

 **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 NINETEENTH day of DECEMBER in the year TWO THOUSAND TWENTY-FOUR  
(In words, indicate day, month, and year.)

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

Willis Independent School District  
612 N. Campbell St.  
Willis, Texas 77378  
Phone: 936-856-1200

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

~~Stewart Builders, LLC~~  
23000 NW Lake Drive  
Houston, Texas 770095  
Telephone: 713-983-8819

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

Construction of Elementary School No. 7 with construction of new parking areas, drives, site utilities, and storm detention.

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

Stantec, Inc.  
910 Louisiana St., Ste. 2600  
Houston, Texas 77002  
Telephone: 713-446-2709

The Owner and Construction Manager agree as follows.

**ADDITIONS AND DELETIONS:**

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

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

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

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

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**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.)*

To be prepared by Architect.

§ 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.)*

Construction of Elementary School No. 7, a new prototype elementary school (two stories and approximately 125,000 square feet) along with construction of new parking areas, drives, site utilities, and storm detention.

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

*(Provide total and, if known, a line item breakdown.)*

Approximately \$37,000,000.00

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

.1 Design phase milestone dates, if any:

TBD

.2 Construction commencement date:

TBD

.3 Substantial Completion date or dates:

TBD (Estimated July 2026)

.4 Other milestone dates:

TBD

§ 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.)*

TBD

§ 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.)*

None.

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If

E234-2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234-2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

**§ 1.1.7 Other Project information:**

*(Identify special characteristics or needs of the Project not provided elsewhere.)*

TBD

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

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

Dr. Kimberley James, Superintendent of Schools  
Willis Independent School District  
612 N. Campbell St.  
Willis, Texas 77378  
Phone: 936-856-1200

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

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

Architect

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

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

**.1 Geotechnical Engineer:**

TBD

**.2 Civil Engineer:**

TBD

**.3 Other, if any:**

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

TBD

**§ 1.1.11 The Architect's representative:**

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

Parul Vyas, AIA, NCARB  
Stantec, Inc.  
910 Louisiana St., Ste. 2600  
Houston, TX 77002  
Telephone: 713-446-2709  
Email: parul.vyas@stantec.com

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

Carey Hamilton, Sr, Project Manager  
Stewart Builders, LLC  
23000 NW Lake Drive  
Houston, Texas 770095  
Telephone: 713-983-8819

§ 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.)

TBD

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

As noted herein.

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

None

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

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

## ARTICLE 2 GENERAL PROVISIONS

### § 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15. The Contract Documents identified in this Section shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations involving computers. In the absence of individual signatures by Owner and Construction Manager, the Contract Documents identified in the signed contract prevail. The order of precedence of the Contract Documents shall be as set out in Section 1.2.4 of the AIA Document A201™-2017. Any reference to the AIA Document A201™-2017 in the Contract Documents shall be construed to mean the A201™-2017, as modified by the Owner.

### § 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to perform the Work defined in the Contract Documents, in accordance with the Owner's

requirements and construction cost limitations, as approved by the Owner's Board of Trustees; to furnish efficient construction administration, management services, and supervision; to furnish construction services in accordance with the law, to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. Information or services required of the Owner by the Contract Documents shall be furnished by the Owner within a reasonable time following actual receipt of a written request. The Owner agrees to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

### **§ 2.3 General Conditions**

**§ 2.3.1** For all phases of the Project, the AIA Document A201™-2017, General Conditions of the Contract for Construction, as modified by the Owner, which document is incorporated herein by reference, shall apply to this Project, except to the extent any provision therein is in direct conflict with any of the provisions of this 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*. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

### **§ 2.3.2** [Section deleted.]

*(Paragraphs deleted)*

## **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 and in the applicable provisions of A201-2017 referenced in Section 2.3.1. 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. In the event of such agreement, the scope of the Project to be commenced prior to completion of the Pre-construction Phase shall be established, requirements for submission of the Guaranteed Maximum Price Amendment Proposal for the Phase, any changes to documentation that will be required, insurance and bonding requirements, scheduling and the closeout of the phase shall be established during such consultation, and be memorialized as a written modification of the Contract Documents prior to bidding the phase or submission of a Guaranteed Maximum Price Proposal. 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**

**§ 3.1.1.1** The Construction Manager represents and agrees that it will perform its pre-construction and construction services in accordance with the usual and customary standards of Construction Manager's profession or business and in compliance with all applicable national, federal, state, and municipal laws, regulations, codes, ordinances, and orders and with those of any other body or authority having jurisdiction over the Project. Construction Manager agrees to bear the full cost of correcting Construction Manager's negligent or improper work and services, those of its consultants, and any harm caused by the negligent or improper work or services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Construction Manager concerning design alternatives and potential cost savings shall be subject to the review and approval of the Architect, Owner and the Owner's professional consultants. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity which the Construction Manager knew or reasonably should have known or discovered, as a request for information in such form as the Architect may require. The Construction Manager shall certify to the Owner, with each application for payment that the Work has been constructed in accordance with the Construction Documents prepared by the Architect.

#### **§ 3.1.2 Evaluation of Program and Architect Support**

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

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§ 3.1.2.2 The Construction Manager shall provide direct support to the Architect in the development of each Project's plans and specifications, by meeting a minimum of twice per month to review projects, to review project's budget with the Architect/Design Team throughout the design process and provide field investigation surveys of existing conditions to support the Architect/Design Team. Through this process, the Construction Manager shall identify and resolve building system conflicts, constructability issues, as well as cost and scheduling issues.

§ 3.1.2.3 The Construction Manager shall participate in all Owner scheduled design review meetings and provide constructability reviews for the Project plans and specifications. For each meeting, the Construction Manager shall work with the Owner and Architect to develop an agenda that tracks each Project, take meeting notes for pre-construction items related to estimates, value analysis and constructability and distribute them to all parties. Participation in meetings and consultation shall include requirement for preparation of comprehensive notes for each meeting, as well as final reports to the Owner at the end of each phase that addresses the construction schedules, project costs, and constructability.

§ 3.1.2.4 The Construction Manager shall prepare and submit detailed construction cost estimates as follows:

- .1 Keep each project on budget by reviewing design development and construction documents and specifications and preparing a detailed estimate based on available design drawings at all milestone reviews during and at the conclusion of the design documentation phases to assess overall project budget compliance.
- .2 Analyze the Project for potential alternative equipment, material, and systems selections for cost savings and prepare "trade-off" studies relative to value engineering.

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

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

§ 3.1.3.4 During the Construction Documents Phase the Construction Manager shall review the contract documents, in its capacity as a contractor and not a design professional, to ascertain whether the components of the mechanical, electrical, and plumbing systems may be constructed without interference with each other, or with the structural or architectural components of the Project. In the event conflicts between such systems are discovered, the Construction Manager shall promptly notify the Owner and the Architect in writing. Constructability reviews shall be performed in conjunction with preparation of preliminary cost estimates as provided below.

§ 3.1.3.5 Notwithstanding any provision of the General Conditions of the Contract for Construction to the contrary, the Construction Manager shall not be entitled to additional compensation for any delay or disruption to the Work arising from any conflict between the mechanical, electrical, and plumbing systems with each other, or with the structural or architectural components of the Project if such conflicts could have been discovered by the Construction Manager through the exercise of reasonable diligence, in its capacity as a contractor and not a design professional, and the Owner and Architect were not informed of such conflicts as required herein. Provided, however, that this provision shall apply only with respect to conflicts appearing in the Drawings and Specifications provided for the Construction Manager's review prior to proposal of a Guaranteed Maximum Price.

#### **§ 3.1.4 Project Schedule**

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; dates of Substantial Completion and Final Completion; and the occupancy requirements of the Owner. If the updated Project schedule(s) indicate that previously approved schedules may not be met, then the Construction Manager shall make appropriate recommendations to the Owner and Architect and, upon written approval of both, shall implement any necessary corrective action.

#### **§ 3.1.5 Phased Construction**

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues. In the event that the Owner, Architect and Construction Manager agree, after consultation, that any phase of construction should be commenced prior to completion of the Pre-construction Phase, agreement should be reached as to the scope of the Phase to be commenced regarding the following: the requirements for submission of the Guaranteed Maximum Price Amendment Proposal for the Phase to be commenced; any changes to documentation that will be required; insurance and bonding requirements; scheduling and the closeout of the Phase to be commenced. The agreement of the Parties as to such matters reached in consultation shall be memorialized as a written modification of the Contract Documents prior to the bidding phase or submission of a Guaranteed Maximum Price Proposal for the Phase to be commenced.

#### **§ 3.1.6 Cost Estimates**

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

**§ 3.1.6.2** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be prepared and updated at a minimum upon completion of the Schematic Design and Design Development Documents. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations to reduce cost to maintain the budget, including but not limited to substitution of materials or revision or alterations in the design, to bring the Project within the Owner's current identified budget, but shall not delete necessary components of the Project without the approval of the Owner's Board of Trustees.

**§ 3.1.6.3** [Section deleted.]

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

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

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

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

**§ 3.1.11 Subcontractors and Suppliers**

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

§ 3.1.11.2 To the extent not inconsistent with the Construction Manager's requirements under Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall develop subcontractors' interest in the Project. All subcontracts and material purchases shall be awarded pursuant to the procedures set forth Texas Government Code Chapter 2269, Section 2269.255 and 2269.256.

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

**§ 3.1.12 Procurement**

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

**§ 3.1.13 Compliance with Laws**

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

**§ 3.1.14 Other Preconstruction Services**

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

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

Provide guidance and work with Architect to develop the project, cost estimating, scheduling, building systems, and material cost.

**§ 3.2 Guaranteed Maximum Price Proposal**

§ 3.2.1 Unless otherwise agreed, in writing, by the Owner, Architect and Construction Manager, when the Construction Drawings and Specifications are one hundred percent (100%) complete, 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 as defined in Article 7 herein, (including any Allowances and the Construction Contingency described in Section 3.2.4; the Construction Manager's Fee described in Section 6.1.2; and the Construction Manager's compensation for General Conditions. The Guaranteed Maximum Price as proposed shall be calculated as follows:

Estimated Cost of the Work (as defined in Article 7) PLUS  
Fee (Estimated Cost of the Work TIMES percentage in Section 6.1.2) PLUS  
General Conditions (Estimated Cost of the Work TIMES percentage in Section 6.1.7)  
EQUALS Guaranteed Maximum Price Proposed

The Guaranteed Maximum Price shall be proposed no later than sixty (60) days after approval of the final Construction Drawings and Specifications by Owner, and not before such approval. If any Guaranteed Maximum Price proposal to be

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submitted to the Owner exceeds previously approved estimates or Owner's budget, the Construction Manager shall work with the Architect to develop options that are acceptable to the Owner and within the Owner's previously approved cost estimates or Owner's budget, including but not limited to substitution of materials or revisions or alterations to the Construction Documents to bring the Project within budget and meet the Owner's requirements for the date of Substantial and Final completion. In no event, however, shall necessary components of the Project be deleted without approval of the Owner's Board of Trustees (the "Board"). The Guaranteed Maximum Price Proposal shall be submitted to the Owner's Representative not later than thirty (30) days prior to the Board Meeting at which the Guaranteed Maximum Price Proposal is posted to be approved by the Board in order to allow sufficient time for review by the Owner's representative and negotiation of necessary changes. If the Guaranteed Maximum Price Proposal is submitted after such deadline for submission, approval of the Guaranteed Maximum Price Proposal will be posted on the agenda of the next scheduled or special Board Meeting which will allow for a thirty (30) day review.

§ 3.2.2 The Guaranteed Maximum Price Proposal may not be based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager on other than a fixed fee basis.

§ 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 (To the extent provisions included in the clarifications attempt to change any term or condition included in this Agreement or the AIA A201-2017 *General Conditions of the Contract for Construction*, and such provision conflicts with the terms stated in either of these two documents, such provision will be deemed to have no effect and will be void *ab initio*);
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, if any; the Construction Contingency, if any; the Construction Manager's Fee; and the Construction Manager's compensation for General Conditions; and
4. The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based.
5. [Paragraph deleted.]

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager may include a Construction Contingency of not more than five-percent (5%) of the estimated Cost of the Work (the "Construction Contingency"). The Construction Contingency is not allocated to any particular item of the Cost of the Work and is established to address costs incurred in the Work from unforeseeable causes, or details which could not have been anticipated by the Construction Manager at the time of the Owner's approval of the Guaranteed Maximum Price, but which would be otherwise reimbursable as Cost of the Work. Such unforeseeable causes or unanticipated details include, but are not limited to, refinement of details of design within the scope of standards, quality and quantities which are reasonably inferable from the Guaranteed Maximum Price documents, and correction of minor defects not relating to design. Any unforeseeable causes or unanticipated details which exceed the Construction Contingency shall be borne by the Construction Manager at the Construction Manager's sole risk. In the final accounting, and at any other times upon request of the Owner, all supporting documentation for all uses of the Construction Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Contingency shall accrue to the Owner.

