AIA® Document A133™ – 2019

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

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

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

The Dallas Independent School District, a political subdivision of the State of Texas
Dallas, Texas
9400 North Central Expressway
Dallas, Texas 75231

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

<<GC Company Name>>
<<GC Address>>0
<<GC City/State/Zip>>
(###) ###-#### Phone

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

<<BP# XXX:>>
<<ORG #XXX XX Elementary School>>
<<ORG Address>>
<<Dallas, Texas 75XXX>>

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

<<A/E Company Name>>
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Version Dated 08/07/2026
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.

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

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

TABLE OF ARTICLES

ARTICLE 1 INITIAL INFORMATION

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

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

« »

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

« »

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

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

.1 Design phase milestone dates, if any:

« »

.2 Construction commencement date:

« »

.3 Substantial Completion date or dates:

« »

.4 Other milestone dates:

« »

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

«The Owner will consider recommendations made by the Owner's Design and the Construction Manager team during the preconstruction phase of the project for the Owner to achieve the Owner's planned substantial completion and final completion dates for the project. »

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

« »

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

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

«The Owner has published a Construction Cost Limitation (CCL) for this project in the Request for Proposal (RFP) document. The published CCL will be the target budget for the scope of work published in the RFP and it is expected that the agreed-upon Guaranteed Maximum Price (GMP) for the project will be less than or equal to the established CCL. »

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

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« »

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

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

« »

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

.1 Geotechnical Engineer:

« »

.2 Civil Engineer:

« »

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

« »

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

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

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« »

§ 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.)

«~~The Owner expects the CM to propose a detailed staffing plan and related estimate of reimbursable costs as defined in the applicable Articles of the Agreement to provide complete Preconstruction Services in accordance with the terms of DISD's RFP document and the A133 Article 3.1 and Article 3.2 for GMP Development Services.~~

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

« »

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

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

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, as amended, Conditions of the Contract (General, Supplementary and other Conditions), as amended, Drawings, Specifications, Addenda issued before execution of this Agreement, all sections of the Project Manual, other documents listed in this Agreement, Modifications issued after execution of this Agreement, the proposal signed by the Construction Manager, the request for proposals, and Construction Manager's proof of payment and performance bonds, and proof of insurance, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15. Any reference to AIA Document A201-2017 in this Agreement shall be construed as the AIA Document A201-2017, as amended.

2.1.1 Note: It is the Owner's intent not to change the provisions of this agreement by inserting different contract terms in the ~~anticipated~~ GMP Amendment(s). If there are any Owner-approved changes to the terms of this Agreement, they must be highlighted in red and specifically noted as agreed to by the Owner in the GMP Amendment on another form as approved contract modifications. Any revision, amendment, or modification to the Standard Form of this Agreement shall be valid, binding, and enforceable only if said revision, amendment, or modification is made conspicuous by being underlined, lined-through, or highlighted in this Agreement signed by the Construction Manager and the authorized representative of Owner's Board of Trustees. In the event of conflict, terms and conditions contained in the Agreement, as amended, shall take precedence over terms and conditions contained in the General Conditions, as amended, and the terms and conditions in the General Conditions, as amended, shall take precedence over all other terms and conditions contained in the other Contract Documents. If the Request for Proposals and the Proposal are included in the Contract Documents, then the Request for Proposals shall take precedence over the Proposal, unless specifically agreed otherwise herein.

2.1.2 The Board of Trustees, by majority vote, is the only representative of the Owner, an independent school district, having the power to enter into or amend a contract, to approve changes in the scope of the Work, to approve and execute a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price, to agree to an extension to the date of Substantial or Final Completion or to terminate a contract. The Owner designates Superintendent of Schools or designee authorization to sign all other documents on behalf of the Board of Trustees .

2.1.2 The Board designates the authorized representatives identified on the front page to act on its behalf as provided in paragraph 4.2 of this Agreement.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to perform the Work defined in the Contract Documents, in accordance with the Owner's requirements and construction cost limitations, as approved by the Owner's Board of Trustees, as set forth in the Contract Documents; to furnish efficient construction administration, management services, and supervision; to furnish construction services, if allowed in accordance with law; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. The Owner and Construction Manager shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager, Construction Manager's subcontractors, and other persons or entities employed by the Owner for the Project.

§ 2.3 General Conditions

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

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

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The 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 alternative and potential cost savings shall be subject to the review and approval of the Architect, Owner, and the Owner's professional consultant. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by, or that reasonably should have been discovered by, or made known to the Construction Manager as a request for information in such form as the Architect may require.

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

§ 3.1.3 Consultation

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

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

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

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

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

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

§ 3.1.5 Phased Construction
The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues. The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications so as to facilitate the proposal of a Guaranteed Maximum Price when all elements of the Drawings and Specifications are at least ninety percent complete, unless mutually agreed otherwise by the Architect, Owner and the Construction Manager.

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

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action and/or cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Design Development Documents or the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without consent of the Superintendent of Schools or designee. In the event that the quality or scope identified in the estimates are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner and are within the Owner's budget.

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

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

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

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

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

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

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

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

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

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

§ 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.)

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§ 3.2 Guaranteed Maximum Price Proposal

1. **§ 3.2.1** When all elements of the Construction Documents are at least 90 percent complete, at a time mutually-agreed upon by the Owner, the Construction Manager, and the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Construction Phase Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, the general conditions; and the Construction Manager's Fee. If any Guaranteed Maximum Price proposal submitted to the Owner exceeds previously-approved estimates or the Owner's budget, then the Construction Manager shall make appropriate recommendations to the Owner and Architect for cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without consent of the Superintendent of Schools or designee. In the event that the quality or scope identified in the proposal are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner, are within the Owner's budget, and meet the Owner's requirements for dates of Substantial Completion and Final Completion. The Construction Manager may propose separate Guaranteed Maximum Prices for separate Works within the Project, as schedules and efficiencies dictate. The Construction Manager will work with the Architect to achieve a Guaranteed Maximum Price that is fully acceptable to Owner and is within the Owner's budget for the Work and for the Project.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development by the Architect, the Construction Manager shall provide, the Guaranteed Maximum Price for costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom.

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

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

.2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2 , to supplement the information provided by the Owner and contained in the Drawings and Specification;

.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; the estimated Not-to-Exceed costs of providing: preconstruction services, general conditions, general requirements, conventionally procured liability insurance required by the contract (or the agreed upon costs of a Contractor Controlled Insurance Program), builder's risk *insurance costs, CM's performance and payment bond costs, estimated allowable charges for Subcontractor Default Insurance (SDI) (if applicable*); and the Construction Manager's Fee at the contractually agreed upon Construction Manager Fee percentage of Cost of Work as defined in this agreement;

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

.5 The date of Final Completion upon which the proposed Guaranteed Maximum Price is based, which date shall not be more than sixty (60) days after the date of Substantial Completion; and

.6 The Guaranteed Maximum Price proposal may not be based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager on other than a maximum price basis..

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

The Guaranteed Maximum Price will contain a separately-identified contingency amount (the "Construction Contingency").

The Construction Contingency is not allocated to any particular item of the Cost of the Work and is established for the Construction Manager's use as may be required for costs incurred in the Work from unforeseeable causes, or details which could not have been anticipated by the Construction Manager at the time of the Owner's approval of the Guaranteed Maximum Price.

Such unforeseeable causes or unanticipated details include, but are not limited to, refinement of details of design within the scope of standards, quality and quantities which are not reasonably inferable from the Guaranteed Maximum Price documents, the correction of minor defects not relating to design, delays in receipt of materials~~., and additional costs relating to Subcontractor defaults not reimbursed by a Subcontractor's bonding company .~~

The Construction Manager, with Owner's representative's written approval, may utilize the Construction Contingency for any of the above items within the Cost of the Work without the necessity of a Change Order, without constituting a Change in the Scope of the Work, and without resulting in any change in the Guaranteed Maximum Price. **This approval will mirror the same documentation as used in the Owner's CAEA process.**

Any unforeseeable causes or unanticipated details which exceed the Construction Contingency shall be borne by the Construction Manager at the Construction Manager's sole risk.

