



AIA® Document A133® – 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the _____ day of _____ in the year TWO THOUSAND TWENTY _____
(In words, indicate day, month, and year.)

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

Frisco Independent School District
5515 Ohio Drive
Frisco, Texas 75035
Phone: 469-633-6000

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

Phone: _____
Fax: _____
E-mail: _____

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

Sample for Procurement

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

Phone: _____
E-mail: _____

WHEREAS Frisco Independent School District (hereinafter referred to as "Owner") and _____ (hereinafter referred to as "Construction Manager") desire to enter into a contract under which Construction Manager will perform construction services relating to the above-referenced Projects on behalf of Owner;

WHEREAS Owner and Construction Manager have agreed to enter into AIA Document A133™-2019 Contract (Contract) as the basic form for that contract; and

WHEREAS certain terms and conditions of the contract must be modified to comply with applicable laws and policies affecting Owner and Construction Manager on this project,

ADDITIONS AND DELETIONS:

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

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

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

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User Notes:

(1630953814)

| Owner and Construction Manager hereby agree to the following amendments to the Contract:



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EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

NOTE: Any reference hereinafter this one, to an AIA™ Document or any AIA Documents included in the Contract Documents shall refer to such document "as modified for this Project". In addition, any reference to AIA Documents shall all be considered to have included the Trademark "™" after the AIA reference, whether or not included in the text. The AIA Documents are registered intellectual property of the American Institute of Architects and use and amendment of such forms is permitted under license granted to Walsh Gallegos Kyle Robinson & Roalson P.C. No use may be made of this AIA document other than as Contract Documents for this Project.

ARTICLE 1 INITIAL INFORMATION

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

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

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

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

See above.

§ 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.)

Approximately \$_____.

§ 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:

.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 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

§ 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.)

Danny Melton, Executive Director of Facilities
Frisco Independent School District
12025 Rolater Road
Frisco, Texas 75035
Phone: 469-633-6510
E-mail: MeltonD@friscoisd.org

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§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:

(List name, address and other contact information.)

Architect and Consultants- all related shop drawings, product data, performance specifications, certifications, per project specifications

Justin Rushing (Owner's Construction Supervisor) - Owner-Insite Project Management Software

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

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

(Paragraphs deleted)

§ 1.1.11 The Architect's representative:

(List name, address, and other contact information.)

Phone: _____

E-mail: _____

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

(List name, address, and other contact information.)

Phone: _____

E-mail: _____

§ 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 (10) days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, as amended, Conditions of the Contract (General, Supplementary and other Conditions), as amended, Drawings, Specifications, Addenda issued prior to execution of this Agreement, all sections of the Project Manual, other documents listed in this Agreement, Modifications issued after execution of this Agreement, the proposal signed by the Construction Manager, the request for proposals, and Construction Manager's proof of payment and performance bonds, and proof of insurance, 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. Any reference to AIA Document A201-2017 in this Agreement shall be construed as the AIA Document A201-2017, as amended.

§ 2.1.1 Any revision, amendment, or modification to the Standard Form of this Agreement shall be valid, binding, and enforceable only if said revision, amendment or modification is made conspicuous by being underlined, lined-through, or highlighted in this Agreement signed by Construction Manager and the authorized representative of Owner's Board of Trustees. In the event of conflict, terms and conditions contained in the Agreement, as amended, shall take precedence over terms and conditions contained in the General Conditions, as amended, and the terms and conditions in the General Conditions, as amended, shall take precedence over all other terms and conditions contained in the other Contract Documents. If the Request for Proposals and the Proposal are included in the Contract Documents, then the Request for Proposals shall take precedence over the Proposal, unless specifically agreed otherwise herein.

§ 2.1.2 The Board of Trustees, by majority vote, is the only representative of the Owner, an independent school district, having the power to enter into or amend a contract, to approve changes in the scope of the Work, to approve and execute a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price, to agree to an extension to the date of Substantial or Final Completion or to terminate a contract. The Owner designates the following as the individual authorized to sign documents on behalf of the Board of Trustees: Todd Fouché, Deputy Superintendent, or successor.

§ 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 perform the Work defined in the Contract Documents, in accordance with the Owner's requirements and construction cost limitations, as approved by the Owner's Board of Trustees, as set forth in the Contract Documents; to furnish efficient construction administration, management services, and supervision; to furnish construction services, if allowed in accordance with law; 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. The Owner and Construction Manager shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager, Construction Manager's subcontractors, and other persons or entities employed by the Owner for the Project.

§ 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 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.

(Paragraph deleted)

§ 2.3.2 Per Texas Government Code, Section 2269.257, if a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected, the Construction Manager may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements. Construction Manager shall be paid for its own performance in accordance with Section 2.3.2.1 and Section 6.2.1 herein.

§ 2.3.3 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 recommendations and advice of the Construction Manager concerning design alternative and potential cost savings shall be subject to the review and approval of the Architect, Owner, and the Owner's professional consultant. 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 that reasonably should have been 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, which shall satisfy Owner's time requirements; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

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

§ 3.1.3.4 During the Preconstruction Phase, the Construction Manager shall review the Contract Documents to ascertain whether the components of the plumbing, electrical and mechanical systems may be constructed without interference with each other, or with the structural or architectural components of the Project, or with existing systems. In the event that conflicts between the systems are discovered, the Construction Manager shall promptly notify the Owner and Architect in writing.

§ 3.1.3.5 Notwithstanding any provision of the General Conditions of the Contract for Construction to the contrary, the Construction Manager shall not be entitled to additional compensation for any delay or disruption to the Work arising from any conflict between the mechanical, electrical, and plumbing systems with each other, or with the structural or architectural components of the Work, or with existing systems, if such conflicts should have been discovered during the Construction Documents Phase by the Construction Manager through the exercise of reasonable diligence, and the Owner and Architect were not informed of such conflicts as required by subparagraph 2.1.2.1. This provision shall apply only with respect to conflicts appearing in the Drawings and Specifications provided for the Construction Manager's review prior to proposal of a Guaranteed Maximum Price.

§ 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; dates of Substantial Completion and Final Completion; and the occupancy requirements of the Owner. If updated Project schedules indicate that previously-approved schedules may not be met, then the Construction Manager shall make appropriate recommendations to the Owner and Architect and, upon written approval of both, shall implement necessary corrective action.

§ 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. The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications so as to facilitate the proposal of a Guaranteed Maximum Price when all elements of the Drawings and Specifications are at least ninety percent complete, unless mutually agreed otherwise by the Architect, Owner and the Construction Manager.

§ 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 and/or cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Design Development Documents or the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's Board of Trustees' consent. In the event that the quality or scope identified in the estimates are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner and are within the Owner's budget.

§ 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. To the extent not inconsistent with the Construction Manager's requirements under Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor or supplier.

§ 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 When all elements of the Construction Documents are at least 90 percent complete, at a time mutually-agreed upon by the Owner, the Construction Manager, and the Architect, 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, the general conditions; and the Construction Manager's Fee. If any Guaranteed Maximum Price proposal submitted to the Owner exceeds previously-approved estimates or the Owner's budget, then the Construction Manager shall make appropriate recommendations to the Owner and Architect for cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's Board of Trustees' consent. In the event that the quality or scope identified in the proposal are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner, are within the Owner's budget, and meet the Owner's requirements for dates of Substantial Completion and Final Completion. The Construction Manager may propose separate Guaranteed Maximum Prices for separate Works within the Project, as schedules and efficiencies dictate. The Construction Manager will work with the Architect to achieve a Guaranteed Maximum Price that is fully acceptable to Owner and is within the Owner's budget for the Work and for the Project.

§ 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.

§ 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; general conditions; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based;
- .5 The date Final Completion upon which the proposed Guaranteed Maximum Price is based, which date shall not be more than thirty (30) days after the date of Substantial Completion; and
- .6 The Guaranteed Maximum Price proposal may not be based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager on other than a maximum price basis.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. The Guaranteed Maximum Price will contain a separately-identified contingency amount (the "Construction Contingency"). The Construction Contingency is not allocated to any particular item of the Cost of the Work and is established for the Construction Manager's use as may be required for costs incurred in the Work from unforeseeable causes, or details which could not have been anticipated by the Construction Manager at the time of the Owner's approval of the Guaranteed Maximum Price. Such unforeseeable causes or unanticipated details include, but are not limited to, refinement of details of design within the scope of standards, quality and quantities which are reasonably inferable from the Guaranteed Maximum Price documents, the correction of minor defects not relating to design, delays in receipt of materials, and additional costs relating to Subcontractor defaults not reimbursed by the Subcontractor's bonding company. The Construction Manager, with Owner's representative's written approval, may utilize the Construction Contingency for any of the above items within the Cost of the Work without the necessity of a Change Order, without constituting a Change in the Scope of the Work, and without resulting in any change in the Guaranteed Maximum Price. Any unforeseeable causes or unanticipated details which exceed the Construction Contingency shall be borne by the Construction Manager at the Construction Manager's sole risk. All savings will accrue and be available for use, only as detailed above, by the Construction Manager until the Construction Manager's final accounting. In the final accounting, all supporting documentation for all uses of the Construction Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Contingency shall accrue to the Owner. The Guaranteed Maximum Price shall also include a separately-identified contingency amount, an "Owner's Contingency," which is defined as a contingency fund within the Guaranteed Maximum Price established by the Owner for the Owner's exclusive use. Monies from Owner's Contingency may be spent in the discretion of Owner's Representative and without additional Board of Trustees approval, but with subsequent notice to Owner's Board of Trustees. Any unused Owner's contingency shall accrue to the Owner.

§ 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. As soon as feasible after Architect's preliminary approval of the Construction Manager's proposed Guaranteed Maximum Price, the Architect will prepare the Amendment forms and return them to the Construction Manager for review, signature, and return to the Owner.

§ 3.2.6 The Owner's Board of Trustees shall be allowed not less than thirty (30) days after receipt of the Construction Manager's signed Guaranteed Maximum Price Amendment to review and take action on the Amendment. Unless the Owner's Board of Trustees accepts the Guaranteed Maximum Price Amendment by Board action within thirty (30) days after District's receipt, the Amendment will not become effective. Following acceptance of a Guaranteed Maximum Price, the Owner 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 not include in the Guaranteed Maximum Price any taxes from which Owner is exempt.

§ 3.2.10 The Construction Manager shall diligently prosecute and achieve Substantial and Final Completion of the Entire Work as provided in the Amendment.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 The date of commencement of the Work shall mean the date of commencement of the Construction Phase, as provided in Section 8.1.2 of A201-2017.

§ 3.3.1.2 [Section Deleted.]

§ 3.3.2 Administration

§ 3.3.2.1 Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and solicit through competitive purchasing, as required by law, competitive sealed proposals from Subcontractors Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and obtain bids or proposals from Subcontractors for the performance of all major elements of the Work. All bids or proposals shall be sent directly to Construction Manager.

