



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 **2024**
(In words, indicate day, month, and year.)

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

TARRANT COUNTY HOSPITAL DISTRICT D/B/A JPS HEALTH NETWORK
1500 South Main Street
Fort Worth, Texas 76104

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

Austin Commercial, LP
3535 TRAVIS STREET
SUITE 300
DALLAS TEXAS 75204

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

Main Campus Replacement Hospital and Pavilion North Expansion
1575 S. Main Street, Fort Worth, Texas 76104

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

BECK ARCHITECTURE (MAIN CAMPUS REPLACEMENT HOSPITAL)
HOEFER WELKER (PAVILION NORTH EXPANSION)

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

BROADDUS-LEVIS
916 BRYAN AVENUE
FORT WORTH, TEXAS 76104

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

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

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

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

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ARTICLE 1 INITIAL INFORMATION

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

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

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

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

The Project generally consists of Main Campus Replacement Hospital and Pavilion North Expansion as described in more detail in Section 1.1.2 below.

§ 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.)

The replacement hospital will be located north of the JPS Patient Pavilion on South Main Street. The Pavilion North Expansion project is an expansion and renovation of the existing Patient Care Pavilion located on South Main Street.

§ 1.1.3 The Owner's Estimated Construction Cost upon which the Initial Guaranteed Maximum Price is based:

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

Init.

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User Notes:

(2002871650)

The Owner's estimated cost for the Project is Six Hundred Twenty-Five Million Dollars (\$673,000,000.00).

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

.1 Design phase milestone dates, if any:

It is anticipated that Final Construction Documents will be completed approximately September, 30, 2025.

.2 Construction commencement date:

It is anticipated that Hospital Expansion Construction will commence approximately November 3, 2025.
It is anticipated that Pavilion Construction will commence approximately November 4, 2024

.3 Substantial Completion date or dates

It is anticipated that the entire Work will achieve Substantial Completion approximately September, 7 2029.

.4 Other milestone dates:

TBD during Construction Manager's Preconstruction Services.

§ 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.)

To be determined.

§ 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.)

N/A

§ 1.1.6.1 *[Intentionally Deleted]*.

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

Information contained in RFP #22-1017 for Construction Manager at Risk for Main Campus Replacement Hospital and Pavilion North Expansion and Information contained in Response to RFP #22-1017 from Austin Commercial, Alpha & Omega, Basecom, GCC Enterprises, and Potere Construction dated 12/14/23 These documents are defined as the "RFP Documents" herein and are incorporated by reference as if attached to the Agreement in their entirety; provided, however that to the extent there is any inconsistency, ambiguity, discrepancy, or conflict between the information contained in the RFP Documents and the Contract Documents, the Contract Documents shall control.

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

Jill Farrell
JPS Health Network
Senior Executive Vice President, Chief Operating Officer
1500 South Main Street
Fort Worth, Texas 76104
Telephone: 817-702-9998
Email: jfarrell@jpshealth.org

**David Watkins
Broaddus-Levis**
916 Bryant Avenue
Fort Worth, Texas 76104
Telephone: 214.492.3881
Email: dwatkins@broaddususa.com

with a copy to:

Daphne Walker
Sr. Vice President, Chief Legal Counsel
1500 South Main Street
Fort Worth, Texas 76104
Telephone: 817-702-9988
Email: DWalker10@jpshealth.org

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

The Project Manager, who is identified on page one of this Agreement. The Project Manager shall be copied on all communications from the Construction Manager to the Owner.

§ 1.1.10 In addition to the Architect identified on the first page of this Agreement, the Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

(Paragraphs deleted)
None.

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

Beck Architecture, LLC
1601 Elm Street, Suite 2800
Dallas, TX 75201
Telephone: 214.303.6200
Attn: Sarah Mueller sarahmueller@beckgroup.com
Attn: Adam Holland adamholland@beckarchitecture.com

Hoefel Welker
500 North Akard Street, Suite 2450
Dallas, Texas 75201
Telephone: 214.445.4339
Attn: Jaron Ricketts jaron.ricketts@hoefelwelker.com

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

David Graham
Senior Vice President of Operations
Austin Commercial, LP
3535 Travis Street
Suite 300

Init.

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User Notes:

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Dallas Texas 75204
Telephone: 214-443-5679
Email: dgraham@austin-ind.com

Craig Williams
Area Manager
Austin Commercial
3535 Travis Street
Suite 300
Dallas Texas 75204
Telephone: (214) 356-6318
Email cwilliams@austin-ind.com

With a copy to:

Robert Ty Taylor
Vice President of Risk Management
Austin Commercial, LP
3535 Travis Street
Suite 300
Dallas Texas 75204
Telephone: 214-443-5651
Email: rtaylor@austin-ind.com

Construction Manager's representative shall be the primary point of contact during all phases of the Work of the Project. Construction Manager shall not furnish a representative over whom Owner has made reasonable and timely objection. Within **five (5)** Days of Owner's reasonable written request, Construction Manager shall replace any representative over whom Owner has made a reasonable objection.

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.4:

(List any Owner-specific requirements to be included in the staffing plan.)

See **Exhibit F**.

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:

(List any Owner-specific requirements for subcontractor procurement.)

In addition to other requirements set forth herein, Construction Manager shall comply with the requirements of *Tex. Govt. Code § 2269.255 - § 2269.257* when procuring Subcontractors for performance of the Work.

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

Information contained in RFP #22-1017 for Construction Manager at Risk for Main Campus Replacement Hospital and Pavilion North Expansion and Information contained in Response to RFP #22-1017 from Austin Commercial, Alpha & Omega, Basecom, GCC Enterprises, and Potere Construction dated 12/14/23

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

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement and its attached Exhibits, the General Conditions of the Contract AIA Document A201-2017 (hereinafter, including all modifications to said document for this Project, the "**A201-2017**"), Supplementary and other Conditions, Owner-Provided Information and documents described in **Exhibit D** attached hereto, Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Final Guaranteed Maximum Price Proposal, the Contract Documents will also include the documents described in Section 3.2.2 and identified in the Final Guaranteed Maximum Price Amendment (**Exhibit A**). 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.

§ 2.1.1 If, and to the extent of, any inconsistency, ambiguity, or discrepancy in the Contract Documents and/or items that can be reasonably inferred by the Contract Documents, precedence shall be given to the Contract Documents in the following order of priority: (1) written Modifications issued after execution of this Agreement, with the Modification bearing the latest date taking precedence; (2) the Final Guaranteed Maximum Price Amendment and its Exhibits, except that any Construction Manager's Clarifications and Assumptions exhibit contained in the Final Guaranteed Maximum Price Amendment shall be given the priority reflected herein; (3) this Agreement; (4) the A201- 2017; (5) Construction Manager's Clarifications and Assumptions, if any, attached to the Final Guaranteed Maximum Price Amendment; and (6) the Drawings and Specifications identified in and incorporated into the Contract Documents, with those addenda and revisions bearing the latest date taking precedence. Without limiting the foregoing, the terms of the Agreement and the A201-2017 shall control over any terms in the Drawings or Specifications inconsistent therewith shall clearly and precisely describe the specification provision, if any, the qualification or clarification seeks to qualify or clarify.

§ 2.1.2 **Definitions.** Definitions are set forth in the A201–2017 and are incorporated herein by reference.

§ 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 other members of the Project Team. Construction Manager shall exercise its best skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision. Construction Manager shall at all times furnish an adequate supply of workers and materials during both the Preconstruction and Construction Phases of the Work. Construction Manager shall perform the Work, including all Preconstruction and Construction Services, in accordance with the Contract Documents and in an expeditious and economical manner consistent with the Owner's interests, Applicable Laws, rules, regulations, and lawful orders of Authorities Having Jurisdiction. 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. Construction Manager shall immediately give written notice to Owner upon its determination that any of the information referenced in the preceding sentence is not being timely provided by Owner, with such notice detailing what information is not being timely provided. Nothing in this Section 2.2 shall be interpreted as creating a fiduciary duty between the parties.

(Paragraph deleted)

§ 2.2.1 Construction Manager shall provide all services to the Project in a coordinated, careful and harmonious fashion. Construction Manager shall communicate promptly to Owner any and all concerns that Construction Manager may have with regard to the Work, or services of others on the Project, including, without limitation, any defects or potential defects in planning, design, or construction of the Work, and shall cooperate with Owner and other professionals and experts if errors or omissions are discovered in the Contract Documents. If upon review of any plans, Drawings, Specifications or other design documents the Construction Manager discovers a defect, inaccuracy, inadequacy or insufficiency in said documents, the Construction Manager shall promptly report to the Owner, in writing, the existence of any defect discovered, or that reasonably should have been discovered, by the Construction Manager using ordinary diligence, before, during, and after construction and in conformance with Texas law.

§ 2.3. General Conditions.

§ 2.3.1 For both the Preconstruction and Construction Phases, the General Conditions of the Contract are set forth in the A201–2017, as modified for this Project, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 [Intentionally Deleted].

§ 2.4 **Construction Manager's Insurance and Bonds.** The Construction Manager shall purchase and maintain insurance coverages and provide bonds as set forth in **Exhibit B**. Construction Manager will comply, at all times, with all insurance and bonding requirements of Owner. To the fullest extent permitted by law, the Construction Manager shall cause Owner and Indemnitees (as provided in Section 3.18 of the A201-2017) be listed as Additional Insureds on all policies as required in **Exhibit B**. In the event of any failure by Construction Manager to comply with the provisions of **Exhibit B**, Owner may, at its option, with notice to Construction Manager, suspend or terminate this Agreement for cause. Alternatively, Owner may purchase such insurance at Construction Manager's expense.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's responsibilities are described throughout the Contract Documents. Preconstruction Phase responsibilities are further detailed in Sections 3.1 and 3.2 and in the A201-2017. The Construction Manager's Construction Phase responsibilities are further detailed in Section 3.4, in the Final Guaranteed Maximum Price Amendment, and in the A201-2017. 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 Services

§ 3.1.1 **Notice to Proceed.** The Preconstruction Services Phase shall be deemed to commence upon the date specified in a Notice to Proceed with Preconstruction Services and shall continue through completion of the Construction Documents and procurement of all major Subcontractor agreements. Construction Manager is not entitled to reimbursement for any costs incurred for Preconstruction Services performed before issuance of the Notice to Proceed by Owner. The listing of Preconstruction Services below should not be construed as a limitation on such services should Construction Manager determine additional services are necessary to fully plan, implement, and timely complete the Work within the Contract Time and Contract Sum. Any such services must be approved by Owner in writing prior to the Services being provided. Preconstruction Services include, but are not limited to, the following:

§ 3.1.2 **General.** Construction Manager shall visit the proposed Site and inspect the existing facilities, systems and conditions to ensure an accurate understanding of the existing conditions as required. The Construction Manager shall participate in Project Team meetings at scheduled intervals during the Preconstruction Phase and shall advise the Owner on proposed Site use and improvements, selection and availability of labor, materials, building systems and equipment. The Construction Manager shall also provide the Owner with recommendations (consistent with the Owner's Budget and Program) on constructability, availability of materials and labor, time requirements for procurement, installation and construction, use of temporary facilities, and factors related to Cost of the Work, including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions; identification and resolution of conflicts in the proposed Drawings and Specifications as they evolve; methods of delivery and handling of materials, systems, and equipment; traffic, parking and materials and equipment storage in and around the Site; safety issues and available precautions related to the Work; scheduling issues including phased construction and potential fast track scheduling; and any other matters necessary to accomplish the Project in accordance with the Project Schedule. At the Owner's request, the Construction Manager shall attend public meetings concerning the development, design, scheduling, and Work of the Project.

§ 3.1.3 **Communication and Reporting.** Construction Manager will establish procedures for effective communication and coordination among the Project Team throughout the Preconstruction phase of the Project and shall implement and continuously modify such procedures as necessary. To the extent of an apparent conflict in the sequencing of the Work or services with another service provider, Construction Manager shall report the concern to the Project Manager.

§ 3.1.3.1 **Meetings.** Construction Manager shall actively participate in all meetings and/or teleconferences to bring the full measure of Construction Manager's collective experience, expertise and recommendations to the Project as it pertains to the overall Project or to a specific discipline including, but not limited to, all explanatory presentations with other Project

Team members as may be requested by Owner, and matters concerning the proposed Site use and improvements, selection of materials, and building systems and equipment. Construction Manager shall be responsible for preparing and distributing (on the business day preceding the meeting) to Owner and Project Manager, a written agenda for all meetings, in a form and with such content as reasonably required by Owner. Construction Manager shall attend regularly scheduled and any interim Project progress meetings and fully advise the Owner and Project Team of the Project status including progress, schedule, costs, quality, and proposed changes. Construction Manager shall be responsible for preparing and distributing (on the business day following the meeting) to Owner, Project Manager, and Architect meeting minutes for the meeting, in a form and with such content as reasonably required by Owner, which includes a status report of all pending action items during the performance of the Preconstruction Services.

(Paragraphs deleted)

§ 3.1.4 Staffing and Personnel. Within **ten (10)** Days of execution of this Agreement, Construction Manager shall provide to Owner a list of necessary personnel to assist in performing Preconstruction Services on the Project. Personnel to be utilized during the Construction Phase shall be included in **Attachment 8** to the Final Guaranteed Maximum Price Amendment. Construction Manager represents and warrants to Owner that it and its employees, and its Subcontractors are experienced in providing the Preconstruction Services required under this Agreement. Construction Manager understands the complexity involved in this type Project and the necessity of coordinating its services and its Work with the Owner, Architect, Project Manager, and Authorities Having Jurisdiction.

§ 3.1.5 BIM. The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project and shall assist the Project Team to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.6 Coordination of Design and Construction Documents. Construction Manager shall review all Drawings, Specifications, and other Construction Documents as they are developed by the Architect. Construction Manager shall consult with Owner, Architect, and Project Manager on the selection of materials, equipment, component systems, and types of construction used on the Project. Construction Manager will advise Owner on Site use, construction feasibility, availability of labor and materials, procurement time requirements, and construction coordination. Construction Manager shall advise Owner of any error, inconsistency or omission discovered in the Drawings, Specifications, and other Construction Documents. Construction Manager shall advise Owner on reasonable adjustments in the Project scope, quality or other options for keeping the Project cost within the Owner's budget. The Construction Manager's review of the Construction Documents shall be in its capacity as a general contractor, and not as a design professional.

(Paragraphs deleted)

§ 3.1.7 Budget and Cost Consultation. 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, Construction Manager, or Project Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems. The Construction Manager shall provide estimates of construction costs to Owner in cost reports within **ten (10)** Days of receipt of the updated information. The cost reports shall be detailed estimates derived from cost quantity surveys and based on prices for labor, materials, equipment, supplies, overhead and profit and organized as required by Owner. The Construction Manager shall provide continuous cost consultation services throughout the duration of the Project, including identification and tracking of decisions that affect the scope or quality of the Project and providing ongoing updates of their cost and budget impact. Construction Manager shall promptly identify all variances between estimated costs and actual costs during the Construction Phase, and shall promptly report such variances to the Project Team along with recommendations for action, but in any event no more than **three (3) business** days after acquiring such information.

§ 3.1.8 Constructability. Construction Manager shall implement and conduct a constructability program to identify and document Project costs and schedule savings opportunities. The Construction Manager shall prepare a "Constructability Report" that identifies items that, in the Construction Manager's opinion, may negatively impact construction of the Project. The Constructability Report shall address the overall coordination of Project Drawings, Specifications, and details and identify discrepancies that may generate Change Orders or Claims once Project construction commences. The Constructability Report shall be updated at least monthly during the Preconstruction Services Phase.

§ 3.1.9 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 and opportunities.

§ 3.1.10 Construction Planning/Procurement Schedule. Construction Manager shall identify equipment or material requiring extended delivery times and advise Owner on expedited procurement of those items and will advise the Owner on the preparation of performance specifications and requests for technical proposals for the procurement and installation of systems and components and for the procurement of long lead items. The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. Construction Manager shall make recommendations to the Project Team regarding organization of the Construction Documents to facilitate the bidding and awarding of construction contracts in a manner that promotes the interests of the Project and the Owner. The recommendations shall take into consideration such factors as time of performance, type and scope of work, availability of labor and materials, overlapping trade jurisdictions, provisions for temporary facilities, comparisons of factory and on-Site production costs, shipping costs, code restrictions, the Owner's goals for S/W/MBE/HUB Subcontractor participation, and other related matters. Construction Manager shall advise Owner of any tests to be performed, and assist Owner in selecting testing laboratories and consultants, without assuming direct responsibility for the work of such laboratories and consultants (if applicable).