All unused contingency savings will accrue and be available for use, only as detailed above, by the Construction Manager until the Construction Manager's final accounting.

In the final accounting, all supporting documentation for all uses of the Construction Contingency which was not previously provided to Owner shall be provided to Owner.

Upon final accounting, all remaining monies in the Construction Contingency shall accrue to the Owner.

The Guaranteed Maximum Price shall also include a separately-identified contingency amount, an "Owner's Contingency," which is defined as a contingency fund within the Guaranteed Maximum Price established by the Owner for the Owner's exclusive use. Monies from Owner's Contingency may be spent in the discretion of Owner's Representative and without additional Board of Trustees approval, but with subsequent notice to Owner's Board of Trustees. Any unused Owner's contingency shall accrue to the Owner.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both. As soon as feasible after Architect's preliminary approval of the Construction Manager's proposed Guaranteed Maximum Price, the Architect will prepare the Amendment forms and return them to the Construction Manager for review, signature, and return to the Owner.

§ 3.2.6 The Owner's Board of Trustees shall be allowed not less than forty-five (45) days after receipt of the Construction Manager's signed Guaranteed Maximum Price Amendment to review and take action on the Amendment. Unless the Owner's Board of Trustees accepts the Guaranteed Maximum Price Amendment by Board action within forty-five (45) days after District's receipt, the Amendment will not become effective. Following acceptance of a Guaranteed Maximum Price, the Owner shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

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

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

§ 3.2.9 The Construction Manager shall not include in the Guaranteed Maximum Price, any taxes from which Owner is exempt.

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

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

§ 3.3.1.2

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

§ 3.3.2.1.1

For scope of work bid packages typically performed by subcontractors, Construction Manager or their teaming partner, or their joint venture partner, may "self-perform" such work on a cost-plus fee basis subject to an agreed upon guaranteed maximum price for the "self-performed work", where the Construction Manager will specify their self-performed work proposed percentage subcontract fee for the self-perform bid package scope of work with their bid submission. The 'self-performed work' fee percentage will be limited to a percentage mutually agreed to by both parties when the Owner agreed to accept the Construction Manager's self-performed work as "best value" for the project. The Construction Manager must bid their proposed Work to be "self-performed" against at least three non-related party trade contractors submitting responsible bona fide bids and Owner will decide if such bid constitutes the "best value' for the District. The Construction Manager's detailed bid for any Self-Performed Work Bid Package must be turned in to the Owner as a sealed bid 24 hours before the bids are due from any other bidders. Any subcontract for "self-performed work" will provide for payments in an amount equal to the Cost of the Work (as defined in the Agreement) plus the mutually agreed upon Construction Manager's self-performed work subcontract fee subject to the mutually agreed not-to-exceed "self-performed work" subcontract guaranteed maximum price. All terms and provisions of any subcontract for "self-performed work" will be consistent with the terms and conditions of the Agreement with the exception of the agreed upon subcontract Fee percentage. All savings under any such subcontract for "self-performed work" shall be applied to reduce the Cost of the Work under the Agreement and the Guaranteed Maximum Price of the Agreement. For purposes of defining "self-performed work" subject to this Contract provision, any division of Construction Manager, or any separate Construction Manager or subcontractor that is partially owned or wholly owned by the Construction Manager or any of their employees or employee's relatives will be considered a related party entity and not a non-interested trade contractor and will be subject to this provision regarding "self-performed work". No self-performed work will be allowed to be performed on a lump sum basis.

3.3.2.1.1.1Pursuant to Texas Government Code Chapter 2269, Subchapter F, if during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from a subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager. Any joint venture partners and Teaming Agreement partners shall not be qualified to submit bona fide proposals to be used for comparison to the Construction Manager's proposal to self-perform portions of the Work under this section.

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

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

.2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;

.3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate;

.4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.

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

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

3.3.2.1.5 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 prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee with a GMP basis, 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 Section 6.11 below.

3.3.2.1.6 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 7.8.1, 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 7.8.2.

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

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

§ 3.3.2.4 Daily Logs
The Construction Manager shall keep, and make available to the Owner and Architect at any time, including at the meetings referend in paragraph 3.3.2.3 above, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

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

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

.1 The Occupational Safety and Health Administration standards for trench safety in effect for the Construction of the Work.

.2 The special shoring requirements, if any, of the Owner.

.3 Any geotechnical information obtained by Owner for use by the Construction Manager in the design of the trench safety system.

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

3.4 Per Texas Government Code, Section 2269.257, if a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected, the Construction Manager may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements. Construction Manager shall be paid for its own performance in accordance with Section 3.3.2.1 and Section 7 herein.

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

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs, including the Owner's Contingency as provided in Section 3.2.4. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

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

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

§ 4.1.4.2 The Owner shall furnish surveys as provided in Section 2.2.3 of AIA A201-2017.

§ 4.1.4.3 Unless provided by the Architect by agreement with the Owner, the Owner, when such services are reasonably required by the scope of the Work, and are requested by the Architect or Construction Manager and approved by the Owner, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

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

§ 4.2 Owner's Designated Representative
Owner's Board of Trustees designate the Superintendent of Schools or his to act on its behalf in the day-to-day administration of the Project, to issue stop work orders, and to authorize expenditures within the Owner's contingency. ____.

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

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

4.4 Inspection And Testing
Pursuant to Texas Government Code Section 2269.058, the Owner shall provide or contract for, independently of the Construction Manager, construction materials engineering, and testing and inspection services necessary for acceptance of the Work by Owner.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

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

«A total lump sum amount for Preconstruction Phase Services as described in the Owner's RFP document and in Articles 3.1 and 3.2 of this Agreement will be the mutually agreed total lump sum amount of $xxx,xxx » which will be payable in mutually agreed upon amounts upon submission of agreed upon deliverables. GMP Amendment #1 will document this agreed upon total lump sum amount along with a breakdown of how much will be paid for each set of deliverables spread out over the period that the agreed upon Preconstruction Phase Services are performed.

~~**§ 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.)*~~

~~Reimbursable costs for labor and labor burden cost for Preconstruction Phase services and the estimated hours expected to be spent on Preconstruction Services will be documented in an Exhibit to this agreement and are further defined in Article 7 of this agreement. The Exhibit to this agreement covering the estimated reimbursable costs for Preconstruction Phase services will be in a format provided in the Owner's RFP document and all estimated costs shall be subject to audit verification for accuracy and compliance with the terms of Article 7 of this agreement.~~

~~**Individual or Position**~~	~~**Rate**~~

~~**§ 5.1.2.1** Hourly billing rates for Preconstruction Phase services shall be based on actual verifiable base wages paid to the Construction Manager's employees or to any authorized Consultant firm employees and will include all actual verifiable labor burden costs to be paid or incurred by the Construction Manager or any authorized Consultant firm employees, 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. All allowable labor burden costs will be as defined in Article 7 of this agreement and subject to the limitations included in this agreement. and shall remain unchanged unless the parties execute a Modification.~~

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

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

§ 5.2.2 Payments are due and payable within thirty (30) days of receipt of the Construction Manager's invoice and Certification for Payment from the Architect. Amounts unpaid more than thirty (30) days after the invoice receipt from the Architect shall bear interest in accordance with Texas Government Code Section 2251.025
*(**Note: These blanks should be filled in with "30" if the school board meets more often than once per month, or filled in with "45" if the school board meets once per month**).*
« » (« »
(Insert rate of monthly or annual interest agreed upon.)

« » % « »

ARTICLE 6 COMPENSATION FOR ~~PRECONSTRUCTION AND~~ CONSTRUCTION PHASE SERVICES
§ 6.1 Contract Sum
§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract in accordance with the terms of this agreement. ~~after execution of the Guaranteed Maximum Price Amendment.~~ The Contract Sum for Construction Phase services is the Cost of the Work as defined in Articles 6 and 7 plus the Construction Manager's Fee subject to the limitations of the overall approved CCL or approved GMP.