§ 3.2.5 The Construction Manager shall meet with the Owner's Representative and Architect (and Program Manager, if any) to review the Guaranteed Maximum Price proposal not later than thirty (30) days prior to the deadline for posting the Guaranteed Maximum Price proposal for approval by the Board of Trustees, in order to allow review and revision as necessary. In the event that the Owner or Architect discover any incomplete information, inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 Upon approval of the form of the Guaranteed Maximum Price Proposal by the Owner's Representative and Architect, the Guaranteed Maximum Price Proposal will be placed on the Board Agenda for approval by the Board of Trustees. Following acceptance of a Guaranteed Maximum Price Proposal by the Board, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment, prepared by legal counsel for the Owner, amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment

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shall set forth the agreed upon Guaranteed Maximum Price and incorporate the information and assumptions from the Construction Manager's Guaranteed Maximum Price Proposal, upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment and issuance of Owner's Notice to Proceed, 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 sales, consumer, use and similar taxes for the Work provided by the Construction Manager for which a Texas independent school district is exempt. Upon request the Owner will provide the Construction Manager with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes. No such taxes shall be reimbursable costs under this Contract.

### § 3.3 Construction Phase

#### § 3.3.1 General

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

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment and the Owner's issuance of a Notice to Proceed. The Notice to Proceed shall not be issued until the Agreement has been signed by the Construction Manager the Owner, as well as the Owner and Architect, have received and approved as to form all required payment and performance bonds and documentation of insurance as required by Article 11 of the A201-2017. Issuance of the Notice to Proceed shall not relieve the Construction Manager of its responsibility to comply with the requirements in this Section 3.3.1.2.

§ 3.3.1.3 The Construction Manager shall achieve Substantial Completion of the entire Work not later than the date set out in the Guaranteed Maximum Price Amendment, subject to adjustment of this Contract Time as provided in the Contract Documents.

#### § 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings at which the Owner, Architect, Construction Manager and appropriate Subcontractors discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect. The Construction Manager shall provide periodic presentations updating the progress, quality and status of the Work to Owner's Board of Trustees, at Owner's request, at no additional cost to Owner.

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

#### § 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. The Construction Manager shall submit written progress reports to the Owner and Architect, not less frequently than monthly, 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, at any time, including the meetings referenced in Section 3.3.2.1, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site and if workers are performing self-performed work, assigned tasks, identification of equipment on site and its uses during that day, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

**§ 3.3.2.5 Cost Control**

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress, including changes to the Work approved by Owner and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2 and all subsections.

**§ 3.3.2.6 Administrative Handling of Buyout**

**§ 3.3.2.6.1** Within a reasonable time following execution of the Guaranteed Maximum Price Amendment and as required by the schedule, Construction Manager shall complete procurement of all of the Work on the Project and shall provide to the Owner a written accounting of any difference between the estimated Cost of the Work allocated to the work covered by each Contract bought out, and the difference if any, in the amounts actually contracted for in connection with the same work, whether positive or negative ("Buy-Out Difference"). As the various divisions of work are bought out, if the Contract for any category of work on buyout is less than the amount estimated for that same work in the Guaranteed Maximum Price Proposal, the amount of the Buy-Out Difference shall be accounted for in a Buyout Report, to be delivered to the Architect monthly with the Construction Manager's monthly payment applications.

**§ 3.3.2.6.2** The Buyout Report prepared as described herein, shall be submitted with each Application for Payment by the Construction Manager, showing additions and deletions (applications of the Buyout funds to other line items) since the prior payment application. Receipt of such Buyout Report by the Architect shall be a condition precedent to the Architect's certification of the Application for Payment. The revised line items shall also be reflected on the Schedule of Values, so that the bottom line Guaranteed Maximum Price (including any changes by Change Order) remains the same throughout the Construction Phase.

**§ 3.3.2.6.3** As each division of work is bought out, the Construction Manager shall provide, with its next scheduled payment application:

1. a copy of the Buyout Report showing the changes from the prior month; and
2. an executed copy of the CMAA-Subcontractor Agreement entered with the selected Subcontractor for any portion of the Work bought out during the month for which the Payment Application is submitted. The copy of the Subcontract Agreement shall be provided regardless of whether the amount reflected therein is the same, greater or less than the estimated line item for that Work. In any event the difference, if any, shall be reflected on the Buyout Report for that month.
3. If all of the work allocated to a Subcontractor in the Guaranteed Maximum Price is not bought out at the same time, a copy of any later Change Order to the Subcontract shall be provided with the Construction Manager's next monthly payment application after the applicable buy out, in lieu of the Subcontract.

**§ 3.3.2.6.4** If the Subcontract for any category of work on buyout, is greater than the amount estimated for that same work in the Guaranteed Maximum Price Proposal, the Construction Manager may deduct the shortfall amount from the balance shown in the Buyout Report and apply the funds to the category of work for which the shortfall is attributable. This application transaction shall be documented in the Buyout Report delivered with Construction Manager's next Payment Application.

**§ 3.3.2.7 Administrative Handling of Allowances**

**§ 3.3.2.7.1 Use of Allowance for Intended Purpose.** Unless otherwise provided in the Contract Documents, allowances shown in the Guaranteed Maximum Price for a particular purpose shall be used to cover the actual cost to the Construction Manager of materials and equipment delivered at the site and all required taxes, less applicable trade discounts, Construction Manager's actual costs of unloading and handling at the site, labor, installation costs, overhead, profit at the rate stated herein, and other expenses contemplated in connection with the stated purpose of that allowance as itemized in the Construction Manager's recommendation and proposed pricing.

**§ 3.3.2.7.2 Proposals for Performance of Allowance Work.** When performing Work under allowances, Construction Manager shall solicit and receive no fewer than three (3) written proposals to provide the Work (in addition to its self-performance proposal, if any), and shall provide a copy of such proposals with a recommendation to the Architect as to which proposal offers the best value to the Owner. If the Construction Manager is proposing to self-perform the Work, its Proposal shall be submitted to the Owner 24 hours in advance of its receipt of the third-party proposals. The Construction Manager shall begin the Work as directed by the Architect following Owner's approval of the estimated cost to be reimbursed from the Allowance, on the basis of the Construction Manager's best value recommendation from the

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third-party proposals submitted. If Owner believes the Construction Manager's proposal for self-performance to provide the best value to Owner, it will provide notice of its approval of the self-perform proposal and a notice to proceed with the Work.

**§ 3.3.2.7.3 Allowance Report.** An Allowance Report shall be maintained by the Construction Manager showing the credits and debits to each allowance. Once the Work for which an allowance was allocated is complete, the balance of the allowance shall be subject to utilization for other shortfalls within the Guaranteed Maximum Price. If funds are moved from an allowance to a cover such a shortfall, that transaction shall be documented in the Allowance Report, with a notation as to the application of such funds.

**§ 3.3.2.7.4 Selection of Materials and Equipment by Owner.** The Construction Manager shall provide the Owner with a reasonable period, but in no event fewer than thirty (30) days, to make its selections of materials and equipment under an allowance after provision of the options.

**§ 3.3.2.9** If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 7.8, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 7.8.

#### **§ 3.4. Trench Safety**

**§ 3.4.1** 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.

**§ 3.4.2** 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.

#### **§ 3.5 Professional Services**

Section 3.12.10 of A201-2017 shall apply to both the Preconstruction and Construction Phases.

#### **§ 3.6 Hazardous Materials**

The Construction Manager shall have no responsibility for the handling, removal, or disposal or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, polychlorinated biphenyl (PCB), or other hazardous materials. The Construction Manager shall have no responsibility to initially discover the presence of such hazardous materials on the Project site but shall have an affirmative duty to immediately report to the Owner the existence of such materials actually known by the Construction Manager or the Construction Manager's consultants to be present on the Project site. Provided, however, that these limitations shall not apply if the Construction Manager places or allows such hazardous materials to be placed on the Project site.

### **ARTICLE 4 OWNER'S RESPONSIBILITIES**

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

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

**§ 4.1.2** For purposes of Texas Business and Commerce Code Section 56.054(e)(3), the Owner represents to Construction Manager that funds are available and have been authorized for the full contract amount for the construction of improvements.

**§ 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.

**§ 4.1.4 Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. Such documents shall be provided for information only and are not warranted or represented to show the conditions at the Project site accurately. Construction manager may use the information at its own risk and shall use customary precautions relating to the performance of the Work. Notwithstanding the preceding sentences and the delivery of surveys or other documents and reports by Owner. The Construction Manager shall perform all Work in such non-negligent manner so as to avoid damaging any utility lines, cables, pipes or pipelines on the Property. Construction Manager shall be responsible for any damage to such lines, cables, pipes or pipelines negligently caused during the Work.

**§ 4.1.4.1** The Owner (either directly or by contract with the Architect) may furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

**§ 4.1.4.2** The Owner (either directly or by contract with the Architect) when such information is, in the professional opinion of the Architect, required, may furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site, but shall have no duty to do so. Notwithstanding the foregoing, if the Owner provides such survey, the Construction Manager shall remain responsible to independently investigate the physical characteristics, legal limitations, and utility locations for the Project site. In the event that the Construction Manager damages, any utilities during construction, the Construction Manager, at its cost, shall immediately repair the same at its sole cost and expense.

**§ 4.1.4.3** The Owner, (directly or by contract with the Architect), when such services, in the professional opinion of the Architect, are required, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

**§ 4.1.6** [Section deleted].

**§ 4.2 Owner's Designated Representative**

The Owner is the Board of Trustees of the Willis Independent School District and is referred to throughout the Contract Documents as if singular in number. The Board of Trustees, by majority vote, is the only representative of the Owner, an independent school district, having the power to enter into and amend a contract, to approve changes in the scope of Work, to approve and execute a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price, to agree to an extension to the date of Substantial or Final Completion or to terminate a contract. The Owner may designate in writing one or more persons to represent the Owner with respect to the day-to-day activities of the Project; however, such representatives shall have the authority to bind the Owner only to the extent expressly authorized by the Owner and shall have no implied authority. The Owner has delegated its authority to approve Change Orders or Construction Change Directives in connection with this Contract, in an amount not exceed \$50,000.00. Such delegate shall have the authority in any instance she/he feels is in the best interest of the Owner to require Board Approval on any delegated matter including a Change Order or Change Directive.

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

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**§ 4.3 Architect**

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

**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.)*

Compensation for the Construction Manager's Preconstruction Phase Services described herein shall be included in the compensation described in Article 6, and shall not exceed the sum of: TWENTY THOUSAND AND 00/100 DOLLARS (\$20,000.00).

**§ 5.1.2**

*(Paragraphs deleted)*

[Section deleted.]

*(Table deleted)*

**§ 5.1.2.1** [Section deleted.]

**§ 5.1.3** Compensation for Preconstruction Services shall be equitably adjusted if the originally contemplated scope of services is significantly modified.

**§ 5.1.4** Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions, all of which must be adequately documented in order to be eligible for reimbursement.

**§ 5.2 Payments**

**§ 5.2.1** If the Construction Phase Services do not commence for any reason, compensation for Preconstruction Services shall be made in accordance with Section 5.1.1 upon termination of the Agreement.

**§ 5.2.2**

*(Paragraphs deleted)*

[Section deleted.]

**ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

**§ 6.1 Contract Sum**

**§ 6.1.1** For the Construction Manager's performance of the Work as described in Section 3, and all subparts, 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 actual Cost of the Work as defined in Article 7 plus the Construction Manager's Fee and Construction Manager's compensation for General Conditions Costs.

**§ 6.1.2** The Construction Manager's Fee:

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

The Construction Manager's Fee shall be One and Eighty Three One Hundredths percent (1.83%) of the actual Cost of the Work as defined in Article 7. For purposes of clarity, the Construction Manager's fee shall not be calculated as a percentage of the Contract Sum, the Guaranteed Maximum Price, or the Construction Budget. No Construction Manager's Fee shall be paid on the Construction Contingency until funds are allocated from the contingency to the Cost of the Work.

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

Such change may occur only by action of Owner's Board of Trustees.

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

- 1 On Change Orders and Construction Change Directives, the total mark-up for overhead and profit included in the total cost to the Owner shall be based upon the following schedule:
- 2 For the Construction Manager, for Work performed by the Construction Manager's own forces, ten percent (10%) of the cost (0% for change orders to be paid out of any contingency allowance);
- 3 For the Construction Manager, for the Work performed by the Construction Manager's Subcontractors, four percent (4%) of the amount due the Subcontractors (0% for the change orders to be paid out of any contingency allowance);
- 4 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost; and
- 5 The costs to which the above percentages shall be applied will be determined in accordance with Article 7 of the AIA Document A201™-2017 General Conditions of the Contract for Construction as applicable.

In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including quantities and unit costs of labor and materials extended and totaled.

§ 6.1.5 Rental charges of all necessary machinery and equipment, exclusive of hand tools, used at the site of the Work, whether rented from the Contractor or others, including installation, minor repairs and replacements, fuel, dismantling, removal, transportation and delivery costs thereof, shall be at rates consistent with those prevailing in the area, provided such charges are approved by the Owner.

