



# AIA® Document A133® – 2019

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

**AGREEMENT** made as of the    day of    in the year  
*(In words, indicate day, month, and year.)*

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

Salado Independent School District  
601 N. Main Street  
Salado, Texas 76571

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

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

**NOT FOR EXECUTION – FOR PROCUREMENT PURPOSES ONLY**

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

The Owner and Construction Manager agree as follows.

**ADDITIONS AND DELETIONS:**

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

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

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

## TABLE OF ARTICLES

1	INITIAL INFORMATION
2	GENERAL PROVISIONS
3	CONSTRUCTION MANAGER'S RESPONSIBILITIES
4	OWNER'S RESPONSIBILITIES
5	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
6	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
7	COST OF THE WORK FOR CONSTRUCTION PHASE
8	DISCOUNTS, REBATES, AND REFUNDS
9	SUBCONTRACTS AND OTHER AGREEMENTS
10	ACCOUNTING RECORDS
11	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
12	DISPUTE RESOLUTION
13	TERMINATION OR SUSPENSION
14	MISCELLANEOUS PROVISIONS
15	SCOPE OF THE AGREEMENT

### EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT (if executed)

#### 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.)*

§ 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.)*

§ 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:

| *(Paragraphs deleted)*

§ 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.)*

§ 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.)*

| Owner’s Superintendent or designee(s).

| *(Paragraphs deleted)*

§ 1.1.11 The Architect’s representative:

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

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

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

§ 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.)

Construction Manager shall award all subcontracts for the Project in accordance with Texas Government Code, Chapter 2269, Subchapter F and the requirements of this Agreement. In addition to other reasonable procedures and methods, the Construction Manager shall also do the following for procuring subcontracts:

- .1 The Construction Manager shall publicly advertise for bids or proposals by publishing in a newspaper published in the county in which the Owner's central administrative office is located a notice soliciting bids or proposals. Such notice must be published once a week for at least two weeks before the deadline to submit. If there is not a newspaper in that county, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which the Owner's central administrative office is located.
- .2 The Construction Manager shall require and ensure that bidders or proposers submit a complete copy of their bids or proposals directly to the Owner at the same time that the bids or proposals are submitted to the Construction Manager.

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

*(Paragraph deleted)*

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

## **ARTICLE 2 GENERAL PROVISIONS**

### **§ 2.1 The Contract Documents**

The Contract Documents consist of this Agreement, the A201 General Conditions specifically referenced herein, Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the parties' execution of the Guaranteed Maximum Price proposal, the Contract Documents will also include the documents identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

### **§ 2.2 Relationship of the Parties**

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. Owner shall be entitled to rely on the information provided by Construction Manager in connection with the Construction Manager's construction administration and management services. 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 Construction Manager agrees that 1) because it owes the Owner a duty of trust and confidence and 2) because of the covenants it has made to the Owner in this Agreement, Construction Manager would be violating its duty of trust and confidence to the Owner to agree to pursue claims or causes of action against the Owner on behalf of any other party, including but not limited to, any contractor, subcontractor, trade contractor or any other person or entity whatsoever. Construction Manager shall not make any agreement, written or otherwise, with any contractor, subcontractor, trade contractor or any other person or entity whatsoever to assert claims or causes of action in any event against the Owner. Should the Construction Manager make any agreement to assert any claims or causes of action on behalf of any other person or entity against the Owner, Construction Manager has breached its duty of trust and confidence, including its duty of utmost good faith, duty to be fair and equitable to Owner, duty to make reasonable use of the confidence Owner placed

in it, duty to place Owner's interests before its own and not self-deal, and its duty to fully and fairly disclose all important information concerning the above-referenced Project.

### **§ 2.3 General Conditions**

**§ 2.3.1** For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 as amended 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 as amended, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 as amended 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 provide complete and accurate schedules and estimates. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price Amendment. Except as required by the Construction Manager's duty to exercise reasonable care or by any part of the Contract Documents, 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 in writing any nonconformity discovered by or made known to the Construction Manager and also prepare a request for information in such form as the Architect may require.

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

#### **§ 3.1.3 Consultation**

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

**§ 3.1.3.2** The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect and Owner 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, as negotiated with terms acceptable to Owner and executed by the Parties, to establish the protocols for the development, use, transmission, and exchange of digital data.

#### **§ 3.1.4 Project Schedule**

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. At a minimum, the

Construction Manager shall update the Project schedule prior to the commencement of each design phase. 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 Construction Manager must obtain Owner's and Architect's written approval of each schedule prior to proceeding to the next phase. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner. If any Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations in writing to the Owner and Architect.

### **§ 3.1.5 Phased Construction**

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

### **§ 3.1.6 Cost Estimates**

**§ 3.1.6.1** Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary written 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. Construction Manager is responsible for preparing its own estimates independently of those prepared by the Architect. Unless Owner otherwise approves in writing, Construction Manager's estimates must follow CSI MasterFormat and be based on pricing from RS Means.

**§ 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, prior to the commencement of each design phase, 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 writing in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, describe the reasons therefor, and make written recommendations for corrective action. The Construction Manager must obtain Owner's written approval of each estimate prior to proceeding to the next phase.

**§ 3.1.6.3** If a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

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

**§ 3.1.8** The Construction Manager shall provide written 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 written 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, as negotiated with terms acceptable to the Owner and attached to this Agreement.

### § 3.1.11 Subcontractors and Suppliers

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

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

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

### § 3.1.12 Procurement

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

### § 3.1.13 Compliance with Laws

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

### § 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document.

*(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)*

### § 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and prior to advertising or solicitation of sub-contract proposals, 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 Owner's Contingency described in Section 3.2.4.1 (if any), and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom.

§ 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; the clarifications and assumptions shall not delete or mitigate in any way any of the Construction Manager's duties or the Owner's rights under this Agreement and the applicable A201 General Conditions and shall not be treated as an amendment of this Agreement or the applicable A201 General Conditions; additionally, the Construction Manager shall notify the Owner and Architect in writing of any inconsistencies between the proposed assumptions and clarifications contained in the Guaranteed Maximum Price Proposal and the Contract Documents;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances and specifically identifying the amount of the Guaranteed Maximum Price that is attributable to either Self-Performed Work under 7.2.1.1

- or related parties under section 7.8; the Construction Manager's contingency set forth in Section 3.2.4, the Owner's Contingency set forth in Section 3.2.4.1 (if any); and the Construction Manager's Fee; and
- .4** The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based.

**§ 3.2.3.5** If the Construction Manager includes in its Guaranteed Maximum Price proposal any terms, whether in the Assumptions and Clarifications or in any attachment or requirement of the Guaranteed Maximum Price proposal, which purport to modify the duties, rights, or privileges of either Party under this Agreement or the A201 General Conditions as amended, or otherwise require such a modification, the Construction Manager must: (1) list with each proposed term the section or sections of this Agreement or the A201 General Conditions that would be modified by the proposed term, and (2) provide notice to the Owner in a separate written letter that (a) the Construction Manager proposes to modify the terms of this Agreement and/or the A201 General Conditions through the Guaranteed Maximum Price proposal, and (b) the Owner should have its legal counsel review the proposed changes prior to the Owner's acceptance of the Guaranteed Maximum Price proposal.

If the Construction Manager does not comply with the requirements of this Section 3.2.3.5, the Owner shall be entitled to accept the pricing provided by the Construction Manager in its Guaranteed Maximum Price proposal without modification to this Agreement or the A201 General Conditions. Failure to notify the Owner under this section shall be considered a breach of the Construction Manager's fiduciary duty to the Owner.

Furthermore, the Owner's acceptance of a Guaranteed Maximum Price proposal does not obligate the Owner to make any modifications to this Agreement or A201 General Conditions nor entitle the Construction Manager to rely on the proposed modifications unless they have been incorporated into the Guaranteed Maximum Price Amendment executed by the Parties with specific reference to this Section 3.2.3.5 and the section or sections affected by the modification.

**§ 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 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 Construction Manager, with the Owner's written approval, may utilize the Construction Contingency solely for items that are reimbursable under Article 7. All supporting documentation for all uses of the Construction Contingency shall be provided to Owner. Construction Manager shall notify the Owner and Architect, and request approval, prior to making the expenditure. Failure to obtain pre-approval constitutes a waiver by Construction Manager of reimbursement for an expenditure. Notwithstanding anything in this section, Owner may withhold approval of use of the Construction Contingency if (1) the proposed expenditure arises from the negligence or other fault of the Construction Manager, a Subcontractor, or anyone else for whom the Construction Manager is responsible; (2) the proposed expenditure is otherwise disallowed under the Contract Documents; or (3) other good cause as determined by the Architect. Any unused Construction Contingency shall accrue to the Owner.