§ 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.)

No Construction Manager's fee shall be paid on the Construction Manager's Contingency or the Owner's Contingency until funds are allocated from those contingencies to the Cost of the Work.~~., or as provided in Section 2.3.2.1.~~

« » The Construction Manager percentage Fee shall be calculated at the Fee percentage proposed in their competitive RFP proposal which is <<< _____>>>> percent. The Fee to be paid monthly will be the agreed upon Fee % times all billable Reimbursable Costs for ~~Preconstruction Services,~~ General Conditions, General Requirements, Bonds, Insurance, Trade Contractor work and other reimbursable costs as further defined in this Agreement and/or the Owner approved GMP Amendments.

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

« The Construction Manager's Fee to be added or deducted on any approved GMP change order costs will be the same as the percentage documented Article 6.1.2.»

«Change orders to the Approved CCL and/or the Approved GMP are Only by agreement of Owner's Board of Trustees »

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

~~«See AIA Document A201-2017, Section 7.1.4 »~~

The following terms and conditions will govern the pricing of all change order adjustments to lump sum and unit price subcontracts and any lower-tier sub-subcontract change orders:

It is understood that these contract provisions will govern the pricing and administration of all change order proposals to be submitted by Trade Contractors and/or all other lower tier Subcontractors (all referred to as "Contractor" in this 6.1.4 contract provision. In the event of a conflict between the other contract documents used for the project, this provision will govern. Note: Any provisions of the A201 Article 7 regarding change orders that do not conflict with these A133 contract provisions will also apply. Also note that these provisions do not apply to any cost-plus fee with Guaranteed Maximum Price Subcontracts or Self-Performed Work subcontracts which will be governed by the terms of those special subcontracts.

Contractor agrees that it will incorporate *the terms of this contract provision into all agreements with lower tier Contractors who will also include this provision into agreements with all lower tier Subcontractors, etc. It is understood that these change order pricing provisions apply to all types of contracts and/or subcontracts specifically including lump sum (or fixed price contracts), unit price contracts. It is further understood that these change order provisions will apply to all methods of change order pricing specifically including lump sum change order proposals, unit price change order proposals, and cost-plus Fee change order proposals.*

Whenever change order proposals to adjust the contract price become necessary, the Owner will have the right to select the method of pricing to be used by the Contractor in accordance with the pricing provisions found in this contract provision. The options will be (1) lump sum change order proposal, (2) unit price change order proposal, or (3) cost -plus Fee change order proposal as defined in the following provisions.

1.1 ***Lump Sum Change Order Proposals:*** *The Contractor will submit a properly itemized Lump Sum Change Order Proposal covering the additional work and/or the work to be deleted. This proposal will be itemized for the various components of work and segregated by labor, material, and equipment in a detailed format satisfactory to Owner. The Owner will require itemized change orders on all change order proposals from the Contractor, Subcontractors, and sub- Subcontractors regardless of tier. Details to be submitted will include detailed line-item estimates showing detailed materials quantity take-offs, material prices by item and related labor hour pricing information and extensions (by line item or by drawing as applicable.)*

1.2 ***Labor:*** *Estimated labor costs to be included for self-performed work shall be based on the actual cost per hour paid by the Contractor for those workers or crews of workers who the Contractor reasonably anticipates will perform the change order work. Estimated labor hours shall include hours only for those workers and working foremen directly involved in performing the change order work. Supervision above the level of working supervisors (such as general foremen, non- working foremen, superintendent, project manager, etc.) is considered to be included in the Markup Percentages as outlined in paragraphs 1.6 and 1.7 of this Contract provision. Note: No separate allowances for warranty or safety expenses will be allowed as a direct cost of a change order. Costs attributed to warranty expenses and safety expense will be considered to* *be covered by the Markup Percentages as outlined in paragraphs 1.6 and 1.7 of this Contract provision.*

1.3 ***Labor Burden:*** *Labor burden allowable in change orders shall be defined as employer's net actual cost of payroll taxes (FICA, Medicare, SUTA, FUTA), net actual cost for employer's cost of union benefits (or other usual and customary fringe benefits if the employees are not union employees), and net actual cost to employer for worker's compensation insurance taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, etc. Contractor shall reduce their standard payroll tax percentages to properly reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to payroll taxes. (An estimated percentage for labor burden may be used for pricing change orders. However, the percentage used for labor burden to price change orders will be examined at the conclusion of the project and an adjustment to the approved change orders will be processed if it is determined that the actual labor burden percentage should have been more or less than the estimated percentage used.)*

1.4 ***Material:*** *Estimated material change order costs shall reflect the Contractor's reasonably anticipated net actual cost for the purchase of the material needed for the change order work. Estimated material costs shall reflect cost reductions available to the Contractor due to "non- Cash" discounts, trade discounts, free material credits, and/or volume rebates. "Cash" discounts (i.e. prompt payment discounts of 1.5% or less) available on material purchased for change order work shall be credited to Owner if the Contractor is provided Owner funds in time for Contractor to take advantage of any such "cash" discounts. Price quotations from material suppliers must be itemized with unit prices for each specific item to be purchased. "Lot pricing" quotations will not be considered sufficient substantiating detail.*

1.5 ***Equipment****: Allowable change order estimated costs may include appropriate amounts for rental of major equipment specifically needed to perform the change order work (defined as tools and equipment with an individual purchase cost of more than $750). For Contractor owned equipment, the "bare" equipment rental rates allowed to be used for pricing change order proposals shall be 75% of the monthly rate listed in the most current publication of The AED Green Book divided by 173.3 to arrive at a maximum hourly rate to be applied to the hours the equipment is used performing the change order work. Further, for Contractor owned equipment the aggregate equipment rent charges for any single piece of equipment used in all change order work shall be limited to 50% of the fair market value of the piece of equipment when the first change order is priced involving usage of the piece of equipment. Fuel necessary to operate the equipment will be considered as a separate direct cost associated with the change order work.*

1.6 ***Maximum Markup Percentage Allowable on Self-Performed Work:*** *With respect to pricing change orders, the maximum Markup Percentage Fee to be paid to any Contractor (regardless of tier) on self-performed work shall be a single markup percentage not-to-exceed ten percent (10%) of the net direct cost of (1) direct labor and allowable labor burden costs applicable to the change order or extra work; (2) the net cost of material and installed equipment incorporated into the change or extra work, and (3) net rental cost of major equipment and related fuel costs necessary to complete the change in the Work.*

1.7 ***Maximum Markup Percentages Allowable on Work Performed by Lower Tier Contractors:*** *With respect to pricing the portion of change order proposals involving work performed by lower tier Contractors, the maximum Markup Percentage Fee allowable to the Contractor supervising the lower tier Contractor's work shall not exceed four percent (4%) of the net of all approved change order work performed by all Contractors combined for any particular change order proposal.*

1.8 ***No Markup on Bonds and Liability Insurance Costs****: Change Order cost adjustments due to increases or decreases in bond or insurance costs (if applicable) shall not be subject to any Markup Percentage Fee.*

1.9 ***Direct and Indirect Costs Covered by Markup Percentages****: As a further clarification, the agreed upon Markup Percentage Fee is intended to cover the Contractor's profit and all indirect costs associated with the change order work. Items intended to be covered by the Markup Percentage Fee include, but are not limited to: home office expenses, branch office and field office overhead expense of any kind; project management; superintendents, general foremen; non-working foremen, estimating, engineering; coordinating; expediting; purchasing; detailing; legal, accounting, data processing or other administrative expenses; shop drawings; permits; auto insurance and umbrella insurance; pick-up truck costs; and warranty expense costs. The cost for the use of small tools is also to be considered covered by the Markup Percentage Fee. Small tools shall be defined as tools and equipment (power or non-power) with an individual purchase cost of less than $750.*