The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall do so in the same manner as required of all subcontractors. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Work offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal during the selection process to anyone who is not an employee of the Construction Manager, architect, engineer, or Owner. All proposals shall be made public within seven (7) days after the Owner's final selection. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work, but the Construction Manager shall not receive an additional Construction Manager's fee for self-performed work. Pursuant to Texas Government Code Chapter 2269, Subchapter F, if during the course of recommending proposals, the Construction Manager recommends to Owner a

proposal from a subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

§ 3.3.2.1.1 The Construction Manager shall include the following specific notices in the information to proposers:

- .1 The successful proposer's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;
- .2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;
- .3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate; and
- .4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.

§ 3.3.2.1.2 Nothing herein shall preclude the Construction Manager from including other notices required or allowed by law.

§ 3.3.2.1.3 The Construction Manager shall schedule and conduct weekly or otherwise regularly-scheduled meetings at which Owner, Architect, Construction Manager and appropriate Subcontractors 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. The Construction Manager shall provide periodic presentations updating the progress, quality and status of the Work to Owner's Board of Trustees, at Owner's request, at no additional cost to Owner.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment by Owner and Construction Manager, 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, including the Owner's occupancy requirements.

§ 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, including changes to the Work approved by Owner, and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

§ 3.3.3 To the extent that any portion of the Work requires a trench excavation exceeding five (5) feet in depth, in accordance with Texas Health and Safety Code Section 756.023(a), Construction Manager shall fully comply, and shall require any applicable subcontractor to comply, with:

- .1 The Occupational Safety and Health Administration standards for trench safety in effect for the Construction of the Work;
- .2 The special shoring requirements, if any, of the Owner;
- .3 Any geotechnical information obtained by Owner for use by the Construction Manager in the design of the trench safety system.

§ 3.3.4 Trench excavation safety protection shall be a separate pay item, and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item, and shall be based on the square feet of shoring used. Said cost shall be included within the Guaranteed Maximum Price.

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 [Section Deleted.]

§ 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, including the Owner's Contingency as provided in Section 3.2.4. 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. Such documents shall be provided for information only and are not warranted or represented to show the conditions at the Project site accurately. Construction Manager may use the information at its own risk and shall use customary precautions relating to the performance of the Work. Notwithstanding the preceding sentences and the delivery of surveys or other documents and reports by Owner, Construction Manager shall perform all work in such a non-negligent manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the Property. Contractor shall be responsible for any damage done to such lines, cables pipes and pipelines during the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law or 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 as provided in Section 2.3.4 of AIA A201-2017.

§ 4.1.4.3 Unless provided by the Architect by agreement with the Owner, the Owner, when such services are reasonably required by the scope of the Work, and are requested by the Architect or Construction Manager and approved by the Owner, 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 may 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 reasonable 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

Owner's Board of Trustees shall designate one or more authorized representatives to act on its behalf in the day-to-day administration of the Project, to issue stop work orders, and to authorize expenditures within the Owner's contingency. The Board designates as its authorized representatives, the following individuals: Danny Melton, Executive Director of Facilities.

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

§ 4.3 Architect

The Construction Manager's services shall be provided in conjunction with the services of an Architect. The terms of the agreement between the Owner and Architect shall be available for inspection by the Construction Manager upon request.

§ 4.4 Inspection And Testing

Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement. Pursuant to Texas Government Code Section 2269.058, the Owner shall provide or contract for, independently of the Construction Manager, construction materials engineering, and testing and inspection services necessary for acceptance of the Work by Owner.

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.)

All costs for Preconstruction Phase services including cost estimating, scheduling, building systems and material cost analysis are included in the Construction Manager's Fee described in Section 6.1.2. However, if the Construction Phase does not commence for any reason, payment to the Construction Manager for Preconstruction Services shall be the necessary and reasonable cost of such services, not to exceed the lump sum amount of _____ and No/00 Dollars (\$_____.00).

§ 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
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§ 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 may 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 within Forty-Five (45) days of the Construction Manager's invoice and Certification for Payment from the Architect. Amounts unpaid more than Forty-Five (45) days after the invoice receipt from the Architect shall bear interest in accordance with Texas Government Code Section 2251.025.

(Note: These blanks should be filled in with "30" if the school board meets more often than once per month, or filled in with "45" if the school board meets once per month).

(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, plus the general conditions, the total of which shall not exceed the Guaranteed Maximum Price.

§ 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 fee shall be calculated as a percentage of the Cost of the Work, and not as a percentage of the Contract Sum. The fee shall be _____ Percent (_____%) of the Cost of the Work. No Construction Manager's fee shall be paid on the Construction Manager's Contingency or the Owner's Contingency until funds are allocated from those contingencies to the Cost of the Work, or as provided in Section 2.3.2.1.

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

Only by agreement of Owner's Board of Trustees.

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

See AIA Document A201-2017, Section 7.1.4.

§ 6.1.5 **General Conditions.** All charges, if any, for general conditions (costs to be reimbursed) shall be delineated separately in the Guaranteed Maximum Price Amendment, and may include only the following: on-site Project Manager; on-site Project and Site Superintendents; on-site Assistant Superintendents; minor work that may be included in the general conditions as allowed by Texas Government Code Section 2269.255; office trailer expenses; on-site sanitary facilities; project sign; safety/first aid; on-site technology; temporary water and power; project site office supplies and office equipment; plan reproduction; construction photographs; dumpsters; final clean-up; equipment rental; fuel; small tools; and items described in more detail below.

(Paragraphs deleted)

§ 6.1.6 Rental rates for Construction Manager-owned equipment shall be subject to the Owner's prior approval and shall not exceed seventy-five percent (75 %) of the standard rental rate paid at the place of the Project.

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

§ 6.1.8 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries, for Construction Manager's on-site Project Manager, on-site Project and Site Superintendents, on-site Assistant Superintendents, and Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

§ 6.1.9 Actual rental charges for temporary facilities, machinery, equipment and hand tools not included in Section 6.5.1 and not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal.

§ 6.1.10 The general conditions shall not include the following: all reimbursement for profit; indirect costs; all telephone bills for all personnel; all facsimile charges; home office personnel and benefits assigned to the Project; home office overhead and expenses; home office personnel relocation; all home office accounting, audit, legal and data processing fees and expenses; and all travel, meals and lodging.

§ 6.1.11 Liquidated damages, if any:

Init.

(Insert terms and conditions for liquidated damages, if any.)

.1 Time is of the essence in all phases of the Work. It is specifically understood and agreed by and between Owner and Construction Manager that time is of the essence in the Substantial Completion and Final Completion of the Project and Owner shall sustain actual and direct damages as a result of Construction Manager's failure, neglect or refusal to achieve said deadlines. Such actual and direct damages are, and will continue to be, impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute agreement by Owner and Construction Manager that the amounts stated below are the minimum value of the costs and actual and direct damages caused by failure of Construction Manager to substantially complete the work within the allotted times, that such sums are liquidated direct damages and shall not be construed as a penalty, and that such sums may be deducted from payments due Construction Manager if such delay occurs. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not completed within the agreed time, or within the agreed extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for personnel, attorneys fees, architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult to exactly ascertain. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion, shall be construed as a breach of this Agreement.

.2 It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from the Final Payment made to the Construction Manager a sum equal to _____ AND NO/100 DOLLARS (\$ _____ .00) per day for each and every additional calendar day beyond the agreed date of Substantial Completion.

.3 Timely Final Completion is an essential condition of this Agreement. Construction Manager agrees to achieve Final Completion of the Agreement within thirty (30) days of the designated or extended date of Substantial Completion. Owner and Construction Manager agree that should Construction Manager fail to achieve Final Completion of the Agreement by the deadline, Owner shall continue to be damaged to a greater degree by such delay. Construction Manager and Owner agree that the amount of liquidated damages for each calendar day Final Completion is delayed beyond the date set for Final Completion shall be the sum of _____ NO/100 DOLLARS (\$ _____ .00) per day. Owner may deduct from the Final Payment made to Construction Manager, or, if sufficient funds are not available, then Construction Manager shall pay Owner the amounts specified per day for each and every calendar day the breach continues after the deadline for Final Completion of the Work.

.4 Such damages shall be in addition to, and not in lieu of, any other rights, claims or remedies Owner may have against Construction Manager. If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final completion.

§ 6.12 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 and the Dates of Substantial Completion and Final Completion shall be subject to adjustment as provided in the Construction Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. Should the final audited Contract Sum be less than the Guaranteed Maximum Price, then the difference between the Contract Sum and the Guaranteed Maximum Price shall be considered as savings to the Owner, and Owner shall have no obligation to pay same to the Construction Manager. Construction Manager shall also consider as savings to the Owner all unused funds from any Contingency account. The Construction Manager shall not participate in any savings; all savings shall be credited to Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner with Board of Trustees' approval, if appropriate, 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. Either the Construction Manager or the Owner, as appropriate, 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 Increases or decreases, if any, 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 may 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 the following direct, actual and verifiable costs reasonably and necessarily incurred by the Construction Manager in the proper performance of the Work, except those costs compensated as general conditions under Section 6.1.5 above. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7. Cost of the Work that exceeds the Guaranteed Maximum Price shall be borne by the Construction Manager.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior written 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 any portion of the construction of the Work at the site or, with the Owner's prior written approval, at off-site workshops to the extent allowed by Texas Government Code Sections 2269.255 or 2269.275.

§ 7.2.2 *[Intentionally deleted.]*

§ 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, to the extent same are not compensated under general conditions, are directly attributable to and required for the Work, and are approved by the Owner:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

§ 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 and to the extent same are not compensated under general conditions, are directly attributable to and required for the Work, and are approved by the Owner.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for employment-related 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, to the extent not compensated under general conditions.

§ 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. Any Subcontract Work to be performed by the Construction Manager's own forces on the basis of a bid or proposal submitted by the Construction Manager per Section 3.3.2.1, as amended, shall be treated as Work performed by a Subcontractor under this Section. The Construction Manager's compensation for such Subcontract Work performed shall be based on the amount of the bid or proposal submitted by the Construction Manager for such Work, rather than "actual costs" as provided elsewhere in Article 6 of this Agreement.

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

§ 7.4.1 Costs, including transportation and Owner approved 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 Except for items included as general conditions, costs of transportation, 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 *[Intentionally deleted.]*

§ 7.5.3 To the extent not compensated under general conditions, costs of removal of debris from the site of the Work and its proper and legal disposal other than final clean-up.