**§ 3.2.4.1** The Guaranteed Maximum Price proposal may 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 sole discretion of Owner. Any unused Owner's Contingency shall accrue to the Owner. Construction Manager has no contractual right to require that Owner make any expenditure from the Owner's Contingency.

**§ 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. However, such review by Owner and Architect is not a guarantee or warranty by Owner or Architect of the accuracy of the Guaranteed Maximum Price.

**§ 3.2.6** The Owner's Board of Trustees shall be allowed not less than 30 days to consider the Guaranteed Maximum Price Proposal. 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, the Specifications, Drawings, and other Contract Documents, and the required date for Substantial Completion. Owner retains the absolute right not to accept any Guaranteed Maximum Price proposal and otherwise to elect not to proceed to the construction phase under this Agreement.



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

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

§ 3.2.9 The Construction Manager shall not include in the Guaranteed Maximum Price any taxes for which the Owner is exempt under Texas law.

### § 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.

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

§ 3.3.1.3 Construction Manager shall not perform any portions of the Work unless (1) such services are for supervisory or administrative personnel described in Section 7.2, (2) such services are described in Sections 7.5, 7.6, or 7.7, or (3) it has been awarded such portion in accordance with section 7.2.1.1 and the same procedures imposed upon all other trade contractors, and then, only if the Owner has determined that the Construction Manager's bid or proposal provides the best value for the Owner.

#### § 3.3.2 Administration

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

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201-2017 (as amended), including 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 and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances in writing 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 upon written request of the Construction Manager shall provide information with reasonable promptness, regarding requirements for and limitations on the Project.

*(Paragraph 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.

§ 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 test, surveys, and reports are provided for information only and are not warranted or represented to show the conditions at the Project site accurately. Construction Manager's use of the information at its own risk and Construction Manager 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 exercise reasonable care so as to avoid damaging any utility lines, cables, pipes, or pipelines on the Property. Construction Manager 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 as otherwise agreed to by the parties in writing, 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 when such services are requested by the Construction Manager in writing and such services are reasonably required to complete the Project in a manner consistent with good workmanship. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are requested in writing by the Construction Manager and such services are reasonably required to complete the Project in a manner consistent with good workmanship, 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 upon written request by the Construction Manager. The Owner shall

also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

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

#### § 4.2 Owner's Designated Representative

The Owner may identify a representative authorized to act on behalf of the Owner with respect to the Project to the extent permitted by law and Owner's board policy and to the extent authorized by formal action by the Board of Trustees. The Owner's representative, if one is formally designated, 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, as amended, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative, if any. The Owner's Board of Trustees retains final approval authority over all Change Orders.

*(Paragraphs deleted)*

### 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.)*

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

#### § 5.2 Payments

§ 5.2.1 Payments shall be made following the Construction Manager's presentation of an Application for Payment and approval and certification by the Architect of such application (or of a portion of such Application), subject to Owner's right to request a rescission or amendment of the Architect's certification, and further subject to any right Owner may have under the Contract Documents to withhold or otherwise reduce payment. Construction Manager's Applications for Payment must be proportional to services actually performed.

§ 5.2.2 Payments are due and payable as provided by law.

§ 5.2.3 The obligations of the Construction Manager under Article 10 shall apply to the Preconstruction Phase services. Each monthly invoice shall be supported by appropriate documentation, and the Construction manager shall supply such evidence as Owner or Architect may reasonably require to substantiate the compensation claimed.

### ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

#### § 6.1 Contract Sum

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

§ 6.1.2 The Construction Manager's Fee:

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

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

None.

Init.

**§ 6.1.4** Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work that are included in a Change Order or Construction Change Directive:

Overhead shall not exceed 5%  
Profit shall not exceed 5%

**§ 6.1.5** The Construction Manager, along with the Guaranteed Maximum Price Proposal, shall submit its rental rates for Construction Manager-owned equipment. Compensation for these items shall not exceed the lower of (1) the standard rate paid at the place of the Project, or (2) the rates provided in the Guaranteed Maximum Price Proposal.

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

Owner and Construction Manager recognize that time is of the essence in the Agreement and that the Owner will suffer financial loss if the Work is not completed within the time specified in the Guaranteed Maximum Price Amendment. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed within such time.

Accordingly, in the event the Construction Manager fails to achieve Substantial Completion of the Work by the agreed date, the Owner shall be entitled to liquidated damages in the amount of \$1,500 per day until the Work is substantially completed. In the event the Construction Manager fails to achieve Final Completion of the Work by the agreed date, the Owner shall be entitled to liquidated damages in the amount of \$500 per day until the Work is finally completed. In the event that the parties establish multiple required dates of Substantial Completion, these liquidated damages provisions apply independently to each required date of Substantial Completion and Final Completion. Unless the Guaranteed Maximum Price Amendment explicitly states otherwise, the Construction Manager shall achieve final completion of the Project no later than thirty (30) days from the date Substantial Completion.

It is expressly understood that these amounts are agreed upon as a fair estimate of the pecuniary damages that the Owner will incur if the Work is not completed within the agreed time. These amounts shall be considered as liquidated damages only, the exact ascertainment of which is difficult, and in no sense shall be considered a penalty.

The parties agree that the damages that the Owner would suffer due to the Construction Manager's failure to meet the necessary timelines are difficult to estimate. Each party represents that, as of the date of this Agreement, it believes the liquidated damages identified in this section to be a reasonable estimate of the damages that the Owner would suffer due to the Construction Manager's failure to meet the necessary timelines, and the Construction Manager acknowledges that such representation on its part is a substantial inducement to Owner's agreement with the terms of this Agreement.

The parties agree that the Owner may withhold any accrued liquidated damages at any time and from any payment that otherwise may be due to the Construction Manager. The parties further agree that the sum of all liquidated damages under this section shall also be deemed a credit against amounts owed by Owner to Construction Manager.

**§ 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.)*

If the Construction Manager completes the performance of the Work for less than the Guaranteed Maximum Price, the difference between (i) the total aggregate sum of the actual Cost of the Work plus the Construction Manager's fee and (ii) the Guaranteed Maximum Price shall inure in its entirety to the Owner's benefit.

## **§ 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. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

## **§ 6.3 Changes in the Work**

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

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

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

§ 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 amended, 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 as amended 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 In the case of changes in the Work, the Construction Manager's Fee will be adjusted as provided for in Section 6.1.3, if the Construction Manager, Owner, and Architect agree that the scope of services has changed significantly. If, however, these parties cannot agree that the scope of services has changed significantly, the Construction Manager's Fee shall not be adjusted.

## ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 7.1 Costs to Be Reimbursed

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

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost. If Construction Manager fails to do so, it waives any right to reimbursement of such costs.

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

§ 7.1.4 The Cost of Work shall not include costs incurred because of the negligence, breach of contract, or other misconduct of the Construction Manager or of any Subcontractor. All cost items qualifying for reimbursement under this Article 7 as included in the Cost of the Work shall be included in the Guaranteed Maximum Price.

### § 7.2 Labor Costs

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

§ 7.2.1.1 Self-Performed Work as defined in this section, if the Owner determines that Construction Manager's bid or proposal provides the best value to the Owner and specifically approves the bid or proposal in writing. Even where approved by Owner, Self-Performed Work must meet the requirements of this section to be reimbursable. To the extent allowed by law, the Construction Manager may seek to perform portions of the Work itself by submitting a bid or proposal for those portions of the Work in the same manner as all other trade contractors or Subcontractors (such work is referred to in this section as "Self-Performed Work"), subject to the following provisions:

1. Self-Performed Work is payable on a "cost"-plus-"fee" basis subject to an agreed-upon guaranteed maximum price, as follows:
  - (i) The "cost" is defined as costs for the following items, but only to the extent they are properly reimbursable as Cost of the Work under this Agreement: labor performed with Construction Manager's own forces, labor burden, materials, and equipment.
  - (ii) The "fee" is defined as an amount no more than 7.5% of the "cost." The "fee" defined in this Section 7.2.1.1.1(ii) solely applies to the "cost" under Section 7.2.1.1.1(i), and in no

circumstances can it be applied as the fee for Work properly categorized as "Subcontract Costs" under Section 7.3.