§ 3.1.10.1 Construction Manager shall review the Construction Documents with the Project Team to eliminate areas of conflict and overlap in the Work to be performed by the various Subcontractors or Owner's Separate Contractors. Construction Manager shall develop bidder's interest in the Project and will develop and refine a bid/proposal strategy that addresses the entire scope of the Work for each phase and stage of the Project for approval by Owner and Project Manager. Construction Manager shall provide an analysis of the types and quantities of labor required for the Project, review the appropriate categories of labor required for critical phases or stages, and make recommendations that minimize adverse effects of labor shortages. Construction Manager shall refine, implement and monitor required S/W/MBE/HUB contracting plans to promote equal employment opportunity in the provision of goods and services to the Project. Construction Manager shall provide an analysis of the types and quantities of materials required for the Project, review and monitor the cost of such materials on an on-going basis, and make recommendations to minimize the adverse effects of material shortages and price volatility of materials. Construction Manager shall consult with and make recommendations to Owner with respect to the acquisition and delivery schedules for fixtures and equipment and include such activities on the Project Schedule.

§ 3.1.10.2 Construction Manager will provide on-going value analysis studies on construction systems and major construction components, including but not limited to the mechanical systems, exterior envelope, structural systems, roofing systems, lighting and power service. The value analysis will be summarized in report format and distributed to the Owner and Project Manager.

§ 3.1.10.3 Construction Manager, with the assistance of the Owner, shall prepare and file all documents required to secure approval and receive permits of all Authorities Having Jurisdiction in a manner so as not to delay the Project Schedule. All requests for reimbursement for any direct costs associated with submitting documents to such Authorities Having Jurisdiction and for permit fees shall be included as Reimbursable Expenses and paid pursuant to Section 5.1.4 of this Agreement.

§ 3.1.11 Safety. Construction Manager shall plan, initiate, maintain, and supervise all safety precautions and programs in connection with the Work of the Project including during Preconstruction Services. Construction Manager shall develop a safety program for the performance of Work during the construction stage which shall be provided to Owner and Project

Manager for approval. Construction Manager's safety program shall address activities of all Contractors and Consultants, shall consider any Applicable Laws and Owner Requirements set forth in **Exhibit C**.

(Paragraphs deleted)

§ 3.1.12 Quality Control/Quality Assurance. Construction Manager shall develop and implement a Quality Control Plan to govern all testing, inspection, and review of its Work and the Work of its Subcontractors during the Construction Phase to ensure it complies with Applicable Laws, standards and requirements of Owner and Project Manager, and any insurance requirements. The Construction Manager's Quality Control Plan shall be attached to Final Guaranteed Maximum Price Amendment as **Attachment 12**. At a minimum, Construction Manager's Quality Control Plan shall include identification of the Quality Control supervisor, the details of the proposed Quality Control Plan and implementation of same; production and implementation of Quality Control reports; confirmation that any Quality Control Plan complies with Applicable Law and requirements set forth in any insurance requirements. Construction Manager's Quality Control Plan shall contain a methodology for incorporation of the Quality Control Plan into all subcontracts and appropriate oversight to deliver the Project such that it complies with the Contract Documents in all respects. Construction Manager shall provide Owner and Project Manager Quality Control reports for their review and approval. During the Construction Phase, Owner shall perform Quality Assurance testing.

§ 3.1.13

(Paragraphs deleted)

Scheduling.

(Paragraphs deleted)

§ 3.1.13.1 Within **ten (10)** Days of execution of this Agreement, Construction Manager shall prepare and submit for Owner's information a Preliminary Project Schedule for the Work. Similarly, for each Work Package Authorization issued, a preliminary schedule for the Work to be accomplished under that Work Package Authorization shall be prepared and submitted to the Owner with the proposal for the Work Package Authorization. The Preliminary Project Schedule will include various dates critical to the progress of the Project, including design milestones applicable to the performance of Preconstruction Services set forth in this Section 3.1, deliverables to the Owner, submission of the Final Guaranteed Maximum Price Proposal, mobilization, procurement, installation, testing, commissioning, inspection, the Required Date of Substantial Completion, the Final Completion date, any interim milestone dates, delivery of Close-out Documents, acceptance of all Work required under this Agreement, and any other details required for tracking the progress of the Work. The Preliminary Project Schedule shall be computerized Critical Path Method (CPM) with fully editable logic with adequate detail so the schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities. The Preliminary Project Schedule should address the procurement of long-lead items, Submittal activities, as well as Preconstruction Services milestones and proposed field construction activities anticipated during the Construction Phase. The Preliminary Project Schedule shall not exceed time limits current under the Contract Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by Authorities Having Jurisdiction.

§ 3.1.13.2 Construction Manager shall update the Preliminary Project Schedule monthly, or otherwise as required, during the Preconstruction Services Phase to maintain the Project Schedule. Construction Manager and shall utilize the Preliminary Project Schedule to prepare the Project Schedule and Submittal Schedule required for the Construction Phase in compliance with Section 3.10 of the A201-2017 and which shall be **Attachment 7** to the Final Guaranteed Maximum Price Proposal and which shall, upon approval by Owner, become part of the Final Guaranteed Maximum Price Amendment.

§ 3.2 Initial Guaranteed Maximum Price and Development of Final Guaranteed Maximum Price Proposal

§ 3.2.1 Initial Guaranteed Maximum Price. Based on the Initial Information provided within Article 1, **100% Design Documents** and **Owner's Estimated Construction Cost**, an Initial Guaranteed Maximum Price Proposal will be provided by Construction Manager **within 30 days of issuance of the 100% Design Documents**. Through the performance of Preconstruction Services, Construction Manager will work with Owner, Architect, and other members of the Project Team to fully develop the Drawings and Specifications to enable the Construction Manager to prepare and submit to the Owner a Final Guaranteed Maximum Price Proposal with all information required in Section 3.2.2 below. Construction Manager acknowledges and understands that, other than through an Owner-approved Change Order, **the amount of the Final Guaranteed Maximum Price in the Final Guaranteed Maximum Price Amendment shall not exceed the Initial Guaranteed Maximum Price set forth in this Section 3.2.1.**

§ 3.2.2 Final Guaranteed Maximum Price Proposal. Not later than **forty-two (42)** Days from the Owner's written notice to proceed with the Final Guaranteed Maximum Price Proposal, the Construction Manager shall prepare and submit the Final Guaranteed Maximum Price Proposal to the Owner. The Final Guaranteed Maximum Price Proposal shall include the following documentation, with sufficient background information to establish and support each portion of the Proposal:

- .1 A list of the Construction Documents, including Drawings, Specifications, and other information, including any deviations, upon which the Final Guaranteed Maximum Price Proposal is based;
- .2 The proposed Schedule of Values/Final Guaranteed Maximum Price Breakdown that includes a written statement of estimated cost organized by trade categories, allowances, Contingency, the Construction Manager's Fee, General Conditions Costs, costs for insurance, and other items that comprise the Final Guaranteed Maximum Price. Any proposed allowances, Contingency and all other costs shall be accompanied with a detailed description and justification of such allowance/Contingency and/or cost amount;
- .3 A schedule of the Work consistent with the Owner's requirements based on the Preliminary Project Schedule provided pursuant to Section 3.1.13 above, and including anticipated dates of ordering and delivery of long-lead items, the proposed date the Construction Manager shall achieve the Required Date of Substantial Completion, along with any other critical Interim Milestone dates, and the date of Final Completion;
- .4 An enumeration of any assumptions, clarifications, and qualifications if applicable;
- .5 A list of allowances and a statement of their bases;
- .6 A list of the Construction Manager's key personnel;
- .7 A list of accepted alternates included in the Final Guaranteed Maximum Price;
- .8 A list of unit prices included within the Final Guaranteed Maximum Price;
- .9 A breakdown of Construction Manager's General Conditions Costs based on allowable General Conditions cost categories provided in **Exhibit H** including Construction Manager's labor burden schedule;
- .10 An enumeration of Construction Manager-owned equipment rental rates;
- .11 A list of all Work Package Authorizations included in the Final Guaranteed Maximum Price;
- .12 Construction Manager's Final Quality Control Plan;
- .13 The Construction Manager's Final Safety Plan;
- .14 The proposed Final Guaranteed Maximum Amendment in draft form with all necessary information completed; and
- .15 Any additional information requested by Owner to enable it to properly evaluate the Final Guaranteed Maximum Price Proposal.

§ 3.2.3

(Paragraphs deleted)

Contingency. In preparing the Construction Manager's Final Guaranteed Maximum Price Proposal, the Construction Manager shall include a contingency to cover those costs that are included in the Final Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. Contingency shall be used to fund (i) increases in the Cost of the Work incurred by the Construction Manager for unforeseen causes to which an allowance is not assigned; or (ii) items not capable of reasonable anticipation at the time the Final Guaranteed Maximum Price Amendment is executed that are not the basis for a Change Order, and then only as follows: (a) the Construction Manager provides the Owner with a written explanation of each requested draw upon the Contingency, along with back-up documentation reasonably requested by the Owner, with each Application for Payment in which such draw of Contingency is requested, (b) each Application for Payment contains a report aggregating the Construction Manager's use of the Contingency, and (c) each draw on the Contingency is approved by the Owner as an Application for Payment is approved (such approval not to be unreasonably withheld). Any re-allocation of funds from the Contingency to cover increases in the Cost of Work or any other claimed costs by the Construction Manager must be approved by Owner in advance and in writing, such approval not to be unreasonably withheld. The Construction Manager shall include the Contingency amount as a separate line item in the Schedule of Values, and upon the use of part of the Contingency, that part shall be allocated to the applicable line item of the Schedule of Values. In no event shall Contingency be used for any cost incurred that is not a Cost of the Work. Any unused portion of the Contingency shall be returned to Owner.

§ 3.2.4 The Construction Manager shall meet with the Owner and Architect to review the Final 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 Final Guaranteed Maximum Price Proposal, its basis, or both.

§ 3.2.5 Acceptance of the Final Guaranteed Maximum Price Proposal. Owner shall have at least **ninety (90)** Days after receipt of the Final Guaranteed Maximum Price Proposal in which to accept or reject such proposal, unless extended by mutual agreement or in accordance with Section 3.2.6.2. Acceptance of the Final Guaranteed Maximum Price Proposal shall be by written amendment to this Agreement, duly executed by Owner and Construction Manager. The Final Guaranteed Maximum Price Amendment shall include Attachments 1-12 supporting the various items of the Final Guaranteed Maximum Price Proposal (as set forth in Section 3.2.2 above) plus any additional information reasonably required by Owner in support of the Final Guaranteed Maximum Price Amendment. Upon execution of the Final Guaranteed Maximum Price Amendment, the Amendment and its Attachments shall become part of the Contract Documents as **Exhibit A**.

§ 3.2.6 Rejection of the Final Guaranteed Maximum Price Proposal. If Owner, in its discretion, is unwilling or unable to approve the Final Guaranteed Maximum Price Proposal, Owner may, at its election, take one or more of the following actions:

- .1 terminate this Agreement by providing the Construction Manager with notice of termination in accordance with Section 13.1 below. Promptly after such termination, upon receipt of final conditional lien waivers documents from the Construction Manager, its Subcontractors and others performing Work, and the receipt of all documents reasonably requested by Owner, Owner shall pay Construction Manager for services performed and authorized in writing by Owner to the point of termination, as full payment for all Work and services performed by the Construction Manager, which shall be the exclusive and total amount due Construction Manager in connection with this Agreement and the termination thereof pursuant to this Section; or
- .2 direct the Construction Manager to continue to participate in value engineering exercises so that the Construction Manager can submit another Final Guaranteed Maximum Price Proposal at a reduced cost. Owner shall review the revised Final Guaranteed Maximum Price Proposal submitted and advise Construction Manager of the acceptance or rejection of the revised Final Guaranteed Maximum Price Proposal within **thirty (30)** Days of approval/rejection by the Owner's governing body. If approved, Owner will notify the Construction Manager. If rejected, Owner shall have the right to proceed or to terminate this Agreement as set forth herein. If Owner does not accept or reject the revised Final Guaranteed Maximum Price Proposal within the aforementioned period of time, Construction Manager may notify the Owner of its intention to terminate this Agreement, or, if the parties agree, may to continue value engineering efforts for that period of time agreed to establish another revised Final Guaranteed Maximum Price Proposal.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Final Guaranteed Maximum Price Amendment, except as the Owner may specifically authorize in an executed Work Package Authorization or 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 Final 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 Final Guaranteed Maximum Price Amendment and the revised Contract Documents. To the extent that the Contract Documents are anticipated to require further development, the Final Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

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

§ 3.3 Work Package Authorizations. Owner may identify various portions of the Work that may be ready for construction before it is appropriate to arrive at a Final Guaranteed Maximum Price for the entire Project (a "Work Package"). If the Owner elects to proceed with any Work Packages before the parties arrive at a Final Guaranteed Maximum Price, the Construction Manager shall develop a proposal for "Work Package Authorization" for each Work Package identified by the Owner as follows: The Construction Manager shall prepare a proposal for any particular portion of the Work identified by the Owner as a candidate for a Work Package by preparing a proposed Work Package Authorization. Each proposed Work Package Authorization will include, for the particular Work Package or phase of Work, the information and supporting details set forth for the Construction Manager's Final Guaranteed Maximum Price Proposal in Section 3.2.2 above. Construction Manager will include a site-specific Safety Plan focused on the Work under the particular Work Package. When the proposal for any portion of the Work is agreed upon by the Owner and Construction Manager, the Owner and Construction Manager shall execute the Work Package Authorization that describes the specific scope of Work to be performed and details regarding that Work. Each approved Work Package Authorization will be identified in the Construction Manager's Final Guaranteed Maximum Price Proposal with an explanation of its completion status and the approved amount included within the Final Guaranteed Maximum Price and will be attached to **Exhibit A as Attachment 11**. The Work Package Authorization Template is attached as **Exhibit G**.

(Paragraphs deleted)

§ 3.4 Construction Phase

§ 3.4.1 General

§ 3.4.1.1 For purposes of the Construction Phase, the Construction Manager shall at all times comply with this Agreement, the requirements and obligations set forth in the Final Guarantee Maximum Price Amendment, and the requirements of the A201-2017, in addition to all Contract Documents.

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

§ 3.4.2 Contract Time, Date of Commencement, and Required Date of Substantial Completion. The Date of Commencement, any Interim Milestone Dates, and the Required Date of Substantial Completion shall be set forth in the Final Guaranteed Maximum Price Amendment. The Contract Time shall be measured from the Date of Commencement. Construction Manager shall perform the Work in accordance with the Project Schedule and the dates of Substantial Completion and Final Completion and all Interim Milestone Dates contained in the Final Guaranteed Maximum Price Amendment.

§ 3.4.2.1 Substantial Completion. The Construction Manager shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. If the Construction Manager fails to achieve Substantial Completion by the Required Date of Substantial Completion as provided in the Final Guaranteed Maximum Price Amendment, liquidated damages, if any, shall be assessed as set forth in Section 6.1.6 below. By executing the Final Guaranteed Maximum Price Amendment, the Construction Manager confirms that the Contract Time is a reasonable period for performing the Work.

§ 3.4.2.2 The Construction Manager shall not knowingly, except by agreement or instructions of the Owner in writing, prematurely commence operations on the Site or elsewhere prior to the effective date of insurance required by **Exhibit B** to be furnished by the Construction Manager to the Owner. The Contract Time shall not be adjusted as a result of the Construction Manager's failure to obtain insurance required under this Contract.

§ 3.4.3 Schedule. The Construction Manager shall provide scheduling and periodic updating of the progress of the Work and other necessary schedules in the interest of completing the Work in the most expeditious and economic manner (hereinafter called the "Project Schedule") and as otherwise required by Section 3.10 of the A201-2017. Except as otherwise expressly agreed by Owner and Construction Manager, the Project Schedule shall be and remain consistent with the schedule attached to the Final Guaranteed Maximum Price Amendment as **Attachment 7**.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall, with reasonable promptness, provide Construction Manager with copies of, or reasonable access to, information and documentation regarding the Project and to the property on which the Project is located. Owner shall also provide information regarding Owner's program which shall set forth Owner's objectives, constraints, and Owner Criteria. Such information may include schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and Site requirements.