§ 7.5.4 To the extent not compensated under general conditions, 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 written approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 To the extent not compensated under general conditions, 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 *[Intentionally deleted.]*

§ 7.6.1.2 *[Intentionally deleted.]*

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority for materials that are related to the Work but not incorporated into the Work, and for which the Construction Manager is liable and Owner is not exempt. Construction Manager shall be obligated to take reasonable care to obtain all applicable tax exemptions.

§ 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 and paid by the Construction Manager; 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.

§ 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 *[Intentionally deleted.]*

§ 7.6.6 *[Intentionally deleted.]*

§ 7.6.7 *[Intentionally deleted.]*

§ 7.6.8 Deposits lost for causes directly resulting from the Owner's wrongful actions or decisions.

§ 7.6.9 *[Intentionally deleted.]*

§ 7.6.10 *[Intentionally deleted.]*

§ 7.6.11 *[Intentionally deleted.]*

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work to the extent same are not compensated under general conditions, are directly attributable to and required for the Work, and are approved by the Owner.

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

§ 7.7.3 *[Intentionally deleted.]*

§ 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, or other provision of or amendment to this Agreement. However, notwithstanding anything in Article 7 to the contrary, no reimbursable cost or expense will be paid again if it is also included and paid in any general conditions amount submitted by Construction Manager.

§ 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, in writing, 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 or refuses 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 [Subsection deleted.];
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .9 Costs for services incurred during the Preconstruction Phase;
- .10 Delay damages or claims;
- .11 Storage costs, unless with prior written Owner approval;
- .12 All costs intentionally excluded in Article Section 6 above, including all subsections; and
- .13 All items included in either general conditions under Section 6.1.5 above, or the Construction Manager's Fee in Section 6.1.2 above.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Construction Manager shall take advantage of all available discounts, rebates, and refunds for supplies, materials, and equipment connected with the Work, and which conform to the Contract Documents, which discounts, rebates, and refunds shall accrue to the benefit of the Owner. Cash Discounts obtained on payments made by the Construction Manager shall accrue to the Owner. 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.

§ 9.3 Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and solicit through competitive purchasing, as required by law, competitive sealed proposals from Subcontractors. Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and obtain bids or proposals from Subcontractors for the performance of all major elements of the Work. All bids or proposals shall be sent directly to Construction Manager.

§ 9.4 The Construction Manager shall include the following specific notices in the information to proposers:

- .1 The successful proposer's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;
- .2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;
- .3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate;
- .4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023;
- .5 The following shall be included in any information to proposers, Request for Proposals, or Bid Documents:

By submitting a bid or proposal, each bidder or proposer agrees to waive any claims it has or may have against the Owner, the Architect, the Construction Manager, and their respective officers, trustees, employees, agents, or representatives, arising out of or in connection with the administration, evaluation, recommendation, or selection of any bid or proposal; waiver of any requirements under the bid or proposal documents or contract documents; acceptance or rejection of any bid or proposal; and award of the contract.

§ 9.5 Nothing herein shall preclude the Construction Manager from including other notices required or allowed by law.

§ 9.6 The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall do so in the same manner as required of all subcontractors. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Work offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal during the selection process to anyone who is not an employee of the Construction Manager, architect, engineer, or Owner. All proposals shall be made public within seven (7) days after the Owner's final selection. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the cost of the Work, but the Construction Manager shall not receive an additional Construction Manager's fee for self-performed work. Pursuant to Texas Government Code Chapter 2269, Subchapter F, if during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from a subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

§ 9.7 Per Texas Government Code Section 2269.257, if a selected trade contractor or subcontractor defaults in the

performance of its work or fails to execute a subcontract after being selected, the Construction Manager may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements. Construction Manager shall be paid for its own performance in accordance with Section 3.3.2.1 and Section 6.2.1 herein.

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, and other representatives 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 ten (10) years after the date of Final Completion, 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 The Construction Manager shall submit monthly Applications for Payment to both the Architect and Program Manager, if applicable, on AIA Form G702 for approval. Continuation sheets shall be submitted on AIA Form G703. If the Architect and Program Manager, if applicable, approve the application, then they shall submit a Certificate for Payment to the Owner. The Architect and Program Manager, if applicable, may require any additional information deemed necessary and appropriate to substantiate the Application for Payment. The Owner shall have the right to withhold from payments due Construction Manager such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Construction Manager or failure of Construction Manager to perform Construction Manager's obligations under this Contract. Materials that are verified to be on the jobsite or other approved location for use in the Project may also be incorporated into the Application for Payment. The Architect and Program Manager, if applicable, shall have seven (7) days from date of receipt from the Construction Manager of an Application for Payment to approve or reject all or any part of the Application for Payment. The Owner shall pay the undisputed amounts certified by the Architect and Program Manager, if applicable, to the Construction Manager within forty-five (45) days, if Owner's Board of Trustees meets once a month, or thirty (30) days, if Owner's Board of Trustees meets twice a month, of receipt of the Certificate for Payment from the Architect and Program Manager, unless otherwise provided in the Contract Documents. Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025.

(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. Each Application for Payment shall also include a list, with backup data, of how each payment shall be spent, including a list detailing which subcontractors and suppliers will be paid out of funds paid by the Owner and the amount of such payments to subcontractors and suppliers, and in the next payment cycle, proof of each payment to Construction Manager's subcontractors and suppliers after payment. The Construction Manager shall promptly pay all bills validly due and owing for labor and material performed and furnished by others in connection with the performance and construction of the Work.

§ 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, less any unused Owner's contingency and unused Construction Manager's contingency, shall allocate the entire Guaranteed Maximum Price among: (1) the various portions or classifications 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. The Construction Manager's fee shall be shown as a separate line item on the schedule of values.

§ 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 and Program Manager, if applicable, may require. The format and tracking method of the original schedule of values and of all updates to the schedule of values shall be subject to the approval of the Architect and Program Manager, if applicable. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment. If at any time, the amount shown on the schedule of values exceeds the Guaranteed Maximum Price allocable to that portion or classification of the Work, then the amount payable to Construction Manager by Owner shall be reduced by the amount of such excess.

§ 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 or classification 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) classification on 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 or classification of the Work by the share of the Guaranteed Maximum Price allocated to that portion or classification 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, accountants, or other representatives in such documentation; and

- .6 Retainage withheld pursuant to Section 11.1.8.
- .7 Subtract retainage of five percent (5%) of the remaining amount, including the Construction Manager's Fee, of the progress payment. (Note: Under Texas law, if the retainage exceeds five percent, then the retainage shall be deposited in an interest-bearing account, and the interest earned on the retainage shall be paid to the Construction Manager upon completion of the Work. Texas Government Code Section 2252.032.)
- .8 The progress payment amount determined in accordance with this Section shall be further modified under the following circumstances:
 - .1 If Final Completion of the Work is thereafter materially delayed by Owner or Owner's agents through no fault of the Construction Manager, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2017, as amended.
 - .2 If Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then Owner shall be entitled to deduct such liquidated damages, amounts and fees due Construction Manager at any time.
 - .3 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, then any final payment to Construction Manager shall be subject to deduction for such amounts as the Architect and Program Manager, if applicable, shall determine as the cost for completing incomplete Work and the value of unsettled claims;
 - .4 Subtract withheld payments pursuant to Section 11.1.3.

§ 11.1.7.3 Payment for materials and/or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest and shall include the costs of applicable insurance (naming the Owner as additional insured) and transportation to the site for those materials and equipment stored off the site. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment. Payments shall be made on account of materials and equipment (a) incorporated in the Work, (b) suitably stored at the Project site, or (c) suitably stored at some off-site location provided the following conditions are met for off-site storage:

- .1 The location must be agreed to, in writing, by the Owner and Surety;
- .2 The location must be a bonded warehouse;
- .3 The Surety must agree, in writing, to each request for payment; and
- .4 The Contractor must bear the cost of the Owner's and Architect's expense related to visiting the off-site storage area.

§ 11.1.7.4 In the event of Contract termination or default by the Contractor, the items stored off the site, upon which payment has been made, will be promptly turned over to the Owner or Owner's designated representative at a location near the Project site as directed by the Owner or Owner's designated representative. The full provisions of Performance and Payment Bonds on this Project cover the materials stored off the site in every respect as though they were stored on the Project site.

§ 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. Retainage is managed in conformance with Texas Government Code Chapter 2252, subchapter B:

(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.)

None.

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be subject to the written consent of the Contractor's Surety and 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.)

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Final Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Final 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.)

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Construction Manager shall submit a claim in accordance with Article 15 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. If the Contractor wishes to bill for materials or equipment which cannot be stored on site, the Contractor shall, along with the request for approval, provide evidence of purchase, evidence of delivery in good order without damage, and a certificate of insurance specifically covering the material identified by way of serial numbers, bill of lading, and copy of signature of receipt of materials and photography showing material. The Contractor shall also require, at the Owner's request, proof that the facility at which the materials or equipment is stored is bonded. Security and protection from theft and damage remains on the Contractor as the first line of accountability and financial responsibility. Delays due to issues arising from stored materials shall not be considered as reasonable justification to release the Contractor from meeting the schedule unless the Owner agrees to such delay in writing in advance of notification to the Owner of any delay.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors. The percentage of retainage held on Subcontracts shall be the same percentage of retainage withheld from Construction Manager. The Construction Manager shall execute subcontracts that contain the same terms and conditions as those contained in this Agreement.

§ 11.1.12 In submitting Construction Manager's Applications for Payment, Construction Manager shall be responsible for all errors or omissions. Owner shall not be responsible for Construction Manager's errors or omissions.

§ 11.2 Final Payment

§ 11.2.1 Final payment for each Work, if multiple Project(s), shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, including the Construction Manager's responsibility to correct Work except for the Construction Manager's responsibility to satisfy other requirements, if any, which Owner agrees in writing necessarily 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 that are certified by Construction Manager and reviewed and approved by the Owner's auditors or other representatives;
- .3 a final Certificate for Payment has been issued by the Architect and approved by the Program Manager, if applicable in accordance with Section 11.2.2.2.;
- .4 The Construction Manager certifies to the Owner that the Project, to the best of the Construction Manager's knowledge, has been constructed in general accordance with Architect's Construction Documents. The certificate shall be the Texas Education Agency's Certification of Project Compliance, signed by a duly authorized officer of the Construction Manager and properly notarized;
- .5 Construction Manager has provided all documents required by Section 9.10.2 of AIA Document A201-2017; and
- .6 Owner's Board of Trustees has voted to accept the Work and approve Final Payment.

§ 11.2.2 Within sixty (60) 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 ten (10) days after completion of the audit, submit a written report based upon the auditors' or other representatives' findings to the Architect.