- 1 The projected usage for each piece of equipment to be rented for use on the project and the estimated total rentals shall be considered by the Contractor before the piece of equipment is rented so that an appropriate rent versus buy decision can be made. Purchased equipment shall be considered "job owned". At the completion of the project, the Contractor shall transfer title and possession of all remaining job-owned equipment to the Owner, or Contractor may keep any such equipment for an appropriate fair market value credit to job cost, which will be mutually agreed to by Owner and Contractor. Maintenance records shall be provided for "job owned" equipment, certifying that the equipment was properly maintained, per the manufacturer's instruction.
- 2 Each piece of equipment to be rented shall have hourly, daily, weekly and monthly rates and the most economical rate available shall be reimbursed based on the circumstances of actual need and usage of the piece of equipment while it is stationed at the jobsite. When the piece of equipment is no longer needed for the work, no rental charges will be reimbursed if the piece of equipment remains at the jobsite for the convenience of the contractor.
- 3 The reimbursable equipment rental rates shall not exceed 75% of the published rates based on the latest edition of "Rental Rates and Specifications" published by the Associated Equipment Distributors (AED). If the AED publication does not contain information related to the type of equipment rented, the Contractor will be allowed to use a maximum equipment rental rate equal to 75% of the current competitive rental rates from local third-party equipment rental companies.
- 4 The aggregate rentals chargeable for each piece of Contractor owned tools or equipment shall not exceed 50% of the fair market value of such equipment at the time of its commitment to the Work. The original purchase price and date of purchase of the equipment will be documented with a copy of the purchase invoice for the piece of equipment. Such aggregate limitations will apply and no further rentals shall be charged even if a piece of equipment is taken off the job and is later replaced by a similar piece of equipment. For purposes of computing the aggregate rentals applicable to aggregate rental limitations, rental charges for similar pieces of equipment will be combined if the pieces of equipment were not used at the same time.
- 5 Fair market value for used material and equipment as referred to in this contract shall mean the estimated

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price a reasonable purchaser would pay to purchase the used material or equipment at the time it was initially needed for the job. Note: This is usually lower than the price a reasonable purchaser would pay for similar new construction material or construction equipment.

- .6 Rental charges for equipment which is not owned by Contractor or any of its affiliates, subsidiaries, or other related parties and is rented from third parties for use in proper completion of the Work shall be considered reimbursable, will be reimbursed at actual costs, as long as rental rates are consistent with those prevailing in the locality. For any lease/purchase arrangement where any of the lease/purchase rental charges were charged to Owner as reimbursable job costs, appropriate credit adjustments to job cost will be made for an appropriate pro rata share of the fair market value of the equipment at the time it was last used on the job.
- .7 All losses resulting from lost, damaged or stolen tools and equipment shall be the sole responsibility of the Contractor, and not the Owner, and the cost of such losses shall not be reimbursable under this contract.
- .8 The Contractor shall be required to maintain a detailed equipment inventory of all job-owned equipment (either purchased and charged to job cost or job-owned through aggregate rentals) and such inventory shall be submitted to Owner each month. For each piece of equipment, such inventory should contain at a minimum (1) original purchase price or acquisition cost (2) acquisition date (3) approved FMV at the time the piece of equipment was first used on the job and (4) final disposition.
- .9 All costs incurred for minor maintenance and repairs shall be reimbursed at actual cost. Such costs include routine and preventative maintenance, minor repairs, and other incidental costs. Repairs and/or replacement of a capital nature are considered to be covered by the rental rates. Major repairs and overhauls are not considered routine and ordinary expenses; consequently, such costs are not reimbursable and are intended to be covered by the rental rates.

**§ 6.1.6 Liquidated damages, if any:**

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

The Construction Manager and the Construction Manager's surety shall be liable for and shall pay to the Owner the sums hereinafter stipulated as liquidated damages for each calendar day of delay until the Work is substantially completed: SEVEN HUNDRED FIFTY DOLLARS (\$750.00).

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

**§ 6.1.7 General Conditions Costs (Project Site Costs) To Be Reimbursed**

**§ 6.1.7.1** The Construction Manager's General Conditions Costs shall be reimbursed each month based on the following formula: The actual Cost of the Work (as defined herein) multiplied by Two and Sixty Seven One Hundredths percent

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(2.67%)<sup>11</sup> The Construction Manager's Fee shall not be included in the Cost of the Work prior to figuring the General Conditions Costs.

§ 6.1.7.2 The term General Conditions Costs shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The General Conditions Costs shall not be compensated based on actual cost and include only the items set forth in this § 6.1.7.2. The following work is included in general conditions costs to be reimbursed in accordance with Section 6.1.7.1:

**1 Labor Costs**

- a. Wages or salaries of all the Construction Manager's supervisory, administrative, and other personnel, whether employees or independent contractors, when stationed at the site. This includes of all the Construction Manager's staff except employees performing portions of the Work pursuant to Section 9.4. This includes, but is not limited to, project superintendents (including assistants), managers and administrators (including assistants); project engineers (including assistants); secretaries and other office staff; estimating, cost control, scheduling and safety staff (dedicated to Project and located on site), field engineers (including assistants), and security staff and watchmen.
- b. Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in General Conditions Costs under articles 1a of this section, Labor Costs. 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 shall be allocated to Home Office Overhead and will be compensated within the Construction Manager's Fee Percentage.
- c. Cost of obtaining criminal history record information (CHRI) on personnel engaged by Construction Manager if CHRI is required for the Project.
- d. Expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling between projects in discharge of duties connected with the Work
- e. 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.

**2 Materials and Equipment, Temporary Facilities and Related Items**

- a. All costs of mobilization and demobilization of the project site.
- b. 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 Owner-approved storage of materials and equipment, if any, suitably stored off the site at a mutually acceptable location.
- c. 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.
- d. Rental and costs of operation of Construction Manager's site office, including transportation, erection, installation, dismantling, maintenance, and removal; supply of general office supplies, equipment (including computers, and copiers) and furnishings; maintenance, repairs of same and temporary utilities.
- e. Cost of temporary project signage; temporary fire protection; tree protection not included in a specific subcontract scope; dewatering of project site and areas not included in a specific subcontract scope; partitions; temporary streets/roads including maintenance and dust control; off-site parking for onsite personnel; temporary safety covered pedestrian walkways, building entry protection.
- f. Costs of safety training programs and OSHA compliance; first aid supplies and training costs; cups, water, coffee for personnel and subcontractors (i.e. office and Jobsite/field water and ice) including cost of distribution; hard hats and safety goggles required by site personnel and subcontractors.
- g. Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office. This includes, but is not limited to, costs of reproduction of construction documents outside of the agreed upon number to be provided; electronic distribution of construction documents; record

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- drawings and shop drawings and other submittals; project documentation, including photographs and digital video; record documents including paper and electronic media; closeout documents; and operations and maintenance manuals.
- h. Cost of licenses and dues arising from construction permitting requirements; software and data processing licenses; CPM scheduling software licenses.
  - i. Costs for communications services, communications devices, electronic equipment, and software, directly related to the Work and located at the site, including website and software; hosting costs; and communication devices including telephones (wired and wireless), fax machines, pagers and radios.
  - j. Costs of advertising for trade contractors, subcontractors and vendors as required to establish guaranteed maximum price.
  - k. Cost of providing warranties and warranty inspection.
  - l. Any cost designated as General Conditions in the RFP for this project, such portion of the RFP is incorporated herein by reference.

**§ 6.2 Guaranteed Maximum Price**

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

**§ 6.3 Changes in the Work**

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

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

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

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

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

**§ 6.3.5** [Section deleted.]

**ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE**

**§ 7.1 Costs to Be Reimbursed as Cost of the Work.**

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

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

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

**§ 7.2 Labor Costs**

**§ 7.2.1** Wages or salaries of construction workers directly employed by the Construction Manager to perform any portion of the construction of the Work at the site or, with the Owner's prior written approval, at off-site workshops, to the extent allowed by Texas Government Code Sections 2269.255 or 2269.257

**§ 7.2.2** [Section deleted.]

**§ 7.2.2.1**

*(Paragraphs deleted)*

[Section deleted.]

**§ 7.2.3** [Section deleted.]

**§ 7.2.4** [Section deleted.]

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

**§ 7.3 Subcontract Costs**

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

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

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

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

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

**§ 7.5.1** [Section deleted.]

**§ 7.5.2** [Section deleted.]

**§ 7.5.3** [Section deleted.]

**§ 7.5.4** [Section deleted.]

**§ 7.5.5** [Section deleted.]

**§ 7.6 Miscellaneous Costs**

**§ 7.6.1** Costs of removal of debris from the site of the Work and its proper and legal disposal and final cleaning of the Project Site.

**§ 7.6.1.1** [Section deleted.]

**§ 7.6.1.2** [Section deleted.]

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

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

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§ 7.6.4 Fees of laboratories for tests required by the Contract Documents and paid by the Construction Manager; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents, not including software licenses.

§ 7.6.5.1 [Section deleted.]

§ 7.6.6 [Section deleted.]

§ 7.6.7 [Section deleted.]

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

§ 7.6.9 [Section deleted.]

§ 7.6.10 [Section deleted.]

§ 7.6.11 [Section deleted.]

#### § 7.7 Other Costs and Emergencies

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

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

§ 7.7.3 [Section deleted.]

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9 or are included in the definition of General Conditions Costs set out in Section 6.1.7 (and all subsections).

#### § 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 sharing a common Tax ID Number.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Section 3.3.2.6 and Article 9.

#### § 7.9 Costs Not to Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;

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- .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 described in Sections 6.1.7.2 (and all subsections), 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.
- .10 Costs that are otherwise collectable from insurance or bonds.
- .11 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract shall be reimbursed at cost, however not included as Cost of Work, nor shall any fee percentage be applied to the amount. In no event will the cost reimbursable for the insurance required by contract exceed 0.5% of the GMP contract value.

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

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

§ 8.2 Cost of the Work will be credited with all insurance policy discounts/refunds, performance and payment bond rebates or refunds, refunds or return premiums from any subcontractor default insurance, refunds or rebates from any contractor controlled insurance programs applicable to the project, merchandise rebates of any nature, refunds of any nature, insurance dividends; and a portion of any volume rebates or free material credits earned with purchase of material or other goods and services charged to the job.

§ 8.3 "Cash" discounts which may accrue to the Contractor will be limited to a maximum of 1.5% of invoice cost. Any portion of "Cash" discounts greater than 1.5% shall automatically accrue to Owner if the contractor is eligible to take advantage of the discounts.

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

#### **ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS**

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain proposals in accordance with Section 9.3 below. The Construction Manager shall obtain proposals 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 proposals to the Architect and Owner with an indication as to which proposals the Construction Manager determines to provide the best value to the Owner, and therefore, 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 as offering the best value to the Owner; (2) is qualified to perform that portion of the Work; and (3) has submitted a proposal that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another proposal be accepted, then the Construction Manager may require that a Change Order be issued to adjust the

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Guaranteed Maximum Price by the difference between the proposal 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. Construction Manager shall state the additional cost in writing and shall provide written proof of same before Owner compensates Construction Manager.

§ 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.

*(Paragraphs deleted)*

§ 9.3 Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and obtain proposals from Subcontractors for the performance of all major elements of the Work. To the extent an element of the Work is included in the General Conditions Costs, it is not considered a major element of the Work and shall not be procured under this Section 9.3. All bids or proposals shall be sent directly to Construction Manager.

§ 9.3.1 The Construction Manager the Owner Representative, and Project Manager, if any, shall receive and open all subcontractor proposals in a manner that does not disclose the contents of the proposals during the selection process to a person not employed by the Construction Manager, Architect, Engineer or Owner. The Construction Manager shall review and evaluate all bids or proposals and shall recommend to the Owner a list of bidders to which the Construction Manager proposes to award subcontracts for the Project Work.

§ 9.3.2 In the event that the Owner requires that the Construction Manager to award any portion of the work to a subcontractor not proposed as best value by the Construction Manager, the Owner shall compensate the Construction Manager by a change in price, time, or Guaranteed Maximum Price for any additional cost or risk that the Construction Manager may incur by reason of the Owner's requirements. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

§ 9.3.3 The Construction Manager shall deliver a copy of all advertising, solicitation documents, proposals, evaluations of proposals and all documents relevant to the Guaranteed Maximum Price proposal to the Owner with the Guaranteed Maximum Price proposal.

§ 9.3.4 The Construction Manager shall make all bids and proposals available for public inspection within seven (7) days following final selection of the subcontractors.

#### § 9.4 Self-Performed Work

§ 9.4.1 The Construction Manager may seek to perform portions of the Work itself; provided however, the Construction Manager must submit its proposal for those portions of the Work it seeks to self-perform to the Owner, at the office of the Owner's Representative, not later than twenty-four (24) hours in advance of the scheduled receipt of proposals from third-party subcontractors.

§ 9.4.2 The Construction Manager's proposal for those portions of the Work it seeks to self-perform shall be submitted the same form and in the same manner as proposals are required from all other third-party subcontractors or trade contractors, and shall be for the same scope of work which the competing trade contractors or subcontractors have submitted proposals, as if the Construction Manager itself were proposing as a third-party subcontractor or trade contractor.

§ 9.4.3 Following receipt of all third-party and self-performance proposals the Owner shall decide, in its sole discretion, whether or not Construction Manager's proposal for self-performing portions of the Work offers the best value to Owner.