§ 4.1.2 Prior to the execution of the Final Guaranteed Maximum Price Amendment, and upon written request by the Construction Manager, the Owner shall provide to the Construction Manager reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract Documents including the information described in *Texas Business and Commerce Code §56.054(e)*.

§ 4.1.3 *[Intentionally deleted]*.

§ 4.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.4.1 The Owner shall provide as available, to the extent under the Owner's control and if not required by the Contract Documents to be provided by the Construction Manager, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; Hazardous Materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project Site. In addition, Owner shall provide or provide access to necessary soil reports, environmental reports, flood plain analyses, or traffic impact studies in the possession of Owner which may impact the design and/or construction of the Project. The Construction Manager shall have the right to reasonably rely on information provided by the Owner under this Section 4.1.4.1, but shall exercise proper precautions relating to the safe performance of the Work and shall notify the Owner of any discovered errors, incomplete, or inaccurate information. Construction Manager may not rely on such information if Construction Manager knows the information is inaccurate, inadequate, incomplete, or otherwise unfit for its intended purpose, or would infringe the intellectual property rights of third parties.

§ 4.1.4.2 *[Intentionally Deleted]*.

§ 4.1.4.3 The Owner, when such services are required for the Project, 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.

(Paragraph deleted)

§ 4.1.4.4 Additional Owner Provided Information and Special Conditions regarding the performance of the Work are set forth in **Exhibit C – Owner's Special Conditions** and **Exhibit D – Owner-Provided Information**.

§ 4.1.5. *[Intentionally Deleted]*.

§ 4.1.6 *[Intentionally Deleted]*.

§ 4.2 Owner's Designated Representative

The Owner has identified, in Section 1.1.8 above, its representative(s) authorized to act on behalf of the Owner with respect to the Project. The Owner's representative(s) shall have authority to bind the Owner with respect to certain Project matters requiring the Owner's approval or authorization; however, only to the extent previously delegated in writing by Owner. Except as otherwise provided in Section 4.2.1 of A201-2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative(s).

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

§ 4.3 *[Intentionally Deleted]*.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase Services described in Sections 3.1 and 3.2, the Owner shall *(Paragraphs deleted)*

pay the Construction Manager a Preconstruction Services Lump Sum Fee of One Million Nine Hundred Fifty Thousand and No/100 (\$1,950,00.00) (the "Preconstruction Services Fee"). The Preconstruction Services Fee is the total compensation payable to the Construction Manager for the performance of the Preconstruction Services set forth in this Agreement and shall include any reimbursable expenses.

§ 5.1.2

(Paragraphs deleted)

[Intentionally deleted.]

(Table deleted)

§ 5.1.2.1 *[Intentionally deleted]*.

§ 5.1.3 *[Intentionally deleted]*.

§ 5.2 Payments

§ 5.2.1 Payments are due and payable within **thirty (30)** Days after approval of the Construction Manager's Preconstruction Invoice by the Owner and the Project Manager, in proportion to services performed. Invoices shall be in such form set forth in **Exhibit E** and shall categorize services provided with such level of detail as prescribed by Owner.

§ 5.2.2

(Paragraphs deleted)

Tex. Gov't. Code 2251.021 shall govern amounts certified and approved by Owner but remaining unpaid and which are overdue pursuant to said statute.

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

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

§ 6.1.2 The Construction Manager's Fee:

(Percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

3.21% of the Cost of the Work.

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

The Construction Manager's Fee for changes in the Work shall be based on the **same percentage** as set forth in Section 6.1.2 above, whether the change results in a net increase or decrease. Such fee is agreed by Construction Manager to be reasonable reimbursement for, and in satisfaction of, any increase in indirect overhead or profit on said change.

Construction Manager will not charge insurance or bond costs as a percentage increase in any Change Order except those based on demonstrated increases in actual cost to Construction Manager. All added insurance and bond costs included in any change order shall be fully auditable by Owner. When both additions and deletions covering related Work or substitutions are included in any one change, the increase or decrease in the Construction Manager's Fee shall be calculated on the basis of the net increase or decrease, if any, with respect to the change.

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

Any Subcontractor overhead and profit attributable to increases in the cost of its portion of the Work, as evidenced by executed Change Order(s) identifying the same, shall not exceed **ten percent (10%)** for overhead and **five percent (5%)** for profit on the increased cost of its Work. In no event shall the total of overhead and profit payable by the Owner for

changes in the Work performed by a Subcontractor and/or sub-subcontractor (regardless of the number of tiers) exceed **fifteen percent (15%)** of the actual direct labor and material cost of the changed Work. Mark-up on any Self-Performed Work will not be charged other than as the Construction Manager's Fee set forth in Section 6.1.2 above.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed **seventy percent (70%)** of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages.

§ 6.1.6.1 All time limits stated in the Contract Documents are of the essence. Construction Manager acknowledges and agrees that its failure to meet the deadlines set forth in this Agreement and in the Final Guaranteed Maximum Price Amendment shall be a material breach of the Agreement and that Owner will incur substantial damages due to any failure by the Construction Manager to achieve Substantial Completion on or before the Required Date of Substantial Completion and any Interim Milestone Dates. If the Construction Manager fails to achieve Substantial Completion of the Work by the Required Date of Substantial Completion as such date may be modified in accordance with the terms of the Contract Documents, the Construction Manager shall pay Owner liquidated damages, in the amount of \$6,000 per Day until Substantial Completion of the Work is achieved. If the Construction Manager fails to achieve Substantial Completion of certain Interim Milestones(s) by the date(s) set forth in the Final Guaranteed Maximum Price Amendment or Work Authorization Packages, as may be modified in accordance with the terms of this Agreement, the Construction Manager shall pay Owner liquidated damages, and not as a penalty or forfeiture, the following:

Milestone	Amount per Day
To be discussed by the Parties during the IGMP stage and included in the Final GMP Amendment	

§ 6.1.6.2 Owner may deduct any liquidated damages from any amounts due the Construction Manager, and/or Owner may require the Construction Manager to pay any liquidated damages, within **ten (10)** Days after Owner's request should the available contract funds be insufficient to cover the liquidated damages assessed against the Construction Manager. The above-stated liquidated damages provided for in Section 6.1.6.1 shall be Owner's exclusive damages remedy for the Construction Manager's unexcused failure to achieve Substantial Completion of the Work by the Required Date of Substantial Completion or Substantial Completion of any construction milestone by the Interim Milestone Date(s), but such damages shall in no way limit Owner's other rights (e.g., termination) under the Agreement or Owner's entitlement to damages for any other injury, damage or loss, other than for delay to achieving Substantial Completion of the Work by the Required Date of Substantial Completion or Substantial Completion of certain construction milestone(s) by the Interim Milestone Date(s), for which the Construction Manager may be responsible pursuant to the terms of this Agreement or Applicable Law.

§ 6.1.6.3 In determining the amount(s) of liquidated damages above, Owner has carefully considered the following categories of damages and has thoughtfully determined such amount(s) accordingly: increased financing charges, cost of relocation of personnel to alternative space, costs for managing an extended schedule, costs for the Architect's or Project Manager's extended involvement, costs of storage of Owner-provided FF&E, lease extension costs, and other numerous damages. Further, the Construction Manager acknowledges and agrees that as of the date this Agreement is executed (i) the amount of damages Owner will incur due to the Construction Manager's failure to achieve Substantial Completion of the Work by the Required Date of Substantial Completion or Substantial Completion of certain construction milestone(s) as required by this Agreement are impossible or difficult to estimate, (ii) the liquidated damages set forth herein are a reasonable pre-estimate of damages that Owner will incur as a result of a delay in achieving Substantial Completion of the Work by the Required Date of Substantial Completion or Substantial Completion of certain construction milestone(s) as required by this Agreement, (iii) that the consequential damages contemplated at the time of this Agreement are uncertain and difficult to determine with exactness, and (iv) that the liquidated damages set forth herein are in proportion to the probable loss.

§ 6.1.6.4 This Section 6.1.6 shall survive the termination of this Agreement. In the event this liquidated damage provision is held to be unenforceable or void (except when the holding is the result of a challenge by Owner), Owner shall be allowed to recover actual damages (both direct and consequential damages) caused by the Construction Manager's failure to achieve the applicable Contract Time requirements to the fullest extent allowed by Applicable Law.

§ 6.1.7 Other:

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

None.

§ 6.2 Final Guaranteed Maximum Price

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

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work as provided in the A201-2017.

§ 6.3.1.1 *[Intentionally deleted]*.

§ 6.3.2 Adjustments to the Final Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Final Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of the A201-2017.

§ 6.3.3 *[Intentionally deleted]*.

§ 6.3.4 In calculating adjustments to the Final Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of the 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.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

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

§ 7.1.1.1 Cost, as defined herein, shall be actual costs paid or incurred by the Construction Manager, less all discounts, rebates and salvages that are obtained by the Construction Manager, subject to Article 9 of this Agreement. All payments made by the Owner pursuant to this Article 7, whether those payments are actually made before or after the execution of this Agreement, are included within the Final Guaranteed Maximum Price specified in Section 6.2 above.

Notwithstanding the breakdown or categorization of any costs to be reimbursed in Sections 7.1 – 7.7 or elsewhere in the Contract Documents, there shall be no duplication of payment in the event any particular items for which payment is requested can be characterized as falling into more than one of the types of reimbursable categories.

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

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

§ 7.1.4 **Construction Manager's General Conditions Costs.** Owner and Construction Manager agree that those certain administrative and supervisory personnel costs, direct overhead, and other on-Site costs and expenses incurred by Construction Manager in the performance of its administrative, supervisory, and management responsibilities under the Contract described or itemized in Construction Manager's General Conditions Costs Schedule attached to the Final

Guaranteed Maximum Price Amendment as **Attachment 5** shall, notwithstanding the other terms of this Article 7, be reimbursable to the Construction Manager subject to the limitations and restrictions expressly set forth in such Schedule and in **Attachment 5** to the Final Guaranteed Maximum Price Amendment. **Attachment 5.1** to the Final Guaranteed Maximum Price Amendment provides wage/salary, benefits, and labor burden information for the specific personnel included in the administrative, supervisory and management roles in **Attachment 5** to the Final Guaranteed Maximum Price Amendment. Notwithstanding anything to the contrary in the Contract Documents, (a) the Construction Manager shall not be entitled to an increase in the General Conditions Costs for any portion of the Work as a result of errors in the Construction Manager's assumptions or changes to the Construction Manager's means and methods of performing the Work; and (b) the total cost to the Owner for all General Conditions Costs for the Work shall in no event exceed the amount set forth on Final Guaranteed Maximum Price Amendment **Attachment 5**, unless such amount is increased by Change Order or the Owner in its sole discretion consents to use the Contingency therefor. The Construction Manager's General Conditions Costs shall be billed each month in an Application for Payment based on actual costs incurred for that month. General Conditions costs shall not be duplicated in other non-General Conditions cost categories.

§ 7.2 Labor Costs

§ 7.2.1 With the Owner's prior written approval, wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the Site or at off-Site workshops. Construction Manager shall, at all times comply with the requirements of prevailing wage rates/requirements of *Tex. Gov't. Code § 2258* and shall pay not less than the wage schedule in compliance with same.

§ 7.2.2 With the Owner's prior approval, wages or salaries of the Construction Manager's supervisory and administrative personnel assigned to the Project, including but not limited to an estimator, scheduler(s), safety personnel, a Project manager, a Project administrator, superintendent(s) and operations managers, but only for that portion of the time required for the Project, all of whom shall be paid as part of Construction Manager's General Conditions Costs set forth in **Attachments 5 and 5.1** to the Final Guaranteed Maximum Price Amendment. Supervisory and administrative personnel providing only a portion of their time to the Project shall be frequently assessed and reviewed by the Construction Manager, Project Manager, and Owner to agree upon the time or percentage of time portioned to the Project.

(Paragraphs deleted)

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel assigned to the Project who are 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 on the Project, which shall be paid as Construction Manager's General Conditions Costs set forth in **Attachments 5 and 5.1** to the Final Guaranteed Maximum Price Amendment.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for employment 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 or other incentive compensation or benefits (but not discretionary or merit bonuses), included as part of Construction Manager's usual compensation package, 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. Such costs are referred to as "Labor Burden" which are included in the rates established in **Attachment 5.1** to the Final Guaranteed Maximum Price Amendment for each position as set forth therein.

§ 7.2.5 The stipulated labor costs provided in **Attachment 5.1** to the Final Guaranteed Maximum Price Amendment shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.2.6 Any labor rates and/or Labor Burden set forth in **Attachments 5 and 5.1** to the Final Guaranteed Maximum Price Amendment are fixed and final for the duration of the Project. Owner shall be entitled to verify the calculation of the fixed rate times the applicable multiplier. Owner agrees that the rates, multipliers and other fixed percentages and amounts applicable to insurance are subject to review and audit.

§ 7.3 Subcontract Costs

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

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

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

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

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

§ 7.5.1 Costs of transportation, storage at the Site (subject to other provisions in the Contract regarding stored materials), installation, dismantling, maintenance, removal of materials, supplies, temporary utilities and consumption costs (including those for equipment start-up), temporary facilities, temporary bracing, support, or shoring, 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 Site less the value of the item when it is no longer used at the Site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.1.1 Utility costs, which shall include all temporary hook-up and/or service charges, temporary power distribution and lighting system and equipment, and costs for coordination, installation, relocation, maintenance and removal of the temporary electrical service.

§ 7.5.2 Rental charges for facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the Site and costs of transportation, installation, minor repairs, dismantling and removal. For tools, machinery or construction equipment owned by and rented directly from the Construction Manager, the rental rate, including freight and delivery costs and all operating expenses except labor, shall be approved in advance by Owner and shall be in accordance with those established by (i) the "Contractor's Equipment Cost Guide," latest edition published by the Associated General Contractors of America, or (ii) the lowest of three (3) competitive bids obtained from equipment leasing companies that have been approved by the Owner before any commitments are made. Such rental costs shall in no event be charged at higher than competitive rental rates prevailing in the Dallas/Fort Worth metropolitan area for similar equipment. In no event shall the aggregate rental cost to Owner exceed the purchase price and maintenance cost of the item. No charge for idle machinery and equipment owned by Construction Manager shall be made by the Construction Manager during the period of any suspension or labor dispute. The total rental cost of any such equipment may not exceed the purchase price of any comparable item on the date that the equipment is first rented for the Project. The Construction Manager shall pay any excess rental charges. **Attachment 10** to the Final Guaranteed Maximum Price Amendment shall govern all Construction Manager-owned equipment rental rates.

§ 7.5.3 Costs of removal of debris from the Site of the Work and its proper and legal disposal, which shall be paid as part of Construction Manager's General Conditions Costs as set forth in **Attachment 5**.

§ 7.5.4 Costs of the Construction Manager's Site office, including general office equipment and supplies such as document reproductions, internet service, dedicated data and communication services, teleconferences, Project websites, extranets, electronic communications, delivery charges, telephone service (including cellular service) at the Site and reasonable petty cash expenses of the Site office, which shall be paid as part of Construction Manager's General Conditions Costs as set forth in **Attachment 5**.

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

§ 7.5.6 Costs of ice, water containers, cups, fire extinguishers, first aid supplies, safety equipment, fall protection, final cleaning requirements, compliance with trench safety requirements, street and sidewalk expenses, off-Site storage space or facilities, and progress photos, which shall be paid as part of Construction Manager's General Conditions Costs set forth in **Attachment 5**.

§ 7.5.7 Costs necessary to maintain proper physical distancing, protection, and safety of all persons and employees who may be affected by the Work and to ensure compliance with any and all Applicable Laws, including Executive Orders by local, State of Texas, or federal government authorities, relating to COVID-19.

§ 7.5.8 All losses resulting from lost, damaged or stolen tools and equipment shall be the sole responsibility of the Construction Manager, and not the Owner. Costs of such losses shall not be reimbursable under this Agreement. However, this limitation is not intended to prevent the Construction Manager from recovering any such loss under the builder's risk insurance furnished by Construction Manager with respect to the Project, to the extent such loss is recoverable thereunder.