1.10 ***Deduct Change Orders and Net Deduct Changes****: The application of the markup percentages referenced in the preceding paragraphs 1.6 and 1.7 will apply to both additive and deductive change orders. In the case of a deductive change order, the credit will be computed by applying the sliding scale percentages as outlined in paragraphs 1.6 and 1.7 so that a deductive change order would be computed in the same manner as an additive change order. In those instances where a change involves both additive and deductive work, the additions and deductions will be netted, and the markup percentage adjustments will be applied to the net amount.*

1.11 ***Contingency****: In no event will any lump sum or percentage amounts for "contingency" be allowed to be added as a separate line item in change order estimates. Unknowns attributable to labor hours will be accounted for when estimating labor hours anticipated to perform the work. Unknowns attributable to material scrap and waste will be estimated as part of material costs.*

1.12 ***Change Order Proposal Time and Change Directives****: The Contractor's proposals for changes in the contract amount or time shall be submitted within seven (7) calendar days of the Owner's request, unless the Owner extends such period of time due to the circumstances involved. If such proposals are not received in a timely manner, if the proposals are not acceptable to Owner, or if the changed work should be started immediately to avoid damage to the project or costly delay, the Owner may direct the Contractor to proceed with the changes without waiting for the Contractor's proposal or for the formal change order to be issued. In the case of an unacceptable Contractor proposal, the Owner may direct the Contractor to proceed with the changed work on a cost-plus basis with an agreed upon "not-to-exceed" price for the work to be performed. Such directions to the Contractor by the Owner shall be confirmed in writing by a "Notice to Proceed on Changes" letter within seven (7) calendar days. The cost or credit, and or time extensions will be determined by negotiations as soon as practical thereafter and incorporated in a Change Order to the Contract.*

1.13 ***General Liability Insurance and Bonds:*** *In the event the Contractor has been required to furnish comprehensive general liability insurance and/or performance and/or payment bonds as part of the base contract price, a final contract change order will be processed to account for the Contractor's net increase or decrease in comprehensive general liability insurance costs and/or net bond premium costs associated with change orders to Contractor's base contract price.* ~~*Note: If a change order or a separate payment is made to reimburse the Contractor for the cost of a Performance and/or Payment Bond, the Contractor will be required to remit (or credit via change order) any bond dividend, rebate, or credit that it will receive from the Surety after the successful completion of the project.*~~

2.1 ***Unit Price Change Order Proposals****: As an alternative to Lump Sum Change Order Proposals, the Construction Manager acting with the approval of the Owner may choose the option to use Contract Unit Prices. Agreed upon Contract Unit Prices shall be the same for added quantities and deductive quantities. Unit Prices are not required to be used for pricing change orders where other methods of pricing change order work are more equitable.*

2.2 *The Contractor will submit, within seven (7) days after receipt of the Owner's written request for a Unit Price Proposal, a written Unit Price proposal itemizing the quantities of each item of work for which there is an applicable Contract Unit Price. The quantities must be itemized in relation to each specific contract drawing.*

2.3 *Contract Unit Prices will be applied to net differences of quantities of the same item. Such Contract Unit Prices will be considered to cover all direct and indirect costs of furnishing and installing the item including the Contractor's Markup Percentage Fee.*

3.1 ***Cost Plus Change Order Proposals***: *As an alternative to either Lump Sum Change Order Proposals or Unit Price Change Order Proposals, the Owner may elect to have any extra work performed on a cost-plus markup percentage fee basis. Upon written notice to proceed, the Contractor shall perform such authorized extra work at actual cost for direct labor (working foremen, journeymen, apprentices, helpers, etc.), actual cost of labor burden, actual cost of material used to perform the extra work, and actual cost of rental of major equipment (without any charge for administration, clerical expense, general supervision or superintendent of any nature whatsoever, including general foremen, or the cost or rental of small tools, minor equipment, or plant) plus the approved Markup Percentage Fee.*

The intent of this clause is to define allowable cost plus chargeable costs to be the same as those allowable when pricing Lump Sum Change Proposals as outlined in subparagraphs 1.1 through
1.13 above. Owner and Contractor may agree in advance in writing on a maximum price for this work and Owner shall not be liable for any charge in excess of the maximum. Daily time sheets with names of all Contractor's employees working on the project will be required to be submitted to the Owner for both labor and equipment used by the Contractor for time periods during which extra work is performed on a cost- plus fee basis. Daily time sheets will break down the paid hours worked by the Contractor's employees showing both base contract work as well as extra work performed by each employee.

4.1 ***Accurate Change Order Pricing Information:*** *Contractor (Subcontractor or sub-subcontractor) agrees that it is responsible for submitting accurate cost and pricing data to support its Lump Sum Change and/or Cost Plus Change Order Proposals or other contract price adjustments under the contract. Contractor further agrees to submit change order proposals with cost and pricing data which is accurate, complete, current, and in accordance with the terms of the contract with respect to pricing of change orders. Contractor agrees that any "buy-out savings" on change orders shall accrue 100% to Owner. "Buy-out savings" are defined as any savings negotiated by the Contractor with a Subcontractor or a material supplier after receiving approval of a change order amount that was designated to be paid to a specific Subcontractor or supplier for the approved change order work.*

4.2 ***Right to Verify Change Order Pricing Information:*** *Contractor, Subcontractor and sub-sub- Contractor agrees that any designated Owner's representative will have the right to examine (copy or scan) the records of the Contractor, Subcontractor or sub-sub Contractor's records (during the contract period and up to three years after final payment is made on the contract) to verify the accuracy and appropriateness of the pricing data used to price all change order proposals and/or claims. Contractor agrees that if the Owner determines the cost and pricing data submitted (whether approved or not) was inaccurate, incomplete, not current, or not in compliance with the terms of the contract regarding pricing of change orders, an appropriate contract price adjustment will be made. Such post-approval contract price adjustments will apply to all levels of Contractors and/or Subcontractors and to all types of change order proposals specifically including lump sum change orders, unit price change orders, and cost-plus change orders.*

4.3 ***Requirements for Detailed Change Order Pricing Information: Contractor, Subcontractor and all lower tier Contractors agree to provide and require all Subcontractors and sub-Subcontractors to provide a breakdown of allowable labor and labor burden cost information. This information will be used to evaluate the potential cost of labor and labor burden related to change order work. It is intended that this information represent an accurate estimate of the Contractor's actual labor and labor burden cost components. This information is not intended to establish fixed***

billing or change order pricing labor rates. However, at the time change orders are priced, the submitted cost data for labor rates may be used to price change order work. The accuracy of any such agreed upon labor cost components used to price change orders will be subject to later audit. Approved change order amounts may be adjusted later to correct the impact of inaccurate labor cost components if the agreed upon labor cost components are determined to be inaccurate.

5.1 ***Discounts:*** *If a Contractor enters into an agreement to pay a Subcontractor before they receive payment the Owner and in return they negotiate an early payment discount, the amount of any such discount that the Contractor is allowed to keep as a "cash discount earned" will be limited to two ~~one and ½ percent~~ (2%) of the costs subject to discount. Any percentage of discount greater than two ~~1 and ½~~ percent (2)% shall be credited to the Owner as a reduction to the reimbursable Cost of Work and a credit to trade contracts or material purchases and change orders as applicable.*

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

.1 Time is of the essence in all phases of the Work. It is specifically understood and agreed by and between Owner and Construction Manager that time is of the essence in the Substantial Completion and Final Completion of the Project and the Owner shall sustain actual and direct damages as a result of the 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 an agreement by the Owner and Construction Manager that the amounts stated below are the minimum value of the costs and actual and direct damages caused by the failure of the 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 a delay occurs. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not completed within the agreed time, or within the agreed extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for personnel, attorneys fees, architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utility costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult to exactly ascertain. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion shall be construed as a breach of this Agreement

.2 It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from the Final Payment made to the Construction Manager a sum equal to $1,500.00 per day for each and every additional calendar day beyond the agreed date of Substantial Completion.