§ 9.4.4 In order for the Construction Manager's self-performed proposal to be considered the best value proposal by the Owner, the Owner must be able to evaluate the Construction Manager's Proposal against at least one other bona fide competitive proposal. If at least one other proposal is received for the same scope of Work as the Construction Manager, and the Owner, in its sole discretion, determines the scope of Work to have been competitively procured then the Owner may accept performance of the work by the Construction Manager. In such event, the Owner must accept the Construction Manager's proposal to self-perform a specific scope of work, as the best value for the Owner, in writing.

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§ 9.4.5 If selected to self-perform a specific scope of work, the Construction Manager will be permitted to be paid for the self-performed work pursuant to progress payments, as if Construction Manager were a subcontractor; and like any third-party subcontractor, the Construction Manager shall be required to submit a "subcontractor" Payment Application each month for its self-performed work in the same manner and in the same form as the third-party subcontractors on the Project. The "subcontractor" Payment Application submitted by the Construction Manager shall be attached to its Construction Manager's Payment Application as documentation of the work completed that month and the associated costs. Payments to the Construction Manager on account of self-performed work shall be included in the Cost of the Work, but the Construction Manager shall not receive an additional Construction Manager's Fee for self-performed work.

§ 9.4.6 If the Owner reasonably determines in its sole discretion, that the scope of work sought to be self-performed was not subject to bona fide competition, it may accept the Construction Manager's proposal in writing, as the best value for the Owner and allow the Construction Manager to be paid as described in Section 9.4.5, or may reject all proposals (including those of third parties) and require the Construction Manager to repeat the procurement for that scope of work. If the Owner elects to accept the Construction Manager's proposal as the best value.

§ 9.5 The Construction Manager shall include statutory required notices in the information to proposers including:

1. The successful bidder's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;
2. The successful bidder's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;
3. A notice of the sales tax exemption for the project and the procedure for obtaining any required exemption verification or certificates;
4. The notice regarding trench safety and shoring safety required by Texas Health and Safety Code Section 756.023; and
5. The following waiver language:  
"By submitting a bid or proposal, each bidder or proposer agrees to waive any claims it has or may have against the Owner, the Architect, the Construction Manager, and their respective officers, trustees, employees, agents, or representatives, arising out of or in connection with the administration, evaluation, recommendation, or selection of any bid or proposal; waiver of any requirements under the bid or proposal documents or contract documents; acceptance or rejection of any bid or proposal; and award of the contract."

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

§ 9.7 In accordance with Texas Government Code Section 2269.257, if a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected, the Construction Manager may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements. Construction Manager shall be paid for its own performance in accordance with Section 9.4.

#### ARTICLE 10 ACCOUNTING RECORDS AND AUDIT RIGHTS

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

#### ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

##### § 11.1 Progress Payments

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

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

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the first day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the thirtieth day of the same 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 forty-five (45) days after the Architect receives the Application for Payment.

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

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

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

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

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

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

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

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

§ 11.1.7.1 The amount of each progress payment shall be computed as follows:

- .1 Take 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, Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2017;
- .2 Add 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 Add that portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified;
- .4 Add, 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

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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; and

- 5 Add the Construction Manager's General Conditions Costs computed based upon the Cost of the Work completed during the period covered by the Payment Application multiplied by the percentage rate stated in Section 6.1.7.1.

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

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

#### § 11.1.8 Retainage

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

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

Five Percent (5%)

§ 11.1.8.1.1 The following items are not subject to retainage:

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

N/A - All items subject to retainage.

§ 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.)*

There shall be no reduction or limitation or modification of retainage prior to Final Completion.

§ 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.)*

Retainage may be withheld by Owner following initiation of an audit and only as to those specific charges in question until the conclusion of the audit. In no event shall retainage be withheld on reconciled charges for more than thirty (30) days after submission of the Application for Payment

§ 11.1.9 [Section 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. If the Construction Manager wishes to bill for materials or equipment which cannot be stored on site, the Construction Manager shall, along with the request for approval, provide evidence of purchase, evidence of delivery in good order without damage, and a certificate of insurance specifically covering the material identified by way of serial numbers, bill of lading, and copy of signature of receipt of materials and photography showing material. The Construction Manager shall also require, at the

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Owner's request, proof that the facility at which the materials or equipment is stored is bonded. Security and protection from theft and damage remains on the Construction Manager as the first line of accountability and financial responsibility. Delays due to issues arising from stored materials shall not be considered as reasonable justification to release the Construction Manager from meeting the schedule unless the Owner agrees to such delay in writing in advance of notification to the Owner of any delay.

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

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

#### § 11.2 Final Payment

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

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

§ 11.2.2 Within sixty (60) days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

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

§ 11.2.2.2 Within seven (7) days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201-2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201-2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

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

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than thirty (30) days after the issuance of the Architect's final Certificate for Payment or in the event of mediation, no later than thirty (30) days after the execution of the Settlement agreement, if any.

§ 11.2.4 The amount of final payment shall be calculated as follows:

- .1 Begin with the actual Cost of Work substantiated by the Construction Manager's final accounting which includes deductions for all discounts and unused contingencies and construction savings achieved in the Cost of Work, if applicable.
- .2 Add the actual expended General Conditions costs substantiated by the Construction Manager's final accounting which includes savings to the Owner for unused General Conditions.
- .3 Add the Construction Manager's Fee.
- .4 Subtract amounts, if any for which Architect or Owner disputes, refuses or withholds payment, if any.
- .5 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner then subtract such amounts as Architect shall determine as the cost for completing incomplete work and the value of unsettled claims.
- .6 Subtract all previous payments made by Owner.
- .7 In no event shall the total of subsections .1, .2 and .3 above exceed the Guaranteed Maximum Price.
- .8 If the aggregate of previous payment made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner.

### § 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate *(Paragraphs deleted)* set out in the Texas Prompt Payment Act, Texas Government Code Chapter 2251.

§ 11.4 Subject to Texas Government Code Chapter 2251, the Contract shall not have been fully performed until all work required by the Construction Documents including but not limited to the following have been performed:

- .1 provision of record or as-built drawings executed or complete;
- .2 provision of executed or complete certificates of documents evidencing warranties and owner-operator's manuals;
- .3 provision of all documents evidencing required testing, inspection, verification and other engineering or consulting services required under the construction contract; and
- .4 insuring agreements and bonds covering all periods of construction and any subsequent periods required under the contract.

## ARTICLE 12 DISPUTE RESOLUTION

### § 12.1 Initial Decision Maker

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

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

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

### § 12.2 Binding Dispute Resolution

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

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Arbitration pursuant to Article 15 of AIA Document A201-2017

Litigation in a court of competent jurisdiction

Other: *(Specify)*

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

#### **ARTICLE 13 TERMINATION OR SUSPENSION**

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

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

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

**§ 13.1.3** Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

**§ 13.1.4** [Section deleted.]

##### **§ 13.1.5**

*(Paragraphs deleted)*

[Section deleted.]

**§ 13.1.6** [Section deleted.]

**§ 13.1.6.1** [Section deleted.]

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

###### **§ 13.2.1 Termination**

Following execution of the Guaranteed Maximum Price Amendment Owner may terminate this Agreement, with or without cause, at any time. In the event such termination is for the convenience of the Owner, the Construction Manager shall be compensated for reasonable costs incurred prior to notice of termination, profits on only that portion of the work actually performed prior to termination, and reasonable demobilization costs. The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201-2017.

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

###### **§ 13.2.2.1**

*(Paragraphs deleted)*

[Section deleted.]

**§ 13.2.2.2** [Section deleted.]

###### **§ 13.2.3 Termination by the Construction Manager.**

*(Paragraphs deleted)*

Following execution by both parties of the Guaranteed Maximum Price Amendment, if the Project work is stopped for a period of ninety (90) days through no act or fault of the Construction Manager, then the Construction Manager may, upon ten (10) additional days written notice to the Owner, terminate this agreement and recover from the Owner payment for all work actually performed, for any loss sustained upon any materials, equipment, tools, equipment, and machinery, and

profits on only that portion of the work actually performed prior to termination. If the cause of the work stoppage is removed prior to the end of the ten (10) day notice period, the Construction Manager may not terminate this agreement.

§ 13.3 Suspension [Section deleted.]

**ARTICLE 14 MISCELLANEOUS PROVISIONS**

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

**§ 14.2 Successors and Assigns**

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

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

**§ 14.3 Insurance and Bonds**

§ 14.3.1 For all phases of the Project, the Construction Manager shall purchase and maintain insurance and performance and payment bonds, in the coverages and amounts as required by state law and set forth in Article 11 of the AIA Document A201-2017. In addition, the Construction Manager shall provide the Professional Liability Coverage as shown therein.

§ 14.3.2 The Construction Manager shall, as a condition precedent to allowing any subcontractor to proceed with any work on the Project, either require that the subcontractor provide proof of existence of workers compensation coverage for all its employees, or, at the Construction Manager's sole discretion, provide for coverage of the subcontractor's employees under the Construction Manager's workers' compensation insurance coverage. The Construction Manager shall maintain records of all required certificates of insurance provided by the subcontractors and shall forward copies to the Owner and the Architect.

§ 14.3.3 As required by Chapter 2253 of the Texas Governmental Code, the Construction Manager is required, as a condition precedent to the execution of the Contract, to execute a PERFORMANCE BOND in the form required by TEXAS STATUTES, in an amount equal to ONE HUNDRED PERCENT (100%) of the Contract Sum, and a PAYMENT BOND in the form required by TEXAS STATUTES, in an amount equal to ONE HUNDRED PERCENT (100%) of the Contract Sum as security for payment of all persons performing labor and furnishing materials in connection with this Contract. (Bonding Company is to furnish such forms). All bonds shall name the Owner as additional obligee. The Payment and Performance Bonds shall meet requirements for the bonds set out in Section 11.4.3 through Section 11.4.9 of the AIA Document A201-2017.

§ 14.3.1.1 [Section deleted.]

§ 14.3.1.2 [Section deleted.]

§ 14.3.1.3 [Section deleted.]

§ 14.3.1.4 [Section deleted.]

§ 14.3.1.5 [Section deleted.]

§ 14.3.1.6

*(Paragraphs deleted)*

*[Section deleted.]*

*(Table deleted)*

init.

§ 14.3.1.7 [Section deleted.]

§ 14.3.1.8 [Section deleted.]

§ 14.3.2 [Section deleted.]

§ 14.3.2.1 [Section deleted.]

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with *(Paragraphs deleted)* AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or in any other format agreed to by the Owner, Construction Manager and Architect.

§ 14.5 Other provisions:

§ 14.5.1 Pursuant to Texas Government Code Chapter 2271, as amended, if this contract is valued at \$100,000 or more and if the Construction Manager has at least ten (10) full time employees, then the Construction Manager, by its execution of this Agreement represents and warrants to the Owner that the Construction Manager does not boycott Israel and will not boycott Israel during the term of this Agreement. This section does not apply to a sole proprietorship.

§ 14.5.2 By signing this Agreement, the undersigned certifies as follows: Under Section 231.006 of the Texas Family Code, the Construction Manager certifies that the individual or business entity named in this Contract is not ineligible to receive the specified payments and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

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

§ 14.5.4 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Construction Manager agrees that the contract can be terminated if the Construction Manager knowingly or intentionally fails to comply with a requirement of that subchapter. Therefore, if the Guaranteed Maximum Price for this Project is One Million Dollars (\$1,000,000.00) or more, the Construction Manager agrees to: (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 governmental body 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.

§ 14.5.5 Pursuant to Texas Education Code §22.08341, Construction Manager shall obtain criminal history record information through the Fingerprint-Based Applicant Clearinghouse of Texas ("FACT Clearinghouse"), for all of Construction Manager's Covered Employee in accordance with the requirements of Section 3.4.5 of the AIA Document A201™–2017, General Conditions of the Contract for Construction.

§ 14.5.6 Construction Manager shall take all actions and shall comply with all federal, state, and local legal requirements, and shall also comply with all recommendations of the Centers for Disease Control.

§ 14.5.7 Pursuant to Texas Government Code Chapters 2276 and 809, if this contract is valued at \$100,000 or more and if Contractor has at least ten (10) full-time employees, then Contractor represents and warrants to the Owner that the Contractor does not boycott energy companies and will not boycott energy companies during the term of this Agreement. This provision does not apply to sole proprietorships.

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

**ARTICLE 15 SCOPE OF THE AGREEMENT**

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

§ 15.2 The following documents comprise the Agreement:

- 1. AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- 2. AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- 3. [Subsection Deleted.]
- 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:

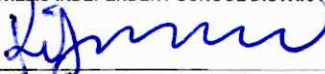
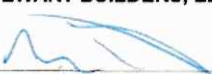
| Document | Title | Date | Pages |
|----------|-------|------|-------|
|----------|-------|------|-------|

**NOTE:** Any Supplementary Conditions or other Conditions of this Contract listed above, the Project Manual or other terms or conditions attempted to be incorporated into this Contract, which contradict or conflict with the terms of this document or the terms and conditions set out in the AIA Document A201™-2017, General Conditions of the Contract for Construction shall be void and subordinate to the terms set out in the AIA Document A201™-2017, General Conditions of the Contract for Construction.