§ 7.5.9 With Owner's advance written approval, Construction Manager may procure long-lead time items or large quantities of materials to be incorporated into the Work for the purpose of taking advantage of lower prices or quantity purchase discounts, or addressing potential scheduling issues. Payment for such materials shall be made at the time the materials are incorporated into the Work pursuant to Section 11.1.7.1.3, or when stored off-Site, with Owner's approval. To the extent deposits or advances are required to secure the materials, Construction Manager shall identify the reason and the amount of such deposits and shall seek Owner's approval of same prior to ordering. Construction Manager shall comply with the requirements of Section 9.3.2 of the A201-2017 (as modified for this Project), store, and secure such materials in a bonded warehouse and shall arrange and pay for, as a Cost of the Work, all shipping, storage and insurance costs for said materials.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Insurance Premiums and Deductibles. Owner will pay that portion of premiums for Construction Manager's payment and performance bonds required pursuant to *Tex. Gov't. Code § 2253* and insurance required by this Agreement and specified in **Exhibit B**, that are attributable to this Project. Construction Manager's portion of liability insurance will be reimbursed at a fixed rate of .95% of the Final Guaranteed Maximum Price. Construction Manager's portion of bonds will be reimbursed at a fixed rate of .83% of the Final Guaranteed Maximum Price. Construction Manager shall not charge Fee on the cost of the bonds. Construction Manager's premium for Builder's Risk Insurance shall be charged as a Cost of the Work based on the Initial Guaranteed Maximum Price and duration. Insurance deductibles for Subcontractor bonds and premiums for Subcontractor default insurance are NOT reimbursable as a General Conditions Cost or Cost of the Work. Premiums for Subcontractor payment and performance bonds may be included in the Cost of Work.

§ 7.6.1.1 No charges for self-insurance will be considered as a reimbursable cost under the terms of this Agreement unless the arrangements for self-insurance are first disclosed in writing to Owner and approved by Owner along with a proposed methodology for determining a fair and equitable portion of the actual cost of the self-insurance out-of-pocket costs incurred to settle claims related to Work performed in this Project. In no event shall the charges for self-insurance costs exceed the comparable costs of purchasing conventional insurance at conventional net or modified rates of similar volumes of Work performed under similar conditions.

§ 7.6.1.2 [Intentionally Deleted].

§ 7.6.2 Sales, use or similar taxes imposed by Authorities Having Jurisdiction, that are related to the Work and for which the Construction Manager is liable, except to the extent the Owner is exempt under *Tex. Admin. Code § 3.291*, the *Texas Tax Code Ch. 151*, and/or the Internal Revenue Code.

§ 7.6.3 Fees and assessments for any building permits, licenses, and inspections, including, but not limited to construction-related permits and approvals and expediting of such permits and approvals, including those related to, demolition, sidewalk and/or street closings, traffic control, sidewalk crossing, building and Certificates of Occupancy (permanent and temporary), Certificates of Compliance (permanent and temporary), and any other construction-related permit.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents, including testing A/C system power, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.4.3 of the A201-2017 (as modified for this Project), those related to repeated testing or inspections as a result of failed tests for which reimbursement is excluded by Section 13.4.3 of the A201-2017 (as modified for this Project), or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents except as provided in Section 7.6.5.1 below.

§ 7.6.5.1 *[Intentionally Deleted]*.

§ 7.6.6 As set forth in **Attachment 5** to the Final Guaranteed Maximum Price Amendment, costs for communications services, electronic equipment, and software, directly related to the Work (including QA/QC Systems, Project I.T. Infrastructure, and Project Management Systems), located at the Site or used in furtherance of the Work at fixed monthly rate. These costs are included in the Construction Manager's General Conditions Costs in **Attachment 5** of the Final Guaranteed Maximum Price Amendment.

§ 7.6.7 The cost of company-assigned vehicles are included in the General Conditions Costs in **Attachment 5** of the Final Guaranteed Maximum Price Amendment.

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

§ 7.6.9 *[Intentionally Deleted]*.

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

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling, in accordance with Owner's travel policy, and in discharge of duties connected with the Work. Such expenses incurred by employees of the Construction Manager not permanently stationed at the field office must be approved in advance by the Owner. Commuting expenses are specifically not reimbursable.

§ 7.6.12 Costs incurred for performing surveying, field engineering and layout services required by the Contract Documents.

§ 7.6.13 Costs relating to personnel, such as employee credentialing and identification materials, costs of the safety program, temporary barriers, signage and controls.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 7.7.2 Reasonable 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 the A201–2017 (as modified for this Project).

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable; provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 *[Intentionally Deleted]*.

§ 7.8 Related Party Transactions

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

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner in writing of the specific nature of the contemplated transaction,

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

§ 7.9 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the Site office, except as specifically provided in Section 7.2;
- .2 Expenses of the Construction Manager's principal office and offices other than the Site office, except as to Project-related services such as scheduling, estimating or accounting and then only for such time or in such amount as relates to the Project and only as authorized in Section 7.2.2;
- .3 Overhead, bonus, profit-sharing, incentive compensation, and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence, lack of care, or failure of the Construction Manager, Subcontractors, and/or suppliers (or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable) to fulfill a specific responsibility of or comply with the Contract Documents, to coordinate its Work with Owner's Separate Contractors or to fulfill a specific responsibility of the Agreement, or costs for the correction of damaged, defective or non-conforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, costs for any re-tests or re-inspections required, and costs incurred in making good damage to property not forming part of the Work;
- .6 Any cost not specifically and expressly described in Sections 7.1 to 7.7, without Owner's prior approval;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Final Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase;
- .9 Except as provided in Section 7.6.1 above, premiums, losses and expenses for or related to (i) Construction Manager's insurance program, (ii) Subcontractor default insurance, (iii) Subcontractor payment and performance bonds, and (iv) lost, damaged, or stolen tools or goods not covered by insurance or items within the deductible. Insurance deductibles under insurance policies secured for the Project in accordance with **Exhibit B** are not reimbursable and will not be paid as a Cost of the Work.
- .10 Overtime wages or salaries (and fringe benefits related thereto) incurred by the Construction Manager as a result of the Construction Manager's unexcused failure to perform the Work in accordance with the Project Schedule, unless the Construction Manager has received the Owner's prior consent to incur such overtime;
- .11 Fines, penalties, sanctions or impositions assessed or imposed by any Authority Having Jurisdiction, instrumentality or tribunal arising from the fault of Construction Manager or its Subcontractors or any tier;
- .12 Costs incurred by Construction Manager resulting from the failure of Construction Manager or its Subcontractors to coordinate their Work with that of Owner and its Separate Contractors, if any, after agreeing to the schedules therefor, or failure of Construction Manager to comply with directives of Owner not in conflict with said schedules;
- .13 Any cost or portion thereof that duplicates in whole or in part any other cost or portion thereof that has been charged to or has been paid separately by Owner; and
- .14 Sales and use taxes from which Owner is exempt under *Tex. Admin. Code § 3.291*, *Tex. Tax Code Ch. 151*, and/or the Internal Revenue Code.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 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. The Construction Manager shall not obtain for its own benefit any discounts, rebates or refunds in connection with the Work prior to providing the Owner with **seven (7)** Days prior notice of the potential discount, rebate or refund so that the Owner can take advantage of it in accordance with the requirements of this Section 8.1.

§ 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 Construction Manager shall make reasonable efforts to provide Owner with timely notice of all available discounts, rebates, refunds and returns (hereinafter referred to collectively as "discounts"). The Construction Manager shall not obtain for its own benefit any discounts in connection with the Work prior to providing the Owner with reasonable, prior notice of the potential discount and an opportunity to furnish funds necessary to obtain such discount on behalf of the Owner in accordance with the requirements of this Section 8.3.

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 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. Construction Manager shall not retain any Subcontractor, supplier or other person or organization, whether initially or as a substitute, against whom Owner shall have reasonable objection. Construction Manager shall not substitute Subcontractors without the acceptance of Owner. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Final 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 be consistent with and bind the Subcontractors to the terms and conditions of the Contract Documents and shall conform to the applicable payment provisions of this Agreement. No trade work shall be performed by Construction Manager, or any entity related to or affiliated with Construction Manager, except as provided in *Tex. Govt' Code 2269.255*. If a Subcontract is awarded on a cost-plus a fee 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 Article 11 below. Construction Manager shall furnish to Owner a copy, at Owner's request, of each first-tier subcontract promptly after its execution. Construction Manager agrees that Owner has no obligation to review or approve the content of such contracts and that providing Owner such copies in no way relieves Construction Manager of any of the terms and conditions of the Contract, including, without limitation, any provisions of the Contract which require the Subcontractor to be bound to Construction Manager in the same manner in which Construction Manager is bound to Owner.

§ 9.3 If Construction Manager intends to (i) perform Work itself or (ii) award a subcontract to any entity related to or affiliated with Construction Manager, other than supervision of the Work, the Construction Manager or its affiliated or related entity shall include such self-performance in the bid/proposal strategy. Construction Manager shall bid the Work at least twenty-four (24) hours prior to receiving bids from other parties. Construction Manager must also obtain at least three (3) additional competitive bids from Subcontractors and from suppliers of materials or equipment fabricated for the Work and shall deliver such bids to the Owner for review and approval unless the Owner directs otherwise. The Owner may be present when all bids are received. If the Owner determines that the Construction Manager's bid or proposal provides the best value for the Owner, the Owner may allow the Construction Manager to self-perform Work. Construction Manager must perform such Work in accordance with the same terms and conditions as its other Subcontractors. For payment purposes, the Construction Manager shall account for self-performed Work in the same manner as it does all other Subcontractor costs. In the event an adjustment is required to the cost of any awarded self-performed Work the awarded amount shall be treated as a lump sum amount and any adjustment to said amount must be approved through the Change Order process identified in Section 7.2 of the A201-2017.

§ 9.4 Value engineering or cost saving alternative proposals contained in any Construction Manager or Subcontractor bids must be set forth as alternates to bid required by Drawings or Specifications. Construction Manager shall consult with Owner before awarding any alternates to Subcontractors and shall provide Owner with a copy of each proposed alternate for Owner's review and acceptance. The term "value engineering" used in conjunction with this Agreement or the Project

or the Work has its commonly accepted meaning within the construction industry and does not imply the practice of architecture or engineering with or without a license.

§ 9.5 Construction Manager shall include in each Subcontract a provision permitting Construction Manager to assign to Owner each Subcontract upon termination of this Agreement pursuant to Section 14.2 or Section 14.4 of the A201-2017. Each Subcontract shall contain a provision that upon assignment of each Subcontract to Owner, Subcontractor shall assume toward the Owner all of the obligations and responsibilities which the Construction Manager, by the Contract Documents, assumes toward the Owner.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, Drawings, receipts, Pencil Draws, formal Applications for Payment, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract and the Preconstruction Services, Construction Services, and Work hereunder, including but not limited to all records and back-up documentation relating to reimbursable expenses and Cost of Work items. The Construction Manager shall preserve these records for a period of **five (5)** years after final payment, or for such longer period as may be required by Applicable Law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon the Schedule of Values approved by Owner, Applications for Payment submitted to the Owner and the Architect by the Construction Manager (including all supporting documentation, as hereinafter provided), and Certificates for Payment issued by the Project Manager, the Owner shall make progress payments 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 (1)** calendar month ending on the last day of the month.

§ 11.1.3 Application for Payment Process

§ 11.1.3.1 Pencil Draw. No later than the **20th Day** of the month (or the next business day if the 20th is not a business day), the Construction Manager shall submit to the Architect, Project Manager, and Owner, a preliminary draft of that month's Application for Payment (the "Pencil Draw") for review by Owner, Architect, and Project Manager. On or about the **25th Day** of the month (or the next business day if the 25th is not a business day), the Owner, Architect, Project Manager, Construction Manager, and other members of the Project Team as required by Owner, shall meet to review the Pencil Draw and to observe the condition of the Work to determine whether the Work is of the quality required by the Contract Documents and has progressed in quantity to the point indicated in the Application for Payment. Based on this review, the Owner, Project Manager and/or Architect may require modifications to the Pencil Draw. Construction Manager shall revise the Pencil Draw in accordance with any objections or recommendations of the Owner, Architect, or Project Manager that are consistent with the requirements of the Contract Documents. The Construction Manager shall resubmit to the Project Manager and the Architect the corrected Pencil Draw as the formal Application for Payment, which Application shall be due no later than the **last Day** of the month. All formal Applications for Payment shall be notarized. The Construction Manager shall also submit with each Application for Payment such supporting documentation as required in this Section 11.1.3 and a written narrative describing the basis for any item set forth in the Application for Payment that does not conform to instructions of the Owner, Project Manager, or the Architect in connection with any applicable Pencil Draw. Upon receipt of the formal Application for Payment, the Architect and Project Manager shall each certify that, based on the Architect's and Project's Manager's inspections at the Site, the data comprising the Application for Payment, and their knowledge of the Contract Documents, the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information, belief and Standard of Care, the quantity and quality of the Work is in accordance with the Contract Documents. The Project Manager shall then issue the Certificate for Payment.

§ 11.1.3.2 Provided that the final Application for Payment, including supporting documentation as required in this Article 11 and in Section 9.3 of the A201-2017 (as modified for this Project), as certified by the Project Manager, is received by the Owner not later than the **last Day** of a month, the Owner shall make payment to the Construction Manager of the

amount certified by the Project Manager not later than the **thirtieth (30th)** Day of the following month, in accordance with *Tex. Gov't. Code § 2251*. If an Application for Payment is received by the Owner and Project Manager after the application date fixed above, payment of the certified amount shall be made by the Owner not later than **thirty (30)** Days after the Project Manager certifies the amount due and owing in the Certificate for Payment. For purposes of *Tex. Gov't. Code § 2251.021(2)* and (3), the "date of performance/receipt of invoice" is the date the Project Manager signs the formal Application for Payment. No Application for Payment is complete unless it fully reflects all required modifications, attaches all required supporting documentation, and is certified by the Project Manager. Construction Manager shall make payment to Subcontractors in the appropriate amounts not later than the **tenth (10th)** Day after the date Construction Manager receives payment or otherwise in accordance with *Tex. Gov't. Code § 2251.022*.

§ 11.1.4 The Application for Payment shall be made in the AIA G702 and G703 format or other such format required by Owner based on the percentages of completion and the approved Schedule of Values set forth in **Attachment 1 to Exhibit A**, the Final Guaranteed Maximum Price Amendment. Construction Manager shall submit with each Application for Payment any reports, documentation, and evidence required by the Owner or Architect to substantiate the Construction Manager's Application for Payment, including, but not limited to, payrolls, petty cash accounts, receipted invoices, or invoices with check vouchers attached, to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager's Fee; plus (3) payrolls for the period covered by the present Application for Payment. Construction Manager shall, in each Application for Payment provide certification that, to the best of its knowledge, information and belief, the Work has been performed in accordance with this Agreement and the Contract Documents.

§ 11.1.5 Each Application for Payment shall be based on the Schedule of Values submitted by the Construction Manager in accordance with the Contract Documents as approved by Owner. The Schedule of Values shall allocate the entire Final Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee, Construction Manager's General Conditions Costs, any allowances, and Contingency shall be shown as separate items. With each Application for Payment, the Construction Manager shall also provide copies of all Subcontractors' monthly applications for payment to substantiate the Construction Manager's Application for Payment.

(Paragraphs deleted)

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the percentage of that portion of the Work that has actually been completed and is supported by documentation required by Owner as set forth in Sections 11.1.4, 11.1.5, and 11.1.6.1. Applications for Payment shall not include requests for payment for portions of the Work for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Construction Manager intends to pay.

§ 11.1.6.1 In addition to other items required for payment in Section 9.3 of the A201-2017 (as modified for this Project), and as set forth above, each Application for Payment shall be accompanied by the following documentation, statements and information, as conditions precedent to payment, all in form and substance reasonably satisfactory to the Owner and in compliance with applicable state statutes:

- .1** an Excel spreadsheet identifying all Subcontractors (including vendors and material suppliers) together with a brief description of the scope of work for each (i.e., masonry, HVAC, etc.), the subcontract amount for the scope of work and any retainage agreement. Said information shall be required to be furnished with the first Application for Payment. Each Application for Payment thereafter shall identify the Subcontractor, the total contract amount and the amount requested in the particular Application for Payment for each Subcontractor and shall be accompanied by the information required in Section 11.1.4 above. Construction Manager may reference the latter back to the Schedule of Values by line item number or other reference point approved by Owner;
- .2** an updated Project Schedule including executive summary and all required schedule reports;
- .3** an updated Submittal Log and Change Order log;
- .4** a duly executed Unconditional Waiver and Release on Progress Payment from the Construction Manager on the Texas statutory form that waives all liens or claims for payment for the Work covered by the previous Application for Payment paid by Owner and a Conditional Waiver and Release on Progress Payment on the Texas statutory form that waives all liens or claims for payment for the Work by the Application for Payment being submitted, conditioned upon and to the extent of payment received;

- .5 a duly executed Unconditional Waiver and Release on Progress Payment from each Subcontractor on the Texas statutory form that waives all liens or claims for payment for the Work covered by the previous Application for Payment paid by Owner and a Conditional Waiver and Release on Progress Payment on the Texas statutory form that waives all liens or claims for payment for the Work by the Application for Payment being submitted, conditioned upon and to the extent of payment received; and
- .6 if payments are to be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored on the Site, or at some other location agreed upon in writing, such payments shall be conditioned upon submission to Owner of bills of sale or other commercially reasonable procedures reasonably satisfactory to Owner to establish Owner's title to such materials or equipment or otherwise protect Owner's interest. Any materials stored off-Site must be stored in compliance with Section 9.3.2 of the A201-2017 (as modified for this Project).