.3 Timely Final Completion is an essential condition of this Agreement. The construction Manager agrees to achieve Final Completion of the Agreement within 30 days of the designated or extended date of Substantial Completion. Owner and Construction Manager agree that should Construction Manager fail to achieve Final Completion of the Agreement by the deadline, Owner shall continue to be damaged to a greater degree by such delay. The Construction Manager and Owner agree that the amount of liquidated damages for each calendar day Final Completion is delayed beyond the date set for Final Completion shall be the sum of $500.00 per day. Owner may deduct from the Final Payment made to Construction Manager, or, if sufficient funds are not available, then Construction Manager shall pay Owner the amounts specified per day for each and every calendar day the breach continues after the deadline for Final Completion of the Work.

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

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~~**§ 6.1.12** Other:~~
(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

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

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

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

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

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum or unit price shall be determined in accordance with Article **6.1.4** ~~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 with a GMP shall be calculated in accordance with the terms of those subcontracts which shall conform to the terms of this agreement as far as costs to be reimbursed.

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

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

ARTICLE 7 COST OF THE WORK FOR ~~PRECONSTRUCTION AND~~ CONSTRUCTION PHASE
§ 7.1 Costs to Be Reimbursed
§ 7.1.1 The term Cost of the Work shall mean the following direct, actual and verifiable costs reasonably and necessarily incurred by the Construction Manager in the proper performance of the work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7. Cost of the Work that exceeds the Guaranteed Maximum Price shall be borne by the Construction Manager.

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

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

§ 7.1.4 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing this agreement.

7.1.5 ~~Preconstruction Phase Services,~~ General Conditions and General Requirements All charges, if any, for ~~preconstruction phase services,~~ general conditions, and general requirements (i.e. costs to be reimbursed) shall be delineated separately in an Exhibit to Approved Construction Phase GMPs in accordance with this Agreement in the detailed format that was included in the Owner's RFP. (***Note***: It is the intent of Owner that the approved estimated amount of ~~Preconstruction Services,~~ General Conditions Costs, and General Requirements Costs will be a negotiated Not-To-Exceed amount approved by Owner when this Agreement is approved. It is agreed that the total agreed upon amounts for Preconstruction services, General Conditions, and General Requirements will treated as a Not-To-Exceed Limits and will not be treated as a Fixed price or Lump Sum amounts. The approved Not-to-Exceed amounts approved in the Exhibits to this Agreement will be incorporated into the approved Construction Phase GMP amendments and will be subject to equitable adjustment in accordance with the provisions in Article 7 of the A201 contract document associated with this agreement in the event that the agreed upon schedule for ~~preconstruction services and/or~~ the project completion dates are extended. If the equitable adjustments are the result of the Owner's changes to the approved scope of work or the approved schedule, the approved equitable adjustment to the Not-To-Exceed amounts for these costs will be funded first from any available Owner Contingency funds.

§ 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 *Intentionally deleted.* Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work at the site or are ~~and~~ stationed at a location other than the site, but only for that portion of time required for the Work and are directly attributable to and required for the Work, and are approved by the Owner in the Exhibits attached to this agreement.

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

« »

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

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for employment-related taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3 Reimbursable labor and labor burden costs will be limited to the actual verifiable base wage costs of employees plus any applicable auto allowances paid directly to employees plus the actual allocable costs of payroll taxes, worker's compensation insurance, and the actual verifiable costs of benefits including paid time off. However, the maximum that will be considered reimbursable labor burden will be limited to 45% of the taxable base wages of the aggregate of all ~~each individual's~~ reimbursable employee wages not including the taxable portion of any auto allowances and employer payroll taxes due on auto allowances paid to the employees.

§ 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 approved to be awarded by Owner will be reimbursable as Cost of Work per this Agreement. Any Subcontract Work to be performed by the Construction Manager's own forces on the basis of a bid or proposal submitted by the Construction

Manager per Section 3.3.2.1 and 3.3.2.2, as amended, shall be treated as Work performed by a Subcontractor under this Section. The Construction Manager's compensation for such self-performed Subcontract Work performed shall be based on the amount of the bid or proposal submitted by the Construction Manager for such Work as a Guaranteed Maximum Subcontract amount and will be reimbursed on a cost plus subcontract fee basis with a guaranteed maximum for the proposed amount equal to the bid or proposal for the scope of work submitted in accordance with the terms of Section 3.3.2.1.1 which states that no self-performed work will be allowed to be performed on a lump sum basis..

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

§ 7.5.2 Billable rental rates for Construction Manager owned equipment will be limited to a maximum of 75% of the applicable retail rental rates published by Equipment Watch (adjusted for Dallas, Texas) or 75% of applicable local competitive local rental rates for any equipment not specifically listed by Equipment Watch. The maximum rental charges for Construction Manager or Trade Contractor Owned equipment will be 50% of the fair market value of the equipment when it was first used on the job. Once the rental charges reach 50% of the fair market value the equipment will remain on the job as long as needed with no further rental charges. The Construction Manager or applicable Trade Contractor will retain ownership of the equipment when it is no longer needed for the job.

§ 7.5.3 ~~C~~osts of removal of debris from the site of the Work and its proper and legal disposal, and the costs of final clean-up.

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

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

§ 7.6 Miscellaneous Costs
§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents ~~that can be directly attributed to this Contract~~ subject to the limitations and other provisions of this agreement. Construction Manager will credit Owner with the amount of any applicable bond or insurance policy rebates or dividends received or due to be received in connection with the project (plus the approved Construction Manager percentage Fee) whether or not the rebates or dividend(s) are received before or after the final payment is made for the project.

§ 7.6.1.1 *Intentionally deleted.* The maximum cost to be reimbursed to the Construction Manager for the premiums paid to secure the required performance and payment bond for the project will be the agreed upon percentage of the CCL or the total amount of the approved GMP that was stated in the Owner's RFP document. This percentage limitation will be applied to the bond premiums required to paid before any cost reduction that becomes available from a bond dividend or a return premium due to savings. Reimbursable Bond premiums net of any dividends and/or return premiums shall be treated as an allowance in the contract Guaranteed Maximum Price for the project with any savings to be returned to the Owner as a credit to the final Guaranteed Maximum price for the project.

7.6.1.1.1 The Owner will reimburse the Construction Manager for the cost of any approved Performance and Payment bonds purchased ~~to cover subcontracts with values expected to exceed \$500,000~~. ~~The Construction Manager shall~~

~~require the Subcontractor whose bids are expected to be more than $500,000 to provide bid bonds when submitting their bids.~~ The subcontractors will ~~also~~ be required to provide add alternate bid estimate of the maximum cost to furnish a performance and payment bond. The subcontractor will be required to furnish an invoice from their bonding company and a copy of the performance and payment bonds in their first change order request for their contract as long as the cost of the bond is not more than the maximum amount they included in their bid alternate to furnish an acceptable performance and payment bond. ~~Any bond dividends expected to be received by subcontractor upon successful completion of their contract work will be credited in a close-out credit change order to their subcontract. If Construction Manager elects to purchase performance and payment bonds from subcontractors with subcontract values less than $500,000 the associated costs will not be considered reimbursable and will be considered to be covered by the Construction Manager's FEE.~~

§ 7.6.1.2 *Intentionally deleted.* The amount to be reimbursed to the Construction Manager for all contractually required liability insurance will be actual costs not to exceed a total of .6% of the net reimbursable Cost of Work (but not including the allowable charges for liability insurance or the Construction Manager Fee). If the Construction Manager's cost of contractually required liability insurance is greater than the amount agreed to be reimbursed per this contract provision, the difference shall be considered to be covered by the Construction Manager's FEE. The allowable charges to cover required liability insurance will also be considered to cover the cost of any liability insurance claims and any related deductibles. Any liability insurance costs not covered by the allowable maximum percentage stated in this agreement will be considered to be covered by the contractor's fee. *Note: If the Owner elects to allow the Construction Manager to use a Contractor Controlled Insurance Program (CCIP) in accordance with Article 7.6.1.4 there will be no other liability insurance charges allowed to be reimbursed other than the agreed upon ~~maximum~~ % for CCIP*.