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 B – Prevailing Wage Rates

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

|  |   |
|--|---|
| <b>WILLIS INDEPENDENT SCHOOL DISTRICT</b><br> | <b>STEWART BUILDERS, LLC</b><br> |
| <b>OWNER (Signature)</b>   | <b>CONSTRUCTION MANAGER (Signature)</b>   |
| <b>Dr. Kimberley James, Superintendent of Schools</b><br><i>(Printed name and title)</i>                                       | <b>Tommy Bertrand, General Manager</b><br><i>(Printed name and title)</i>   |

Init.

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

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PAGE 1

AGREEMENT made as of the NINETEENTH day of DECEMBER in the year TWO THOUSAND TWENTY-FOUR

...

Willis Independent School District  
612 N. Campbell St.  
Willis, Texas 77378  
Phone: 936-856-1200

...

Stewart Builders, LLC  
23000 NW Lake Drive  
Houston, Texas 77099  
Telephone: 713-983-8819

...

Construction of Elementary School No. 7 with construction of new parking areas, drives, site utilities, and storm detention.

...

Stantec, Inc.  
910 Louisiana St., Ste. 2600  
Houston, Texas 77002  
Telephone: 713-446-2709  
PAGE 2

EXHIBIT A - GUARANTEED MAXIMUM PRICE AMENDMENT  
EXHIBIT B INSURANCE AND BONDS - PREVAILING WAGE RATES

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

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**ARTICLE 1 — INITIAL INFORMATION**  
**ARTICLE 1 INITIAL INFORMATION**  
**PAGE 3**

To be prepared by Architect.

...

Construction of Elementary School No. 7, a new prototype elementary school (two stories and approximately 125,000 square feet) along with construction of new parking areas, drives, site utilities, and storm detention.

...

Approximately \$37,000,000.00

...

TBD

...

TBD

...

TBD (Estimated July 2026)

...

TBD

...

TBD

...

None.  
**PAGE 4**

TBD

...

Dr. Kimberley James, Superintendent of Schools  
Willis Independent School District  
612 N. Campbell St.  
Willis, Texas 77378  
Phone: 936-856-1200

...

Architect

...

TBD

...

TBD

...

TBD

...

Parul Vyas, AIA, NCARB  
Stantec, Inc.  
910 Louisiana St., Ste. 2600  
Houston, TX 77002  
Telephone: 713-446-2709  
Email: parul.vyas@stantec.com  
**PAGE 5**

Carey Hamilton, Sr. Project Manager  
Stewart Builders, LLC  
23000 NW Lake Drive  
Houston, Texas 77095  
Telephone: 713-983-8819

...

TBD

...

As noted herein.

...

None

**§ 1.2** The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially ~~change~~ 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~~ may 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.

...

## **ARTICLE 2 — GENERAL PROVISIONS**

### **ARTICLE 2 GENERAL PROVISIONS**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire

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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 Contract Documents identified in this Section shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations involving computers. In the absence of individual signatures by Owner and Construction Manager, the Contract Documents identified in the signed contract prevail. The order of precedence of the Contract Documents shall be as set out in Section 1.2.4 of the AIA Document A201™-2017. Any reference to the AIA Document A201™-2017 in the Contract Documents shall be construed to mean the A201™-2017, as modified by the Owner.

...

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the ~~Owner~~ Owner; to perform the Work defined in the Contract Documents, in accordance with the Owner's requirements and construction cost limitations, as approved by the Owner's Board of Trustees, to furnish efficient construction administration, management services, and supervision; to furnish construction services in accordance with the law, to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. ~~The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and information or services required of the Owner by the Contract Documents shall be furnished by the Owner within a reasonable time following actual receipt of a written request.~~ The Owner agrees to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

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§ 2.3.1 For the Preconstruction Phase, all phases of the Project, the AIA Document A201™-2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law as modified by the Owner, which document is incorporated herein by reference, shall apply to this Project, except to the extent any provision therein is in direct conflict with any of the provisions of this 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. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

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

#### **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.~~

#### **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 and in the applicable provisions of A201-2017 referenced in Section 2.3.1. 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. In the event of such agreement, the scope of the Project to be commenced prior to completion of the Pre-construction Phase shall be established, requirements for submission of the Guaranteed Maximum Price Amendment Proposal for the Phase, any changes to documentation that will be required, insurance and bonding requirements, scheduling and the closeout of the phase shall be established during such consultation, and be memorialized as a written modification

of the Contract Documents prior to bidding the phase or submission of a Guaranteed Maximum Price Proposal. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

...

~~The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require. § 3.1.1.1 The Construction Manager represents and agrees that it will perform its pre-construction and construction services in accordance with the usual and customary standards of Construction Manager's profession or business and in compliance with all applicable national, federal, state, and municipal laws, regulations, codes, ordinances, and orders and with those of any other body or authority having jurisdiction over the Project. Construction Manager agrees to bear the full cost of correcting Construction Manager's negligent or improper work and services, those of its consultants, and any harm caused by the negligent or improper work or services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Construction Manager concerning design alternatives and potential cost savings shall be subject to the review and approval of the Architect, Owner and the Owner's professional consultants. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity which the Construction Manager knew or reasonably should have known or discovered, as a request for information in such form as the Architect may require. The Construction Manager shall certify to the Owner, with each application for payment that the Work has been constructed in accordance with the Construction Documents prepared by the Architect.~~

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

~~§ 3.1.2.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule, and construction budget requirements, each in terms of the other.~~

~~§ 3.1.2.2 The Construction Manager shall provide direct support to the Architect in the development of each Project's plans and specifications, by meeting a minimum of twice per month to review projects, to review project's budget with the Architect/Design Team throughout the design process and provide field investigation surveys of existing conditions to support the Architect/Design Team. Through this process, the Construction Manager shall identify and resolve building system conflicts, constructability issues, as well as cost and scheduling issues.~~

~~§ 3.1.2.3 The Construction Manager shall participate in all Owner scheduled design review meetings and provide constructability reviews for the Project plans and specifications. For each meeting, the Construction Manager shall work with the Owner and Architect to develop an agenda that tracks each Project, take meeting notes for pre-construction items related to estimates, value analysis and constructability, and distribute them to all parties. Participation in meetings and consultation shall include requirement for preparation of comprehensive notes for each meeting, as well as final reports to the Owner at the end of each phase that addresses the construction schedules, project costs, and constructability.~~

~~§ 3.1.2.4 The Construction Manager shall prepare and submit detailed construction cost estimates as follows:~~

- ~~1. Keep each project on budget by reviewing design development and construction documents and specifications and preparing a detailed estimate based on available design drawings at all milestone reviews during and at the conclusion of the design documentation phases to assess overall project budget~~

compliance.

- 2 Analyze the Project for potential alternative equipment, material, and systems selections for cost savings and prepare "trade-off" studies relative to value engineering.

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

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

§ 3.1.3.4 During the Construction Documents Phase the Construction Manager shall review the contract documents, in its capacity as a contractor and not a design professional, to ascertain whether the components of the mechanical, electrical, and plumbing systems may be constructed without interference with each other, or with the structural or architectural components of the Project. In the event conflicts between such systems are discovered, the Construction Manager shall promptly notify the Owner and the Architect in writing. Constructability reviews shall be performed in conjunction with preparation of preliminary cost estimates as provided below.

§ 3.1.3.5 Notwithstanding any provision of the General Conditions of the Contract for Construction to the contrary, the Construction Manager shall not be entitled to additional compensation for any delay or disruption to the Work arising from any conflict between the mechanical, electrical, and plumbing systems with each other, or with the structural or architectural components of the Project if such conflicts could have been discovered by the Construction Manager through the exercise of reasonable diligence, in its capacity as a contractor and not a design professional, and the Owner and Architect were not informed of such conflicts as required herein. Provided, however, that this provision shall apply only with respect to conflicts appearing in the Drawings and Specifications provided for the Construction Manager's review prior to proposal of a Guaranteed Maximum Price.

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When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; dates of Substantial Completion and Final Completion; and the occupancy requirements of the Owner. If the updated Project schedule(s) indicate that previously approved schedules may not be met, then the Construction Manager shall make appropriate recommendations to the Owner and Architect and, upon written approval of both, shall implement any necessary corrective action.

...

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues. In the event that the Owner, Architect and Construction Manager agree, after consultation, that any phase of construction should be commenced prior to completion of the

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Pre-construction Phase agreement should be reached as to the scope of the Phase to be commenced regarding the following: the requirements for submission of the Guaranteed Maximum Price Amendment Proposal for the Phase to be commenced; any changes to documentation that will be required; insurance and bonding requirements; scheduling and the closeout of the Phase to be commenced. The agreement of the Parties as to such matters reached in consultation shall be memorialized as a written modification of the Contract Documents prior to the bidding phase or submission of a Guaranteed Maximum Price Proposal for the Phase to be commenced.

...

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be prepared and updated at a minimum upon completion of the Schematic Design and Design Development Documents. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action to reduce cost to maintain the budget, including but not limited substitution of materials or revision or alterations in the design, to bring the Project within the Owner's current identified budget, but shall not delete necessary components of the Project without the approval of the Owner's Board of Trustees.

§ 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. [Section deleted.]~~

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§ 3.1.11.2 ~~The Construction Manager shall develop bidders' interest in the Project. To the extent not inconsistent with the Construction Manager's requirements under Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall develop subcontractors' interest in the Project. All subcontracts and material purchases shall be awarded pursuant to the procedures set forth Texas Government Code Chapter 2269, Section 2269.255 and 2269.256.~~

...

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, in accordance with applicable procurement requirements and the Contract. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

...

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.

...

Provide guidance and work with Architect to develop the project cost estimating, scheduling, building systems, and material cost.

...

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, Unless otherwise agreed, in writing, by the Owner, Architect and Construction Manager, when the Construction Drawings and Specifications are one hundred percent (100%) complete, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2. Work as defined in Article 7 herein, (including any Allowances and the Construction Contingency described in Section 3.2.4; the Construction Manager's Fee described in Section 6.1.2; and the Construction Manager's compensation for General Conditions. The Guaranteed Maximum Price as proposed shall be calculated as follows:

Estimated Cost of the Work (as defined in Article 7) PLUS  
Fee (Estimated Cost of the Work TIMES percentage in Section 6.1.2) PLUS  
General Conditions (Estimated Cost of the Work TIMES percentage in Section 6.1.7)  
EQUALS Guaranteed Maximum Price Proposed

The Guaranteed Maximum Price shall be proposed no later than sixty (60) days after approval of the final Construction Drawings and Specifications by Owner, and not before such approval. If any Guaranteed Maximum Price proposal to be submitted to the Owner exceeds previously approved estimates or Owner's budget, the Construction Manager shall work with the Architect to develop options that are acceptable to the Owner and within the Owner's previously approved cost estimates or Owner's budget, including but not limited to substitution of materials or revisions or alterations to the Construction Documents to bring the Project within budget and meet the Owner's requirements for the date of Substantial and Final completion. In no event, however, shall necessary components of the Project be deleted without approval of the Owner's Board of Trustees (the "Board"). The Guaranteed Maximum Price Proposal shall be submitted to the Owner's Representative not later than thirty (30) days prior to the Board Meeting at which the Guaranteed Maximum Price Proposal is posted to be approved by the Board in order to allow sufficient time for review by the Owner's representative and negotiation of necessary changes. If the Guaranteed Maximum Price Proposal is submitted after such deadline for submission, approval of the Guaranteed Maximum Price Proposal will be posted on the agenda of the next scheduled or special Board Meeting which will allow for a thirty (30) day review.

§ 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. The Guaranteed Maximum Price Proposal may not be based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager on other than a fixed fee basis.

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- .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; proposal 1. To the extent provisions included in the clarifications attempt to change any term or condition included in this Agreement or the AIA A201-2017 General Conditions of the Contract for Construction, and such provision conflicts with the terms stated in either of these two documents, such provision will be deemed to have no effect and will be void *ab initio*;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee; allowances, if any; the Construction Contingency, if any; the Construction Manager's Fee; and the Construction Manager's compensation for General Conditions; and
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and based.
- .5 A date by which the Owner must accept the Guaranteed Maximum Price. [Paragraph deleted.]

§ 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. may include a Construction Contingency of not more than five-percent (5%) of the estimated Cost of the Work (the

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"Construction Contingency". The Construction Contingency is not allocated to any particular item of the Cost of the Work and is established to address costs incurred in the Work from unforeseeable causes, or details which could not have been anticipated by the Construction Manager at the time of the Owner's approval of the Guaranteed Maximum Price, but which would be otherwise reimbursable as Cost of the Work. Such unforeseeable causes or unanticipated details include, but are not limited to, refinement of details of design within the scope of standards, quality and quantities which are reasonably inferable from the Guaranteed Maximum Price documents, and correction of minor defects not relating to design. Any unforeseeable causes or unanticipated details which exceed the Construction Contingency shall be borne by the Construction Manager at the Construction Manager's sole risk. In the final accounting, and at any other times upon request of the Owner, all supporting documentation for all uses of the Construction Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Contingency shall accrue to the Owner.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect-Owner's Representative and Architect (and Program Manager, if any) to review the Guaranteed Maximum Price proposal not later than thirty (30) days prior to the deadline for posting the Guaranteed Maximum Price proposal for approval by the Board of Trustees, in order to allow review and revision as necessary. In the event that the Owner or Architect discover any incomplete information, inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Upon approval of the form of the Guaranteed Maximum Price Proposal by the Owner's Representative and Architect, the Guaranteed Maximum Price Proposal will be placed on the Board Agenda for approval by the Board of Trustees. Following acceptance of a Guaranteed Maximum Price, Price Proposal by the Board, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment-Amendment, prepared by legal counsel for the Owner, 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 and incorporate the information and assumptions from the Construction Manager's Guaranteed Maximum Price Proposal, upon which it is based.