§ 11.1.7 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 Final Guaranteed Maximum Price properly allocable to completed Work as determined in the Schedule of Values, not to exceed the actual Cost of the Work incurred by Construction Manager for such period. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of the A201-2017 (as modified for this Project);
- .2 That portion of the Final Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the Site at a location agreed upon in writing and in conformance with Section 9.3.2 of the A201-2017 (as modified for this Project);
- .3 That portion of the Costs allocable to specially fabricated materials or other orders requiring advance deposits or interim payment before completion and/or delivery, which advances shall be made as approved by Owner;
- .4 the Construction Manager's Fee (subject to Section 11.1.8). The Construction Manager's Fee shall be computed upon the Cost of the Work described in Sections .1 and .2 above at the rate stated in Section 5.1. No Fee will be paid on approved Change Orders to the extent Construction Manager has already include Fee in said Change Order.

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

- .1 Retainage as set forth in Section 11.1.8;
 - .2 The aggregate of previous payments made by the Owner;
- (Paragraph deleted)*
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor unless the Work has been performed by others the Construction Manager intends to pay;
 - .4 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
 - .5 Amounts, if any, for which the Owner or Project Manager has withheld or nullified a payment as provided in Sections 9.4.3 or 9.5 of the A201-2017 (as modified for this Project).

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Final Completion of the Work, the Owner may withhold

(Paragraphs deleted)

five percent (5%) of the total Application for Payment being submitted. Retainage will be managed in conformance with *Subchapter B, Tex. Gov't. Code § 2252*. Construction Manager shall not withhold retainage from Subcontractors in amounts that are any percentage greater than that withheld in this Section 11.1.8.1. Any reduction or release of retainage, or portion thereof should Owner decide to do so, shall not be a waiver of (1) any of the Owner's rights to retainage in connection with other payments to the Construction Manager or (2) any other right or remedy that the Owner has under the Contract Documents, at law, or in equity.

§ 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.)

General Conditions Costs, Construction Manager's Fee and costs of insurance and bonds required by this Agreement.

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

(If the retainage established in Section 12.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

Subject to owner approval pursuant to Section 11.1.8.1

§ 11.1.8.3

(Paragraphs deleted)

[Intentionally deleted].

(Paragraph deleted)

§ 11.1.9 *[Intentionally deleted].*

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the Site in accordance with Section 9.3.2 of the A201-2017 and as otherwise provided in the Contract Documents.

§ 11.1.11 As set forth in Section 11.1.6.1.1, in addition to other required items, such Application for Payment shall be accompanied by a duly executed and acknowledged Construction Manager's statement showing all Subcontractors with whom the Construction Manager has entered into subcontracts, the amount of each subcontract, the amount requested for any Subcontractor in the Application for Payment and the amount to be paid to the Subcontractor from such progress payment; conditional lien waivers from the Construction Manager and all Subcontractors, all invoices received from vendors; and such other information, documentation and materials as the Owner, the Project Manager, or the Architect may reasonably require. With each Application for Payment, the Construction Manager shall also provide copies of all Subcontractors' monthly applications for payment to substantiate the Construction Manager's Application for Payment. If the Construction Manager fails to make timely payment of a Subcontractor Payment Amount, the Owner, at its sole election, may issue joint checks payable to the Construction Manager and the Subcontractor and/or may directly pay the Subcontractor, and such payments shall be deemed to be payments to the Construction Manager under this Contract. The Owner's right to elect to issue joint checks or make direct payments shall not give rise to an obligation of the Owner to do so for the benefit of the Construction Manager, a Subcontractor, a Sub-subcontractor, or anyone else.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Owner, Architect, and Project Manager shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Owner, Architect, or Project Manager have made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4, 11.1.5, or 11.1.6, or other supporting data; (2) that neither the Owner, Architect, nor the Project Manager have made exhaustive or continuous on-Site inspections; or (3) that the Owner, Architect, or the Project Manager has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

§ 11.2.1 Neither Final Payment nor any remaining retained amount shall become due, and the Project shall not be deemed to have reached Final Completion, until all of the following have occurred:

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of the A201-2017 (as modified for this Project) and to satisfy other requirements, if any, that extend beyond Final Payment or which otherwise necessarily survive Final Payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment and the Owner's auditors have approved same for payment;
- .3 a final Certificate for Payment has been issued by the Project Manager after completion of the audit process set forth in Section 11.2.2 below;
- .4 Owner has received satisfactory Record Drawings from Architect reflecting the location of the Work on the Site in accordance with the Drawings and Specifications as modified through Change Orders;

- .5 Owner has received confirmation of approval of such completion by the Texas Department of Health and Human Services, if required, and any Authorities Having Jurisdiction, as evidenced by a certificate of occupancy or similar final inspection certificate; provided, however, that if the Construction Manager may only obtain a temporary certificate of occupancy due to (i) Owner's failure to complete Owner's obligations that are conditions precedent to obtaining a permanent certificate of occupancy and (ii) additional requirements made by Authorities Having Jurisdiction covering the items not in this Contract, then Final Payment shall be made on the basis of such temporary certificate of occupancy;
- .6 Owner has received from Construction Manager a certificate evidencing that insurance required by the Contract Documents to remain in force after Final Payment is currently in effect and will not be canceled or allowed to expire until at least **thirty (30) Days'** prior written notice has been given to the Owner;
- .7 Owner has received a written statement that the Construction Manager knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
- .8 Owner has received consent of surety to Final Payment;
- .9 Project Manager has provided certification that all of the requirements for Substantial Completion under Section 9.8 of the A201-2017 have been met and all Work, including all Punchlist items, commissioning of equipment, and training of Owner's staff, has been fully and finally completed;
- .10 Construction Manager has provided a complete list of Subcontractors and principal material and equipment suppliers, including addresses, telephone numbers, and name of individuals to contact who are familiar with the Project (including the Construction Manager);
- .11 Construction Manager has provided one (1) digital copy and two (2) hardcopies of files of all maintenance and operating manuals;
- .12 Construction Manager has provided hardcopy and digital files of all written guarantees and warranties in the form prescribed by the Contract Documents;
- .13 Construction Manager has provided one (1) copy of a quantity survey which breaks down the final Cost of the Work by square foot, by discipline or trade, by department (as defined by Owner), and by any other criteria required by the Owner at the time of Final Completion;
- .14 Owner has received a duly executed Unconditional Waiver and Release on Progress Payment from the Construction Manager on the Texas statutory form that waives all liens or claims for payment for the Work covered by all previous Applications for Payment paid by Owner and a Conditional Waiver and Release of Lien on Final Payment waiving the Construction Manager's constitutional and statutory mechanic's lien or any other claim for payment, conditioned upon receipt of payment and a bills paid affidavit which conforms to the provisions of *Tex. Prop. Code § 53.085*;
- .15 Owner has received duly executed Unconditional Waiver and Release on Progress Payment documents from all Subcontractors on the Texas statutory form that waives all liens or claims for payment for the Work covered by all previous Applications for Payment paid by Owner and Conditional Waiver and Release on Final Payment documents from each Subcontractor, waiving, upon receipt of Final Payment, any and all mechanic's liens or any other claim for payment; and
- .16 Construction Manager has satisfied the remaining close-out procedures and provided Owner all documentation requested by Owner and all other conditions precedent to Final Payment described in the Contract Documents have been satisfied.

All documents including scanned copies of required signed originals shall be acceptable in digital format. Payments which may otherwise become due to the Construction Manager at or following the point of Substantial Completion shall be withheld contingent upon receipt of the above and all other requirements for Final Payment. Owner's acceptance of these items is required for Final Payment.

§ 11.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within a commercially reasonable period of time after delivery of the final accounting to the Owner. Based upon such Cost of the Work as the Owner's auditor's report determines to be substantiated by the Construction Manager's final accounting, provided the other conditions of Section 11.2.1 have been met, the Project Manager will, within **ten (10) Days** after receipt of the written report of the Owner's auditors, 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 Project Manager's reasons for withholding a certificate as provided in Section 9.5.1 of the A201-2017. The time periods stated in this Section 11.2.2 supersede those stated in Section 9.4.1 of the A201-2017 (as modified for this Project).

(Paragraphs deleted)

§ 11.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to initiate final resolution of the dispute pursuant to Article 15 of the A201-2017. Pending a final resolution of the disputed amount, the Owner may pay the Construction Manager the amount determined by the Owner's accountant to be due the Construction Manager.

§ 11.2.4 The Owner's Final Payment to the Construction Manager shall be made no later than **thirty (30)** Days after satisfaction of all of the conditions set forth in Section 11.2.1 above and the issuance of the final accounting set forth in Section 11.2.2.

§ 11.2.5 Construction Manager will provide Unconditional Waiver and Release on Final Payment documents, executed by Construction Manager and all Subcontractors within **ten (10)** Days of receipt of Final Payment from Owner or in the case of Subcontractors, from Construction Manager.

§ 11.2.6 If, subsequent to Final Payment and at the Owner's request, the Construction Manager incurs costs described in Section 7.1-7.7 and not excluded by Section 7.9 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs together with 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 Final Guaranteed Maximum Price.

§ 11.3 Interest

Payments due and unpaid under this Agreement shall bear interest from the date payment is due at the rate stated below, only as allowed under *Tex. Gov't Code § 2251.021 et seq.*

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

[Intentionally deleted].

(Paragraphs deleted)

§ 12.2 Binding Dispute Resolution

For any Claim, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

- ☐ Arbitration pursuant to Article 15 of AIA Document A201-2017
- ☒ Litigation in a court of competent jurisdiction
- ☐ Other: *(Specify)*

§ 12.2.1 **Limitation on Damages.** Notwithstanding anything contained herein or elsewhere in the Contract Documents to the contrary, the total amount of money recoverable from Owner (as a hospital district), on a claim for breach of contract is limited as set forth under Texas law. An award of damages may not include consequential damages (except as allowed pursuant to *Tex. Local Gov't Code § 271.153(b)(1)*), exemplary damages, or damages for unabsorbed home office overhead. Nothing in this Agreement shall be construed as a waiver of sovereign immunity; nor constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to Owner. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the under this Agreement or under Applicable Law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension Prior to Execution of the Final Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Final Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than **ten (10)** Days' written notice to the Construction Manager.

§ 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 performed to the date of the notice of termination together with

Reimbursable Expenses then due. Under no circumstances will Owner be responsible for any damages disallowed under Texas law given Owner's status as a hospital district and Owner specifically reserves all rights, remedies and defenses allowed under Texas law. Further, 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 Final Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than **seven (7)** Days' written notice to the Construction Manager for the Owner's convenience and without cause.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase Services and Work performed prior to receipt of a notice of termination together with Reimbursable Expenses then due. Under no circumstances will Owner be responsible for any damages disallowed under Texas law given Owner's status as a hospital district and Owner specifically reserves all rights, remedies and defenses allowed under Texas law. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Final 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; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

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

§ 13.1.6.1 *[Intentionally deleted]*.

§ 13.1.7 If the Owner suspends the Project, the Construction Manager shall be compensated for the Work performed prior to notice of such suspension. The Construction Manager's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

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

The Contract may be terminated or suspended by the Owner or terminated by the Construction Manager as provided in Article 14 of the A201–2017.

(Paragraphs deleted)

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

(Paragraphs deleted)

§ 14.2 Successors and Assigns

[AIA original language intentionally deleted. See Section 13.2 of the A201.].

§ 14.3 Insurance and Bonds

[AIA original language intentionally deleted. See Exhibit B for Insurance Requirements and Article 11 of the A201-2017.]

§ 14.4 Written Notice. Any notice, demand, or request required by or made pursuant to this Agreement shall be deemed properly made if made in writing and delivered by hand delivery, or certified mail, return receipt requested, and confirmed by first class mail, postage prepaid, or deposited in the United States Mail, postage prepaid, addressed to the respective representative and to the respective addresses set forth below:

IF TO THE OWNER:

Jill Farrell

Senior Executive Vice President, Chief Operating Officer

1500 South Main Street

Fort Worth, Texas 76104

Telephone: 817.702.9998

Email: jfarrell@jpshealth.org

with a copy to:

Daphne Walker

Sr. Vice President, Chief Legal Counsel

1500 South Main Street

Fort Worth, Texas 76104

Telephone: 817.702.9988

Email: dwalker10@jpshealth.org

IF TO THE PROJECT MANAGER:

David Watkins

Broaddus-Levis

916 Bryant Avenue

Fort Worth, Texas 76104

Telephone: 214.492.3881

Email: dwatkins@broaddususa.com

IF TO THE CONSTRUCTION MANAGER:

David Graham

Senior Vice President of Operations

Austin Commercial, LP

3535 Travis Street

Suite 300

Dallas Texas 75204

Telephone: 214-443-5679

Email: dgraham@austin-ind.com

With a copy to:

Robert Ty Taylor

Vice President of Risk Management

Austin Commercial, LP

3535 Travis Street

Suite 300

Dallas Texas 75204

Telephone: 214-443-5651

Email: ttaylor@austin-ind.com

The parties may change the address where or the individual to whom notice is to be given by providing notice of such change pursuant to this Section 14.4. Nothing contained in this Section 14.4 shall be construed to restrict the transmission

of routine communications between representatives of the Owner and the Construction Manager via electronic mail so long as verification of receipt can be obtained.

§ 14.5 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 14.6 Attorneys' Fees and Severability. If any action at law or in equity is necessary to enforce or interpret the terms of this Contract, the Court shall determine the prevailing party and award to such prevailing party, in addition to any other relief to which such party is entitled to recover, its reasonable attorneys' fees, expert witness fees, costs, and other reasonable expenses incurred in such proceeding, but only insofar as allowed under Applicable Law.

(Paragraphs deleted)

§ 14.7 Partial Invalidity. The invalidity of any part or portion of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability or effect of the remainder of the Contract Documents. To the extent any provision or portion thereof in this Agreement or the Contract Documents is held to be void, voidable, invalid, or unenforceable, then the remainder of this Agreement will not be affected thereby and will remain valid and fully enforceable and the parties agree that to the extent possible, any provision that is determined void, voidable, invalid or unenforceable will be reformed to the minimum extent necessary to make it valid and enforceable and will be enforced and enforceable as reformed.

§ 14.8 Survival. All provisions of the Contract that by their nature survive termination of this Contract or Final Completion of the Work, including, without limitation, all warranties, indemnities, indemnity obligations, confidentiality obligations, and obligations to arbitrate or litigate disputes, shall remain in force and effect after Final Completion or any termination of the Contract.

§ 14.9 Multiple Counterparts. This Contract may be executed in multiple original counterparts, each of which shall be of equal dignity. Faxed or electronically scanned signatures shall be sufficient for the execution and delivery of this Contract.

§ 14.10 Owner's Special Terms, Conditions, and Protocols. Owner hereby incorporates **Exhibit C – Owner's Special Conditions** and **Exhibit D – Owner-Provided Information** into this Agreement, together with all other Exhibits.

§ 14.11 Independent Contractor. In performing its obligations hereunder, Construction Manager shall be deemed an independent contractor and not an agent or employee of Owner.

§ 14.12 Community Facilities Agreement Work. Construction Manager recognizes that a limited portion of the Work for this Project shall be subject to a Community Facilities Agreement or similar agreement to be executed between Owner and the City of Fort Worth (the "CFA Work"). Construction Manager further recognizes that such CFA Work will be subject to various City of Fort Worth requirements including, without limitation, compliance with the City of Fort Worth's project manual, ordinances, and maintenance and payment and performance bond requirements. Such City of Fort Worth requirements for the CFA Work shall supplement this Agreement rather than replace or supersede any terms of this Agreement.