2. The Construction Manager's bid or proposal shall reflect the requirements of this section and shall specify a guaranteed maximum amount for the Self-Performed Work. The Owner's obligation to reimburse for Self-Performed Work shall not exceed the specified and agreed-upon guaranteed maximum price for such Self-Performed Work.
3. All savings arising from Self-Performed Work shall be applied to reduce the Guaranteed Maximum Price of this Agreement.
4. For purposes of defining Self-Performed Work, any division of Construction Manager, or any separate contractor or subcontractor that is partially owned or wholly owned by the Construction Manager, or any of Construction Manager's parent companies, employees, or employee's relatives will be considered a related party entity and any work performed by such entity will be considered Self-Performed Work by the Construction Manager.
5. No Self-Performed Work will be allowed to be performed on a lump-sum basis.
6. If the Construction Manager does not self-perform the majority of the scope of Self-Performed Work and instead subcontracts a significant portion of the scope of work to another trade contractor, then no self-performed work fees will apply to the cost of any such work.
7. The Construction Manager must submit its bid or proposal to the Owner and Architect at least 48 hours prior to the deadline for submission.
8. All Self-Permed Work must be identified as such on all Schedules of Values submitted with Pay Applications.
9. Owner's acceptance of a Guaranteed Maximum Price does not absolve Construction Manager of its duty to comply with this section, and also does not constitute the specific approval required by this section.

**§ 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 written approval.

**§ 7.2.2.1** Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

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

None.

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

**§ 7.2.4** Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for payroll taxes, but not any taxes for which the Owner is exempt by virtue of its status as a governmental entity, insurance as required by the Contract Documents, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

**§ 7.2.5** If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall not increase throughout the duration of this Agreement, unless the parties execute a Modification.

### **§ 7.3 Subcontract Costs**

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement. To the extent that the Construction Manager is allowed by law and by the Contract Documents to perform work with its own forces, the parties agree that those costs will not be considered Subcontract Costs under this Section 7.3, but, rather, are subject to reimbursement to the extent provided elsewhere in this Article 7.

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

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

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

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

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

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

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

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies necessary for the performance of the Work. This does not include communication services, electronic equipment, or software.

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

*(Paragraphs deleted)*

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

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents, but only if pre-approved in writing by the Owner.

*(Paragraphs deleted)*

§ 7.6.7 Reasonable costs of document reproductions and delivery charges.

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

*(Paragraphs deleted)*

#### § 7.7 Other Costs and Emergencies

*(Paragraph deleted)*

§ 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 as amended.

*(Paragraphs deleted)*

## § 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 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. Owner's acceptance of a Guaranteed Maximum Price does not absolve Construction Manager of its duty to comply with this section, and also does not constitute the specific approval required by this section.

## § 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;
- .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;
- .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 that would cause the Guaranteed Maximum Price to be exceeded;
- .9 Costs for services incurred during the Preconstruction Phase;
- .10 Costs incurred because of the negligence, breach of contract, or other misconduct of the Construction Manager or any subcontractor;
- .11 Delay damages or claims, including but not limited to acceleration costs;
- .12 Storage costs, unless with prior written approval of the Owner;
- .13 Costs for subcontractor bonds or subcontractor default insurance.

## ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts, 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 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 furnish to Owner and Architect for the Owner's approval prior to any public advertisement or solicitation for the portion of the Work, the evaluation criteria that the Construction Manager proposes to use in recommending qualified trade contractors or subcontractors for each portion of the Work that will provide the best value for the Owner. After acceptance of the GMP proposal, 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; (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, and (4) offers the best value to the Owner, then the Construction Manager may request 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** The Construction Manager shall include the following specific notices in the information to proposers, along with any other notices required by law:

- .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.

## **ARTICLE 10 ACCOUNTING RECORDS**

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of twelve (12) years after final payment, or for such longer period as may be required by law.

All records shall be maintained in accordance with generally accepted accounting principles and procedures, consistently applied. Subcontractors retained by the Construction Manager on a cost-plus basis shall have the same obligations to retain records and cooperate with audits as are required of the Construction Manager under this Article 10.

## **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, subject to Owner's right to request a

recission or amendment of the Architect's certification, and further subject to any right Owner may have under the Contract Documents to withhold or otherwise reduce payment. .

**§ 11.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

**§ 11.1.3** The Architect will, within seven days after receipt of the Construction Manager's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Construction Manager, for such amount as the Architect determines is properly due, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Paragraph 9.5 of the AIA Document A201-2017, as amended by the parties. Notwithstanding such certification for payment by the Architect however, Owner shall be entitled to withhold payment to such extent as may be necessary in the Owner's opinion, reasonably supported, to protect the Owner from loss for which the Construction Manager is responsible, including loss of the reasons listed in 9.5.1 of the AIA Document A201-2017, as amended. Such withholding of such payment by Owner shall not be deemed a breach of the Contract Documents nor a failure to make timely payment. Owner has no obligation to pay any money in the absence of a Certification for Payment. If Construction Manager believes that a Certification for Payment is being wrongfully delayed or withheld, Construction Manager must file a Claim in accordance with AIA Document A201-2017, as amended.

**§ 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. Additionally, with each Application for Payment, the Construction Manager shall submit a "buyout report" that accurately reflects the status (including monetary amounts) of all contracts entered into by the Construction Manager for performance 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 shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

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

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

**§ 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 and Owner.

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

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

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

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

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

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

#### § 11.1.8 Retainage

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

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

Five percent (5%)

§ 11.1.8.1.1 The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

None.

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

*(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)*

None.

*(Paragraphs deleted)*

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

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

§ 11.1.12 In submitting the Construction Manager's Applications for Payment the Construction Manager shall be responsible for all errors and omissions.

§ 11.1.13 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.

## § 11.2 Final Payment

§ 11.2.1 Final payment shall be made by the Owner to the Construction Manager when

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

§ 11.2.2 Within 45 days of the Owner's receipt of the Construction Manager's complete and final accounting for the Cost of the Work (including all records requested by Owner and its auditor), the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit. It is the Construction Manager's responsibility to ensure that the final accounting it submits is full and complete. Owner may deduct from any payment otherwise owed to Construction Manager any amount that Owner or Owner's auditor determines is not supported by the Construction Manager's final accounting. Additionally, any amount paid by the Owner in excess of that required by this Agreement shall be, at Owner's election, either withheld from any payment otherwise due to Construction Manager, or returned by Construction Manager within seven days of the date Construction Manager becomes aware of such overpayment.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 30 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017 as amended. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017 as amended. 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 agents or representatives of the Owner's 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, as amended. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors or other agents or representatives of the Owner becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall, subject to all of the Owner's rights to withhold payment or otherwise deduct amounts, 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 otherwise allowed by law.

*(Paragraph deleted)*

## § 11.3 Interest

Init.

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Payments due and unpaid under the Contract shall bear interest  
(Paragraphs deleted)  
as provided by law.

## 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, as amended. The Claims process set forth in this Article 12 and in Article 15 of the applicable A201 shall constitute an independent "contractual adjudication procedure" as that term is used in Texas Local Government Code Chapter 271 Subchapter I.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017  
(Paragraphs deleted)  
as amended.

### § 12.2 Binding Dispute Resolution

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

N/A

Litigation in a court of competent jurisdiction, subject to any other requirements that may need to be satisfied prior to the commencement of litigation.

N/A

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.

### § 12.3. Contractual Adjudication Procedure for all Claims and Disputes

.1 The requirements of this Section 12.3 shall constitute an independent "contractual adjudication procedure" as that term is used in Texas Local Government Code Chapter 271 Subchapter I.

.2 **Pre-Litigation Grievance and Mediation.** Any claim, dispute or other matter in question that Construction Manager has against Owner shall be subject to full exhaustion of the grievance procedure found in Owner's GF (LOCAL) policy and non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by Construction Manager. In the case of any such claim, dispute, or other matter, by the Construction Manager against the Owner, including, but not limited to, any claim that the Owner has breached a contract, the Construction Manager may not file a lawsuit or demand mediation until the complaint procedure found in Owner's GF (LOCAL) policy has been fully exhausted regarding the contested matter. A copy of this policy is attached hereto and incorporated herein as Exhibit A-1. The Construction Manager's failure to timely file a grievance under policy GF (LOCAL), meet any requirement of this Article 12, or otherwise fully exhaust policy GF (LOCAL) in accordance with the policy's requirements is a failure to adhere to contractual adjudication procedures, a failure to exhaust remedies, a failure to fulfill conditions precedent, constitutes waiver, and is a bar to suit against the Owner.

a. The timelines under Policy GF (LOCAL) are amended for purposes of this Agreement as follows: Construction Manager's complaint must be reduced to writing and filed within ninety (90) calendar days of the date the Construction Manager first knew, or with reasonable diligence should have known, of the decision or action giving rise to the complaint. If the Construction Manager fails to meet this timeline, the Construction Manager will have failed to exhaust this remedy, will have failed to adhere to this contractual adjudication procedure, will have failed to fulfill conditions precedent to suit,

will have waived the complaint, and will be barred from suing the Owner.