7.6.1.3 In the event that the Construction Manager elects to utilize a Subcontract Default Insurance program (SDI or SUBGUARD®), the ~~maximum~~ amount to be considered reimbursable costs under this contract will be 1% of the total amount of subcontracts ~~greater than $500,000~~ enrolled in such an insurance program. ~~Reimbursement for SDI costs at .75% will be limited to subcontracts in excess of $500,000.~~ Reimbursement for SDI at 1% will not be calculated on amounts paid directly by the Construction Manager for material purchases, major equipment purchases, or rental of equipment. Any Construction Manager costs incurred in connection with the Construction Manager's elected SDI program that exceeds the amount reimbursed by the Owner under the formula in this paragraph will be considered to be covered by the Construction Manager's FEE. In the event the Construction Manager elects to bond any subcontract rather than enroll them in their SDI program, the net cost to purchase any such subcontract performance and payment bonds will be reimbursed in lieu of the 1% Note: Construction Manager will not be reimbursed for any deductibles stated in the Subguard policy. The deductible is considered covered by the 1% and/or the Construction Manager FEE. Any SDI coverage provided by the Construction Manager shall extend to any additional costs incurred for the Construction Manager to replace or supplement the forces of a subcontractor to provide the Work, and such circumstances shall include, but not be limited to, any partial or full termination of the contract of a subcontract for convenience or otherwise.

7.6.1.4 In the event that the Construction Manager elects to utilize a Construction Manager Controlled Insurance Program (CCIP) and if such a program is specifically authorized by Owner, the amount to be considered reimbursable costs under this contract will be the CCIP percentages quoted in the response to the Owner's RFP. ~~(except that the agreed upon percentage shall not exceed 2%).~~ This percentage will be applied to the actual allowable Cost of the Work (including ~~preconstruction,~~ general conditions costs, general requirements costs, and all other costs defined as reimbursable) but not including Construction Manager Fee or CCIP charges. The CCIP cost factor will cover all insurance required to be carried by the prime Construction Manager and all applicable subcontractors this agreement. Any Construction Manager costs incurred in connection with the Construction Manager's costs related to the elected CCIP program that exceeds the amount reimbursed by the Owner under the formula in this paragraph will be considered to be covered by the Construction Manager's FEE. Note: Construction Manager will not be reimbursed for any deductible stated in the CCIP policy. The deductible is considered covered by the allowable CCIP charges and/or the Construction Manager FEE. *Note: In the event that the Construction Manager does not provide CCIP insurance for any subcontractors working on the project, the costs of the subcontract that is not enrolled in CCIP will not be included in the calculation of allowable CCIP charges*.

7.6.1.4.1 If the CM proposes CCIP coverage that does not cover both liability and worker's compensation insurance for the CM and all applicable subcontractors, the maximum allowable CCIP percentage will be only 1% to cover either the CCIP provided liability insurance or the CCIP provided worker's compensation insurance.

7.6.1.5 Construction Manager will be reimbursed for the actual cost of insurance premiums paid to purchase Builder's Risk Insurance required by this agreement subject to the maximum % proposed in their competitive CM Fee proposal.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority for materials that are related to the Work, but not incorporated into the Work, and for which the Construction Manager is liable and Owner is not exempt. Construction Manager shall be obligated to take reasonable care to obtain all applicable tax exemptions. Note: It is the Owner's understanding that Texas sales tax is not applicable to the cost related to dumpsters and related dumpster services required for the project.

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

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

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

§ 7.6.5.1 *Intentionally deleted.*

§ 7.6.6 *Intentionally deleted.* The Owner will reimburse the Construction Manager for the actual verifiable allocable costs of using Owner approved and Owner accessible cloud-based applications such as Procore, Sensei, Owner-Insite, Construction Viz, PAMS, Smart Bid by Construct Connect, LCP Tracker for submitting Certified Payrolls, Site TRAXX for on-site badging and in-and out time verification, Earth CAM or OxBlue or Multi-Vista for on-site photo history, OxBlue, Textura for processing subcontractor payment applications, or similar and comparable Construction and Project Management Software system to be preapproved by Owner. The specifics related to the proposed use of such applications and their related costs will be specifically itemized in the estimate of reimbursable ~~preconstruction costs,~~ general conditions and general requirements costs required to be submitted with Construction Manager's response to the Owner's RFP.

7.6.6.1 The actual ~~allocable~~ costs of hardware related to personal computers, tablets and cell phones provided to employees working on the project will be considered reimbursable subject to limitations in Article 7.5 of this agreement.

7.6.6.2 The costs of software applications such as Microsoft Office Suite, Project Online, Blue Beam, Primavera Scheduling will be considered overhead and not considered reimbursable, and as such will be considered to be covered by the Construction Manager's FEE. Further any costs of BIM software, Information Technology support services, and any other Construction Manager data processing applications, accounting applications, and similar project management applications used by Construction Manager shall also be considered non-reimbursable overhead and covered by the Construction Manager's FEE.

§ 7.6.7 *Intentionally deleted.*

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

§ 7.6.9 *Intentionally deleted.*

§ 7.6.10 *Intentionally deleted.*

§ 7.6.11 *Intentionally deleted.*

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work that are directly attributable to and required for the Work, and are approved by the Owner.

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

§ 7.7.3 *Intentionally deleted.*

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

§ 7.8 Related Party Transactions

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

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

§ 7.9 Costs Not To Be Reimbursed

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

.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office unless ~~authorized to work on Preconstruction Services and~~ approved in the personnel listings included in the agreed upon GMP Exhibits to this agreement and/or the approved Construction Phase GMP Amendments to this agreement. ~~or except as specifically provided in Section 7.2, or as may be provided in Article 14;~~

Note: Any costs related to employee bonuses, employee stock ownership pension plans, employee stock appreciation right plans, phantom stock plans, employee stock option plans is non-reimbursable and is covered by the CM Fee.

.2 Any costs incurred by Construction Manager which are in excess of the specific limitations on specific reimbursable costs as addressed in Article 7 of this agreement. Examples of such limitations include but are not limited to the 45% maximum for allowable labor burden on base wages, the 1% limit on charges for Subcontractor Default Insurance (SDI) on enrolled subcontracts, the .6% limit on charges for all required liability insurance, the limit of the allowable charge for the Construction Manager's performance and payment bond as noted in the RFP bid form, the limit on charges for any approved Contractor Controlled insurance Program (CCIP), and the limits on charges for contractor owned equipment rentals.

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

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

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

.6 Costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;

.7 Any cost described as non-reimbursable anywhere in this agreement; ~~Sections 7.1 to 7.7;~~

.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
.9 Construction Phase Cost of Work shall not include any Costs incurred while performing the Preconstruction Phase services and GMP development services, said costs are covered by a separate lump sum;
.10 Delay damages or claims;
.11 Storage costs, unless with prior written owner approval;
.12 All costs intentionally excluded in Article 7 above, including all subsections.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Construction Manager shall take advantage of all available discounts, rebates, and refunds for supplies, materials, and equipment connected with the Work, and which conform to the Contract Documents, which discounts, rebates, and refunds shall accrue to the benefit of the Owner. Cash Discounts obtained on payments made by the Construction Manager shall accrue to the Owner. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

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

§ 8.3 If the Construction Manager enters into an agreement with a Subcontractor or a materials supplier, to make payment before receiving payment from the Owner, the amount of any such discount that the Construction Manager is allowed to keep as a "cash discount earned" will be limited to two percent (2%) of the costs subject to discount. Any percentage of discount greater than two percent (2)% shall be credited to the Owner as a reduction to the reimbursable Cost of Work and a credit to trade contracts or material purchases and change orders as applicable.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

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

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

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

9.3 Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and solicit through competitive purchasing, as required by law, competitive sealed proposals from Subcontractors

Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and obtain bids or proposals from Subcontractors for the performance of all major elements of the Work. The Construction Manager shall use an authorized electronic bid service to receive and hold all bids confidentially until the designated bid opening date and time (or establish a process where sealed bids are delivered to the Owner's designated procurement representative when they will be held unopened until the designated bid opening date and time. An authorized Owner's representative will be allowed to be present when all sealed bids are received and opened whether the bids are electronic or hard copies.
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9.4 The Construction Manager shall include the following specific notices in the information to proposers:

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

.2 The successful proposer's responsibility to pay prevailing wages under Texas Government Code Chapter 2258;

.3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate;

.4 The notice regarding trench and shoring safety is required by Texas Health and Safety Code Section 756.023.