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

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§ 3.2.9 The Construction Manager shall not include in the Guaranteed Maximum Price ~~any~~ 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 the Construction Manager for which a Texas independent school district is exempt. Upon request the Owner will provide the Construction Manager with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes. No such taxes shall be reimbursable costs under this Contract.

...

§ 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 and the Owner's issuance of a Notice to Proceed. The Notice to Proceed shall not be issued until the Agreement has been signed by the Construction Manager the Owner, as well as the Owner and Architect, have received and approved as to form all required payment and performance bonds and documentation of insurance as required by Article 11 of the A201-2017. Issuance of the Notice to Proceed shall not relieve the Construction Manager of its responsibility to comply with the requirements in this Section 3.3.1.2.

§ 3.3.1.3 The Construction Manager shall achieve Substantial Completion of the entire Work not later than the date set out in the Guaranteed Maximum Price Amendment, subject to adjustment of this Contract Time as provided in the Contract Documents.

...

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to at which the Owner, Architect, Construction Manager and appropriate Subcontractors discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect. The Construction Manager shall provide periodic presentations updating the progress, quality and status of the Work to Owner's Board of Trustees, at Owner's request, at no additional cost to Owner.

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

...

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, not less frequently than monthly, showing percentages of completion and other information required by the Owner.

...

The Construction Manager shall keep, and make available to the Owner and Architect, at any time, including the meetings referenced in Section 3.3.2.1, 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, site and if workers are performing self-performed work, assigned tasks, identification of equipment on site and its uses during that day, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

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The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress, including changes to the Work approved by Owner and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above, 3.3.2 and all subsections.

#### **ARTICLE 4 — OWNER'S RESPONSIBILITIES**

##### **§ 3.3.2.6 Administrative Handling of Buyout**

§ 3.3.2.6.1 Within a reasonable time following execution of the Guaranteed Maximum Price Amendment and as required by the schedule, Construction Manager shall complete procurement of all of the Work on the Project and shall provide to the Owner a written accounting of any difference between the estimated Cost of the Work allocated to the work covered by each Contract bought out, and the difference if any, in the amounts actually contracted for in connection with the same work, whether positive or negative ("Buy-Out Difference"). As the various divisions of work are bought out, if the Contract for any category of work on buyout is less than the amount estimated for that same work in the Guaranteed Maximum Price Proposal, the amount of the Buy-Out Difference shall be accounted for in a Buyout Report, to be delivered to the Architect monthly, with the Construction Manager's monthly payment applications.

§ 3.3.2.6.2 The Buyout Report prepared as described herein, shall be submitted with each Application for Payment by the Construction Manager, showing additions and deletions (applications of the Buy out funds to other line items) since the prior payment application. Receipt of such Buy out Report by the Architect shall be a condition precedent to the Architect's certification of the Application for Payment. The revised line items shall also be reflected on the Schedule of Values, so that the bottom line Guaranteed Maximum Price (including any changes by Change Order) remains the same throughout the Construction Phase.

**§ 3.3.2.6.3** As each division of work is bought out, the Construction Manager shall provide, with its next scheduled payment application:

1. a copy of the Buy-out Report showing the changes from the prior month; and
2. an executed copy of the CMAR-Subcontractor Agreement entered with the selected Subcontractor for any portion of the Work bought out during the month for which the Payment Application is submitted. The copy of the Subcontract Agreement shall be provided regardless of whether the amount reflected therein is the same, greater or less than the estimated line item for that Work. In any event the difference, if any, shall be reflected on the Buy-out Report for that month.
3. If all of the work allocated to a Subcontractor in the Guaranteed Maximum Price is not bought out at the same time, a copy of any later Change Order to the Subcontract shall be provided with the Construction Manager's next monthly payment application after the applicable buy-out, in lieu of the Subcontract.

**§ 3.3.2.6.4** If the Subcontract for any category of work on buy-out is greater than the amount estimated for that same work in the Guaranteed Maximum Price Proposal, the Construction Manager may deduct the shortfall amount from the balance shown in the Buy-out Report and apply the funds to the category of work for which the shortfall is attributable. This application transaction shall be documented in the Buy-out Report delivered with Construction Manager's next Payment Application.

#### **§ 3.3.2.7 Administrative Handling of Allowances**

**§ 3.3.2.7.1 Use of Allowance for Intended Purpose.** Unless otherwise provided in the Contract Documents, allowances shown in the Guaranteed Maximum Price for a particular purpose shall be used to cover the actual cost to the Construction Manager of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Construction Manager's actual costs of unloading and handling at the site, labor, installation costs, overhead, profit at the rate stated herein, and other expenses contemplated in connection with the stated purpose of that allowance as itemized in the Construction Manager's recommendation and proposed pricing.

**§ 3.3.2.7.2 Proposals for Performance of Allowance Work.** When performing Work under allowances, Construction Manager shall solicit and receive no fewer than three (3) written proposals to provide the Work (in addition to its self-performance proposal, if any), and shall provide a copy of such proposals with a recommendation to the Architect as to which proposal offers the best value to the Owner. If the Construction Manager is proposing to self-perform the Work, its Proposal shall be submitted to the Owner 24 hours in advance of its receipt of the third-party proposals. The Construction Manager shall begin the Work as directed by the Architect following Owner's approval of the estimated cost to be reimbursed from the Allowance, on the basis of the Construction Manager's best value recommendation from the third-party proposals submitted. If Owner believes the Construction Manager's proposal for self-performance to provide the best value to Owner, it will provide notice of its approval of the self-perform proposal and a notice to proceed with the Work.

**§ 3.3.2.7.3 Allowance Report.** An Allowance Report shall be maintained by the Construction Manager showing the credits and debits to each allowance. Once the Work for which an allowance was allocated is complete, the balance of the allowance shall be subject to utilization for other shortfalls within the Guaranteed Maximum Price. If funds are moved from an allowance to cover such a shortfall, that transaction shall be documented in the Allowance Report, with a notation as to the application of such funds.

**§ 3.3.2.7.4 Selection of Materials and Equipment by Owner.** The Construction Manager shall provide the Owner with a reasonable period, but in no event fewer than thirty (30) days, to make its selections of materials and equipment under an allowance after provision of the options.

**§ 3.3.2.9** If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 7.8, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 7.8.

#### **§ 3.4. Trench Safety**

**§ 3.4.1** 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.

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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.

§ 3.4.2 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.

#### § 3.5 Professional Services

Section 3.12.10 of A201-2017 shall apply to both the Preconstruction and Construction Phases.

#### § 3.6 Hazardous Materials

The Construction Manager shall have no responsibility for the handling, removal, or disposal or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, polychlorinated biphenyl (PCB), or other hazardous materials. The Construction Manager shall have no responsibility to initially discover the presence of such hazardous materials on the Project site but shall have an affirmative duty to immediately report to the Owner the existence of such materials actually known by the Construction Manager or the Construction Manager's consultants to be present on the Project site. Provided, however, that these limitations shall not apply if the Construction Manager places or allows such hazardous materials to be placed on the Project site.

### ARTICLE 4 OWNER'S RESPONSIBILITIES

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§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2. For purposes of Texas Business and Commerce Code Section 56.054(e)(3), the Owner represents to Construction Manager that funds are available and have been authorized for the full contract amount for the construction of improvements.

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

§ 4.1.4.1 The Owner shall (either directly or by contract with the Architect) may furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall (either directly or by contract with the Architect) when such information is, in the professional opinion of the Architect, required, may furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and

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~~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 site but shall have no duty to do so. Notwithstanding the foregoing, if the Owner provides such survey, the Construction Manager shall remain responsible to independently investigate the physical characteristics, legal limitations, and utility locations for the Project site. In the event that the Construction Manager damages any utilities during construction, the Construction Manager, at its cost, shall immediately repair the same at its sole cost and expense.~~

~~§ 4.1.4.3 The Owner, when such services are requested, (directly or by contract with the Architect), when such services, in the professional opinion of the Architect, are required, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.~~

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

~~§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E214™ 2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement. [Section deleted].~~

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~~The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative is the Board of Trustees of the Willis Independent School District and is referred to throughout the Contract Documents as if singular in number. The Board of Trustees, by majority vote, is the only representative of the Owner, an independent school district, having the power to enter into and amend a contract, to approve changes in the scope of Work, to approve and execute a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price, to agree to an extension to the date of Substantial or Final Completion or to terminate a contract. The Owner may designate in writing one or more persons to represent the Owner with respect to the day-to-day activities of the Project; however, such representatives shall have the authority to bind the Owner only to the extent expressly authorized by the Owner and shall have no implied authority. The Owner has delegated its authority to approve Change Orders or Construction Change Directives in connection with this Contract, in an amount not exceed \$50,000.00. Such delegate shall have the authority in any instance she/he feels is in the best interest of the Owner to require Board Approval on any delegated matter including a Change Order or Change Directive.~~

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

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

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

...

Compensation for the Construction Manager's Preconstruction Phase Services described herein shall be included in the compensation described in Article 6, and shall not exceed the sum of: TWENTY THOUSAND AND 00/100 DOLLARS (\$20,000.00).

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

~~[Section deleted.]~~

~~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.~~ ~~[Section deleted.]~~

§ 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.~~ ~~Compensation for Preconstruction Services shall be equitably adjusted if the originally contemplated scope of services is significantly modified.~~

§ 5.1.4 ~~Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions, all of which must be adequately documented in order to be eligible for reimbursement.~~

§ 5.2.1 ~~Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. If the Construction Phase Services do not commence for any reason, compensation for Preconstruction Services shall be made in accordance with Section 5.1.1 upon termination of the Agreement.~~

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

~~-% [Section deleted.]~~

~~ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES~~  
~~ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES~~

§ 6.1.1 ~~The For the Construction Manager's performance of the Work as described in Section 3, and all subparts, 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 actual Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.~~ ~~Construction Manager's Fee and Construction Manager's compensation for General Conditions Costs.~~

...

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The Construction Manager's Fee shall be One and Eighty Three One Hundredths percent (1.83%) of the actual Cost of the Work as defined in Article 7. For purposes of clarity, the Construction Manager's fee shall not be calculated as a percentage of the Contract Sum, the Guaranteed Maximum Price, or the Construction Budget. No Construction Manager's Fee shall be paid on the Construction Contingency until funds are allocated from the contingency to the Cost of the Work.

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Such change may occur only by action of Owner's Board of Trustees.

...

1. On Change Orders and Construction Change Directives, the total mark-up for overhead and profit included in the total cost to the Owner shall be based upon the following schedule:
2. For the Construction Manager, for Work performed by the Construction Manager's own forces, ten percent (10%) of the cost (0% for change orders to be paid out of any contingency allowance);
3. For the Construction Manager, for the Work performed by the Construction Manager's Subcontractors, four percent (4%) of the amount due the Subcontractors (0% for the change orders to be paid out of any contingency allowance);
4. For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost; and
5. The costs to which the above percentages shall be applied will be determined in accordance with Article 7 of the AIA Document A201™-2017 General Conditions of the Contract for Construction as applicable.

In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including quantities and unit costs of labor and materials extended and totaled.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed ~~percent~~ (—%) of the standard rental rate paid at the place of the Project charges of all necessary machinery and equipment, exclusive of hand tools, used at the site of the Work, whether rented from the Contractor or others, including installation, minor repairs and replacements, fuel, dismantling, removal, transportation and delivery costs thereof, shall be at rates consistent with those prevailing in the area, provided such charges are approved by the Owner.

1. The projected usage for each piece of equipment to be rented for use on the project and the estimated total rentals shall be considered by the Contractor before the piece of equipment is rented so that an appropriate rent versus buy decision can be made. Purchased equipment shall be considered "job owned". At the completion of the project, the Contractor shall transfer title and possession of all remaining job-owned equipment to the Owner, or Contractor may keep any such equipment for an appropriate fair market value credit to job cost, which will be mutually agreed to by Owner and Contractor. Maintenance records shall be provided for "job owned" equipment, certifying that the equipment was properly maintained, per the manufacturer's instruction.
2. Each piece of equipment to be rented shall have hourly, daily, weekly and monthly rates and the most economical rate available shall be reimbursed based on the circumstances of actual need and usage of the piece of equipment while it is stationed at the jobsite. When the piece of equipment is no longer needed for the work, no rental charges will be reimbursed if the piece of equipment remains at the jobsite for the convenience of the contractor.
3. The reimbursable equipment rental rates shall not exceed 75% of the published rates based on the latest edition of "Rental Rates and Specifications" published by the Associated Equipment Distributors (AED). If the AED publication does not contain information related to the type of equipment rented, the Contractor will be allowed to use a maximum equipment rental rate equal to 75% of the current competitive rental rates from local third-party equipment rental companies.
4. The aggregate rentals chargeable for each piece of Contractor owned tools or equipment shall not exceed 50% of the fair market value of such equipment at the time of its commitment to the Work. The

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original purchase price and date of purchase of the equipment will be documented with a copy of the purchase invoice for the piece of equipment. Such aggregate limitations will apply and no further rentals shall be charged even if a piece of equipment is taken off the job and is later replaced by a similar piece of equipment. For purposes of computing the aggregate rentals applicable to aggregate rental limitations, rental charges for similar pieces of equipment will be combined if the pieces of equipment were not used at the same time.