§ 11.2.2.2 Within seven (7) 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' or other representatives' 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 proceed in accordance with Article 12 without a further decision of the Architect. Unless otherwise agreed in the Contract Documents, a demand for mediation or other dispute resolution as provided in the Contract Documents, of the disputed amount shall be made by the Construction Manager within the timeline established in Section 15.2 of A201-2017 after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this time period shall result in the substantiated amount reported by the Owner's auditors or other representatives 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 thirty (30) days after Board approval. The Construction Manager must certify completion of all Work, including all listed in Section 9.10.2 of the AIA Document A201-2017 for the Project, cleanup, and delivery of record documents prior to or with the Application for Final Payment.

§ 11.2.3.1 The amount of the Final Payment shall be calculated as follows:

- .1 Begin with the actual Cost of the Work substantiated by the Construction Manager's final accounting, which includes deductions for all discounts and unused contingencies, and construction savings achieved in the Cost of the Work, if applicable;
- .2 Add the actual expended general conditions substantiated by the Construction Manager's final accounting, which includes savings to the Owner for unused general conditions;
- .3 Add the Construction Manager's Fee;
- .4 Subtract amounts, if any, for which Architect or Owner disputes, refuses or withholds payment, if any;
- .5 If Owner is entitled to deduct liquidated damages or any other damages or amounts provided in the Contract Documents, including clean-up fees, then subtract all such liquidated damages, amounts and fees;
- .6 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, then subtract such amounts as the Architect shall determine as the cost for completing incomplete Work and the value of unsettled claims;
- .7 Subtract all previous payments made by the Owner; and
- .8 In no event shall the total of subsections .1, .2 and .3 above exceed the Guaranteed Maximum Price;
- .9 If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner, plus interest as allowed by law.

§ 11.2.4 If, subsequent to final payment, and at the Owner's prior written request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, that are not excluded by Section 7.9, to correct defective or nonconforming Work that is not the fault of the Construction Manager or arising from the resolution of a dispute, 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.

§ 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 maximum rate permitted by law, in accordance with Texas Government Code Chapter 2251. *(Insert rate of interest agreed upon, if any.)*

%

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim by the Construction Manager regarding any matter 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 or recommendation by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution.

§ 12.1.2 [Section Deleted.]

§ 12.1.3 When Owner has an applicable claim for construction defects, Owner shall comply with the provision of Texas Government Code Chapter 2272 related to the provision of notice of defects and the Construction Manager’s or Architect’s opportunity to cure.

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

- ☐ Arbitration pursuant to Article 15 of AIA Document A201–2017
- ☒ Litigation in a court of competent jurisdiction with proper venue being the county where the Project is located.
- ☐ 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 (7) days’ written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven (7) 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 (7) 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 (7) 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 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 Price to be exceeded, nor shall it exceed an amount calculated as follows:

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

§ 13.2.2.2 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 if established and Contract Time may be increased as provided in Article 14 of AIA Document A201–2017.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Unless otherwise noted, 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. The Construction Manager shall not assign this Agreement or the Contract in whole or in part without the prior written consent of the Owner's Board of Trustees. If Construction Manager attempts to make such an assignment without such consent, the Construction Manager shall nevertheless remain legally responsible for all obligations under the Contract. This does not prevent Construction Manager from engaging subcontractors to perform various phases of the Project in accordance with law, but Construction Manager shall be fully responsible to Owner for the work, action and omissions of all such subcontractors.

§ 14.2.2 [Section deleted.]

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall purchase and maintain insurance as required by Article 11, A201-2017 as amended for this Project, to protect Construction Manager and Owner against all claims, damages, lawsuits, indemnities, or other actions which may arise out of or result from the Construction Manager's operations under this Contract, whether such operations are by Construction Manager, or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. Prior to performing the Work, the Construction Manager shall provide separate performance and payment bonds in accordance with AIA Document A201-2017 Article 11.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than ONE MILLION AND NO/100 DOLLARS (\$ 1,000,000.00) for each occurrence and ONE MILLION AND NO/100 DOLLARS (\$ 1,000,000.00) in the aggregate for bodily injury and property damage. See Article 11, A201-2017, as amended for this Project.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned, hired, or any other vehicles used, by the Construction Manager with policy limits of not less than those stated below 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. *(Note: Texas statutory minimum for school districts is \$100,000 per person, \$300,000 per occurrence, and \$100,000 property damages.)* Such minimum limits shall be stated as follow, or in a combined single limit policy in the amount of at least \$1,000,000.

.1	Bodily Injury (per person)	\$2,000,000.00
.2	Bodily Injury (per accident)	\$2,000,000.00
.3	Property Damage	\$2,000,000.00

§ 14.3.1.3 The Construction Manager may not achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance. 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.

(Paragraph deleted)

§ 14.3.1.4 Umbrella Excess Liability coverages shall be in at least the following amounts:

- | | | |
|----|-----------------------------------|-----------------|
| .1 | \$10,000,000.00 | each occurrence |
| .2 | \$10,000,000.00 | aggregate |
| .3 | Aggregate Per Project Endorsement | |

§ 14.3.1.5 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than ONE MILLION AND NO/100 DOLLARS (\$ 1,000,000.00) each accident, ONE MILLION AND NO/100 DOLLARS (\$ 1,000,000.00) each employee, and ONE MILLION AND NO/100 DOLLARS (\$ 1,000,000.00) policy limit. See Article 11, A201-2017, as amended for this Project.

§ 14.3.1.5 [Section deleted.]

§ 14.3.1.5.1 Texas Workers' Compensation Insurance. See Article 11, A201-2017, as amended for this Project.

§ 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

§ 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, and Article 11, A201-2017, as amended for this Project.

§ 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, Article 11 of the AIA Document A201-2017, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in Article 11 of the AIA Document A201-2017, 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 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203-2013, 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:

§ 14.5.1 No delay or omission by Owner in exercising any right or power accruing upon the noncompliance or failure of performance by the Construction Manager of any of the provisions of this Agreement shall impair any such right or power or be construed to a lender providing financing for be a waiver thereof. A waiver of any breach by either of the parties of any covenant, condition or agreement shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

§ 14.5.2 Contractor shall require all construction workers, whether Contractor's own forces, or the forces of Contractor's subcontractors, to wear identification tags on the front of their persons during all times that they are on Owner's property. Such identification tags shall have identification of the construction worker by number or other identifying medium in a typeface large enough to be seen from a reasonable distance.

§ 14.5.3 By signing this Agreement, the undersigned certifies as follows: "Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in the contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

§ 14.5.4 Contractor stipulates that Owner is a political subdivision of the State of Texas, and, as such, may enjoy immunities from suit and liability under the Constitution and laws of the State of Texas. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law.

§ 14.5.5 This Agreement is subject to all applicable federal and state laws, rules, and regulations. Invalidity of any portion of this Agreement under the laws of the State of Texas or of the United States shall not affect the validity of the remainder of this Agreement. Governing law and venue shall be as specified in AIA Document A201-2017 Section 13.1.

§ 14.5.6 By executing this Agreement, Contractor verifies that it does not boycott Israel, and it will not boycott Israel during the terms of this Contract. Pursuant to Texas Government Code, Chapter 2271, as amended, if Contractor is a for profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit which has ten (10) or more full-time employees and the value of the contract with Owner is \$100,000 or more, the Contractor represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

§ 14.5.7 Contractor verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Contractor has misrepresented its inclusion on the Comptroller's list, such omission or misrepresentation will void this Contract.

§ 14.5.8 Pursuant to Texas Government Code Chapters 2274 and 809, if this contract is valued at \$100,000 or more and if Contractor has at least ten (10) full-time employees, then Contractor represents and warrants to the Owner that the Contractor does not boycott energy companies and will not boycott energy companies during the term of this Agreement.

§ 14.5.9 Pursuant to Texas Government Code Chapter 2274, if this contract is valued at \$100,000 or more and if Contractor has at least ten (10) full-time employees, then Contractor represents and warrants to the Owner that the Contractor does not discriminate against firearm entities or firearm trade associations and will not discriminate against firearm entities or firearm trade associations during the term of this Agreement.

§ 14.6

.1 By entering into this Contract, pursuant to Texas Government Code 552, Subchapter J, the Contractor agrees to be bound by the following terms if the Contract has a stated expenditure of at least \$1,000,000 for the purchase of goods or services by the District or if the Contract results in the expenditure of at least \$1,000,000 in public funds for the purchase of goods or services by the District in a fiscal year of the District. If the District receives a written request for public information related to this Contract that is in the possession or custody of the Contractor and not in the possession or custody of the District, the District shall send, not later than the third business day after the date the District receives the written request, a written request to the Contractor that Contractor provide that information to the District.

.2 The Contractor must:

2.1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;

2.2 Promptly, within four (4) business days, provide to the District any requested contracting information that is in the custody or possession of the Contractor upon request of the District; and

2.3 On completion of the Contract, either:

.1 Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Contractor; or

.2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.

.3 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with the requirements of that subchapter.

.4 Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.

.5 If a Contractor fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Contractor in writing of the failure and allow ten (10) business days to cure the violation. District may terminate the Contract if Contractor fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

§ 14.7 The Contractor verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers.

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Contract 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 Contract may be amended only by written instrument signed by both Owner and Construction Manager. If any portion of this Contract is determined to be invalid, unenforceable, or void, then that portion shall be severed, and all other portions of this Contract shall remain in full force and effect.

§ 15.2 The following documents are included in the Contract, in addition to those listed in Section 1.1.

.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 [Subsection deleted.]

.4 AIA Document A201™-2017, General Conditions of the Contract for Construction

.5 [Subsection deleted.]

.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:

.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 bidding requirements such as an advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager’s bid or proposal, the Contractor’s bid, 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 Contract. Any such documents should be listed here only if intended to be part of the Contract Documents.)

Owner’s RFP CMAR No. _____

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

FRISCO INDEPENDENT SCHOOL DISTRICT _____

OWNER *(Signature)*
Kimberly Smith, Chief Finance and Strategy Officer
(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

(Printed name and title)

Additions and Deletions Report for AIA® Document A133® – 2019

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 13:17:08 on 09/08/2025.

PAGE 1

AGREEMENT made as of the _____ day of _____ in the year TWO THOUSAND TWENTY

...

Frisco Independent School District
5515 Ohio Drive
Frisco, Texas 75035
Phone: 469-633-6000

...

(Name, legal status, address, and other information)

Phone: _____

Fax: _____

E-mail: _____

...

Sample for Procurement

...

(Name, legal status, address, and other information)

Phone: _____

E-mail: _____

...