(Paragraphs deleted)

(Table deleted)

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as modified for this Project;
- .2 The following Exhibits:
Exhibit A, Final Guaranteed Maximum Price Amendment, once executed

- Attachment 1:** Final Guaranteed Maximum Price Breakdown
- Attachment 2:** Accepted Alternates
- Attachment 3:** Unit Prices
- Attachment 4:** Assumptions/Clarifications/Qualifications
- Attachment 5:** Construction Manager's General Conditions Costs
- Attachment 5.1:** Construction Manager's Labor Burden Schedule
- Attachment 6:** Allowances
- Attachment 7:** Project Schedule
- Attachment 8:** List of Key Personnel
- Attachment 9:** List of Drawings and Specifications
- Attachment 10:** Construction Manager-Owned Equipment Rental Rates
- Attachment 11:** Approved Work Package Authorizations in Final Guaranteed Maximum Price
- Attachment 12:** Construction Manager's Quality Control Plan
- Exhibit B:** Insurance and Bonding Requirements
 - Exhibit B-1:** Form of Performance Bond
 - Exhibit B-2:** Form of Payment Bond
 - Exhibit B-3:** Form of Bid Bond
- Exhibit C:** Owner's Special Conditions
- Exhibit D:** Owner-Provided Information
- Exhibit E:** Preconstruction Invoice Format
- Exhibit F:** Preconstruction Hourly Rates/Salaries/Wages
- Exhibit G:** Work Package Authorization Template

(Table deleted)

Exhibit H: General Conditions Cost Template

- .3** AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified for this Project

Remainder of page intentionally blank – signature page follows.

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

OWNER:

**TARRANT COUNTY HOSPITAL DISTRICT D/B/A
JPS HEALTH NETWORK**

(Signature)

(Printed name and title)

CONSTRUCTION MANAGER:

AUSTIN COMMERCIAL, LP

(Signature)

Robert Ty Taylor
Vice President of Risk Management
Austin Commercial, Inc., its general partner

(Printed name and title)

EXHIBIT A
FINAL GUARANTEED MAXIMUM PRICE AMENDMENT

(TO BE ATTACHED UPON OWNER'S APPROVAL)
(WITH ATTACHMENTS 1-12)

EXHIBIT B
INSURANCE AND BONDING REQUIREMENTS

EXHIBIT B

INSURANCE AND BONDING REQUIREMENTS

A. INSURANCE REQUIREMENTS

Construction Manager shall purchase, maintain, and keep in full force and effect, and shall require its Subcontractors to purchase, maintain and keep in full force and effect at all times during the term of this Agreement such lines of insurance coverage with policy limits set forth in this **Exhibit B**. Each policy shall be written with limits not less than those set forth in this **Exhibit B**. Construction Manager will comply, and will require its Subcontractors to comply, fully with all requirements of this **Exhibit B** prior to the commencement of any services or Work for the Project. "Owner," "Indemnatee," "Indemnitees," "Construction Manager," and "Subcontractor" shall each have the meanings set forth in the Agreement.

1. Required Coverages. The Construction Manager and all Subcontractors will obtain the following policies with the policy limits as indicated below:

For Preconstruction Services: During the Preconstruction Phase of the project, the Construction Manager will be required to provide the following insurance coverages:

Insurance	Construction Manager Limits
Worker's Compensation	Statutory
Employer's Liability Insurance:	
Bodily Injury by Accident (accident)	\$1,000,000
Bodily Injury by Disease (policy limit)	\$1,000,000
Bodily Injury by Disease (each employee)	\$1,000,000
Commercial General Liability ("CGL")	\$1,000,000 per occurrence \$2,000,000 annual general aggregate \$2,000,000 products-completed operations aggregate
Automobile Liability	\$1,000,000 each accident
Excess Liability	\$10,000,000 per occurrence \$10,000,000 aggregate
Professional Liability	\$10,000,000 per claim \$10,000,000 annual aggregate

To the extent Construction Manager engages any Subcontractors to perform Preconstruction services, Construction Manager shall require Subcontractors to carry insurance as set forth above. The limits of such insurance may be adjusted in accordance with the nature of each Subcontractor's operations but, if such adjustment is requested, it must be submitted to Owner for approval before the Subcontractor enters into an agreement or any Work commences under the agreement in question. If long lead items or materials are purchased during the Preconstruction Phase, Construction Manager and/or its Subcontractor must purchase transit coverage for the full replacement value of all materials or supplies (including inland marine and cargo insurance.

EXHIBIT B: INSURANCE AND BONDING REQUIREMENTS

ALL INSURANCE LIMITS SET FORTH BELOW FOR CONSTRUCTION SERVICES ARE SUBJECT TO FURTHER DISCUSSION AND AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER AT THE IGMP AND FGMP PROPOSAL STAGES (SET FORTH IN SECTION 3.2. OF THE AGREEMENT) AS IT CONCERNS COSTS AND TYPES OF COVERAGES ASSOCIATED WITH PROCURING SUCH LIMITS.

For Construction Services: During the Construction Phase, the Construction Manager will implement a project specific Contractor Controlled Insurance Program (“CCIP”) to furnish certain coverages for on-site construction activities of the Construction Manager and enrolled Subcontractors as follows:

Insurance	Controlled Insurance Program Limits
Worker’s Compensation	Statutory
Employer’s Liability Insurance:	
Bodily Injury by Accident (accident)	\$1,000,000
Bodily Injury by Disease (policy limit)	\$1,000,000
Bodily Injury by Disease (each employee)	\$1,000,000
Commercial General Liability (“CGL”)	\$1,000,000 per occurrence \$2,000,000 annual general aggregate \$2,000,000 products-completed operations aggregate
Excess Liability*	\$150,000,000 per occurrence \$150,000,000 aggregate
Pollution Liability	\$25,000,000 per claim \$25,000,000 annual aggregate

*Subject to cost, but in no event shall the Excess Liability placed under the CCIP be for limits of less than \$100,000,000 per occurrence; \$100,000,000 aggregate.

During the Construction Phase, the Construction Manager and Subcontractors (depending on Subcontractor’s CCIP enrollment status) will provide the following coverage with limits not less than shown below for operations and Work not covered by the CCIP:

Insurance	Construction Manager Limits	Enrolled Subcontractor Limits	Excluded Subcontractor Limits
Worker's Compensation	<i>Operations Away From the Site</i> Statutory	<i>Operations Away From the Site</i> Statutory	<i>For all Operations</i> Statutory
Employer's Liability Insurance:			
Bodily Injury by Accident (accident)	\$1,000,000	\$1,000,000	\$1,000,000
Bodily Injury by Disease (policy limit)	\$1,000,000	\$1,000,000	\$1,000,000
Bodily Injury by Disease (each employee)	\$1,000,000	\$1,000,000	\$1,000,000
Commercial General Liability ("CGL")	<i>Operations Away From the Site</i> \$1,000,000 per occurrence \$2,000,000 annual general aggregate \$2,000,000 products-completed operations aggregate	<i>Operations Away From the Site</i> \$1,000,000 per occurrence \$2,000,000 annual general aggregate \$2,000,000 products-completed operations aggregate	<i>For all Operations</i> \$1,000,000 per occurrence \$2,000,000 annual general aggregate \$2,000,000 products-completed operations aggregate
Automobile Liability	\$1,000,000 each accident	\$1,000,000 each accident	\$1,000,000 each accident
Excess Liability	\$10,000,000 per occurrence \$10,000,000 aggregate	\$2,000,000 per occurrence \$2,000,000 aggregate	\$5,000,000 per occurrence \$5,000,000 aggregate
Cyber/Privacy Liability	\$10,000,000 per claim \$10,000,000 aggregate	If Subcontractor is performing Work that requires access to JPS's network: \$5,000,000 per claim \$5,000,000 aggregate	If Subcontractor is performing Work that requires access to JPS's network: \$5,000,000 per claim \$5,000,000 aggregate
Pollution Liability (project specific) which shall include asbestos abatement coverage	Included in the project specific Pollution Liability Policy	Included in the project specific Pollution Liability Policy	Included in the project specific Pollution Liability Policy
Professional Liability	\$10,000,000 per claim \$10,000,000 annual aggregate	For Subcontractors providing MEP, structural steel, curtain wall, and fire sprinkler/fire alarm system Work: \$5,000,000 per claim \$5,000,000 annual aggregate For all other subcontractors per providing professional engineering, delegated design, or other design services \$2,000,000 per claim	For Subcontractors providing MEP, structural steel, curtain wall, and fire sprinkler/fire alarm system Work: \$5,000,000 per claim \$5,000,000 annual aggregate For subcontractors per providing professional engineering, delegated design, or other design services \$2,000,000 per claim

EXHIBIT B: INSURANCE AND BONDING REQUIREMENTS

Insurance	Construction Manager Limits	Enrolled Subcontractor Limits	Excluded Subcontractor Limits
		\$2,000,000 annual aggregate	\$2,000,000 annual aggregate
Builder's Risk	Total value of the Project on a replacement cost basis		

2. Worker's Compensation/Employer's Liability. Worker's Compensation insurance coverage must be provided for all workers at all tier levels and shall meet the statutory requirements of *Tex. Labor Code §401.011(44)* and, specific to construction projects for public entities, as required under *Tex. Labor Code §406.096*. In addition:

(a) **Certifications.** Construction Manager hereby certifies, pursuant to *Tex. Labor Code §406.096(a)*, that Construction Manager provides or will provide at, or prior to, execution of the Agreement, workers' compensation and employers' liability insurance for employees employed on this public project with limits as indicated above. Pursuant to *Tex. Labor Code § 406.096(b)*, Construction Manager shall require its Subcontractors to certify in writing to the Construction Manager that said entity provides workers' compensation and employers' liability insurance for its personnel employed on this public project. Construction Manager shall forward said certifications to Owner within **ten (10) Days** of the Effective Date of the Agreement.

(b) **Endorsements.** The policies must include an Other States Endorsement to include the Owner and Tarrant County, Texas if Construction Manager's business is domiciled outside the State of Texas. The policies will be endorsed to name Owner as the alternate employer.

(c) All policies shall be endorsed to include Waiver of Subrogation in favor of Owner and all Indemnites.

(d) *Workers' Compensation Insurance Coverage.*

A. Definitions:

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the division, or a coverage agreement (DWC Form-81, DWC Form-82, DWC Form-83, or DWC Form-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the Construction Manager's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the Construction Manager has undertaken to perform on the project, regardless of whether that person contracted directly with the Construction Manager and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, Consultants, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing

labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- B. The Construction Manager shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Construction Manager providing services on the project, for the duration of the project.
- C. The Construction Manager must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- D. If the coverage period shown on the Construction Manager's current certificate of coverage ends during the duration of the project, the Construction Manager must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- E. The Construction Manager shall obtain from each person providing services on a project, and provide to the governmental entity:
 - (1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - (2) no later than seven days after receipt by the Construction Manager, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- F. The Construction Manager shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- G. The Construction Manager shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Construction Manager knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- H. The Construction Manager shall post on each project site a notice, in the text, form and manner prescribed by the Division of Workers' Compensation informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- I. The Construction Manager shall contractually require each person with whom it contracts to provide services on a project, to:
 - (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all

of its employees providing services on the project, for the duration of the project;

- (2) provide to the Construction Manager, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
- (3) provide the Construction Manager, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (4) obtain from each other person with whom it contracts, and provide to the Construction Manager:
 - (a) a certificate of coverage, prior to the other person beginning work on the project; and
 - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- (6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
- (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this contract or providing or causing to be provided a certificate of coverage, the Construction Manager is representing to the governmental entity that all employees of the Construction Manager who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the division. Providing false or misleading information may subject the Construction Manager to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The Construction Manager's failure to comply with any of these provisions is a breach of contract by the Construction Manager which entitles the governmental entity to declare the contract void if the Construction Manager does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

EXHIBIT B: INSURANCE AND BONDING REQUIREMENTS

3. Commercial General Liability. Commercial General Liability coverage (“CGL”) shall be provided for Construction Manager and all Subcontractors with the policy limits set forth in the chart above. Coverage shall be provided on ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage). The CGL insurance general aggregate limit shall apply separately to this Project and the Construction Manager and all Subcontractors shall provide evidence of same through ISO Endorsement CG 25 03 05 09. The policies shall include endorsement CG2503, Amendment of Aggregate Limits of Insurance (per Project), or its equivalent. CGL insurance shall cover liability including, but not limited to, liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, electronic data liability, property damage, and personal injury and death resulting therefrom. This policies shall provide for full separation of insureds and shall **not** include any insured v. insured exclusions or limitations. The following is a non-exclusive list of additional prohibited exclusions and limiting endorsements:

- Liability assumed by Construction Manager and all Subcontractors under a written agreement, including any contractual liability limitation endorsement restricting coverage to only liability that would exist in the absence of a contract, such as the ISO CG 21 39 or its equivalent, or any amendment of insured contract definition endorsement such as the ISO CG 24 26 or its equivalent.
- Explosion, collapse, underground property damage, blasting, blowouts, cratering, or the like, including any Explosion, Collapse and Underground Property Damage Hazard endorsement such as the ISO CG 21 42 or ISO CG 21 43 endorsements, or their equivalent.
- Cross-liability on claims between any insureds, other than claims between named insureds.
- Injury to independent contractors and employees of independent contractors.
- Any exclusion relating to damage to work performed by any Subcontractor on behalf of Construction Manager (or sub-subcontractors on behalf of a Subcontractor) such as the ISO CG 22 94 or ISO CG 22 95, or their equivalent.
- Any type of classification or business description limitation endorsement.
- Any type of endorsement excluding coverage for construction defects in the completed operations phase.
- Any type of endorsement modifying the employer’s liability exclusion.
- Any type of habitation or residential exclusion.
- Any type of punitive, exemplary or multiplied damages exclusion.
- Any type of subsidence exclusion if Construction Manager or any Subcontractor is engaged in any type of earth movement work, including but not limited to soil compaction, fill, or installation of storm or sewer drains.

Owner reserves the right to notify Construction Manager of any additional prohibited exclusions or endorsements in advance of placing the CCIP insurance. A copy of the CGL Schedule of Forms and Endorsement page(s) of the policy shall be provided to verify the coverages required, that the Endorsements required by these insurance requirements are included, and that none of the prohibited exclusions exist in the policy. Owner may require additional exclusions be removed but

only to the extent approved by the insurer. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs maintained by Owner. CGL insurance must be kept in force at all times during the course of this Agreement and until all claims arising out of the Work are barred by the statute of repose provided under Texas law.

4. **Automobile Liability Insurance.** Automobile liability insurance policies shall be provided by Construction Manager and all Subcontractors with policy limits as stated in Paragraph 1 above. This policy shall cover liability arising out of any auto (including owned, hired, and non-owned autos) used in connection with the Work on the Project and shall include coverage for loading and unloading hazards. Automobile liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01. No aggregate shall be permitted.

5. **Umbrella/Excess Liability Insurance.** Excess or Umbrella liability insurance shall be provided for Construction Manager and all Subcontractors with policy limits as indicated in Paragraph 1. This coverage shall be excess of the CGL, automobile liability, and employer's liability insurance on a "following form" basis of underlying policies. This coverage shall be excess over and be no less broad than the CGL, Automobile Liability, Employer's Liability as described in these insurance requirements, including but not limited to the required additional insured status, designated project(s) and/or location(s), general aggregate, waiver of subrogation, notice of cancellation, and prohibited exclusions or limitations. The policy shall provide coverage where underlying primary insurance coverage limits are exhausted or inadequate to cover a loss. Any excess or umbrella policy shall be kept in force at all times during the course of this Agreement and until all claims arising out of the Work are barred by the statute of repose provided under Texas law.

6. **Asbestos Abatement Liability Insurance.** Asbestos Abatement Liability coverage shall be provided by Construction Manager and Subcontractors with policy limits as stated in Paragraph 1 above if the Work or the Project includes asbestos containing materials. This policy shall provide coverage for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

7. **Cyber/Privacy Liability Coverage.** Cyber/Privacy liability insurance shall be provided by Construction Manager and each Subcontractor accessing Owner's network with policy limits as stated in Paragraph 1 above to cover risk of loss to electronic data. Such policy must include coverage for electronic vandalism to electronic data, including coverage for a third party's willful alteration of data, introduction of viruses which impact electronic data, unauthorized use of electronic data, and denial of service to website or email destinations.

