per 100' of additional distance away from courts.

Twin Falls Planning and Zoning's research found a three tier pickleball zoning recommendation:

- Property line-350 No Pickleball
- 350-800' Conditional Use Zone
- 800'and beyond Pickleball Zone

It is impossible to place courts at Harmon Park 800' from homes, as recommended in P&Z research. The park simply isn't big enough.

Our park-

- Harmon Park is a long-established active, community park busy with softball fields, tennis courts, basketball, and a skate park.
- The ballfields have lights and host league play and tournaments throughout the year, therefore, one could assume that neighbors are accustomed to noise generated in this park.

- Softball games may produce crowd noise of 90-110 dB, and batting noise of 115-125 dB.
- Harmon Park is separated from residential housing by roads, on the west by Locust St which is classified as a collector. Some research suggests that streets, collectors in particular, produce constant, low-frequency traffic noise which may mask the intermittent noise generated by park activities making the noise less noticeable or annoying to adjacent areas.

Harmon Park's closest residents to the proposed project are located between 200' and 400'

- If we assume that these neighbors might experience pickelball noise levels between 50-62 dB at the closest or 34-46 dB for neighbors to the south, and that 50 dB at the property line is audible but not objectionable, then efforts should be made to reduce decibels to below 50 dB before property lines.
- There are about 6 residents that live within proximity of the noise levels over 50 dB.

What do we do?

With space restrictions, we looked for other types of mitigation strategies.

- Full enclosure – not feasible
- Limit hours of play.
    - Reasonable, especially with no lights.
- Install a reflecting barrier at source (Wood fence, vinyl fence, concrete walls)
    - could be done later
- Install an absorbing barrier at the source-
    - This would add $20,000 to the project and would include more robust fencing on the east side of the courts and the installation of acoustic material. This decision needs to be made before the fence installation.
- Hedge plantings –
    - reduction of 1-4 dB, but good for visual barrier and therefore reduces annoyance
- Use of quieter equipment –
    - may reduce noise by 50% dB, but difficult to enforce-
    - this will likely solve the problem given time.
- Abandon the pickleball courts and use the space for a third tennis court, which is what the current configuration is.

It is hard to know what is best. Neighbors are accustomed to noise from the park. Will pickleball be too much? It appears that even the slightest mitigation would help us reduce noise levels to something very tolerable, especially for neighbors who are used to adjacent noise in the park.

Date: Monday, December 22, 2025

To: Honorable Mayor and City Council

From: Mitch Humble, Deputy City Manager

ACTION ITEM

Request:

A request for $70,000 of additional funding for architectural services associated with the City Pool addition and remodel project.

Time Estimate:

the discussion should take about five minutes.

Background:

The Fiscal Year 2024 budget included $140,800 to hire an architect to design, bid, and administer the City Pool remodel project. We signed a contract with Cole Architects in September 2024 to perform those services. While designing the project, it became clear that a simple remodel would not provide enough space to accomplish the needs of the project, and a 1,300 square foot addition was included in the project. With that addition, the estimated cost of the project also grew from $1.2 million to $2.3 million. We were able to bid and award the construction project within that expanded budget. The problem was that we failed to expand the architectural budget at that same time. With the expanded scope of the project, the architect's time on the project also expanded. Additionally, the contractor, Core Construction, is very thorough with their documentation, causing the architect to also participate more than expected during pre-construction coordination and design meetings. Finally, when the decision was made to keep the pool open during construction, the timeline of the construction was extended. The extended timeline meant additional work for the architects for construction administration.

For all of those reasons, we exhausted the original $140,800 contract with Cole Architects in September of this year, with construction just underway. We need to have the architects involved in construction administration throughout the duration of the project. I met with the architects to determine how much additional funding will be necessary to complete the construction administration for the project. They have committed to complete the project for an additional $70,000 as a not-to-exceed amount. Some of the work for that amount has already been completed in October and November. They believe that their workload will continue to reduce as we proceed, as the beginning of the construction project is typically a heavier workload for the architects as they work through all the unexpected issues that can pop up during construction. Cole Architects have done a good job on the design, and they have been responsive and thorough during the bidding and construction. Therefore, staff recommends that the Council approve the request for the additional funding as presented.

Approval Process:

A simple majority vote of the Council is needed to approve this request.

Budget Impact:

As described above, the need for architectural services associated with this project has increased along with the scope and timeline for the project. We need an additional $70,000 for the project architect to complete the construction administration services. There are three possible sources to consider for this request. The first is that the construction project currently has an unused contingency amount of about

$58,000. That amount will likely change as the project continues, but there is a possibility of construction savings on the project that we could use to reduce the amount needed for these architectural services. The second source is as a transfer from another capital project in this year's budget, the remodel of the old Council chambers. That project is currently about $600,000 under budget. Some of that savings will be used to purchase furniture and equipment in the Legal Department offices and City gym that are going to be housed in that building. But there should still be plenty of savings to cover this request. Finally, if the construction contingency and the project savings both run out, we could use cash reserves for this request. The City has enough cash reserves to cover the entirety of this request.

Regulatory Impact:

Should the Council approve this request, an additional $70,000 of funding will be dedicated to the City Pool additional and remodel project, either from project savings from the remodel of the old Council chambers or from cash reserves.

History:

N/A

Analysis:

N/A

Conclusion:

Staff recommends that the Council approve the request for $70,000 of additional funding for architectural services associated with the City Pool addition and remodel project, as presented.

Attachments:

None