.5 The following shall be included in any information to proposers, Requests for Proposals, or Bid Documents:

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

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

9.6 The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its proposal for any portion of the Work, it shall do so in the same manner as required of all subcontractors. The owner shall decide whether or not the Construction Manager's proposal for self-performing portions of the Work offers the best value to the Owner. In opening proposals, neither the Construction Manager nor Owner shall disclose the contents of a proposal during the selection process to anyone who is not an employee of the Construction Manager, architect, engineer, or Owner. All proposals shall be made public within seven days after the Owner's final selection. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, under progress payments, as if Construction Manager were a subcontractor. Such payments to the Construction Manager shall be included in the Cost of the Work~~, but the Construction Manager shall not receive an additional Construction Manager's fee for self-performed work~~. Under Texas Government Code Chapter 2269, Subchapter F, if during recommending proposals, the Construction Manager recommends to the Owner a proposal from a subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before the Owner compensates the Construction Manager. Reimbursement for Self-performed work will be in accordance with Article 3.3.2.1.1.

9.7 Per Texas Government Code Section 2269.257, if a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected, the Construction Manager may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements. The Construction Manager shall be paid for its performance in accordance with Section 9.6 herein.

ARTICLE 10 ACCOUNTING RECORDS
The Construction Manager <u>and all subcontractors</u> shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors, and other representatives shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager <u>and all subcontractors</u> shall preserve these records for ten (10) years after the date of Final Completion, or such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
§ 11.1 Progress Payments
§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

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

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

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

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee. Each Application for Payment shall also include a list, with backup data, of how each payment shall be spent, including a list detailing which subcontractors and suppliers will be paid out of funds paid by the Owner and the amount of such payments to subcontractors and suppliers, and in the next payment cycle, proof of each payment to Construction Manager's subcontractors and suppliers after payment. The Construction Manager shall promptly pay all bills validly due and owing for labor and material performed and furnished by others in connection with the performance and construction of the Work.

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

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

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

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

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion or classification of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed portion or (2) classification on the schedule of values.

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

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

.1 That portion of the Guaranteed Maximum Price is properly allocable to completed Work as determined by multiplying the percentage of completion of each portion or classification of the Work by the share of the Guaranteed Maximum Price allocated to that portion or classification of the Work in the most recent schedule of values. Pending final determination of the cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Article 7 of AIA Document A201–2017;

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

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

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

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

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

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

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

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

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

.6 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2017

.7 Retainage withheld under Section 11.1.8.

.8 Subtract retainage of five percent (5%) of the remaining amount, including the Construction Manager's Fee, of the progress payment.

.9 The progress payment amount determined in accordance with this Section shall be further modified under the following circumstances:

.1 Add, if Final Completion of the Work is thereafter materially delayed by Owner or Owner's agents through no fault of the Construction Manager, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201- 2017, as amended.

.2 If Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then Owner shall be entitled to deduct such liquidated damages, amounts, and fees due Construction Manager at any time.

.3 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, then any final payment to Construction Manager shall be subject to deduction for such amounts as the Architect and the Dallas ISD Construction Services department, if applicable, shall determine as the cost for completing incomplete Work and the value of unsettled claims;

.4 Subtract withheld payments under Section 11.1.3.

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

.1 The location must be agreed to, in writing, by the Owner and Surety;

.2 The location must be a bonded warehouse;

.3 The Surety must agree, in writing, to each request for payment; and

.4 The Construction Manager must bear the cost of the Owner's and Architect's expenses related to visiting the off-site storage area.

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

11.7.5 The Owner and Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors.

11.7.6 Except with the Owner's prior written approval, or as otherwise provided in Section 9.3.2 of the AIA Document A201-2017, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

11.7.8 In submitting Construction Manager's Applications for Payment, the Construction Manager shall be responsible for all errors and omissions. The owner shall not be responsible for Construction Manager's errors or omissions.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made before Final Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due. Retainage is managed in conformance with Texas Government Code Chapter 2252, subchapter B:

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

«Five (5%) percent »

§ 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 »

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

«N/A »

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

«N/A »

§ 11.1.9 If the final completion of the Work is materially delayed through no fault of the Construction Manager, the Construction Manager shall submit a claim in accordance with Article 15 of AIA Document A201–2017.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site. If the 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 the 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 remain 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 the Construction Manager. The Construction Manager shall execute subcontracts that contain the same terms and conditions as those contained in this Agreement.

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

§ 11.2 Final Payment
§ 11.2.1 Final payment 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 except for the Construction Manager's responsibility to satisfy other requirements, if any, which Owner agrees in writing necessarily extend beyond final payment;

.2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment that are certified by the Construction Manager and reviewed and approved by the Owner's auditors or other representatives;

.3 a final Certificate for Payment has been issued by the Architect and approved by the Program Manager, if applicable in accordance with Section 11.2.2.2;

.4 The Construction Manager certifies to the Owner that the Project, to the best of the Construction Manager's knowledge, has been constructed in general accordance with Architect's Construction Documents. The certificate shall be the Texas Education Agency's Certification of Project Compliance, signed by a duly authorized officer of the Construction Manager and properly notarized.

.5 Construction Manager has provided all documents required by Section 9.10.2 of AIA Document A201-2017; and

.6 Owner's Board of Trustees has voted to accept the Work and approve Final Payment.

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

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

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

§ 11.2.2.3 If the Owner's auditors or other representatives' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 12 without a further decision of the Architect.

Unless otherwise agreed in the Contract Documents, a demand for mediation or other dispute resolution as provided in the Contract Documents, of the disputed amount shall be made by the Construction Manager within the timeline established in Section 15.2 of A201-2017 after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment.

Failure to request mediation within this time period shall result in the substantiated amount reported by the Owner's auditors or other representatives becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after Board approval. The Construction Manager must certify completion of all Work, including all listed items in Section 9.10.2 of the AIA Document A201-2017 for the Project, cleanup, and delivery of record documents before or with the Application for Final Payment.

« »

11.2.3.1 The amount of the final payment shall be calculated as follows:

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

.2 Add the actual expended general conditions substantiated by the Construction Manager's final accounting, which includes savings to the Owner for unused general conditions.

.3 Add the Construction Manager's Fee.

.4 Subtract amounts, if any, for which Architect or Owner disputes, refuses, or withholds payment if any.

.5 If the Owner is entitled to deduct liquidated damages or any other damages or amounts provided in the Contract Documents, including clean-up fees, then subtract all such liquidated damages, amounts, and fees.

.6 If the Construction Manager fails or refuses to complete the Work, or has unsettled claims with the Owner, then subtract such amounts as the Architect shall determine as the cost for completing incomplete Work and the value of unsettled claims.

.7 Subtract all previous payments made by the Owner.

.8 In no event shall the total of subsections .1, .2, and .3 above exceed the Guaranteed Maximum Price.

.9 If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner, plus interest as allowed by law.

§ 11.2.4 If, after final payment, and at the Owner's prior written request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, that are not excluded by Section 7.9, to correct defective or nonconforming Work that is not the fault of the Construction Manager or arising from the resolution of a dispute, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price.

§ 11.3 Interest
Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the rate permitted by law, in accordance with Texas Government Code Chapter 2251.
(Insert rate of interest agreed upon, if any.)

« » % « »

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker
§ 12.1.1 Any Claim by the Construction Manager regarding any matter between the Owner and Construction Manager shall be resolved in accordance with the provisions outlined in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision or recommendation by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution.

§ 12.1.2
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)
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« »
« »
« »

12.1.3 When the Owner has an applicable claim for construction defects, the 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

(Check the appropriate box.)