8. **Pollution Liability Coverage.** Construction Manager will provide a pollution liability policy with limits as stated in Paragraph 1 above that covers a pollution event or release on the Project resulting from their activities under and during the term of this Agreement and for completed operations. The Pollution Liability policy shall provide coverage for "sudden & accidental" and gradual occurrences arising from the Work performed under this Agreement. Pollution liability insurance with coverage as specified herein shall be maintained until all claims arising out of the Work are barred by applicable statutes of limitation and repose.

This policy shall include coverage for: (i) the full scope of the particular entity's operations (on-going and completed), as described in this Agreement or in any subcontract or separate agreement concerning the Project; (ii) losses arising from pollutants, including but not limited to fungus, bacteria, biological substances, mold, microbial matter, asbestos, lead, silica and contaminated drywall; (iii) third party liability

EXHIBIT B: INSURANCE AND BONDING REQUIREMENTS

for bodily injury, property damage, clean up expenses, and defense costs arising from the entity's operations; (iv) diminution of value and natural resources damages; (v) claims arising from use of any owned or non-owned disposal sites arising out of the insured entity's activities in connection with this Agreement; (vi) bodily injury to include physical injury, sickness, disease, death, mental anguish, medical monitoring and emotional distress sustained by any person; and (vii) all attorneys' fees, expenses and other costs that are related to or that arise out of or from the investigation or adjustment of any claim or in connection with any court, arbitration, mediation, state administrative hearing, or other proceeding of any kind that arise out of or that are related to a Pollution Condition(s). Coverage under this policy shall include a **seven (7)-Day** minimum occurrence period for emergency response costs. The Pollution Liability insurance policy shall not include any type of exclusion or limitation of coverage applicable to claims arising from any of the following:

- Insured vs. insured actions (however, an exclusion for claims made between insureds within the same economic family is acceptable).
- Impaired property that has not been physically injured.
- Materials supplied or handled by the named insured; any exclusionary language pertaining to materials supplied by the insured is subject to the Owner's review and approval.
- Property damage to the work performed by Construction Manager or any Subcontractor.
- Faulty workmanship as it relates to clean up costs.
- Punitive, exemplary or multiplied damages.
- Work performed by Subcontractors or sub-subcontractors of any tier.
- Contractual liability assumed for an injury to an employee of the insured.

"Pollution Condition(s)" means the discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, smoke, sewage, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste, mold, silt, sedimentation, low-level radioactive material and waste materials into or upon land, the atmosphere or any watercourse or body of water, including groundwater, provided such conditions are not naturally present in the environment in the amounts or concentrations discovered.

9. Professional Liability Coverage. Construction Manager and each Subcontractor providing professional engineering, delegated design, or other design services will provide Professional liability coverage ("PL") with policy limits as set forth in Paragraph 1 above as will insure from and against all negligent acts, errors, and omissions in any services performed by Construction Manager and each Subcontractor, and their agents, representatives, employees, and lower-tier sub-subcontractors. PL coverage shall provide full prior acts coverage or a retroactive date not later than the date the professional services are first performed by the entity in connection with the Project. This policy shall not include any type of exclusion or limitation of coverage applicable to claims arising from: (i) bodily injury or property damage where coverage is provided on behalf of Subcontractors; (ii) habitational or residential operations; (iii) pollution, mold and/or microbial matter and/or fungus and/or biological substance; (iv) punitive, exemplary or multiplied damages; (v) professional liability of the Construction Manager arising out of the negligence of Construction Manager; or (vi) design/build services. This insurance shall be maintained until all claims arising out of the Work are barred by applicable statutes of limitation and repose.

EXHIBIT B: INSURANCE AND BONDING REQUIREMENTS

10. Builder's Risk Coverage. Builder's Risk coverage shall be purchased by the Construction Manager for the entire Project on an "all risk" completed value form at 100% of the Final Guaranteed Maximum Price with coverage automatically increasing to provide constant limits of insurance at full 100% of all insurable values as they are created during construction and to cover the amount of any Change Orders, Owner Change Directives, or Modifications that increase the replacement value of the Project. Coverage shall be at least as broad as an unmodified ISO Special Causes of Loss Form ISO CP 10 30 06 95 and shall include coverage for fire, extended coverage, vandalism and malicious mischief, theft, collapse, flood and earth movement, and named storm, and shall include LEG 3 coverage or its US equivalent. Any exclusions to this Builder's Risk coverage form require Owner approval. Such insurance shall (a) designate the Owner and Indemnitees, Construction Manager, and all Subcontractors of any tier (as their interests appear), and all loss payees and mortgagees (as their interests appear) as insureds on the policy and Owner and Indemnitees as loss payees; and (b) be primary and non-contributing to any other insurance coverage available to the insureds, as to whom their other insurance shall be excess, secondary and noncontributing to losses covered by Builder's Risk insurance. The Builder's Risk insurance shall not include any requirement that protective safeguards are in-place or maintained on the Project. Subject to insurer consent, the termination of coverage provision shall be endorsed to permit coverage to continue during any interim period of occupancy of the covered property while being constructed. This insurance shall be maintained in effect until substantial completion.. Loss, if any, shall be adjusted with and made payable to Construction Manager as trustee for the insureds. Such insurance shall cover at a minimum the following:

- All structure(s) under construction, including retaining walls, paved surfaces and roadways, bridges, glass, foundation(s), footings, underground pipes and wiring, excavations, grading, backfilling or filling.
- All temporary structures (e.g., fencing, scaffolding, cribbing, false work, forms, site lighting, temporary utilities and buildings) located at the site.
- All property including materials and supplies on-site for installation and at other locations but intended for use at the site.
- All property including materials and supplies in transit to the site for installation by all means of transportation other than ocean transit.
- The cost of debris removal equal to the lesser of: (i) 25% of the amount of loss, or (ii) \$5,000,000 per occurrence.
- Other property for which an insured is liable in connection with the Project, including Owner furnished or assigned property, provided that Construction Manager has been provided with the values for such property and other information required by the insurer.
 - .1 For renovation projects or projects that involve portions of Work contained within an existing structure, the policy must also include coverage in the additional sum of \$1,000,000.00 For purposes herein, "Existing Property" means existing buildings or structures, as well as, all personal property contained therein, but does not include personal property owned or operated by Construction Manager or any Subcontractors.
 - .2 For Owner-furnished items or materials that will be in care, custody or control of Construction Manager, Construction Manager shall be responsible for any and all damages and losses thereto.

- .3 **Sublimits.** For those properties located within a Tier 1 or 2 windstorm area, named storm coverage must be provided with limits as specified by Owner. For those properties in flood prone areas, floor insurance coverage must be provided with limits specified by Owner. Owner may specify additional sublimits applicable to the Project in the Owner's Special Conditions set forth in **Exhibit C**.
- .4 The policy shall include the following endorsements:
- i. Builder's Risk insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property;
 - ii. The policy shall not contain an occupancy clause suspending or reducing coverage should Owner partially occupy the site and before the parties have determined Substantial Completion though insurer shall have the right to consent; and
 - iii. Valuation of any loss for the renovation and any existing property (exclusive of building and existing structures) shall be at replacement cost.
- .5 **Deductibles.** Deductibles shall not exceed the following:
- i. All risks of direct damage, \$25,000 per occurrence.
 - ii. Delayed Opening Waiting Period: 5 Days.
 - iii. Earthquake and Earthquake Sprinkler Leakage, \$100,000 per occurrence.
 - iv. Flood. The deductible per occurrence shall be 5% of the value-at-risk-at-time-of-loss ("VARTOL") with a minimum VARTOL of \$250,000. If flood insurance is purchased through National Flood Insurance Program, the deductible shall be the maximum amount of insurance purchased thereunder.
- .6 The Builder's Risk policy shall remain in effect through Substantial Completion.
- .7 Additional requirements may be specified by Owner, subject to inclusion in pricing reimbursed under the agreement.
- .8 **Critical Items and Soft Costs.** Builder's Risk coverage will include coverage for consequential loss and rectification (both to the extent available) following physical loss or damage to critical items and for soft costs including, but not limited to, Owner's losses of use, income, profit, financing, additional costs to continue construction and meet contract dates, interest on monies borrowed to finance construction, taxes, assessments, legal, accounting and engineering fees, insurance premiums, and other consequential losses. Owner may define any risks or other special hazards that are applicable to the Project that are not otherwise covered by the Builder's Risk insurance required herein and Construction Manager shall, if reasonably possible, include such coverage in the policy provided pursuant to this paragraph or, with the express written approval of Owner, purchase additional insurance to cover such risks which shall then be paid as a Cost of the Work unless previously included in Construction Manager's General Conditions Costs. The specific soft costs coverage terms and limits shall be expressly approved by Owner prior to commencement of the Work, but shall include rental income and business interruption

coverage for 12 months. This coverage is subject to Owner providing the required underwriting information and subject to market availability. Owner and Construction Manager shall cooperate with each other for procurement of such soft cost coverages at the amounts requested by Owner.

11. Insurance Required of Subcontractors. Each Subcontractor must provide all coverages identified above with limits as set forth in Paragraph 1 above. The limits of such insurance may be adjusted in accordance with the nature of each Subcontractor's operations but, if such adjustment is requested, it must be submitted to Owner for approval before the Subcontractor enters into an agreement or any Work commences under the agreement in question.

12. Inclusion of Insurance Information in Bid Packages. Construction Manager shall include required insurance information in trade bid/proposal packages and indicate on bid/proposal forms the insurance that bidders/proposers are to include in their responses. The Construction Manager shall not commence any phase of the Work under this Agreement until it has obtained all insurance required for that phase and until evidence of the required insurance has been reviewed and approved by the Owner. Owner's review and approval of the insurance shall not affect the liability of either party.

13. General Terms for All Insurance Policies. All insurance coverages must be placed with carriers acceptable to Owner, licensed to do business in Texas and rated A-/VII or better by A.M. Best, confirmed by one or more insurance certificates on an Acord 25 form, with all information fully provided as required by the form. All insurance coverages shall be written on an occurrence basis (except Professional Liability) and shall be primary and not excess insurance vis-à-vis any coverage, any self-insurance, or other policy of insurance maintained by Owner. Any coverage underwritten on a claims-made basis must include a retroactive date for the policy and all renewals must be coincident with the effective date of the Agreement. Any premiums for this extended reporting period shall be paid by Construction Manager. Certificates of insurance and additional insured endorsements required herein shall provide that the policies shall be primary without right of contribution from any insurance carried by Owner. Each policy, other than Worker's Compensation/Employer's Liability and Professional Liability, shall contain a severability of interest clause. Except for Professional Liability policy, each policy shall provide for full separation of insureds and include no insured v. insured limitations or exclusions.

14. Additional Insured Status. Owner and Indemnitees (as defined in the Agreement) and their officers, directors, agents, and employees shall be included as additional insureds on policies procured by Construction Manager and all Subcontractors, except Worker's Compensation, Cyber and Professional Liability, using ISO Additional Insured Endorsements CG 20 10 10 01 (ongoing operations) and CG 20 37 10 01 (Completed Operations) or their equivalent, as approved by Owner. Insured requirements for the Builder's Risk coverage are contained in Paragraph 10 above wherein Owner and the entity Indemnitees shall be listed as insureds and loss payees. Construction Manager and all Subcontractors shall provide additional insured endorsements demonstrating the insured status of Owner and the Indemnitees as provided herein on such forms as required by Owner.

15. Waivers of Subrogation. All Worker's Compensation, Employers' Liability, Automobile Liability, Commercial General Liability, Excess Liability, Builder's Risk, and Pollution Liability insurance policies (including those procured by Subcontractors) must contain an endorsement to the effect that the issuer waives any claim or right of subrogation to recover against Owner and Indemnitees and their officers, directors, agents, and employees. With respect to all such policies, Construction Manager waives any and all rights of recovery or subrogation against Owner and its Indemnitees and their officers, directors, agents, and employees.

EXHIBIT B: INSURANCE AND BONDING REQUIREMENTS

16. Evidence/Proof of Insurance/Endorsements. Evidence of the insurance coverage required of the Construction Manager must be furnished to Owner before commencement of the Work (or, with respect to Subcontractors, before such entity begins its portion of the Work) and as coverage renews. Evidence of coverages shall be provided in certificates of insurance with a copy of the Commercial General Liability policies and all endorsements. The insurance policies shall provide or be endorsed to include a requirement for each insurer to give Owner notice at least **thirty (30)** Days prior to any (i) non-renewal; (ii) cancellation; or (iii) material change. "Material Change" includes, without limitation (i) a change in the policy period; (ii) a material revision to, or removal of, a coverage section; (iii) a reduction of the amount of limits of insurance, provided such reduction is not the result of payment of damages, medical expenses, or claim expenses; or (iv) an increase of the amount of any self-insured retentions. Similarly, the Commercial General Liability policy shall be endorsed to include a **ten (10)**-Day Notice of Non-Payment of Premium in favor of Owner.

17. Notification to Owner. Any and all policies, endorsements, approvals, certificates of insurance and/or notifications of cancellation, non-renewal, or material change shall be transmitted to:

Jill Farrell
JPS Health Network
Senior Executive Vice President, Chief Operating Officer
1500 South Main Street
Fort Worth, Texas 76104
Telephone: 817-702-9998
Email: jfarrell@jpshealth.org

David Watkins
Broadbuss-Levis
916 Bryant Avenue
Fort Worth, Texas 76104
Telephone: 214.492.3881
Email: dwatkins@broadbussusa.com

with a copy to:

Daphne Walker
Sr. Vice President, Chief Legal Counsel
1500 South Main Street
Fort Worth, Texas 76104
Telephone: 817-702-9988
Email: DWalker10@jpshealth.org

18. Deductibles, Retentions & Exclusions. Insurance deductibles shall be paid by Construction Manager or Subcontractors without reimbursement by Owner. Any under-insurance, self-insurance, self-insured retentions (SIR), deductibles, and exclusions in coverage in the insurance policies required under this agreement to the extent applicable, shall be assumed by, for the account of and at the sole risk of Construction Manager and Subcontractors. All deductibles and self-insured retentions shall be disclosed to Owner before the placement of any insurance or commencement of the Work under the Agreement.

19. If Construction Manager elects to self-insure or to maintain insurance required herein subject to deductibles and/or retentions exceeding the foregoing deductible amounts, Construction Manager shall be obligated to grant Owner all rights against Construction Manager to the same extent as if Construction Manager had maintained the insurance required hereunder with a commercial insurer, including but not

EXHIBIT B: INSURANCE AND BONDING REQUIREMENTS

limited to additional insured status (as to liability policies other than Workers' Compensation Insurance and Professional Liability Insurance), primary and non-contributory liability, waivers of rights of recovery, other insurance clauses, and any other extensions of coverage required herein. Construction Manager shall pay from its assets the costs, expenses, damages, claims, losses and liabilities, including attorney's fees and necessary litigation expenses at least to the same extent all of the foregoing would have been covered had Construction Manager maintained the insurance required hereunder with a commercial insurer.

20. Construction Manager's Duty to Review. Construction Manager represents and acknowledges it has carefully reviewed its insurance program with its legal and risk advisors and believes its insurance policies comply with the insurance requirements in this Agreement, and further acknowledges a continuing obligation to ensure its insurance policies remain compliant herewith. Within 48 hours of a written request by Owner, Construction Manager shall submit true and complete copies of Construction Manager's policies of insurance in electronic form by emailing true and complete of such policies to Owner's insurance analyst. The true and complete copies of all applicable insurance policies shall be submitted in a timely manner, as no contract will be executed without the receipt, review, negotiation, and Owner acceptance, of the submitted policies. The policies shall include therewith a letter provided by Construction Manager's broker, agent, or its applicable insurance carrier representative for each policy, certifying that the electronic copies of the policies as furnished are true and correct copies. In addition, upon conducting such review, if Owner's insurance analyst determines Construction Manager's insurance policies contain deficiencies that cause such policies to fail to comply with the insurance requirements of this Agreement, Construction Manager agrees to reimburse Owner for all costs and fees incurred in attempting to resolve such policy deficiencies by modification or special endorsement thereof. Construction Manager shall not cause or permit any required insurance to cancel or lapse prior to the expiration of all warranty periods, provided however, policy duration for Builder's Risk (or as applicable, an installation floater) is not governed by this provision. Construction Manager must update all expired policies prior to submission of any pay application.

21. Right to Review. Owner reserves the right to review all insurance requirements and to require deletion, revision, and/or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulations that are binding upon Owner, Construction Manager, or the underwriter) on any such policies when deemed necessary and prudent by Owner based upon changes in statutory law, court decisions, or the claims history of the industry and/or of Construction Manager, provided however, such modifications must be commercially available to Construction Manager. Owner shall make an equitable adjustment to the Final Guaranteed Maximum Price for any additional cost resulting therefrom.