- .5 Fair market value for used material and equipment as referred to in this contract shall mean the estimated price a reasonable purchaser would pay to purchase the used material or equipment at the time it was initially needed for the job. Note: This is usually lower than the price a reasonable purchaser would pay for similar new construction material or construction equipment.
- .6 Rental charges for equipment which is not owned by Contractor or any of its affiliates, subsidiaries, or other related parties and is rented from third parties for use in proper completion of the Work shall be considered reimbursable, will be reimbursed at actual costs, as long as rental rates are consistent with those prevailing in the locality. For any lease/purchase arrangement where any of the lease/purchase rental charges were charged to Owner as reimbursable job costs, appropriate credit adjustments to job cost will be made for an appropriate pro rata share of the fair market value of the equipment at the time it was last used on the job.
- .7 All losses resulting from lost, damaged or stolen tools and equipment shall be the sole responsibility of the Contractor, and not the Owner, and the cost of such losses shall not be reimbursable under this contract.
- .8 The Contractor shall be required to maintain a detailed equipment inventory of all job-owned equipment (either purchased and charged to job cost or job-owned through aggregate rentals) and such inventory shall be submitted to Owner each month. For each piece of equipment, such inventory should contain at a minimum (1) original purchase price or acquisition cost (2) acquisition date (3) approved FMV at the time the piece of equipment was first used on the job and (4) final disposition.
- .9 All costs incurred for minor maintenance and repairs shall be reimbursed at actual cost. Such costs include routine and preventative maintenance, minor repairs, and other incidental costs. Repairs and/or replacement of a capital nature are considered to be covered by the rental rates. Major repairs and overhauls are not considered routine and ordinary expenses; consequently, such costs are not reimbursable and are intended to be covered by the rental rates.

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The Construction Manager and the Construction Manager's surety shall be liable for and shall pay to the Owner the sums hereinafter stipulated as liquidated damages for each calendar day of delay until the Work is substantially completed: SEVEN HUNDRED FIFTY DOLLARS (\$750.00).

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

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which are difficult to exactly ascertain. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion, shall be construed as a breach of this Agreement.

**§ 6.1.7 Other General Conditions Costs (Project Site Costs) To Be Reimbursed**

**§ 6.1.7.1** The Construction Manager's General Conditions Costs shall be reimbursed each month based on the following formula: The actual Cost of the Work (as defined herein) multiplied by Two and Sixty Seven One Hundredths percent (2.67%). The Construction Manager's Fee shall not be included in the Cost of the Work prior to figuring the General Conditions Costs.

~~(Insert provisions for bonus.)~~

**§ 6.1.7.2** The term General Conditions Costs shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The General Conditions Costs shall not be compensated based on actual cost and include only the items set forth in this § 6.1.7.2. The following work is included in general conditions costs to be reimbursed in accordance with Section 6.1.7.1:

**.1 Labor Costs**

- a. ~~Wages or salaries of all the Construction Manager's supervisory, administrative, and other personnel, whether employees or independent contractors, when stationed at the site. This includes all the Construction Manager's staff except employees performing portions of the Work pursuant to Section 9.4. This includes, but is not limited to, project superintendents (including assistants), managers and administrators (including assistants), project engineers (including assistants), secretaries and other office staff, estimating, cost control, scheduling and safety staff (dedicated to Project and located on site), field engineers (including assistants), and security staff and watchmen.~~
- b. ~~Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in General Conditions Costs under articles 1a of this section, Labor Costs. 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 shall be allocated to Home Office Overhead and will be compensated within the Construction Manager's Fee Percentage.~~
- c. ~~Cost of obtaining criminal history record information (CHRI) on personnel engaged by Construction Manager if CHRI is required for the Project.~~
- d. ~~Expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling between projects in discharge of duties connected with the Work~~
- e. ~~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.~~

**.2 Materials and Equipment, Temporary Facilities and Related Items**

- a. ~~All costs of mobilization and demobilization of the project site.~~
- b. ~~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 Owner-approved storage of materials and equipment, if any, suitably stored off the site at a mutually acceptable location.~~
- c. ~~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.~~
- d. ~~Rental and costs of operation of Construction Manager's site office, including transportation, erection, installation, dismantling, maintenance, and removal; supply of general office supplies, equipment (including computers, and copiers) and furnishings; maintenance, repairs of same and temporary utilities.~~
- e. ~~Cost of temporary project signage; temporary fire protection; tree protection not included in a specific subcontract scope; dewatering of project site and areas not included in a specific subcontract scope; partitions; temporary streets/roads including maintenance and dust control;~~

off-site parking for onsite personnel; temporary safety covered pedestrian walkways, building entry protection.

- f. Costs of safety training programs and OSHA compliance; first aid supplies and training costs; cups, water, coffee for personnel and subcontractors (i.e. office and Jobsite/field water and ice) including cost of distribution; hard hats and safety goggles required by site personnel and subcontractors.
- g. Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office. This includes, but is not limited to, costs of reproduction of construction documents outside of the agreed upon number to be provided; electronic distribution of construction documents; record drawings and shop drawings and other submittals; project documentation, including photographs and digital video; record documents including paper and electronic media; closeout documents; and operations and maintenance manuals.
- h. Cost of licenses and dues arising from construction permitting requirements; software and data processing licenses; CPM scheduling software licenses.
- i. Costs for communications services, communications devices, electronic equipment and software, directly related to the Work and located at the site, including website and software; hosting costs; and communication devices including telephones (wired and wireless), fax machines, pagers and radios.
- j. Costs of advertising for trade contractors, subcontractors and vendors as required to establish guaranteed maximum price.
- k. Cost of providing warranties and warranty inspection.
- l. Any cost designated as General Conditions in the RFP for this project, such portion of the RFP is incorporated herein by reference.

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

#### **ARTICLE 7 — COST OF THE WORK FOR CONSTRUCTION PHASE**

##### **ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE**

###### **§ 7.1 Costs to Be Reimbursed as Cost of the Work.**

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~~§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform any portion of the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops, written approval, at off-site workshops, to the extent allowed by Texas Government Code Sections 2269.255 or 2269.257.~~

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

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

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

~~[Section deleted.]~~

~~§ 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. [Section deleted.]~~

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

...

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

...

~~§ 7.5.1 Costs of transportation, storage, 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. [Section deleted.]~~

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

~~§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal. [Section deleted.]~~

~~§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies. [Section deleted.]~~

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

...

~~§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Costs of removal of debris from the site of the Work and its proper and legal disposal and final cleaning of the Project Site.~~

~~§ 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. [Section deleted.]~~

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

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

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

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~~§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents. Documents, not including software licenses.~~

~~§ 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. [Section deleted.]~~

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

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

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

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

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

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

...

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

...

~~§ 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. [Section deleted.]~~

~~§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9:7.9 or are included in the definition of General Conditions Costs set out in Section 6.1.7 (and all subsections).~~

...

~~§ 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~~

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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 sharing a common Tax ID Number.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Section 3.3.2.6 and Article 9.

**§ 7.9 ~~Costs Not To Be Reimbursed~~ Costs Not to Be Reimbursed**  
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- .6 ~~Except as provided in Section 7.7.3 of this Agreement, costs~~ Costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not ~~specifically and expressly~~ described in Sections 6.1.7.2 (and all subsections), 7.1 to 7.7;
- ...
- .9 Costs for services incurred during the Preconstruction Phase.
- .10 Costs that are otherwise collectable from insurance or bonds.
- .11 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract shall be reimbursed at cost, however not included as Cost of Work, nor shall any fee percentage be applied to the amount. In no event will the cost reimbursable for the insurance required by contract exceed 0.5% of the GMP contract value.

**ARTICLE 8 ~~DISCOUNTS, REBATES, AND REFUNDS~~**

**ARTICLE 8 ~~DISCOUNTS, REBATES, AND REFUNDS~~**

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

§ 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. Cost of the Work will be credited with all insurance policy ~~discounts/refunds, performance and payment bond rebates or refunds, refunds or return premiums from any subcontractor default insurance, refunds or rebates from any contractor controlled insurance programs applicable to the project, merchandise rebates of any nature, refunds of any nature, insurance dividends, and a portion of any volume rebates or free material credits earned with purchase of material or other goods and services charged to the job.~~

**ARTICLE 9 ~~SUBCONTRACTS AND OTHER AGREEMENTS~~**

§ 8.3 "Cash" discounts which may accrue to the Contractor will be limited to a maximum of 1.5% of invoice cost. Any portion of "Cash" discounts greater than 1.5% shall automatically accrue to Owner if the contractor is eligible to take advantage of the discounts.

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

## **ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS**

**§ 9.1** Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids-proposals in accordance with Section 9.3 below. The Construction Manager shall obtain bids-proposals 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-proposals to the Architect and Owner with an indication as to which bids-the Construction Manager-proposals the Construction Manager determines to provide the best value to the Owner, and therefore, 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; Manager as offering the best value to the Owner; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid-proposal that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid-proposal be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid-proposal 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. Construction Manager shall state the additional cost in writing and shall provide written proof of same before Owner compensates Construction Manager.

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

## **ARTICLE 10 ACCOUNTING RECORDS**

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

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

**§ 9.3** Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and obtain proposals from Subcontractors for the performance of all major elements of the Work. To the extent an element of the Work is included in the General Conditions Costs, it is not considered a major element of the Work and shall not be procured under this Section 9.3. All bids or proposals shall be sent directly to Construction Manager.

**§ 9.3.1** The Construction Manager, the Owner Representative, and Project Manager, if any, shall receive and open all subcontractor proposals in a manner that does not disclose the contents of the proposals during the selection process to a person not employed by the Construction Manager, Architect, Engineer or Owner. The Construction Manager shall review and evaluate all bids or proposals and shall recommend to the Owner a list of bidders to which the Construction Manager proposes to award subcontracts for the Project Work.

§ 9.3.2 In the event that the Owner requires that the Construction Manager to award any portion of the work to a subcontractor not proposed as best value by the Construction Manager, the Owner shall compensate the Construction Manager by a change in price, time, or Guaranteed Maximum Price for any additional cost or risk that the Construction Manager may incur by reason of the Owner's requirements. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

§ 9.3.3 The Construction Manager shall deliver a copy of all advertising, solicitation documents, proposals, evaluations of proposals and all documents relevant to the Guaranteed Maximum Price proposal to the Owner with the Guaranteed Maximum Price proposal.

§ 9.3.4 The Construction Manager shall make all bids and proposals available for public inspection within seven (7) days following final selection of the subcontractors.

#### § 9.4 Self-Performed Work

§ 9.4.1 The Construction Manager may seek to perform portions of the Work itself; provided however, the Construction Manager must submit its proposal for those portions of the Work it seeks to self-perform to the Owner, at the office of the Owner's Representative, not later than twenty-four (24) hours in advance of the scheduled receipt of proposals from third-party subcontractors.

§ 9.4.2 The Construction Manager's proposal for those portions of the Work it seeks to self-perform shall be submitted the same form and in the same manner as proposals are required from all other third-party subcontractors or trade contractors, and shall be for the same scope of work which the competing trade contractors or subcontractors have submitted proposals, as if the Construction Manager itself were proposing as a third-party subcontractor or trade contractor.

§ 9.4.3 Following receipt of all third-party and self-performance proposals the Owner shall decide, in its sole discretion, whether or not Construction Manager's proposal for self-performing portions of the Work offers the best value to Owner.

§ 9.4.4 In order for the Construction Manager's self-performed proposal to be considered the best value proposal by the Owner, the Owner must be able to evaluate the Construction Manager's Proposal against at least one other bona fide competitive proposal. If at least one other proposal is received for the same scope of Work as the Construction Manager, and the Owner, in its sole discretion, determines the scope of Work to have been competitively procured then the Owner may accept performance of the work by the Construction Manager. In such event, the Owner must accept the Construction Manager's proposal to self-perform a specific scope of work, as the best value for the Owner, in writing.

§ 9.4.5 If selected to self-perform a specific scope of work, the Construction Manager will be permitted to be paid for the self-performed work pursuant to progress payments, as if Construction Manager were a subcontractor, and like any third-party subcontractor, the Construction Manager shall be required to submit a "subcontractor" Payment Application each month for its self-performed work in the same manner and in the same form as the third-party subcontractors on the Project. The "subcontractor" Payment Application submitted by the Construction Manager shall be attached to its Construction Manager's Payment Application as documentation of the work completed that month and the associated costs. Payments to the Construction Manager on account of self-performed work shall be included in the Cost of the Work, but the Construction Manager shall not receive an additional Construction Manager's Fee for self-performed work.