WHEREAS Frisco Independent School District (hereinafter referred to as "Owner") and _____
(hereinafter referred to as "Construction Manager") desire to enter into a contract under which Construction Manager
will perform construction services relating to the above-referenced Projects on behalf of Owner;

The Owner and Construction Manager agree as follows. WHEREAS Owner and Construction Manager have agreed to
enter into AIA Document A133™-2019 Contract (Contract) as the basic form for that contract; and

WHEREAS certain terms and conditions of the contract must be modified to comply with applicable laws and policies affecting Owner and Construction Manager on this project, Owner and Construction Manager hereby agree to the following amendments to the Contract:

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EXHIBIT B—INSURANCE AND BONDS**NOTE:** Any reference hereinafter this one, to an AIA™ Document or any AIA Documents included in the Contract Documents shall refer to such document "as modified for this Project". In addition, any reference to AIA Documents shall all be considered to have included the Trademark "™" after the AIA reference, whether or not included in the text. The AIA Documents are registered intellectual property of the American Institute of Architects and use and amendment of such forms is permitted under license granted to Walsh Gallegos Kyle Robinson & Roalson P.C. No use may be made of this AIA document other than as Contract Documents for this Project.

...

See above.

PAGE 4

_____.

...

Approximately \$ _____.

...

...

...

...

...

Danny Melton, Executive Director of Facilities
Frisco Independent School District
12025 Rolater Road
Frisco, Texas 75035
Phone: 469-633-6510
E-mail: MeltonD@friscoisd.org

PAGE 5

Architect and Consultants- all related shop drawings, product data, performance specifications, certifications, per project specifications

Justin Rushing (Owner's Construction Supervisor) - Owner-Insite Project Management Software

...

~~.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.)~~

...

Phone: _____
E-mail: _____

...

Phone: _____
E-mail: _____

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§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten (10) days' prior notice to the other party.

...

The Contract Documents consist of this Agreement, as amended, Conditions of the Contract (General, Supplementary and other Conditions), as amended, Drawings, Specifications, Addenda issued prior to execution of this Agreement, all sections of the Project Manual, other documents listed in this Agreement, ~~and~~ Modifications issued after execution of this Agreement, the proposal signed by the Construction Manager, the request for proposals, and Construction Manager's proof of payment and performance bonds, and proof of insurance, 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. Any reference to AIA Document A201-2017 in this Agreement shall be construed as the AIA Document A201-2017, as amended.

§ 2.1.1 Any revision, amendment, or modification to the Standard Form of this Agreement shall be valid, binding, and enforceable only if said revision, amendment or modification is made conspicuous by being underlined, lined-through, or highlighted in this Agreement signed by Construction Manager and the authorized representative of Owner's Board of Trustees. In the event of conflict, terms and conditions contained in the Agreement, as amended, shall take precedence over terms and conditions contained in the General Conditions, as amended, and the terms and conditions in the General Conditions, as amended, shall take precedence over all other terms and conditions contained in the other Contract Documents. If the Request for Proposals and the Proposal are included in the Contract Documents, then the Request for Proposals shall take precedence over the Proposal, unless specifically agreed otherwise herein.

§ 2.1.2 The Board of Trustees, by majority vote, is the only representative of the Owner, an independent school district, having the power to enter into or amend a contract, to approve changes in the scope of the Work, to approve and execute a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price, to agree to an extension to the date of Substantial or Final Completion or to terminate a contract. The Owner designates the following as the individual authorized to sign documents on behalf of the Board of Trustees: Todd Fouche, Deputy Superintendent, or successor.

...

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~~ Owner; to perform the Work defined in the Contract Documents, in accordance with the Owner's requirements and construction cost limitations, as approved by the Owner's Board of Trustees, as set forth in the Contract Documents; to furnish efficient construction administration, management services, and supervision; to furnish construction services, if allowed in accordance with law; 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. The Owner and Construction Manager shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager, Construction Manager's subcontractors, and other persons or entities employed by the Owner for the Project.

...

§ 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.

§ 2.3.2 Per Texas Government Code, Section 2269.257, if a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected, the Construction Manager may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements. Construction Manager shall be paid for its own performance in accordance with Section 2.3.2.1 and Section 6.2.1 herein.

§ 2.3.3 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.

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 recommendations and advice of the Construction Manager concerning design alternative and potential cost savings shall be subject to the review and approval of the Architect, Owner, and the Owner's professional consultant. 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 that reasonably should have been discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

...

§ 3.1.3.2 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~~; construction, which shall satisfy Owner's time requirements; 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 building information modeling and digital data protocols for the Project, using AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, reliance, and exchange of digital data, including building information models for the Project and exchange of digital data.~~

§ 3.1.3.4 During the Preconstruction Phase, the Construction Manager shall review the Contract Documents to ascertain whether the components of the plumbing, electrical and mechanical systems may be constructed without interference with each other, or with the structural or architectural components of the Project, or with existing systems. In the event that conflicts between the systems are discovered, the Construction Manager shall promptly notify the Owner and Architect in writing.

§ 3.1.3.5 Notwithstanding any provision of the General Conditions of the Contract for Construction to the contrary, the Construction Manager shall not be entitled to additional compensation for any delay or disruption to the Work arising from any conflict between the mechanical, electrical, and plumbing systems with each other, or with the structural or architectural components of the Work, or with existing systems, if such conflicts should have been discovered during the Construction Documents Phase by the Construction Manager through the exercise of reasonable diligence, and the Owner and Architect were not informed of such conflicts as required by subparagraph 2.1.2.1. This provision shall apply only with respect to conflicts appearing in the Drawings and Specifications provided for the Construction Manager's review prior to proposal of a Guaranteed Maximum Price.

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; dates of Substantial Completion and Final Completion; and the occupancy requirements of the Owner. If updated Project schedules indicate that previously-approved schedules may not be met, then the Construction

Manager shall make appropriate recommendations to the Owner and Architect and, upon written approval of both, shall implement necessary corrective action.

...

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. The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications so as to facilitate the proposal of a Guaranteed Maximum Price when all elements of the Drawings and Specifications are at least ninety percent complete, unless mutually agreed otherwise by the Architect, Owner and the Construction Manager.

...

§ 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-action~~ and/or cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Design Development Documents or the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's Board of Trustees' consent. In the event that the quality or scope identified in the estimates are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner and are within the Owner's budget.

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§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project. To the extent not inconsistent with the Construction Manager's requirements under Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor or supplier.

...

§ 3.2.1 ~~At a time to be mutually agreed upon by the Owner and the Construction Manager, the~~ When all elements of the Construction Documents are at least 90 percent complete, at a time mutually-agreed upon by the Owner, the Construction Manager, and the Architect, 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. the general conditions; and the Construction Manager's Fee. If any Guaranteed Maximum Price proposal submitted to the Owner exceeds previously-approved estimates or the Owner's budget, then the Construction Manager shall make appropriate recommendations to the Owner and Architect for cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's Board of Trustees' consent. In the event that the quality or scope identified in the proposal are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner, are within the Owner's budget, and meet the Owner's requirements for dates of Substantial Completion and Final Completion. The

Construction Manager may propose separate Guaranteed Maximum Prices for separate Works within the Project, as schedules and efficiencies dictate. The Construction Manager will work with the Architect to achieve a Guaranteed Maximum Price that is fully acceptable to Owner and is within the Owner's budget for the Work and for the Project.

§ 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.

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- .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; general conditions; 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. The date Final Completion upon which the proposed Guaranteed Maximum Price is based, which date shall not be more than thirty (30) days after the date of Substantial Completion; and
- .6 The Guaranteed Maximum Price proposal may not be based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager on other than a maximum price basis.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. The Guaranteed Maximum Price will contain a separately-identified contingency amount (the "Construction Contingency"). The Construction Contingency is not allocated to any particular item of the Cost of the Work and is established for the Construction Manager's use as may be required for costs incurred in the Work from unforeseeable causes, or details which could not have been anticipated by the Construction Manager at the time of the Owner's approval of the Guaranteed Maximum Price. Such unforeseeable causes or unanticipated details include, but are not limited to, refinement of details of design within the scope of standards, quality and quantities which are reasonably inferable from the Guaranteed Maximum Price documents, the correction of minor defects not relating to design, delays in receipt of materials, and additional costs relating to Subcontractor defaults not reimbursed by the Subcontractor's bonding company. The Construction Manager, with Owner's representative's written approval, may utilize the Construction Contingency for any of the above items within the Cost of the Work without the necessity of a Change Order, without constituting a Change in the Scope of the Work, and without resulting in any change in the Guaranteed Maximum Price. Any unforeseeable causes or unanticipated details which exceed the Construction Contingency shall be borne by the Construction Manager at the Construction Manager's sole risk. All savings will accrue and be available for use, only as detailed above, by the Construction Manager until the Construction Manager's final accounting. In the final accounting, all supporting documentation for all uses of the Construction Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Contingency shall accrue to the Owner. The Guaranteed Maximum Price shall also include a separately-identified contingency amount, an "Owner's Contingency," which is defined as a contingency fund within the Guaranteed Maximum Price established by the Owner for the Owner's exclusive use. Monies from Owner's Contingency may be spent in the discretion of Owner's Representative and without additional Board of Trustees approval, but with subsequent notice to Owner's Board of Trustees. Any unused Owner's contingency shall accrue to the Owner.

§ 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. As soon as feasible after Architect's preliminary approval of the Construction Manager's proposed Guaranteed Maximum Price, the Architect will prepare the Amendment forms and return them to the Construction Manager for review, signature, and return to the Owner.

§ 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. The Owner's Board of Trustees shall be allowed not less than thirty (30) days after receipt of the Construction Manager's signed Guaranteed Maximum Price Amendment to review and take action on the Amendment. Unless the Owner's Board of Trustees accepts the Guaranteed Maximum Price Amendment by Board action within thirty (30) days after District's receipt, the Amendment will not become effective. 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.~~

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~~§ 3.2.9 The Construction Manager shall not 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 any taxes from which Owner is exempt.~~

~~§ 3.2.10 The Construction Manager shall diligently prosecute and achieve Substantial and Final Completion of the Entire Work as provided in the Amendment.~~

...

~~§ 3.3.1.1 For purposes of Section 8.1.2 of A201-2017, the The date of commencement of the Work shall mean the date of commencement of the Construction Phase. Phase, as provided in Section 8.1.2 of A201-2017.~~

~~§ 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. [Section Deleted.]~~

...

~~§ 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. Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and solicit through competitive purchasing, as required by law, competitive sealed proposals from Subcontractors Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and obtain bids or proposals from Subcontractors for the performance of all major elements of the Work. All bids or proposals shall be sent directly to Construction Manager.~~

The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall do so in the same manner as required of all subcontractors. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Work offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal during the selection process to anyone who is not an employee of the Construction Manager, architect, engineer, or Owner. All proposals shall be made public within seven (7) days after the Owner's final selection. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work, but the Construction Manager shall not receive an additional Construction Manager's fee for self-performed work. Pursuant to Texas Government Code Chapter 2269, Subchapter F, if during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from a subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

§ 3.3.2.1.1 The Construction Manager shall include the following specific notices in the information to proposers:

- .1 The successful proposer's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;
- .2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;
- .3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate; and
- .4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.