- b. Construction Manager agrees that, in order to fully exhaust its remedies under policy GF (LOCAL) and otherwise comply with this Section 12.3, Construction Manager must identify and articulate in writing the specific factual and legal basis for its claims. Any basis that is not identified and articulated by the Construction Manager as part of its complaint under GF (LOCAL) is waived by the Construction Manager and may not be asserted in any subsequent proceeding against the Owner.
- c. The following are each an independent condition precedent to the institution of civil proceedings by the Construction Manager against the Owner concerning the contested matter: 1) full exhaustion of claims through Owner's GF (LOCAL) policy as described herein, 2) full exhaustion of the Claims process referenced in this Agreement and the applicable A201, 3) a written demand by the Construction Manager for mediation, and 4) good faith and full participation in the mediation process.
- d. Following the full exhaustion of claims through Owner's GF (LOCAL) procedure, and upon receipt by Owner of Construction Manager's written demand for mediation, Owner may, at its option, either proceed with non-binding mediation of the dispute, or provide written notice to Construction Manager of Owner's decision to waive its right to compel such mediation. Owner's voluntary participation in any mediation or any other settlement discussions shall not be construed as a waiver of any failure by Construction Manager to exhaust remedies, follow contractual adjudication procedures, or otherwise comply with the Contract Documents. If the parties participate in mediation, the parties shall share the mediator's fee and any filing fees equally.

## **ARTICLE 13 TERMINATION OR SUSPENSION**

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

**§ 13.1.1** If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, for the Owner's convenience and without cause

**§ 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, solely as provided in Article 5, and shall have no other recovery. In no event shall the Construction Manager's compensation under this section exceed the compensation set forth in Section 5.1

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

**§ 13.1.4** In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be compensated for Preconstruction Phase services performed. 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 pursuant to a written agreed-upon Work Authorization Amendment, 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;
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services; and

- .4 Credit Owner for claims, credits, offsets, and deductions to which the Owner is entitled under the Contract Documents.

§ 13.1.6 The Owner shall also pay the Construction Manager, 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, as amended.

### § 13.2.2 Termination by the Owner for Cause

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

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

§ 13.2.2.2 The Owner shall also pay the Construction Manager, 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.)*

None.

### § 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017 as amended; in such case, the Guaranteed Maximum Price and Contract Time may be increased as provided in Article 14 of AIA Document A201–2017 as amended.

### § 13.4. Damages

In no event shall the Construction Manager be entitled to recover for overhead, lost profits, benefit of the bargain damages, consequential damages, lost opportunity costs, impact damages, damage to reputation, financing costs, loss of productivity, stand-by time, demobilization costs, termination costs, loss of surety bonding capacity, or other damages by reason of any termination or suspension by Owner or the Construction Manager. Construction Manager expressly waives any such claims. This Section 13.4 shall not be interpreted to support any claim for damages by the Construction Manager.

## ARTICLE 14 MISCELLANEOUS PROVISIONS

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

### § 14.2 Successors and Assigns

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

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

### § 14.3 Insurance and Bonds

For all phases of the Project, the Construction Manager shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2017, as amended.

The Construction Manager shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Construction Manager’s usual source, and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum.

The Construction Manager shall deliver the required bonds to the Owner at least three days before the commencement of any Work at the Project site.

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

### § 14.5 Other provisions:

§ 14.5.1 **The right to the recovery of attorney’s fees available under Texas Local Government Code Chapter 271, Subchapter I is hereby waived.**

§ 14.5.3 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 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.

§ 14.5.4 Construction Manager shall require all construction workers, whether Construction Manager’s own forces, or the forces of Construction Manager’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.

**§ 14.5.5** Construction Manager shall require all construction workers, whether Construction Manager's own forces or the forces of Construction Manager's subcontractors, to park their personal motor vehicles on Owner's property only in the parking places designated by the Owner's campus principal. Any vehicles not parked in the appropriate locations may be towed at the vehicle owner's sole expense.

**§ 14.5.6** Construction Manager shall follow, and shall require all employees, agents or subcontractors to follow all applicable ordinances of the municipality or municipalities in which the Project is located, including the tree ordinance, if applicable. If not covered by the municipal tree ordinance, Construction Manager shall barricade and protect all trees on the Project, which shall be included in the Cost of the Work.

**§ 14.5.7** 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."

**§ 14.5.8** Construction Manager 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 required by law.

**§ 14.5.9** This Agreement is subject to all applicable federal and state laws, rules, and regulations.

**§ 14.5.10** This Section 14.5.10 only applies if Construction Manager has more than 10 full time employees and the Agreement is valued at \$100,000 or more. By executing this Agreement, Construction Manager verifies the following:

- .1 as required by Texas Government Code 2270.002: Construction Manager verifies that it does not boycott Israel and will not boycott Israel during the term of this contract.
- .2 as required by Texas Government Code 2274.002, Construction Manager verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association.
- .3 as required by Texas Government Code 2274.002, Construction Manager verifies that it does not boycott energy companies and will not boycott energy companies during the term of the contract.

**§ 14.5.11.** The Construction Manager agrees and stipulates that the unpaid portion of the Contract Sum (up to the Guaranteed Maximum Price established in the GMP Amendment and as subject to modification by means of a Modification as defined in the A201 General Conditions applicable to the Project), is the absolute maximum amount that could ever possibly be due and owing under this Agreement from Owner to Construction Manager. The Construction Manager hereby waives any claim against Owner for any amount in excess of the amount stipulated in this Section 14.5.11. The Construction Manager's agreement, stipulation, and waiver under this section are each a material inducement to Owner's agreement.

## **§ 14.6 Contracting Information**

**§ 14.6.1** This Section 14.6 applies only if, per Texas Government Code §552.371(a), (1) the Agreement has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the governmental body; or (2) the Agreement results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the Owner in a fiscal year of the Owner.

**§ 14.6.2** Pursuant to Texas Government Code §552.372, the Construction Manager must:

- (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the Owner for the duration of the contract;
- (2) promptly provide to the Owner any contracting information related to the contract that is in the custody or possession of the entity on request of the Owner; and
- (3) on completion of the contract, either:
  - (a) provide at no cost to the Owner all contracting information related to the contract that is in the custody or possession of the entity; or

(b) preserve the contracting information related to the contract as provided by the records retention requirements applicable to the Owner.

§ 14.6.3 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the Contractor or vendor agrees that the contract can be terminated if the Contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

§ 14.6.4 "Contracting information" is defined by Texas Government Code §552.003(7) and means the following information maintained by a governmental body or sent between a governmental body and a vendor, contractor, potential vendor, or potential contractor:

- (A) information in a voucher or contract relating to the receipt or expenditure of public funds by a governmental body;
- (B) solicitation or bid documents relating to a contract with a governmental body;
- (C) communications sent between a governmental body and a vendor, contractor, potential vendor, or potential contractor during the solicitation, evaluation, or negotiation of a contract;
- (D) documents, including bid tabulations, showing the criteria by which a governmental body evaluates each vendor, contractor, potential vendor, or potential contractor responding to a solicitation and, if applicable, an explanation of why the vendor or contractor was selected; and
- (E) communications and other information sent between a governmental body and a vendor or contractor related to the performance of a final contract with the governmental body or work performed on behalf of the governmental body.

§ 14.7 The Construction Manager shall not execute a contract with any subcontractor that contains an agreement or provision to arbitrate claims. In the event that a subcontractor seeks to arbitrate a claim arising out of or relating to the Contract Document or this Project, Construction Manager shall not seek to join in such or any other arbitration proceeding relating to this Project.

§ 14.8 Construction Manager agrees to waive any claim it has or may have against the Owner, the Architect, and their respective employees and officers, arising out of or in connection with the administration, evaluation, or recommendation of any bid or proposal; waiver of any requirements under the procurement documents related to this Project; the Contract Documents; acceptance or rejection of any bids or proposals; and award of the Contract.

## ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

- .1 This modified 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  
*(Paragraphs deleted)*
- .4 AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended  
*(Table deleted)*
- .7 Other documents, if any, listed below:  
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

Exhibit A-1 – Owner's GF (LOCAL) Board Policy

Exhibit B – Prevailing Wage Rate Schedule (see Section 3.4.1.1 of the A201 General Conditions, as amended)

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

\_\_\_\_\_  
**OWNER** *(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**CONSTRUCTION MANAGER** *(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
**DATE**



**Init.**

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**User Notes:**

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# **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 11:47:31 CT on 12/05/2023.

## **PAGE 1**

Salado Independent School District  
601 N. Main Street  
Salado, Texas 76571

...

NOT FOR EXECUTION – FOR PROCUREMENT PURPOSES ONLY

## **PAGE 2**

**EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT**

**~~EXHIBIT B – INSURANCE AND BONDS~~(if executed)**

## **PAGE 3**

**§ 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.

...