§ 9.4.6 If the Owner reasonably determines in its sole discretion, that the scope of work sought to be self-performed was not subject to bona fide competition, it may accept the Construction Manager's proposal in writing, as the best value for the Owner and allow the Construction Manager to be paid as described in Section 9.4.5, or may reject all proposals (including those of third parties) and require the Construction Manager to repeat the procurement for that scope of work. If the Owner elects to accept the Construction Manager's proposal as the best value.

§ 9.5 The Construction Manager shall include statutory required notices in the information to proposers including:

1. The successful bidder's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406.

2. The successful bidder's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;
3. A notice of the sales tax exemption for the project and the procedure for obtaining any required exemption verification or certificates;
4. The notice regarding trench safety and shoring safety required by Texas Health and Safety Code Section 756.023; and
5. The following waiver language:  
"By submitting a bid or proposal, each bidder or proposer agrees to waive any claims it has or may have against the Owner, the Architect, the Construction Manager, and their respective officers, trustees, employees, agents, or representatives, arising out of or in connection with the administration, evaluation, recommendation or selection of any bid or proposal; waiver of any requirements under the bid or proposal documents or contract documents; acceptance or rejection of any bid or proposal; and award of the contract."

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

§ 9.7 In accordance with Texas Government Code Section 2269.257, if a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected, the Construction Manager may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements. Construction Manager shall be paid for its own performance in accordance with Section 9.4.

#### **ARTICLE 10 ACCOUNTING RECORDS AND AUDIT RIGHTS**

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

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

**PAGE 25**

§ 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 first day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the thirtieth day of the same 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 ~~(—)forty-five (45)~~ days after the Architect receives the Application 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~~ Guaranteed Maximum Price for the Cost of the Work of each individual line item in the schedule of values.

...

§ 11.1.7.1 The amount of each progress payment shall ~~first include~~ be computed as follows:

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1. ~~That Take~~ 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; of values.~~ Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2017.
2. ~~That Add~~ 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 Add~~ that portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; ~~and~~
4. ~~The Add,~~ 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-completion~~ and
5. ~~Add the Construction Manager's General Conditions Costs computed based upon the Cost of the Work completed during the period covered by the Payment Application multiplied by the percentage rate stated in Section 6.1.7.1.~~

PAGE 26

Five Percent (5%)

...

N/A - All items subject to retainage.

...

There shall be no reduction or limitation or modification of retainage prior to Final Completion.

...

Retainage may be withheld by Owner following initiation of an audit and only as to those specific charges in question until the conclusion of the audit. In no event shall retainage be withheld on reconciled charges for more than thirty (30) days after submission of the Application for Payment

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

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, Subcontractors. The percentage of retainage held on Subcontracts shall be the same percentage of retainage withheld from Construction

~~Manager and the Construction Manager shall execute subcontracts in accordance with these agreements that contain the same terms and conditions related to payment and retainage as those contained in this Agreement.~~

~~§ 11.1.12 In taking action on the submitting 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. Construction Manager shall be responsible for the Construction Manager's errors or omissions.~~

~~PAGE 27~~

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

- ~~1 the Construction Manager has fully performed the Contract, except for including the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which Owner agrees in writing, extend beyond final payment;~~
- ~~2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and Payment which have been certified by Construction Manager and reviewed and approved by the Owner's auditors or other representatives;~~
- ~~3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2 and approved by Program Manager, if applicable, in accordance with Section 11.2.2.2;~~
- ~~4 The Construction Manager certifies to the Owner that the Project, to the best of the Construction Manager's knowledge, has been constructed in general accordance with Architect's Construction Documents, the certificate shall be the Texas Education Agency's Certification of Project Compliance, signed by a duly authorized officer of the Construction Manager and properly notarized;~~
- ~~5 Construction Manager has provided all documents required by Section 9.10.2 of AIA Document A201-2017; and~~
- ~~6 Owner's Board of Trustees has voted to accept the Work and approve Final Payment.~~

§ 11.2.2 Within ~~30~~ sixty (60) days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

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

§ 11.2.2.2 Within seven (7) days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201-2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201-2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

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

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

~~Payment or in the event of mediation, no later than thirty (30) days after the execution of the Settlement agreement, if any.~~

§ 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. The amount of final payment shall be calculated as follows:~~

- ~~1. Begin with the actual Cost of Work substantiated by the Construction Manager's final accounting which includes deductions for all discounts and unused contingencies and construction savings achieved in the Cost of Work, if applicable.~~
- ~~2. Add the actual expended General Conditions costs substantiated by the Construction Manager's final accounting which includes savings to the Owner for unused General Conditions.~~
- ~~3. Add the Construction Manager's Fee.~~
- ~~4. Subtract amounts, if any for which Architect or Owner disputes, refuses or withholds payment, if any.~~
- ~~5. If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner then subtract such amounts as Architect shall determine as the cost for completing incomplete work and the value of unsettled claims.~~
- ~~6. Subtract all previous payments made by Owner.~~
- ~~7. In no event shall the total of subsections 1, 2 and 3 above exceed the Guaranteed Maximum Price.~~
- ~~8. If the aggregate of previous payment made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner.~~

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

~~—% set out in the Texas Prompt Payment Act, Texas Government Code Chapter 2251.~~

#### ARTICLE 12 — DISPUTE RESOLUTION

§ 11.4 ~~Subject to Texas Government Code Chapter 2251, the Contract shall not have been fully performed until all work required by the Construction Documents including but not limited to the following have been performed:~~

- ~~1. provision of record or as-built drawings executed or complete;~~
- ~~2. provision of executed or complete certificates of documents evidencing warranties and owner-operator's manuals;~~
- ~~3. provision of all documents evidencing required testing, inspection, verification and other engineering or consulting services required under the construction contract; and~~
- ~~4. insuring agreements and bonds covering all periods of construction and any subsequent periods required under the contract.~~

#### ARTICLE 12 DISPUTE RESOLUTION

...

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

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[ X ] Litigation in a court of competent jurisdiction

...

~~ARTICLE 13 TERMINATION OR SUSPENSION~~  
~~ARTICLE 13 TERMINATION OR SUSPENSION~~

...

~~§ 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, cause. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in 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. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1. [Section deleted.]~~

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

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

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

~~§ 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. [Section deleted.]~~

...

~~Following execution of the Guaranteed Maximum Price Amendment Owner may terminate this Agreement with or without cause, at any time. In the event such termination is for the convenience of the Owner, the Construction Manager shall be compensated for reasonable costs incurred prior to notice of termination, profits on only that portion~~

of the work actually performed prior to termination, and reasonable demobilization costs. The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201-2017.

...

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

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

~~4. Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201-2017. [Section deleted.]~~

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

**§ 13.2.3 Termination by the Owner for Convenience Construction Manager.**

~~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.)~~

~~Following execution by both parties of the Guaranteed Maximum Price Amendment, if the Project work is stopped for a period of ninety (90) days through no act or fault of the Construction Manager, then the Construction Manager may, upon ten (10) additional days written notice to the Owner, terminate this agreement and recover from the Owner payment for all work actually performed, for any loss sustained upon any materials, equipment, tools, equipment, and machinery, and profits on only that portion of the work actually performed prior to termination. If the cause of the work stoppage is removed prior to the end of the ten (10) day notice period, the Construction Manager may not terminate this agreement.~~

**§ 13.3 Suspension**

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

## **ARTICLE 14 — MISCELLANEOUS PROVISIONS**

### **ARTICLE 14 MISCELLANEOUS PROVISIONS**

PAGE 30

**§ 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. For all phases of the Project, the Construction Manager shall purchase and maintain insurance and performance and payment bonds in the coverages and amounts as required by state law and set forth in Article 11 of the AIA Document A201-2017. In addition, the Construction Manager shall provide the Professional Liability Coverage as shown therein.~~

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**§ 14.3.2** The Construction Manager shall, as a condition precedent to allowing any subcontractor to proceed with any work on the Project, either require that the subcontractor provide proof of existence of workers compensation coverage for all its employees, or, at the Construction Manager's sole discretion, provide for coverage of the subcontractor's employees under the Construction Manager's workers' compensation insurance coverage. The Construction Manager shall maintain records of all required certificates of insurance provided by the subcontractors and shall forward copies to the Owner and the Architect.

**§ 14.3.3** As required by Chapter 2253 of the Texas Governmental Code, the Construction Manager is required as a condition precedent to the execution of the Contract, to execute a PERFORMANCE BOND in the form required by TEXAS STATUTES, in an amount equal to ONE HUNDRED PERCENT (100%) of the Contract Sum, and a PAYMENT BOND in the form required by TEXAS STATUTES, in an amount equal to ONE HUNDRED PERCENT (100%) of the Contract Sum as security for payment of all persons performing labor and furnishing materials in connection with this Contract. (Bonding Company is to furnish such forms). All bonds shall name the Owner as additional obligee. The Payment and Performance Bonds shall meet requirements for the bonds set out in Section 11.4.3 through Section 11.4.9 of the AIA Document A201-2017.

**§ 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. [Section deleted.]

**§ 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. [Section deleted.]

**§ 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. [Section deleted.]

**§ 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. [Section deleted.]

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

**§ 14.3.1.6 Other Insurance**

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

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. [Section deleted.]

**§ 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. [Section deleted.]

**§ 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

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~~a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents. [Section deleted.]~~

~~§ 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. [Section deleted.]~~

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

~~AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or in any other format agreed to by the Owner, Construction Manager and Architect.~~

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#### **ARTICLE 15 — SCOPE OF THE AGREEMENT**

~~§ 14.5.1 Pursuant to Texas Government Code Chapter 2271, as amended, if this contract is valued at \$100,000 or more and if the Construction Manager has at least ten (10) full time employees, then the Construction Manager, by its execution of this Agreement represents and warrants to the Owner that the Construction Manager does not boycott Israel and will not boycott Israel during the term of this Agreement. This section does not apply to a sole proprietorship.~~

~~§ 14.5.2 By signing this Agreement, the undersigned certifies as follows: Under Section 231.006 of the Texas Family Code, the Construction Manager certifies that the individual or business entity named in this Contract is not ineligible to receive the specified payments and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.~~

~~§ 14.5.3 Construction Manager verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Contractor has misrepresented its inclusion on the Comptroller's list such omission or misrepresentation will void this Agreement.~~

~~§ 14.5.4 The requirements of Subchapter J, Chapter 552, Government Code may apply to this Contract and the Construction Manager agrees that the contract can be terminated if the Construction Manager knowingly or intentionally fails to comply with a requirement of that subchapter. Therefore, if the Guaranteed Maximum Price for this Project is One Million Dollars (\$1,000,000.00) or more, the Construction Manager agrees to: (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 governmental body 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.~~

~~§ 14.5.5 Pursuant to Texas Education Code §22.08341, Construction Manager shall obtain criminal history record information through the Fingerprint-Based Applicant Clearinghouse of Texas ("FACT Clearinghouse"), for all of Construction Manager's Covered Employee in accordance with the requirements of Section 3.4.5 of the AIA Document A201™-2017, General Conditions of the Contract for Construction.~~

~~§ 14.5.6 Construction Manager shall take all actions and shall comply with all federal, state, and local legal requirements, and shall also comply with all recommendations of the Centers for Disease Control.~~

~~§ 14.5.7 Pursuant to Texas Government Code Chapters 2276 and 809, if this contract is valued at \$100,000 or more and if Contractor has at least ten (10) full-time employees, then Contractor represents and warrants to the Owner that the Contractor does not boycott energy companies and will not boycott energy companies during the term of this Agreement. This provision does not apply to sole proprietorships.~~

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

**ARTICLE 15 SCOPE OF THE AGREEMENT**  
**PAGE 32**

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

...

.5 ~~Building Information Modeling Exhibit, if completed: 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.)~~

...

**NOTE:** Any Supplementary Conditions or other Conditions of this Contract listed above, the Project Manual or other terms or conditions attempted to be incorporated into this Contract, which contradict or conflict with the terms of this document or the terms and conditions set out in the AIA Document A201™-2017, General Conditions of the Contract for Construction shall be void and subordinate to the terms set out in the AIA Document A201™-2017, General Conditions of the Contract for Construction.

...

Exhibit B – Prevailing Wage Rates

**PAGE 33**

|   |                              |
|---|------------------------------|
| <u>WILLIS INDEPENDENT SCHOOL DISTRICT</u> | <u>STEWART BUILDERS, LLC</u> |
|---|------------------------------|

...

|   |  |
|---|--|
| <u>Dr. Kimberley James, Superintendent of Schools</u> | <u>Tommy Bertrand, General Manager</u> |
|---|--|

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

**AIA® Document D401™ – 2003**

I, Blake Henshaw, 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 17:52:00 ET on 01/15/2025 under Order No. 3104241723 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)*

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*P Blake Henshaw*

(Signed)

Attorney: Walsh Gallegos Kyle Robinson & Roalson, P.C.

(Title)

January 15, 2025

(Dated)