§ 3.3.2.1.2 Nothing herein shall preclude the Construction Manager from including other notices required or allowed by law.

§ 3.3.2.1.3 The Construction Manager shall schedule and conduct weekly or otherwise regularly-scheduled meetings at which Owner, Architect, Construction Manager and appropriate Subcontractors 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. The Construction Manager shall provide periodic presentations updating the progress, quality and status of the Work to Owner's Board of Trustees, at Owner's request, at no additional cost to Owner.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, Amendment by Owner and Construction Manager, 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. A201–2017, including the Owner's occupancy requirements.

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

§ 3.3.3 To the extent that any portion of the Work requires a trench excavation exceeding five (5) feet in depth, in accordance with Texas Health and Safety Code Section 756.023(a), Construction Manager shall fully comply, and shall require any applicable subcontractor to comply, with:

- .1 The Occupational Safety and Health Administration standards for trench safety in effect for the Construction of the Work;
- .2 The special shoring requirements, if any, of the Owner;
- .3 Any geotechnical information obtained by Owner for use by the Construction Manager in the design of the trench safety system.

§ 3.3.4 Trench excavation safety protection shall be a separate pay item, and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item, and shall be based on the square feet of shoring used. Said cost shall be included within the Guaranteed Maximum Price.

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§ 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. [Section Deleted.]

§ 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. costs, including the Owner's Contingency as provided in Section 3.2.4. 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~~ Such documents shall be provided for information only and are not warranted or represented to show the conditions at the Project site accurately. Construction Manager may use the information at its own risk and shall use customary precautions relating to the performance of the Work. Notwithstanding the preceding sentences and the delivery of surveys or other documents and reports by Owner, Construction Manager shall perform all work in such a non-negligent manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the Property. Contractor shall be responsible for any damage done to such lines, cables pipes and pipelines during the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law ~~and or~~ 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 as provided in Section 2.3.4 of AIA A201-2017.~~

§ 4.1.4.3 ~~The Owner, when such services are requested, Unless provided by the Architect by agreement with the Owner, the Owner, when such services are reasonably required by the scope of the Work, and are requested by the Architect or Construction Manager and approved by the Owner, 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~~ may 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 reasonable written request for such information or services.

...

~~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. Owner's Board of Trustees shall designate one or more authorized representatives to act on its behalf in the day-to-day administration of the Project, to issue stop work orders, and to authorize expenditures within the Owner's contingency. The Board designates as its authorized representatives, the following individuals: Danny Melton, Executive Director of Facilities.~~

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

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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 Construction Manager's services shall be provided in conjunction with the services of an Architect. The terms of the agreement between the Owner and Architect shall be available for inspection by the Construction Manager upon request.

§ 4.4 Inspection And Testing

Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement. Pursuant to Texas Government Code Section 2269.058, the Owner shall provide or contract for, independently of the Construction Manager, construction materials engineering, and testing and inspection services necessary for acceptance of the Work by Owner.

...

All costs for Preconstruction Phase services including cost estimating, scheduling, building systems and material cost analysis are included in the Construction Manager's Fee described in Section 6.1.2. However, if the Construction Phase does not commence for any reason, payment to the Construction Manager for Preconstruction Services shall be the necessary and reasonable cost of such services, not to exceed the lump sum amount of _____ and No/00 Dollars (\$ _____ .00).

...

§ 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 may be equitably adjusted.

...

§ 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 within Forty-Five (45) days of the Construction Manager's invoice and Certification for Payment from the Architect. Amounts unpaid more than Forty-Five (45) days after the invoice receipt from the Architect shall bear interest in accordance with Texas Government Code Section 2251.025.

(Note: These blanks should be filled in with "30" if the school board meets more often than once per month, or filled in with "45" if the school board meets once per month).

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§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's ~~Fee~~. Fee, plus the general conditions, the total of which shall not exceed the Guaranteed Maximum Price.

...

The fee shall be calculated as a percentage of the Cost of the Work, and not as a percentage of the Contract Sum. The fee shall be _____ Percent (_____ %) of the Cost of the Work. No Construction Manager's fee shall be paid on the Construction Manager's Contingency or the Owner's Contingency until funds are allocated from those contingencies to the Cost of the Work, or as provided in Section 2.3.2.1.

...

Only by agreement of Owner's Board of Trustees.

...

See AIA Document A201-2017, Section 7.1.4.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed ~~—~~ percent (~~—~~ %) of the standard rental rate paid at the place of the Project. **General Conditions.** All charges, if any, for general conditions (costs to be reimbursed) shall be delineated separately in the Guaranteed Maximum Price Amendment, and may include only the following: on-site Project Manager; on-site Project and Site Superintendents; on-site Assistant Superintendents; minor work that may be included in the general conditions as allowed by Texas Government Code Section 2269.255; office trailer expenses; on-site sanitary facilities; project sign; safety/first aid; on-site technology; temporary water and power; project site office supplies and office equipment; plan reproduction; construction photographs; dumpsters; final clean-up; equipment rental; fuel; small tools; and items described in more detail below.

§ 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.)

§ 6.1.6 Rental rates for Construction Manager-owned equipment shall be subject to the Owner's prior approval and shall not exceed seventy-five percent (75 %) of the standard rental rate paid at the place of the Project.

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

§ 6.1.8 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries, for Construction Manager's on-site Project Manager, on-site Project and Site Superintendents, on-site Assistant Superintendents, and Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

§ 6.1.9 Actual rental charges for temporary facilities, machinery, equipment and hand tools not included in Section 6.5.1 and not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal.

§ 6.1.10 The general conditions shall not include the following: all reimbursement for profit; indirect costs; all telephone bills for all personnel; all facsimile charges; home office personnel and benefits assigned to the Project; home office overhead and expenses; home office personnel relocation; all home office accounting, audit, legal and data processing fees and expenses; and all travel, meals and lodging.

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

.1 Time is of the essence in all phases of the Work. It is specifically understood and agreed by and between Owner and Construction Manager that time is of the essence in the Substantial Completion and Final Completion of the Project and Owner shall sustain actual and direct damages as a result of Construction Manager's failure, neglect or refusal to achieve said deadlines. Such actual and direct damages are, and will continue to be, impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute agreement by Owner and Construction Manager that the amounts stated below are the minimum value of the costs and actual and direct damages caused by failure of Construction Manager to substantially complete the work within the allotted

times, that such sums are liquidated direct damages and shall not be construed as a penalty, and that such sums may be deducted from payments due Construction Manager if such delay occurs. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not completed within the agreed time, or within the agreed extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for personnel, attorneys fees, architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult to exactly ascertain. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion, shall be construed as a breach of this Agreement.

.2 It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from the Final Payment made to the Construction Manager a sum equal to _____ AND NO/100 DOLLARS (\$ _____ .00) per day for each and every additional calendar day beyond the agreed date of Substantial Completion.

.3 Timely Final Completion is an essential condition of this Agreement. Construction Manager agrees to achieve Final Completion of the Agreement within thirty (30) days of the designated or extended date of Substantial Completion. Owner and Construction Manager agree that should Construction Manager fail to achieve Final Completion of the Agreement by the deadline, Owner shall continue to be damaged to a greater degree by such delay. Construction Manager and Owner agree that the amount of liquidated damages for each calendar day Final Completion is delayed beyond the date set for Final Completion shall be the sum of _____ NO/100 DOLLARS (\$ _____ .00) per day. Owner may deduct from the Final Payment made to Construction Manager, or, if sufficient funds are not available, then Construction Manager shall pay Owner the amounts specified per day for each and every calendar day the breach continues after the deadline for Final Completion of the Work.

.4 Such damages shall be in addition to, and not in lieu of, any other rights, claims or remedies Owner may have against Construction Manager. If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final completion.

§ 6.12 Other:

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

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 and the Dates of Substantial Completion and Final Completion shall be subject to adjustment as provided in the Construction Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. Should the final audited Contract Sum be less than the Guaranteed Maximum Price, then the difference between the Contract Sum and the Guaranteed Maximum Price shall be considered as savings to the Owner, and Owner shall have no obligation to pay same to the Construction Manager. Construction Manager shall also consider as savings to the Owner all unused funds from any Contingency account. The Construction Manager shall not participate in any savings; all savings shall be credited to Owner.

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§ 6.3.1 The Owner with Board of Trustees' approval, if appropriate, 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~~ Either the Construction Manager or the Owner, as appropriate, may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

...

§ 6.3.2 ~~Adjustments~~ Increases or decreases, if any, 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.

...

§ 6.3.5 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~~ may 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.

...

§ 7.1.1 The term Cost of the Work shall mean the following direct, actual and verifiable costs reasonably and necessarily incurred by the Construction Manager in the proper performance of the Work. Work, except those costs compensated as general conditions under Section 6.1.5 above. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7. Cost of the Work that exceeds the Guaranteed Maximum Price shall be borne by the Construction Manager.

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

...

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform any portion of the construction of the Work at the site or, with the Owner's prior ~~approval, at off-site workshops.~~ written approval, at off-site workshops to the extent allowed by Texas Government Code Sections 2269.255 or 2269.275.

§ 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.~~ [Intentionally deleted.]

§ 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:~~ and, to the extent same are not compensated under general conditions, are directly attributable to and required for the Work, and are approved by the Owner:

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§ 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.~~ Work and to the extent same are not compensated under general conditions, are directly attributable to and required for the Work, and are approved by the Owner.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for ~~employment-related~~ 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.~~ 7.2.3, to the extent not compensated under general conditions.

...

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the ~~subcontracts and subcontracts.~~ Any Subcontract Work to be performed by the Construction Manager's own forces on the basis of a bid or proposal submitted by the Construction Manager per Section 3.3.2.1, as amended, shall be treated as Work performed by a Subcontractor under this Section. The Construction Manager's compensation for such

Subcontract Work performed shall be based on the amount of the bid or proposal submitted by the Construction Manager for such Work, rather than "actual costs" as provided elsewhere in Article 6 of this Agreement.

...

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

...

§ 7.5.1 ~~Costs of transportation, storage, Except for items included as general conditions, costs of transportation, 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.~~*[Intentionally deleted.]*

§ 7.5.3 ~~Costs To the extent not compensated under general conditions, costs of removal of debris from the site of the Work and its proper and legal disposal.~~disposal other than final clean-up.

§ 7.5.4 ~~Costs To the extent not compensated under general conditions, 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 written approval.

...

§ 7.6.1 ~~Premiums To the extent not compensated under general conditions, 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.~~*[Intentionally deleted.]*

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

§ 7.6.2 ~~Sales, use, or similar taxes, imposed by a governmental authority, authority for materials that are related to the Work but not incorporated into the Work, and for which the Construction Manager is liable.~~is liable and Owner is not exempt. Construction Manager shall be obligated to take reasonable care to obtain all applicable tax exemptions.