Owner's Superintendent or designee(s).

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

.1 — Geotechnical Engineer:

~~.2~~ Civil Engineer:

~~.3~~ Other, if any:

*(List any other consultants retained by the Owner, such as a Project or Program Manager.)*

PAGE 4

Construction Manager shall award all subcontracts for the Project in accordance with Texas Government Code, Chapter 2269, Subchapter F and the requirements of this Agreement. In addition to other reasonable procedures and methods, the Construction Manager shall also do the following for procuring subcontracts:

- .1 The Construction Manager shall publicly advertise for bids or proposals by publishing in a newspaper published in the county in which the Owner's central administrative office is located a notice soliciting bids or proposals. Such notice must be published once a week for at least two weeks before the deadline to submit. If there is not a newspaper in that county, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which the Owner's central administrative office is located.
- .2 The Construction Manager shall require and ensure that bidders or proposers submit a complete copy of their bids or proposals directly to the Owner at the same time that the bids or proposals are submitted to the Construction Manager.

...

**§ 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.~~

...

The Contract Documents consist of this Agreement, ~~Conditions of the Contract (General, Supplementary and other Conditions),~~ the A201 General Conditions specifically referenced herein, Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. ~~Upon the Owner's acceptance of the Construction Manager's parties' execution of the 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.

...

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. Owner shall be entitled to rely on the information provided by Construction Manager in connection with the Construction Manager's construction administration and management services. 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 Construction Manager agrees that 1) because it owes the Owner a duty of trust and confidence and 2) because of the covenants it has made to the Owner in this Agreement, Construction Manager would be violating its duty of trust and confidence to the Owner to agree to pursue claims or causes of action against the Owner on behalf of any other party, including but not limited to, any contractor, subcontractor, trade contractor or any other person or entity whatsoever. Construction Manager shall not make any agreement, written or otherwise, with any contractor, subcontractor, trade contractor or any other person or entity whatsoever to assert claims or causes of action in any event against the Owner. Should the Construction Manager make any agreement to assert any claims or causes of action on behalf of any other person or entity against the Owner, Construction Manager has breached its duty of trust and confidence, including its duty of utmost good faith, duty to be fair and equitable to Owner, duty to make reasonable use of the confidence Owner placed in it, duty to place Owner's interests before its own and not self-deal, and its duty to fully and fairly disclose all important information concerning the above-referenced Project.

#### PAGE 5

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

...

The Construction Manager shall ~~exercise reasonable care in performing its Preconstruction Services. provide complete and accurate schedules and estimates.~~ The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. ~~The Price Amendment. Except as required by the Construction Manager's duty to exercise reasonable care or by any part of the Contract Documents, 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 in writing any nonconformity discovered by or made known to the Construction Manager as and also prepare 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; 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 and Owner 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, as negotiated with terms acceptable to Owner and executed by the Parties, to establish the protocols for the development, use, transmission, and exchange of digital data.

...

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. At a minimum, the Construction Manager shall update the Project schedule prior to the commencement of each design phase. 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 Construction Manager must obtain Owner's and Architect's written approval of each schedule prior to proceeding to the next phase. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner. If any Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations in writing to the Owner and Architect.

**PAGE 6**

§ 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 written 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. Construction Manager is responsible for preparing its own estimates independently of those prepared by the Architect. Unless Owner otherwise approves in writing, Construction Manager's estimates must follow CSI MasterFormat and be based on pricing from RS Means.

§ 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, prior to the commencement of each design phase~~, 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 writing in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, describe the reasons therefor, and make written recommendations for corrective action. The Construction Manager must obtain Owner's written approval of each estimate prior to proceeding to the next phase.

§ 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 written recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide written 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 written 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, as negotiated with terms acceptable to the Owner and attached to this Agreement.

**PAGE 7**

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 then, upon the~~ establishment of the Guaranteed Maximum Price, the Owner shall may elect to assign all contracts for these items to the Construction Manager and the Construction Manager shall ~~thereafter~~ accept responsibility for them.

...

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, ~~Owner's policies,~~ 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.

...

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this ~~document~~document.

...

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction ~~Manager, Manager and prior to advertising or solicitation of sub-contract proposals,~~ 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 Owner's Contingency described in Section 3.2.4.1 (if any),~~ and the Construction Manager's Fee described in Section 6.1.2.

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

...

- .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; the clarifications and assumptions shall not delete or mitigate in any way any of the Construction Manager's duties or the Owner's rights under this Agreement and the applicable A201 General Conditions and shall not be treated as an amendment of this Agreement or the applicable A201 General Conditions; additionally, the Construction Manager shall notify the Owner and Architect in writing of any inconsistencies between the proposed assumptions and clarifications contained in the Guaranteed Maximum Price Proposal and the Contract Documents;
- .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; allowances and~~ specifically identifying the amount of the Guaranteed Maximum Price that is attributable to either



Self-Performed Work under 7.2.1.1 or related parties under section 7.8; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee; 3.2.4, the Owner's Contingency set forth in Section 3.2.4.1 (if any); and the Construction Manager's Fee; and

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

§ 3.2.3.5 If the Construction Manager includes in its Guaranteed Maximum Price proposal any terms, whether in the Assumptions and Clarifications or in any attachment or requirement of the Guaranteed Maximum Price proposal, which purport to modify the duties, rights, or privileges of either Party under this Agreement or the A201 General Conditions as amended, or otherwise require such a modification, the Construction Manager must: (1) list with each proposed term the section or sections of this Agreement or the A201 General Conditions that would be modified by the proposed term, and (2) provide notice to the Owner in a separate written letter that (a) the Construction Manager proposes to modify the terms of this Agreement and/or the A201 General Conditions through the Guaranteed Maximum Price proposal, and (b) the Owner should have its legal counsel review the proposed changes prior to the Owner's acceptance of the Guaranteed Maximum Price proposal.

.5 A date by which the Owner must accept the Guaranteed Maximum Price. If the Construction Manager does not comply with the requirements of this Section 3.2.3.5, the Owner shall be entitled to accept the pricing provided by the Construction Manager in its Guaranteed Maximum Price proposal without modification to this Agreement or the A201 General Conditions. Failure to notify the Owner under this section shall be considered a breach of the Construction Manager's fiduciary duty to the Owner.

Furthermore, the Owner's acceptance of a Guaranteed Maximum Price proposal does not obligate the Owner to make any modifications to this Agreement or A201 General Conditions nor entitle the Construction Manager to rely on the proposed modifications unless they have been incorporated into the Guaranteed Maximum Price Amendment executed by the Parties with specific reference to this Section 3.2.3.5 and the section or sections affected by the modification.

§ 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 Construction Manager, with the Owner's written approval, may utilize the Construction Contingency solely for items that are reimbursable under Article 7. All supporting documentation for all uses of the Construction Contingency shall be provided to Owner. Construction Manager shall notify the Owner and Architect, and request approval, prior to making the expenditure. Failure to obtain pre-approval constitutes a waiver by Construction Manager of reimbursement for an expenditure. Notwithstanding anything in this section, Owner may withhold approval of use of the Construction Contingency if (1) the proposed expenditure arises from the negligence or other fault of the Construction Manager, a Subcontractor, or anyone else for whom the Construction Manager is responsible; (2) the proposed expenditure is otherwise disallowed under the Contract Documents; or (3) other good cause as determined by the Architect. Any unused Construction Contingency shall accrue to the Owner.

§ 3.2.4.1 The Guaranteed Maximum Price proposal may 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 sole discretion of Owner. Any unused Owner's Contingency shall accrue to the Owner. Construction Manager has no contractual right to require that Owner make any expenditure from the Owner's Contingency.

§ 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. However, such review by Owner and Architect is not a guarantee or warranty by Owner or Architect of the accuracy of the Guaranteed Maximum Price.

§ 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 30 days to consider the Guaranteed Maximum Price Proposal. 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. Price, the Specifications, Drawings, and other Contract Documents, and the required date for Substantial Completion. Owner retains the absolute right not to accept any Guaranteed Maximum Price proposal and otherwise to elect not to proceed to the construction phase under this Agreement.

PAGE 9

§ 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 for which the Owner is exempt under Texas law.

...

§ 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.

...

§ 3.3.1.3 Construction Manager shall not perform any portions of the Work unless (1) such services are for supervisory or administrative personnel described in Section 7.2, (2) such services are described in Sections 7.5, 7.6, or 7.7, or (3) it has been awarded such portion in accordance with section 7.2.1.1 and the same procedures imposed upon all other trade contractors, and then, only if the Owner has determined that the Construction Manager's bid or proposal provides the best value for the Owner.

...

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201-2017. A201-2017 (as amended), including Owner's occupancy requirements.