[**« »**]

[**«X »**] Litigation in a court of competent jurisdiction

[« »] *(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 with the proper venue being the county where the Project site is located.

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 before receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

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

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

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

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

.3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take a 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 vested in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders, and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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

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

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

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

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take a 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 vested in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3

« »

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

ARTICLE 14 MISCELLANEOUS PROVISIONS
§ 14.1 Unless otherwise noted, terms in this Agreement shall have the same meaning as those in A201–2017, as amended for the Project. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns
§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. The Construction Manager shall not assign this Agreement or the Contract in whole or in part without the prior written consent of the Owner's Board of Trustees. If Construction Manager attempts to make such an assignment without such consent, the Construction Manager shall nevertheless remain legally responsible for all obligations under the Contract. This does not prevent the Construction Manager from engaging subcontractors to perform various phases of the Project in accordance with the law, but Construction Manager shall be fully responsible to the Owner for the work, actions, and omissions of all such subcontractors.

§ 14.2.2

§ 14.3 Insurance and Bonds
§ 14.3.1 Preconstruction Phase
The Construction Manager shall purchase and maintain insurance as required by Article 11, A201-2017, as amended for this Project, and AIA A133 Exhibit B to protect the Construction Manager and Owner against all claims, damages, lawsuits, indemnities, or other actions which may arise out of or result from the Construction Manager's operations under this Contract, whether such operations are by Construction Manager, or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. Prior to performing the Work, the Construction Manager shall provide separate performance and payment bonds in accordance with AIA Document A201- 2017 Article 11 and AIA A133, Exhibit B.

§ 14.3.1.1 « » (« ») « » (« »)

§ 14.3.1.2 « » (« »)

§ 14.3.1.3

§ 14.3.1.4 « » (« ») « » (« ») « » (« »)

§ 14.3.1.5 « » (« ») « » (« »)

§ 14.3.1.6

§ 14.3.1.7

§ 14.3.1.8

§ 14.3.2

§ 14.3.2.1

§ 14.4

« »

§ 14.5
«

14.4 Criminal History Checks
14.4.1 Construction Manager shall obtain all criminal history information required by Texas Education Code Chapter 22 regarding its "covered employees," as defined below. If Construction Manage is required by Chapter 22 to obtain the information from the Fingerprint-based Applicant Clearinghouse of Texas, then Construction Manager will also subscribe to that person's criminal history record information. Before beginning any Work on the Project, Construction Manager will provide written certification to the District that the Construction Manager has complied with the statutory requirements as of that date. Upon request by the Owner, Construction Manage will provide, in writing; updated certifications and the names and any other requested information regarding covered employees, so that the Owner may obtain criminal history record information on the covered employees. Construction Manager shall assume all expenses associated with obtaining criminal history record information.

14.4.2 Construction Manager will not assign any "covered employee" with a "disqualifying criminal history," as those terms are defined below, to work on the Project. If Construction Manager receives information that a covered employee has a reported disqualifying criminal history, then Construction Manager will immediately remove the covered employee from the Project and notify the Owner in writing within three (3) business days. If the Owner objects to the assignment of any covered employee on the basis of the covered employee's criminal history record information, then Construction Manager agrees to discontinue using that covered employee to provide services on the Owner's Project. If Construction Manager has taken precautions or imposed conditions to ensure that the employees of the Construction Manager and any subcontractor will not become covered employees, the Construction Manager will ensure that these precautions or conditions continue throughout the time the contracted services are provided.

14.4.3 For the purposes of this Section, "covered employees" means employees, agents, or applicants of the Construction Manager who has or will have continuing duties related to the services to be performed on the Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with the Owner's students. "Disqualifying criminal history" means any conviction or other criminal history information designed by the Owner; any felony or misdemeanor conviction that would disqualify a person from obtaining educator certification under Texas Education Code Section 21.060, and 19 Texas Administrative Code Section 249.16; or one of the following offenses, if at the time of the offense, the victim was under 18 years of age or enrolled in a public school; a felony offense under Texas Penal Code Title 5 Offense Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state.

14.4.4 Subcontractors or any subcontractor entity, as defined by Texas Education Code Section 22.08341(a)(3), shall be required by the terms of their contract with the Construction Manager or any other contracting entity (as defined in Texas Education Code Section 22.08341(a)(1)), and by Texas law, to obtain the required criminal history record information on their employees, agents, or applicants, to give required certifications to Owner and the contracting entities, and to obtain required certifications from the subcontracting entity's subcontractors.

14.4.5 On request of Owner, Construction Manager shall provide all necessary identifying information to allow Owner to obtain criminal history record information for covered employees of the Construction Manager and all subcontractors. The Construction Manager shall update this list at the Owner's request.

14.4.6 Owner's Additional Requirements Related To Criminal Histories
In addition, the Construction Manager will at least annually obtain criminal history record information that relates to any employee, agent, or applicant of the Construction Manager, if the person has or will have duties related to the Project, and the duties are or will be performed on Owner's Project, or at another location where students are likely to be present. The Construction Manager shall assume all expenses associated with the background checks and shall immediately remove any employee, agent, or subcontractor who was convicted of a felony or a misdemeanor involving moral turpitude from the Owner's property, or other location where students are likely to be present. The Owner shall determine what constitutes "moral turpitude" or a "location where students are likely to be present."

14.5
14.5.1 No delay or omission by Owner in exercising any right or power accruing upon the noncompliance or failure of performance by the Construction Manager of any of the provisions of this Agreement shall impair any such right or power or be construed to a lender providing financing for be a waiver thereof. A waiver of any breach by either of the parties of any covenant, condition, or agreement shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

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

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

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

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

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

14.5.7 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 Construction Manager has misrepresented its inclusion on the Comptroller's list, such omission or misrepresentation will void this Contract.

14.6
14.6.1
.1 By entering into this Contract, according to Texas Government Code 552, Subchapter J, the Construction Manager agrees to be bound by the following terms if the Contract has a stated expenditure of at least $1,000,000 for the purchase of goods or services by the District or if the Contract results in the expenditure of at least $1,000,000 in public funds for the purchase of goods or services by the District in a fiscal year of the District. If the District receives a written request for public information related to this Contract that is in the possession or custody of the Construction Manager and not in the possession or custody of the District, the District shall send, it not later than the third business day after the date the District receives the written request, a written request to the Construction Manager that Construction Manager provides that information to the District.

.2 The Construction Manager must:

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

.2 Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the Construction Manager upon request of the District; and,

.3 On completion of the Contract, either:

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

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

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

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

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

.6 If Construction Manager is not a sole proprietorship, has ten (10) or more employees, and the value of the Construction Manager's bid or proposal has a value of $100,000 or more, the Construction Manager certifies by submitting Construction Manager's bid or proposal that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, as defined by Texas Government Code Ann. Chapter 2274, and will not during the term of any contract with the Owner unless excepted from that law.

.7 As required by Texas Government Code Ann. Chapter 2274, if Construction Manager has ten (10) or more employees, is not a sole proprietorship, and if the value of the Construction Manager's bid or proposal has a value of $100,000 or more, the Construction Manager certifies by submitting Construction Manager's bid or proposal that it does not boycott energy companies and will not during the term of any contract with the Owner unless excepted by that law.

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

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Contract represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may be amended only by written instrument signed by both Owner and Construction Manager. If any portion of this Contract is determined to be invalid, unenforceable, or void, then that portion shall be severed, and all other portions of this Contract shall remain in full force and effect.

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

.1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

.2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment if executed

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

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

.5 :
(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

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

~~«Exhibit C containing Detailed Estimates of Agreed Upon Not-To-Exceed Amounts for:~~
~~1. Preconstruction Services~~
~~2. General Conditions~~
~~3. General Requirements~~

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

«DALLAS INDEPENDENT SCHOOL DISTRICT »

OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
Dwayne Thompson, Chief Business Officer	« »« »
(Printed name and title)	*(Printed name and title)*

Approved As To Form:

DALLAS ISD LEGAL COUNSEL(*Signature)*_______Date____