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§ 7.6.4 ~~Fees of laboratories for tests required by the Contract Documents; Documents and paid by the Construction Manager; 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.~~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.~~[Intentionally deleted.]

~~§ 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.~~[Intentionally deleted.]

~~§ 7.6.7 Costs of document reproductions and delivery charges.~~[Intentionally deleted.]

~~§ 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 directly resulting from the Owner's wrongful actions or decisions.~~

~~§ 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.~~[Intentionally deleted.]

~~§ 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.~~[Intentionally deleted.]

~~§ 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.~~[Intentionally deleted.]

...

~~§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval. Work to the extent same are not compensated under general conditions, are directly attributable to and required for the Work, and are approved by the Owner.~~

...

~~§ 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.~~[Intentionally deleted.]

~~§ 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 7.9.7.9, or other provision of or amendment to this Agreement. However, notwithstanding anything in Article 7 to the contrary, no reimbursable cost or expense will be paid again if it is also included and paid in any general conditions amount submitted by 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-Owner, in writing, 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 or refuses 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.

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- .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;[Subsection deleted.];

...

- .6 ~~Except as provided in Section 7.7.3 of this Agreement, costs~~ 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;

...

- .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.Phase;
.10 Delay damages or claims;
.11 Storage costs, unless with prior written Owner approval;
.12 All costs intentionally excluded in Article Section 6 above, including all subsections; and
.13 All items included in either general conditions under Section 6.1.5 above, or the Construction Manager's Fee in Section 6.1.2 above.

...

§ 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. Construction Manager shall take advantage of all available discounts, rebates, and refunds for supplies, materials, and equipment connected with the Work, and which conform to the Contract Documents, which discounts, rebates, and refunds shall accrue to the benefit of the Owner. Cash Discounts obtained on payments made by the Construction Manager shall accrue to the Owner. 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.

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§ 9.3 Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and solicit through competitive purchasing, as required by law, competitive sealed proposals from Subcontractors. Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and obtain bids or proposals from Subcontractors for the performance of all major elements of the Work. All bids or proposals shall be sent directly to Construction Manager.

§ 9.4 The Construction Manager shall include the following specific notices in the information to proposers:

- .1 The successful proposer's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;
.2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;

- .3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate;
- .4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023;
- .5 The following shall be included in any information to proposers, Request for Proposals, or Bid Documents:

By submitting a bid or proposal, each bidder or proposer agrees to waive any claims it has or may have against the Owner, the Architect, the Construction Manager, and their respective officers, trustees, employees, agents, or representatives, arising out of or in connection with the administration, evaluation, recommendation, or selection of any bid or proposal; waiver of any requirements under the bid or proposal documents or contract documents; acceptance or rejection of any bid or proposal; and award of the contract.

§ 9.5 Nothing herein shall preclude the Construction Manager from including other notices required or allowed by law.

§ 9.6 The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall do so in the same manner as required of all subcontractors. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Work offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal during the selection process to anyone who is not an employee of the Construction Manager, architect, engineer, or Owner. All proposals shall be made public within seven (7) days after the Owner's final selection. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the cost of the Work, but the Construction Manager shall not receive an additional Construction Manager's fee for self-performed work. Pursuant to Texas Government Code Chapter 2269, Subchapter F, if during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from a subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

§ 9.7 Per Texas Government Code Section 2269.257, if a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected, the Construction Manager may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements. Construction Manager shall be paid for its own performance in accordance with Section 3.3.2.1 and Section 6.2.1 herein.

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~~-auditors, and other representatives 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~~, ten (10) years after the date of Final Completion, or for such longer period as may be required by law.

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§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the day of the 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 () days after the Architect receives the Application for

Payment. The Construction Manager shall submit monthly Applications for Payment to both the Architect and Program Manager, if applicable, on AIA Form G702 for approval. Continuation sheets shall be submitted on AIA Form G703. If the Architect and Program Manager, if applicable, approve the application, then they shall submit a Certificate for Payment to the Owner. The Architect and Program Manager, if applicable, may require any additional information deemed necessary and appropriate to substantiate the Application for Payment. The Owner shall have the right to withhold from payments due Construction Manager such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Construction Manager or failure of Construction Manager to perform Construction Manager's obligations under this Contract. Materials that are verified to be on the jobsite or other approved location for use in the Project may also be incorporated into the Application for Payment. The Architect and Program Manager, if applicable, shall have seven (7) days from date of receipt from the Construction Manager of an Application for Payment to approve or reject all or any part of the Application for Payment. The Owner shall pay the undisputed amounts certified by the Architect and Program Manager, if applicable, to the Construction Manager within forty-five (45) days, if Owner's Board of Trustees meets once a month, or thirty (30) days, if Owner's Board of Trustees meets twice a month, of receipt of the Certificate for Payment from the Architect and Program Manager, unless otherwise provided in the Contract Documents. Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025.

...

§ 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. Each Application for Payment shall also include a list, with backup data, of how each payment shall be spent, including a list detailing which subcontractors and suppliers will be paid out of funds paid by the Owner and the amount of such payments to subcontractors and suppliers, and in the next payment cycle, proof of each payment to Construction Manager's subcontractors and suppliers after payment. The Construction Manager shall promptly pay all bills validly due and owing for labor and material performed and furnished by others in connection with the performance and construction of the Work.

§ 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~~ values, less any unused Owner's contingency and unused Construction Manager's contingency, shall allocate the entire Guaranteed Maximum Price among: (1) the various portions or classifications 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. The Construction Manager's fee shall be shown as a separate line item on the schedule of values.

§ 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 and Program Manager, if applicable, may require. The format and tracking method of the original schedule of values and of all updates to the schedule of values shall be subject to the approval of the Architect and Program Manager, if applicable. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment. If at any time, the amount shown on the schedule of values exceeds the Guaranteed Maximum Price allocable to that portion or classification of the Work, then the amount payable to Construction Manager by Owner shall be reduced by the amount of such excess.

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§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion or classification 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 classification on the schedule of values.~~

...

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

...

- .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~~ auditors, accountants, or other representatives in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.
- .7 Subtract retainage of five percent (5%) of the remaining amount, including the Construction Manager's Fee, of the progress payment. (Note: Under Texas law, if the retainage exceeds five percent, then the retainage shall be deposited in an interest-bearing account, and the interest earned on the retainage shall be paid to the Construction Manager upon completion of the Work. Texas Government Code Section 2252.032.)
- .8 The progress payment amount determined in accordance with this Section shall be further modified under the following circumstances:
- .1 If Final Completion of the Work is thereafter materially delayed by Owner or Owner's agents through no fault of the Construction Manager, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2017, as amended.
- .2 If Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then Owner shall be entitled to deduct such liquidated damages, amounts and fees due Construction Manager at any time.
- .3 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, then any final payment to Construction Manager shall be subject to deduction for such amounts as the Architect and Program Manager, if applicable, shall determine as the cost for completing incomplete Work and the value of unsettled claims;
- .4 Subtract withheld payments pursuant to Section 11.1.3.

§ 11.1.7.3 Payment for materials and/or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest and shall include the costs of applicable insurance (naming the Owner as additional insured) and transportation to the site for those materials and equipment stored off the site. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment. Payments shall be made on account of materials and equipment (a) incorporated in the Work, (b) suitably stored at the Project site, or (c) suitably stored at some off-site location provided the following conditions are met for off-site storage:

- .1 The location must be agreed to, in writing, by the Owner and Surety;
- .2 The location must be a bonded warehouse;
- .3 The Surety must agree, in writing, to each request for payment; and
- .4 The Contractor must bear the cost of the Owner's and Architect's expense related to visiting the off-site storage area.

§ 11.1.7.4 In the event of Contract termination or default by the Contractor, the items stored off the site, upon which payment has been made, will be promptly turned over to the Owner or Owner's designated representative at a location near the Project site as directed by the Owner or Owner's designated representative. The full provisions of Performance and Payment Bonds on this Project cover the materials stored off the site in every respect as though they were stored on the Project site.

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§ 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~~ due. Retainage is managed in conformance with Texas Government Code Chapter 2252, subchapter B:

...

Five percent (5%)

...

None.

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be subject to the written consent of the Contractor's Surety and as follows:

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

...

§ 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~~ Construction Manager shall submit a claim in accordance with Article 15 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. If the Contractor wishes to bill for materials or equipment which cannot be stored on site, the Contractor shall, along with the request for approval, provide evidence of purchase, evidence of delivery in good order without damage, and a certificate of insurance specifically covering the material identified by way of serial numbers, bill of lading, and copy of signature of receipt of materials and photography showing material. The Contractor shall also require, at the Owner's request, proof that the facility at which the materials or equipment is stored is bonded. Security and protection from theft and damage remains on the Contractor as the first line of accountability and financial responsibility. Delays due to issues arising from stored materials shall not be considered as reasonable justification to release the Contractor from meeting the schedule unless the Owner agrees to such delay in writing in advance of notification to the Owner of any delay.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, ~~and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.~~ Subcontractors. The percentage of retainage held on Subcontracts shall be the same percentage of retainage withheld from Construction Manager. The Construction Manager shall execute subcontracts that contain the same terms and conditions as those contained in this Agreement.

§ 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.~~ submitting Construction Manager's Applications for Payment, Construction Manager shall be responsible for all errors or omissions. Owner shall not be responsible for Construction Manager's errors or omissions.

...

§ 11.2.1 ~~Final payment, constituting the entire unpaid balance of the Contract Sum, payment for each Work, if multiple Project(s), shall be made by the Owner to the Construction Manager when~~

- .1 the Construction Manager has fully performed the Contract, ~~except for including the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, and~~ except for the Construction Manager's responsibility to satisfy other requirements, if any, which Owner agrees in writing necessarily 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 Payment that are certified by Construction Manager and reviewed and approved by the Owner's auditors or other representatives;~~
- .3 a final Certificate for Payment has been issued by the Architect ~~in accordance with Section 11.2.2.2 and approved by the Program Manager, if applicable in accordance with Section 11.2.2.2.;~~
- .4 The Construction Manager certifies to the Owner that the Project, to the best of the Construction Manager's knowledge, has been constructed in general accordance with Architect's Construction Documents. The certificate shall be the Texas Education Agency's Certification of Project Compliance, signed by a duly authorized officer of the Construction Manager and properly notarized;
- .5 Construction Manager has provided all documents required by Section 9.10.2 of AIA Document A201-2017; and
- .6 Owner's Board of Trustees has voted to accept the Work and approve Final Payment.

§ 11.2.2 Within ~~30~~ sixty (60) 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~~ ten (10) days after completion of the audit, submit a written report based upon the auditors' ~~or other representatives'~~ findings to the Architect.