...

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances in writing 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.

§ 4.1.1 The Owner upon written request of the Construction Manager 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. Project.

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

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

§ 4.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of Such test, surveys, and reports are provided for information only and are not warranted or represented to show the conditions at the Project site accurately. Construction Manager's use of the information at its own risk and Construction Manager 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 exercise reasonable care so as to avoid damaging any utility lines, cables, pipes, or pipelines on the Property. Construction Manager 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 as otherwise agreed to by the parties, parties in writing, 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—site when such services are requested by the Construction Manager in writing and such services are reasonably required to complete the Project in a manner consistent with good workmanship. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are requested, requested in writing by the Construction Manager and such services are reasonably required to complete the Project in a manner consistent with good workmanship, 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. promptness upon written request by the Construction Manager. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

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

PAGE 11

The Owner shall ~~may~~ identify a representative authorized to act on behalf of the Owner with respect to the Project. ~~The Owner's representative~~ Project to the extent permitted by law and Owner's board policy and to the extent authorized by formal action by the Board of Trustees. The Owner's representative, if one is formally designated, 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, as amended, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized ~~representative~~ representative, if any. The Owner's Board of Trustees retains final approval authority over all Change Orders.

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

#### § 4.3 Architect

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

...

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

Individual or Position

Rate

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

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

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services. Payments shall be made following the Construction Manager's presentation of an Application for Payment and approval and certification by the Architect of such application (or of a portion of such Application), subject to Owner's right to request a rescission or amendment of the Architect's certification, and further subject to any right Owner may have under the Contract Documents to withhold or otherwise reduce payment. Construction Manager's Applications for Payment must be proportional to services actually performed.

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

~~—%~~ § 5.2.3 The obligations of the Construction Manager under Article 10 shall apply to the Preconstruction Phase services. Each monthly invoice shall be supported by appropriate documentation, and the Construction manager shall supply such evidence as Owner or Architect may reasonably require to substantiate the compensation claimed.

...

None.

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work: Work that are included in a Change Order or Construction Change Directive:

Overhead shall not exceed 5%

Profit shall not exceed 5%

~~§ 6.1.5~~ Rental rates for Construction Manager-owned equipment shall not exceed ~~—~~ percent (~~—~~%) of the standard rental. ~~The Construction Manager, along with the Guaranteed Maximum Price Proposal, shall submit its rental rates for Construction Manager-owned equipment. Compensation for these items shall not exceed the lower of (1) the standard rate paid at the place of the Project, the Project, or (2) the rates provided in the Guaranteed Maximum Price Proposal.~~

**PAGE 12**

Owner and Construction Manager recognize that time is of the essence in the Agreement and that the Owner will suffer financial loss if the Work is not completed within the time specified in the Guaranteed Maximum Price Amendment. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed within such time.

Accordingly, in the event the Construction Manager fails to achieve Substantial Completion of the Work by the agreed date, the Owner shall be entitled to liquidated damages in the amount of \$1,500 per day until the Work is substantially completed. In the event the Construction Manager fails to achieve Final Completion of the Work by the agreed date, the Owner shall be entitled to liquidated damages in the amount of \$500 per day until the Work is finally completed. In the event that the parties establish multiple required dates of Substantial Completion, these liquidated damages provisions apply independently to each required date of Substantial Completion and Final Completion. Unless the Guaranteed Maximum Price Amendment explicitly states otherwise, the Construction Manager shall achieve final completion of the Project no later than thirty (30) days from the date Substantial Completion.

It is expressly understood that these amounts are agreed upon as a fair estimate of the pecuniary damages that the Owner will incur if the Work is not completed within the agreed time. These amounts shall be considered as liquidated damages only, the exact ascertainment of which is difficult, and in no sense shall be considered a penalty.

The parties agree that the damages that the Owner would suffer due to the Construction Manager's failure to meet the necessary timelines are difficult to estimate. Each party represents that, as of the date of this Agreement, it believes the liquidated damages identified in this section to be a reasonable estimate of the damages that the Owner would suffer due to the Construction Manager's failure to meet the necessary timelines, and the Construction Manager acknowledges that such representation on its part is a substantial inducement to Owner's agreement with the terms of this Agreement.

The parties agree that the Owner may withhold any accrued liquidated damages at any time and from any payment that otherwise may be due to the Construction Manager. The parties further agree that the sum of all liquidated damages under this section shall also be deemed a credit against amounts owed by Owner to Construction Manager.

...

If the Construction Manager completes the performance of the Work for less than the Guaranteed Maximum Price, the difference between (i) the total aggregate sum of the actual Cost of the Work plus the Construction Manager's fee and (ii) the Guaranteed Maximum Price shall inure in its entirety to the Owner's benefit.

...

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.~~ Order. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

...

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

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

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

§ 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 amended, 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 as amended 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 In the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.~~ the Construction Manager's Fee will be adjusted as provided for in Section 6.1.3, if the Construction Manager, Owner, and Architect agree that the scope of services has changed significantly. If, however, these parties cannot agree that the scope of services has changed significantly, the Construction Manager's Fee shall not be adjusted.

#### PAGE 13

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

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost. If Construction Manager fails to do so, it waives any right to reimbursement of such costs.

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

§ 7.1.4 The Cost of Work shall not include costs incurred because of the negligence, breach of contract, or other misconduct of the Construction Manager or of any Subcontractor. All cost items qualifying for reimbursement under this Article 7 as included in the Cost of the Work shall be included in the Guaranteed Maximum Price.

...

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

§ 7.2.1.1 Self-Performed Work as defined in this section, if the Owner determines that Construction Manager's bid or proposal provides the best value to the Owner and specifically approves the bid or proposal in writing. Even where approved by Owner, Self-Performed Work must meet the requirements of this section to be reimbursable. To the extent allowed by law, the Construction Manager may seek to perform portions of the Work itself by submitting a bid or proposal for those portions of the Work in the same manner as all other trade contractors or Subcontractors (such work is referred to in this section as "Self-Performed Work"), subject to the following provisions:

1. Self-Performed Work is payable on a "cost"-plus-"fee" basis subject to an agreed-upon guaranteed maximum price, as follows:
  - (i) The "cost" is defined as costs for the following items, but only to the extent they are properly reimbursable as Cost of the Work under this Agreement: labor performed with Construction Manager's own forces, labor burden, materials, and equipment.
  - (ii) The "fee" is defined as an amount no more than 7.5% of the "cost." The "fee" defined in this Section 7.2.1.1(ii) solely applies to the "cost" under Section 7.2.1.1(i), and in no circumstances can it be applied as the fee for Work properly categorized as "Subcontract Costs" under Section 7.3.
2. The Construction Manager's bid or proposal shall reflect the requirements of this section and shall specify a guaranteed maximum amount for the Self-Performed Work. The Owner's obligation to reimburse for Self-Performed Work shall not exceed the specified and agreed-upon guaranteed maximum price for such Self-Performed Work.
3. All savings arising from Self-Performed Work shall be applied to reduce the Guaranteed Maximum Price of this Agreement.
4. For purposes of defining Self-Performed Work, any division of Construction Manager, or any separate contractor or subcontractor that is partially owned or wholly owned by the Construction Manager, or any of Construction Manager's parent companies, employees, or employee's relatives will be considered a related party entity and any work performed by such entity will be considered Self-Performed Work by the Construction Manager.
5. No Self-Performed Work will be allowed to be performed on a lump-sum basis.
6. If the Construction Manager does not self-perform the majority of the scope of Self-Performed Work and instead subcontracts a significant portion of the scope of work to another trade contractor, then no self-performed work fees will apply to the cost of any such work.
7. The Construction Manager must submit its bid or proposal to the Owner and Architect at least 48 hours prior to the deadline for submission.
8. All Self-Permed Work must be identified as such on all Schedules of Values submitted with Pay Applications.
9. Owner's acceptance of a Guaranteed Maximum Price does not absolve Construction Manager of its duty to comply with this section, and also does not constitute the specific approval required by this section.

§ 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 written approval.

**PAGE 14**

None.

...

~~§ 7.2.4~~ Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, payroll taxes, but not any taxes for which the Owner is exempt by virtue of its status as a governmental entity, insurance as required by the Contract Documents, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

~~§ 7.2.5~~ If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged ~~not increase~~ throughout the duration of this Agreement, unless the parties execute a Modification.

...

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement. To the extent that the Construction Manager is allowed by law and by the Contract Documents to perform work with its own forces, the parties agree that those costs will not be considered Subcontract Costs under this Section 7.3, but, rather, are subject to reimbursement to the extent provided elsewhere in this Article 7.

PAGE 15

~~§ 7.5.1~~ Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and ~~tools, 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 written approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

...

~~§ 7.5.4~~ Costs of the Construction Manager's site office, including general office equipment and ~~supplies, supplies~~ necessary for the performance of the Work. This does not include communication services, electronic equipment, or software.

~~§ 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.

...

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

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

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



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

~~§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents. Documents, but only if pre-approved in writing by the Owner.~~

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

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

~~§ 7.6.7 Costs Reasonable costs of document reproductions and delivery charges.~~

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

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

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

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

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

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

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

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

PAGE 16

**§ 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~~, subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9. Owner's acceptance of a Guaranteed Maximum Price does not absolve Construction Manager of its duty to comply with this section, and also does not constitute the specific approval required by this section.

...

- ~~.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;~~office;
- ~~.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;~~subcontractor or vendor;

...

- ~~.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,~~ 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,~~ Costs that would cause the Guaranteed Maximum Price to be exceeded; and
- ~~.9~~ Costs for services incurred during the Preconstruction ~~Phase.~~Phase;
- ~~.10~~ Costs incurred because of the negligence, breach of contract, or other misconduct of the Construction Manager or any subcontractor;
- ~~.11~~ Delay damages or claims, including but not limited to acceleration costs;
- ~~.12~~ Storage costs, unless with prior written approval of the Owner;
- ~~.13~~ Costs for subcontractor bonds or subcontractor default insurance.

...

**§ 8.1** ~~Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, 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.~~

...

**§ 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,~~ furnish to Owner and Architect for the Owner's approval prior to any public advertisement or solicitation for the portion of the Work, the evaluation criteria that the Construction Manager proposes to use in recommending qualified trade contractors or subcontractors for each portion of the Work that will provide the best value for the Owner. After acceptance of the GMP proposal, 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, and (4) offers the best value to the Owner, then the Construction Manager may ~~require~~ request 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~~ subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

**§ 9.3** The Construction Manager shall include the following specific notices in the information to proposers, along with any other notices required by law:

- .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.

**PAGE 17**

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of ~~three~~ twelve (12) years after final payment, or for such longer period as may be required by law.

All records shall be maintained in accordance with generally accepted accounting principles and procedures, consistently applied. Subcontractors retained by the Construction Manager on a cost-plus basis shall have the same obligations to retain records and cooperate with audits as are required of the Construction Manager under this Article 10.

...

§ 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, subject to Owner's right to request a rescission or amendment of the Architect's certification, and further subject to any right Owner may have under the Contract Documents to withhold or otherwise reduce payment. .

§ 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:

month.

§ 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.~~

~~(Federal, state or local laws may require payment within a certain period of time.)~~The Architect will, within seven days after receipt of the Construction Manager's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Construction Manager, for such amount as the Architect determines is properly due, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Paragraph 9.5 of the AIA Document A201-2017, as amended by the parties. Notwithstanding such certification for payment by the Architect however, Owner shall be entitled to withhold payment to such extent as may be necessary in the Owner's opinion, reasonably supported, to protect the Owner from loss for which the Construction Manager is responsible, including loss of the reasons listed in 9.5.1 of the AIA Document A201-2017, as amended. Such withholding of such payment by Owner shall not be deemed a breach of the Contract Documents nor a failure to make timely payment. Owner has no obligation to pay any money in the absence of a Certification for Payment. If Construction Manager believes that a Certification for Payment is being wrongfully delayed or withheld, Construction Manager must file a Claim in accordance with AIA Document A201-2017, as amended.

§ 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. Additionally, with each Application for Payment, the Construction Manager shall submit a "buyout report" that accurately reflects the status (including monetary amounts) of all contracts entered into by the Construction Manager for performance of the Work.

PAGE 18

§ 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.~~values, except where the parties have otherwise agreed.

§ 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.~~Architect and Owner.

...

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

PAGE 19

- ~~.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, 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.

...

- ~~.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; A201-2017 as amended;~~
- ~~.5~~ The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; ~~and~~
- ~~.6~~ Retainage withheld pursuant to Section ~~11.1.8; 11.1.8;~~ ~~and~~
- ~~.7~~ Liquidated damages as provided in this Agreement, except that Owner may elect to subtract such amounts from any subsequent pay application.

...

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

...

Five percent (5%)

...

None.

...

None.

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

*(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)*

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

## PAGE 20

~~§ 11.1.12~~ In ~~taking action on~~ submitting 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. The Construction Manager shall be responsible for all errors and omissions.~~

§ 11.1.13 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.

...

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

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

§ 11.2.2 Within ~~30~~45 days of the Owner's receipt of the Construction Manager's complete and final accounting for the Cost of the Work, Work (including all records requested by Owner and its auditor), the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit. It is the Construction Manager's responsibility to ensure that the final accounting it submits is full and complete. Owner may deduct from any payment otherwise owed to Construction Manager any amount that Owner or Owner's auditor determines is not supported by the Construction Manager's final accounting. Additionally, any amount paid by the Owner in excess of that required by this Agreement shall be, at Owner's election, either withheld from any payment otherwise due to Construction Manager, or returned by Construction Manager within seven days of the date Construction Manager becomes aware of such overpayment.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within ~~10~~30 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document ~~A201–2017~~A201–2017 as amended. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document ~~A201–2017~~A201–2017 as amended. 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 agents or representatives of the Owner's 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. A201–2017, as amended. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors or other agents or representatives of the Owner becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall shall, subject to all of the Owner's rights to withhold payment or otherwise deduct amounts, 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:

otherwise allowed by law.

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

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

~~—%—~~ as provided by law.

PAGE 21

~~§ 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 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. ~~A201–2017, as amended.~~ The Claims process set forth in this Article 12 and in Article 15 of the applicable A201 shall constitute an independent "contractual adjudication procedure" as that term is used in Texas Local Government Code Chapter 271 Subchapter I.

~~§ 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.)*

as amended.

...

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

...

- ~~Arbitration pursuant to Article 15 of AIA Document A201–2017~~ N/A
- Litigation in a court of competent ~~jurisdiction~~ jurisdiction, subject to any other requirements that may need to be satisfied prior to the commencement of litigation.
- Other: *(Specify)*

N/A

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.

### § 12.3. Contractual Adjudication Procedure for all Claims and Disputes

- .1 The requirements of this Section 12.3 shall constitute an independent "contractual adjudication procedure" as that term is used in Texas Local Government Code Chapter 271 Subchapter I.
- .2 Pre-Litigation Grievance and Mediation.** Any claim, dispute or other matter in question that Construction Manager has against Owner shall be subject to full exhaustion of the grievance procedure found in Owner's GF (LOCAL) policy and non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by Construction Manager. In the case of any such claim, dispute, or other matter, by the Construction Manager against the Owner, including, but not limited to, any claim that the Owner has breached a contract, the Construction Manager may not file a lawsuit or demand mediation until the complaint procedure found in Owner's GF (LOCAL) policy has been fully exhausted regarding the contested matter. A copy of this policy is attached hereto and incorporated herein as Exhibit A-1. The Construction Manager's failure to timely file a grievance under policy GF (LOCAL), meet any requirement of this Article 12, or otherwise fully exhaust policy GF (LOCAL) in accordance with the policy's requirements is a failure to adhere to contractual adjudication procedures, a failure to exhaust remedies, a failure to fulfill conditions precedent, constitutes waiver, and is a bar to suit against the Owner.
  - a. The timelines under Policy GF (LOCAL) are amended for purposes of this Agreement as follows: Construction Manager's complaint must be reduced to writing and filed within ninety (90) calendar days of the date the Construction Manager first knew, or with reasonable diligence should have known, of the decision or action giving rise to the complaint. If the Construction Manager fails to meet this timeline, the Construction Manager will have failed to exhaust this remedy, will have failed to adhere to this contractual adjudication procedure, will have failed to fulfill conditions precedent to suit, will have waived the complaint, and will be barred from suing the Owner.
  - b. Construction Manager agrees that, in order to fully exhaust its remedies under policy GF (LOCAL) and otherwise comply with this Section 12.3, Construction Manager must identify and articulate in writing the specific factual and legal basis for its claims. Any basis that is not identified and articulated by the Construction Manager as part of its complaint under GF (LOCAL) is waived by the Construction Manager and may not be asserted in any subsequent proceeding against the Owner.
  - c. The following are each an independent condition precedent to the institution of civil proceedings by the Construction Manager against the Owner concerning the contested matter: 1) full exhaustion of claims through Owner's GF (LOCAL) policy as described herein, 2) full exhaustion of the Claims process referenced in this Agreement and the applicable A201, 3) a written demand by the Construction Manager for mediation, and 4) good faith and full participation in the mediation process.
  - d. Following the full exhaustion of claims through Owner's GF (LOCAL) procedure, and upon receipt by Owner of Construction Manager's written demand for mediation, Owner may, at its option, either proceed with non-binding mediation of the dispute, or provide written notice to Construction Manager of Owner's decision to waive its right to compel such mediation. Owner's voluntary participation in any mediation or any other settlement discussions shall not be construed as a waiver of any failure by Construction Manager to exhaust remedies, follow contractual adjudication procedures, or otherwise comply with the Contract Documents. If the parties participate in mediation, the parties shall share the mediator's fee and any filing fees equally.