§ 11.2.2.2 Within seven (7) 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' ~~or other representatives'~~ 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 proceed in accordance with Article 12 without a further decision of the Architect. Unless otherwise agreed in the Contract Documents, a demand for mediation or other dispute resolution as provided in the Contract Documents, of the disputed amount shall be made by the Construction Manager within 30 days the timeline established in Section 15.2 of A201-2017 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 time period shall result in the substantiated amount reported by the Owner's auditors or other representatives 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:~~ thirty (30) days after Board approval. The Construction Manager must certify completion of all Work, including all listed in Section 9.10.2 of the AIA Document A201-2017 for the Project, cleanup, and delivery of record documents prior to or with the Application for Final Payment.

§ 11.2.3.1 The amount of the Final Payment shall be calculated as follows:

- .1 Begin with the actual Cost of the Work substantiated by the Construction Manager's final accounting, which includes deductions for all discounts and unused contingencies, and construction savings achieved in the Cost of the Work, if applicable;

- .2 Add the actual expended general conditions substantiated by the Construction Manager's final accounting, which includes savings to the Owner for unused general conditions;
- .3 Add the Construction Manager's Fee;
- .4 Subtract amounts, if any, for which Architect or Owner disputes, refuses or withholds payment, if any;
- .5 If Owner is entitled to deduct liquidated damages or any other damages or amounts provided in the Contract Documents, including clean-up fees, then subtract all such liquidated damages, amounts and fees;
- .6 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, then subtract such amounts as the Architect shall determine as the cost for completing incomplete Work and the value of unsettled claims;
- .7 Subtract all previous payments made by the Owner; and
- .8 In no event shall the total of subsections .1, .2 and .3 above exceed the Guaranteed Maximum Price;
- .9 If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner, plus interest as allowed by law.

§ 11.2.4 If, subsequent to final payment, and at the Owner's prior written request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, ~~and that are not excluded by Section 7.9~~, to correct defective or nonconforming ~~Work~~, Work that is not the fault of the Construction Manager or arising from the resolution of a dispute, 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.~~

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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~~, maximum rate permitted by law, in accordance with Texas Government Code Chapter 2251.

...

§ 12.1.1 Any Claim by the Construction Manager regarding any matter 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 or recommendation 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.~~ resolution.

§ 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.) [Section Deleted.]

§ 12.1.3 When Owner has an applicable claim for construction defects, Owner shall comply with the provision of Texas Government Code Chapter 2272 related to the provision of notice of defects and the Construction Manager's or Architect's opportunity to cure.

...

[☒] Litigation in a court of competent jurisdiction with proper venue being the county where the Project is located.

...

§ 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 (7) days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven (7) days' written notice to the Owner.

...

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven (7) 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 (7) days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

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§ 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.

...

§ 13.2.2.1 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:

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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 if established and Contract Time shall may 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. A201–2017.

...

§ 14.1 ~~Terms~~ Unless otherwise noted, 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.

...

§ 14.2.1 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~~ The Construction Manager shall not assign this Agreement or the Contract in whole or in part without the prior written consent of the Owner's Board of Trustees. If Construction Manager attempts to make such an assignment without such consent, the Construction Manager 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. This does not prevent Construction Manager from engaging subcontractors to perform various phases of the Project in accordance with law, but Construction Manager shall be fully responsible to Owner for the work, action and omissions of all such subcontractors.

§ 14.2.2 [Section deleted.]

...

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.~~ purchase and maintain insurance as required by Article 11, A201-2017 as amended for this Project, to protect Construction Manager and Owner against all claims, damages, lawsuits, indemnities, or other actions which may arise out of or result from the Construction Manager's operations under this Contract, whether such operations are by Construction Manager, or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. Prior to performing the Work, the Construction Manager shall provide separate performance and payment bonds in accordance with AIA Document A201-2017 Article 11.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than ONE MILLION AND NO/100 DOLLARS (\$ 1,000,000.00) for each occurrence and ONE MILLION AND NO/100 DOLLARS (\$ 1,000,000.00) in the aggregate for bodily injury and property damage. See Article 11, A201-2017, as amended for this Project.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and ~~non-owned~~ non-owned, hired, or any other vehicles used, by the Construction Manager with policy limits of not less than ~~(\$ —)~~ those stated below 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. *(Note: Texas statutory minimum for school districts is \$100,000 per person, \$300,000 per occurrence, and \$100,000 property damages.)* Such minimum limits shall be stated as follow, or in a combined single limit policy in the amount of at least \$1,000,000.

<u>.1</u>	<u>Bodily Injury (per person)</u>	<u>\$2,000,000.00</u>
<u>.2</u>	<u>Bodily Injury (per accident)</u>	<u>\$2,000,000.00</u>
<u>.3</u>	<u>Property Damage</u>	<u>\$2,000,000.00</u>

§ 14.3.1.3 The Construction Manager may not 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 insurance. 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 ~~(\$ —)~~ each accident, ~~(\$ —)~~ each employee, and ~~(\$ —)~~ policy limit.

§ 14.3.1.4 Umbrella Excess Liability coverages shall be in at least the following amounts:

<u>.1</u>	<u>\$10,000,000.00</u>	<u>each occurrence</u>
<u>.2</u>	<u>\$10,000,000.00</u>	<u>aggregate</u>
<u>.3</u>	<u>Aggregate Per Project Endorsement</u>	

§ 14.3.1.5 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than ONE MILLION AND NO/100 DOLLARS (\$ 1,000,000.00) each accident, ONE MILLION AND NO/100 DOLLARS (\$ 1,000,000.00) each employee, and ONE MILLION AND NO/100 DOLLARS (\$ 1,000,000.00) policy limit. See Article 11, A201-2017, as amended for this Project.

§ 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 ~~(\$ —)~~ per claim and ~~(\$ —)~~ in the aggregate.[Section deleted.]

§ 14.3.1.5.1 Texas Workers' Compensation Insurance. See Article 11, A201-2017, as amended for this Project.

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§ 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-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 ~~14.3.1.14.3.1,~~ and Article 11, A201-2017, as amended for this Project.

...

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, Article 11 of the AIA Document A201-2017,~~ 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,~~ Article 11 of the AIA Document A201-2017, 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, AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit,~~ if completed, or as otherwise set forth below:

(If other than in accordance with ~~a building information modeling exhibit, AIA Document E203-2013,~~ 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.)

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§ 14.5.1 No delay or omission by Owner in exercising any right or power accruing upon the noncompliance or failure of performance by the Construction Manager of any of the provisions of this Agreement shall impair any such right or power or be construed to a lender providing financing for be a waiver thereof. A waiver of any breach by either of the parties of any covenant, condition or agreement shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

§ 14.5.2 Contractor shall require all construction workers, whether Contractor's own forces, or the forces of Contractor's subcontractors, to wear identification tags on the front of their persons during all times that they are on Owner's property. Such identification tags shall have identification of the construction worker by number or other identifying medium in a typeface large enough to be seen from a reasonable distance.

§ 14.5.3 By signing this Agreement, the undersigned certifies as follows: "Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in the contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

§ 14.5.4 Contractor stipulates that Owner is a political subdivision of the State of Texas, and, as such, may enjoy immunities from suit and liability under the Constitution and laws of the State of Texas. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law.

§ 14.5.5 This Agreement is subject to all applicable federal and state laws, rules, and regulations. Invalidity of any portion of this Agreement under the laws of the State of Texas or of the United States shall not affect the validity of the remainder of this Agreement. Governing law and venue shall be as specified in AIA Document A201-2017 Section 13.1.

§ 14.5.6 By executing this Agreement, Contractor verifies that it does not boycott Israel, and it will not boycott Israel during the terms of this Contract. Pursuant to Texas Government Code, Chapter 2271, as amended, if Contractor is a

for profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit which has ten (10) or more full-time employees and the value of the contract with Owner is \$100,000 or more, the Contractor represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

§ 14.5.7 Contractor verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Contractor has misrepresented its inclusion on the Comptroller's list, such omission or misrepresentation will void this Contract.

§ 14.5.8 Pursuant to Texas Government Code Chapters 2274 and 809, if this contract is valued at \$100,000 or more and if Contractor has at least ten (10) full-time employees, then Contractor represents and warrants to the Owner that the Contractor does not boycott energy companies and will not boycott energy companies during the term of this Agreement.

§ 14.5.9 Pursuant to Texas Government Code Chapter 2274, if this contract is valued at \$100,000 or more and if Contractor has at least ten (10) full-time employees, then Contractor represents and warrants to the Owner that the Contractor does not discriminate against firearm entities or firearm trade associations and will not discriminate against firearm entities or firearm trade associations during the term of this Agreement.

§ 14.6

.1 By entering into this Contract, pursuant to Texas Government Code 552, Subchapter J, the Contractor agrees to be bound by the following terms if the Contract has a stated expenditure of at least \$1,000,000 for the purchase of goods or services by the District or if the Contract results in the expenditure of at least \$1,000,000 in public funds for the purchase of goods or services by the District in a fiscal year of the District. If the District receives a written request for public information related to this Contract that is in the possession or custody of the Contractor and not in the possession or custody of the District, the District shall send, not later than the third business day after the date the District receives the written request, a written request to the Contractor that Contractor provide that information to the District.

.2 The Contractor must:

2.1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;

2.2 Promptly, within four (4) business days, provide to the District any requested contracting information that is in the custody or possession of the Contractor upon request of the District; and

2.3 On completion of the Contract, either:

.1 Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Contractor; or

.2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.

.3 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with the requirements of that subchapter.

.4 Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.

.5 If a Contractor fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Contractor in writing of the failure and allow ten (10) business days to cure the violation. District may terminate the Contract if Contractor fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

§ 14.7 The Contractor verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers.

§ 15.1 This ~~Agreement~~ Contract 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~~ Contract may be amended only by written instrument signed by both Owner and Construction Manager. If any portion of this Contract is determined to be invalid, unenforceable, or void, then that portion shall be severed, and all other portions of this Contract shall remain in full force and effect.

§ 15.2 The following documents ~~comprise the Agreement:~~ are included in the Contract, in addition to those listed in Section 1.1.

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.3 AIA Document A133™ 2019, Exhibit B, Insurance and Bonds [Subsection deleted.]

...

.5 Building Information Modeling Exhibit, if completed: [Subsection deleted.]

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(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the bidding requirements such as an advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager’s bid or proposal, the Contractor’s bid, 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~~–Contract. Any such documents should be listed here only if intended to be part of the Contract Documents.)

Owner’s RFP CMAR No. _____

...

FRISCO INDEPENDENT SCHOOL DISTRICT _____

...

Kimberly Smith, Chief Finance and Strategy Officer _____

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Elisabeth Nelson, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:17:08 on 09/08/2025 under Order No. 20250116623 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of 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, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)