PAGE 22

**§ 13.1.1** If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the Owner's convenience and without cause



§ 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 solely as provided in Article 5, and shall have no other recovery.~~ In no event shall the Construction Manager's compensation under this ~~Section-section~~ exceed the compensation set forth in ~~Section 5.1.~~Section 5.1

...

§ 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.~~ compensated for Preconstruction Phase services performed. In no event shall the Construction Manager's compensation under this ~~Section-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 pursuant to a written agreed-upon Work Authorization Amendment, 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:

...

- .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-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.~~services; ~~and~~
- .4 Credit Owner for claims, credits, offsets, and deductions to which the Owner is entitled under the Contract Documents.

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

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

**PAGE 23**

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

...

- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager' Fee is stated as a fixed sum in that ~~Section, 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;~~A201-2017; and
- .5 Credit Owner for claims, credits, offsets, and deductions to which the Owner is entitled under the Contract Documents.

§ 13.2.2.2 The Owner shall also pay the Construction ~~Manager fair compensation,~~Manager, 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.

...

None.  
PAGE 24

The Work may be suspended by the Owner as provided in Article 14 of AIA Document ~~A201-2017;~~A201-2017 as amended; in such case, the Guaranteed Maximum Price 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 as amended.~~

**§ 13.4. Damages**

In no event shall the Construction Manager be entitled to recover for overhead, lost profits, benefit of the bargain damages, consequential damages, lost opportunity costs, impact damages, damage to reputation, financing costs, loss of productivity, stand-by time, demobilization costs, termination costs, loss of surety bonding capacity, or other damages by reason of any termination or suspension by Owner or the Construction Manager. Construction Manager expressly waives any such claims. This Section 13.4 shall not be interpreted to support any claim for damages by the Construction Manager.

...

§ 14.1 Terms in this Agreement shall have the same meaning as those in ~~A201-2017;~~A201-2017, as amended. 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;~~A201-2017 as amended, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

...

For all phases of the Project, the Construction Manager shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2017, as amended.

The Construction Manager shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Construction Manager's usual source, and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum.

The Construction Manager shall deliver the required bonds to the Owner at least three days before the commencement of any Work at the Project site.

#### **§ 14.3.1 Preconstruction Phase**

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

**§ 14.3.1.1 Commercial General Liability** with policy limits of not less than ~~(\$ )~~ for each occurrence and ~~(\$ )~~ in the aggregate for bodily injury and property damage.

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

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

**§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability** with policy limits not less than ~~(\$ )~~ each accident, ~~(\$ )~~ each employee, and ~~(\$ )~~ policy limit.

**§ 14.3.1.5 Professional Liability** covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than ~~(\$ )~~ per claim and ~~(\$ )~~ in the aggregate.

#### **§ 14.3.1.6 Other Insurance**

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

Coverage	Limits
----------	--------

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

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

#### **§ 14.3.2 Construction Phase**

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

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

**§ 14.4** Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with 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.)*

**§ 14.5.1 The right to the recovery of attorney’s fees available under Texas Local Government Code Chapter 271, Subchapter I is hereby waived.**

**§ 14.5.3** 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 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.

**§ 14.5.4** Construction Manager shall require all construction workers, whether Construction Manager’s own forces, or the forces of Construction Manager’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.

**§ 14.5.5** Construction Manager shall require all construction workers, whether Construction Manager’s own forces or the forces of Construction Manager’s subcontractors, to park their personal motor vehicles on Owner’s property only in the parking places designated by the Owner’s campus principal. Any vehicles not parked in the appropriate locations may be towed at the vehicle owner’s sole expense.

**§ 14.5.6** Construction Manager shall follow, and shall require all employees, agents or subcontractors to follow all applicable ordinances of the municipality or municipalities in which the Project is located, including the tree ordinance, if applicable. If not covered by the municipal tree ordinance, Construction Manager shall barricade and protect all trees on the Project, which shall be included in the Cost of the Work.

**§ 14.5.7** 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."

**§ 14.5.8** Construction Manager 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 required by law.

**§ 14.5.9** This Agreement is subject to all applicable federal and state laws, rules, and regulations.

**§ 14.5.10** This Section 14.5.10 only applies if Construction Manager has more than 10 full time employees and the Agreement is valued at \$100,000 or more. By executing this Agreement, Construction Manager verifies the following:

- .1** as required by Texas Government Code 2270.002: Construction Manager verifies that it does not boycott Israel and will not boycott Israel during the term of this contract.
- .2** as required by Texas Government Code 2274.002, Construction Manager verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

.3 as required by Texas Government Code 2274.002, Construction Manager verifies that it does not boycott energy companies and will not boycott energy companies during the term of the contract.

§ 14.5.11. The Construction Manager agrees and stipulates that the unpaid portion of the Contract Sum (up to the Guaranteed Maximum Price established in the GMP Amendment and as subject to modification by means of a Modification as defined in the A201 General Conditions applicable to the Project), is the absolute maximum amount that could ever possibly be due and owing under this Agreement from Owner to Construction Manager. The Construction Manager hereby waives any claim against Owner for any amount in excess of the amount stipulated in this Section 14.5.11. The Construction Manager's agreement, stipulation, and waiver under this section are each a material inducement to Owner's agreement.

**§ 14.6 Contracting Information**

§ 14.6.1 This Section 14.6 applies only if, per Texas Government Code §552.371(a), (1) the Agreement has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the governmental body; or (2) the Agreement results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the Owner in a fiscal year of the Owner.

§ 14.6.2 Pursuant to Texas Government Code §552.372, the Construction Manager must:

- (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the Owner for the duration of the contract;
- (2) promptly provide to the Owner any contracting information related to the contract that is in the custody or possession of the entity on request of the Owner; and
- (3) on completion of the contract, either:
  - (a) provide at no cost to the Owner all contracting information related to the contract that is in the custody or possession of the entity; or
  - (b) preserve the contracting information related to the contract as provided by the records retention requirements applicable to the Owner.

§ 14.6.3 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the Contractor or vendor agrees that the contract can be terminated if the Contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

§ 14.6.4 "Contracting information" is defined by Texas Government Code §552.003(7) and means the following information maintained by a governmental body or sent between a governmental body and a vendor, contractor, potential vendor, or potential contractor:

- (A) information in a voucher or contract relating to the receipt or expenditure of public funds by a governmental body;
- (B) solicitation or bid documents relating to a contract with a governmental body;
- (C) communications sent between a governmental body and a vendor, contractor, potential vendor, or potential contractor during the solicitation, evaluation, or negotiation of a contract;
- (D) documents, including bid tabulations, showing the criteria by which a governmental body evaluates each vendor, contractor, potential vendor, or potential contractor responding to a solicitation and, if applicable, an explanation of why the vendor or contractor was selected; and
- (E) communications and other information sent between a governmental body and a vendor or contractor related to the performance of a final contract with the governmental body or work performed on behalf of the governmental body.

§ 14.7 The Construction Manager shall not execute a contract with any subcontractor that contains an agreement or provision to arbitrate claims. In the event that a subcontractor seeks to arbitrate a claim arising out of or relating to the Contract Document or this Project, Construction Manager shall not seek to join in such or any other arbitration proceeding relating to this Project.

§ 14.8 Construction Manager agrees to waive any claim it has or may have against the Owner, the Architect, and their respective employees and officers, arising out of or in connection with the administration, evaluation, or recommendation of any bid or proposal; waiver of any requirements under the procurement documents related to this Project; the Contract Documents; acceptance or rejection of any bids or proposals; and award of the Contract.

**PAGE 26**

~~.1~~ This modified 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

~~.3~~ AIA Document A133™-2019, Exhibit B, Insurance and Bonds

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

~~.5~~ AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

*(Insert the date of the E203-2013 incorporated into this Agreement.)*

~~.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:

Construction, as amended

**Document**

**Title**

**Date**

**Pages**

...

Exhibit A-1 – Owner’s GF (LOCAL) Board Policy

Exhibit B – Prevailing Wage Rate Schedule (see Section 3.4.1.1 of the A201 General Conditions, as amended)

PAGE 27

DATE

DATE

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, \_\_\_\_\_, 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 11:47:31 CT on 12/05/2023 under Order No. 2114411825 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)*