22. Failure to Obtain or Maintain. Failure to timely obtain and maintain the insurance coverages as required under this Agreement may subject Construction Manager to disqualification from eligibility to participate in any other or future projects with Owner and/or suspension or termination of Work for cause pursuant to the Contract Documents. Construction Manager shall provide Owner **thirty (30) Days'** written notice of erosion of any aggregate limits below the minimum amounts required by this Agreement. In the event Construction Manager fails to timely renew or pay any of the renewal premiums for any expiring policies, Owner shall have the right (but not the obligation) to: (i) make such payments; and/or (ii) acquire replacement coverage, and set off the amount(s) or costs thereof against the next payment(s) coming due to Construction Manager under this Agreement or under any other contract between Owner and Construction Manager. Owner may withhold any payments due to Construction Manager from this Project or any other Owner project until satisfaction is achieved.

23. Enforceability of Requirements. None of the requirements contained herein as to types, limits, or Owner's approval of insurance coverage to be maintained by Construction Manager or any Subcontractor is intended to and shall not in any manner limit, qualify, or quantify the liabilities and obligations assumed

EXHIBIT B: INSURANCE AND BONDING REQUIREMENTS

by Construction Manager under the Agreement or otherwise provided by law. All insurance coverages required by the Agreement, as amended by Owner, shall be written in strict conformance with these requirements to provide complete and full coverage to Owner for Construction Manager's and Subcontractors' operations and completed operations. If coverages and/or specified endorsements are not available due to a change in Texas law, Construction Manager shall secure equivalent coverages, which shall be subject to approval by Owner. To the extent any provision of these insurance requirements is held to be void, voidable, invalid, or unenforceable, the remainder of these insurance requirements shall not be affected thereby and shall remain valid and fully enforceable.

24. Losses Paid by Construction Manager. Actual losses not covered by insurance as required by this Agreement shall be paid by Construction Manager. Construction Manager hereby waives all rights of recovery and releases, and shall cause all Subcontractors to release Owner from any and all claims or causes of action whatsoever which Construction Manager and/or Subcontractors might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required herein or not, or which should have been covered by insurance required herein, including the deductible and/or uninsured portion thereof, maintained and/or required to be maintained by Construction Manager or Subcontractors pursuant to the Agreement.

25. Owner a Third-Party Beneficiary. It is hereby acknowledged and agreed that, based on the Agreement into which this **Exhibit B** is incorporated, Owner is intended to be and hereby is a third-party beneficiary of any agreement(s) between Construction Manager and any and all Subcontractors and persons who procure, or cause to be procured any insurance policy and any renewals thereof, for the Project.

26. Required Insurance Coverages No Effect On Indemnification. The insurance and insurance limits required herein shall not be deemed as a limitation on Construction Manager's liability under the indemnifications granted to Owner.

27. No Warranty That Insurance Limits Will Be Adequate to Fully Protect Construction Manager. The insurance requirements set out herein shall not be interpreted as any representation or warranty that the insurance coverage and limits will necessarily be adequate to fully protect Construction Manager.

B. BONDING REQUIREMENTS

1. Security/Bid Bond. Construction Manager shall provide a Security Bond/Bid Bond on the form provided by Owner in **Exhibit B-3** in the amount of **five percent (5%)** of the Owner's budget for the Project. The surety for a Security Bond shall meet the same requirements as set forth for payment and performance bonds. The Security/Bid Bond will be issued for a period not to exceed six (6) months and will be automatically renewed unless cancelled by written notice to Construction Manager and Owner, received by Owner within **sixty (60)** Days prior to the applicable expiration date. If the Bid Bond is cancelled, Construction Manager shall replace the Bid Bond, or provide other financial security under terms substantially the same as the Bid Bond and otherwise acceptable to Owner, in Owner's sole discretion, within **thirty (30)** Days of Owner's receipt of the surety's notice of cancellation, failing which, Construction Manager shall be deemed to be in default of its obligations under and to have committed a material breach of this Agreement and Owner may proceed in accordance with the provisions of the Contract Documents, and/or be entitled to enforce any other remedy or right the Owner may have hereunder.

2. Performance and Payment Bonds. Construction Manager shall provide Performance and Payment Bonds, each with penal sums in the amount of one hundred percent (100%) of the value of the Final Guaranteed Maximum Price upon Owner's execution of the Agreement, unless it has not been established at the time the Agreement is executed and then in conformance with the amount equal to the

construction budget specified in the RFQ/RFP, in accordance with the requirements of *Tex. Gov't. Code* § 2269.258 and § 2253.001 *et seq.*, and in such form attached hereto as **Exhibit B-1**, and **Exhibit B-2**, respectively. No Notice to Proceed shall be issued until the bonds are received and approved by Owner. At all times, Construction Manager's Performance and Payment Bonds will cover the approved Work Package amounts and the Final Guaranteed Maximum Price as set forth in the Final Guaranteed Maximum Price Amendment. To the extent a Work Package is issued under Section 3.3 of the Agreement, and Construction Manager has not provided a performance and payment bond under *Tex. Gov't. Code* § 2269.258, Payment and Performance bonds with penal sums equal to the authorized dollar amount of the Work Package Authorization shall be provided. Without limiting any other requirements or obligations of the surety, the Performance Bond shall cover Construction Manager's warranty obligations for a period not less than two (2) years from the date of the issuance of the Certificate of Substantial Completion, and shall include coverage for any liquidated damages for which Construction Manager may be liable under this Agreement.

3. In addition to the above requirements, all bonds shall be issued with the Owner as the named obligee and shall be executed by a corporate surety company authorized to do business in the State of Texas and which shall hold a certificate of authority from the United States Department of Treasury to qualify as a surety on obligations permitted or required under federal law. All bonds shall have a Power of Attorney attached. Performance and Payment bonds shall be provided before any Work is performed.

4. Costs, premiums or other charges for or relating to Subcontractor bonds and/or Subcontractor default insurance are not reimbursable as Costs of the Work or as General Conditions Costs and will not be reimbursed.

EXHIBIT B-1
FORM OF PERFORMANCE BOND

(SEE ATTACHED)

CONTRACT NO. _____

BOND NO. _____

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

That we _____ as Principal, hereinafter referred to as "Principal" and _____, a corporate surety/sureties, duly authorized to do business in the State of Texas, hereinafter referred to as "Surety" (whether one or more), are held and firmly bound unto Tarrant County Hospital District d/b/a JPS Health Network, a hospital district and political subdivision of the State of Texas, hereinafter referred to as "**JPS**" in the penal sum of _____ (\$ _____), lawful money of the United States, to be paid in Fort Worth, Tarrant County, Texas, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain contract with JPS, dated the _____ day of _____ 20____, attached hereto and incorporated herein for all purposes as if fully set forth herein, to furnish all materials, equipment labor and other accessories as defined by law, in the prosecution of the work provided for said contract.

NOW THEREFORE, the condition of this obligation is such that if the said Principal shall faithfully perform said contract and shall in all respects duly and faithfully observe and perform all and singular the covenants, conditions, and agreements in and by said contract, agreed and covenanted by the Principal to be observed and performed, and according to the true intent and meaning of said contract and the plans and specifications therein referred to, and as well during any period of extension of said contract that may be granted on the part of JPS, as during the original terms of same, then this obligation shall be and become null and void, otherwise to remain in full force and effect.

PROVIDED FURTHER, that if any legal action be filed on this Bond, venue shall lie in Tarrant County, Texas.

AND PROVIDED FURTHER, that said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work any way affect its obligation on this Bond; and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder.

This bond is executed in compliance with the provisions of Chapter 2253 of the Texas Government Code as amended.

**PERFORMANCE BOND
(Continued)**

IN WITNESS WHEREOF, the Principal and the Surety have signed this instrument by duly authorized agents and officers and affixed corporate seals hereto on the _____ day of _____ 20____.

Principal: _____

By: _____

Title: _____

Surety: _____
(Print First Name and Seal)

By: _____

Title: Attorney in Fact

Surety Contact Information where any notice of
claim should be sent:

Name: _____

Mailing
Address: _____

Physical
Address: _____

Telephone
Number: _____

The address of the Surety to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the following toll-free number: 1-800-252-3439.

[ATTACH POWER OF ATTORNEY FOR SURETY'S ATTORNEY-IN FACT]

EXHIBIT B-2
FORM OF PAYMENT BOND

(SEE ATTACHED)

CONTRACT NO. _____

BOND NO. _____

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

That we _____ as Principal, hereinafter referred to as "Principal" and _____, a corporate surety/sureties, duly authorized to do business in the State of Texas, hereinafter referred to as "Surety" (whether one or more), are held and firmly bound unto Tarrant County Hospital District d/b/a JPS Health Network, a hospital district and political subdivision of the State of Texas, hereinafter referred to as "JPS" in the penal sum of _____ (\$_____), lawful money of the United States, to be paid in Fort Worth, Tarrant County, Texas, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain contract with JPS, dated the _____ day of _____, 20____, attached hereto and incorporated herein for all purposes as if fully set forth herein, to furnish all materials, equipment labor and other accessories as defined by law, in the prosecution of the work provided for in said contract.

NOW, THEREFORE, the condition of this obligation is such that if the said Principal, shall pay all sub-contractors, workmen, laborers, mechanics, furnishers of material and claimants (as defined in Chapter 2253 of the Texas Government Code, as amended) supplying labor and material to him or sub-contractor in the prosecution of the work provided for in said contract, all monies to them owing by Principal for sub-contracts, work, labor, and materials furnished for the construction of such improvements for JPS, then this obligation shall be and become null and void, otherwise to remain in full force and effect.

PROVIDED FURTHER, that if any legal action be filed on this Bond, venue shall lie in Tarrant County, Texas.

AND PROVIDED FURTHER, that said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work performed thereunder, or the plans, specifications, drawings, etc. accompanying same shall in any way affect its obligation on this Bond; and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work to be performed hereunder.

This bond is executed in compliance with the provisions of Chapter 2253 of the Texas Government Code, as amended.

PAYMENT BOND
(Continued)

BOND NO. _____

IN WITNESS WHEREOF, the Principal and Surety have signed and sealed this instrument by duly authorized agents and officers and affixed corporate seal hereto on this the ____ day of _____, 20 ____.

Principal: _____

By: _____

Title: _____

Surety: _____
(Print First Name and Seal)

By: _____

Title: Attorney in Fact

Surety Contact Information where any notice of
claim should be sent:

Name: _____

Mailing
Address: _____

Physical
Address: _____

Telephone
Number: _____

The address of the Surety to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the following toll-free number: 1-800-252-3439.

[ATTACH POWER OF ATTORNEY FOR SURETY'S ATTORNEY-IN FACT]

EXHIBIT B-3
FORM OF BID BOND

(SEE ATTACHED)

TARRANT COUNTY HOSPITAL DISTRICT D/B/A/ JPS HEALTH NETWORK
BID BOND

KNOW ALL PERSONS BY THESE PRESENTS,

That we, (Bidder Name) _____ hereinafter referred to as "Principal," and (Surety Name) _____, a corporation or firm duly authorized to transact surety business in the State of Texas, hereinafter called the Surety, are held and firmly bound unto **Tarrant County Hospital District d/b/a JPS Health Network**, a hospital district and political subdivision of the State of Texas, hereinafter referred to as "**JPS**", in the sum of _____ Dollars (\$ _____), the payment of which sum will be well and truly, made, and the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a Proposal to perform work for the following project of JPS, identified as _____.

NOW, THEREFORE, if JPS shall award the Contract for the foregoing project to the Principal, and the Principal shall satisfy all requirements and conditions required for the execution of the Contract and shall enter into the Contract in writing with JPS in accordance with the terms of such proposal, then this bond shall be null and void. If the Principal fails to execute such Contract in accordance with the terms of such Proposal or fails to satisfy all requirements and conditions required for the execution of the Contract in accordance with the Proposal, this Bond shall become the property of JPS, without recourse of the Principal and/or Surety, not as a penalty but as liquidated damages.

Signed this _____ day of _____, 20____.

Principal Name: _____

By: _____

Its: _____

Surety: _____

By: _____

Its: Attorney-in-Fact

[ATTACH POWER OF ATTORNEY FOR SURETY'S ATTORNEY-IN-FACT]

EXHIBIT C
OWNER'S SPECIAL CONDITIONS

EXHIBIT C

OWNER'S SPECIAL CONDITIONS

Capitalized terms as used herein such as "Owner", "Construction Manager", "Subcontractor", "Project", and "Agreement" are used as defined in that certain *Standard Form of Agreement between Owner and Construction Manager as Constructor*, AIA Document A133 – 2019 ed., as modified for this Project, and shall each have the meanings set forth in the Agreement. Definitions set forth in Section 1.1 of the *General Conditions of the Contract for Construction*, AIA Document A201-2017 ed., as modified for this Project, are hereby fully incorporated into this **Exhibit C** as if copied verbatim herein.

1. Confidentiality

1.1 Protection of Confidential Information. Construction Manager hereby acknowledges, understands and agrees: (i) that in the course of conducting its due diligence regarding the provision of services to Owner, certain Confidential Information will be disclosed to Construction Manager; and (ii) that whether developed by Owner or others employed by or associated with Owner, all Confidential Information is, and shall remain, the exclusive and confidential property of Owner, and shall be at all times regarded, treated and protected as such by Construction Manager in accordance with the Agreement. Failure to mark any information "Confidential" shall not affect the confidential nature of such information.

1.2 Confidential Information. Confidential Information includes the information set forth in Section 1.1.8 of the A201-2017, and includes the following:

1.2.1 Work product resulting from, or related to the business and/or operations of Owner, including but not limited to, methods, processes, procedures, analysis, techniques, and audits used by Owner in connection therewith.

1.2.2 Computer software of any type or form in any stage of actual or anticipated research and development, including, but not limited to, programs and program modules, routines and subroutines, processes, algorithms, design concepts, design specifications (design notes, annotations, documentation, flowcharts, coding sheets, and the like), source code, object code and load modules, programming, program patches, and system designs.

1.2.3 Information relating to Owner's proprietary rights prior to any public disclosure thereof, including but not limited to, the nature of the proprietary rights, production data, technical and engineering data, test data and test results, the status and details of research and development of products and services, and information regarding acquiring, protecting, enforcing and licensing proprietary rights (including patents, copyrights, and trade secrets).

1.2.4 Internal personnel and financial information, vendor names and other vendor information (including vendor characteristics, services, and agreements), customer lists and contacts, business plan(s), purchasing and internal cost information, internal services and operational manuals, pricing, marketing, and all other manner and methods of conducting Owner's business.

1.2.5 Marketing and development plans, price and cost data, price and fee amounts, pricing and billing policies, quoting procedures, marketing techniques and

methods of obtaining business, forecasts and forecast assumptions and volumes, and future plans and potential strategies of Owner which have been or are being discussed.

1.3 Covenants. As a consequence of Construction Manager's acquisition or anticipated acquisition of Confidential Information, Construction Manager will occupy a position of trust and confidence to Owner with respect to Owner's affairs and business. In view of the foregoing and of the mutual consideration to be provided to each party, Construction Manager agrees that it is reasonable and necessary that it make the following covenants:

1.3.1 Both during and forever after the performance of any due diligence investigation, Construction Manager will not disclose Confidential Information to any person or entity other than as necessary in carrying out its duties on behalf of Owner and/or due diligence investigation, without first obtaining Owner's prior, written consent, and Construction Manager will take all reasonable precautions to prevent inadvertent disclosure of such Confidential Information. This prohibition against Construction Manager's disclosure of Confidential Information includes, but is not limited to, disclosing the fact that any similarity exists between the Confidential Information and information independently developed by another person or entity, and Construction Manager understands that such similarity does not excuse Construction Manager from abiding by its covenant or other obligations pursuant to the Agreement.

1.3.2 Both during and after the conduct of its due diligence investigation, Construction Manager will not use, copy, or transfer Confidential Information other than as necessary in carrying out its duties on behalf of Owner and/or due diligence investigation, without first obtaining prior written consent of Owner, and will take all reasonable precautions to prevent inadvertent use, copying, or transfer of such Confidential Information. This prohibition against Construction Manager's use, copying, or transfer of Confidential Information includes, but is not limited to, selling, licensing, or otherwise exploiting, directly or indirectly, any products or services, including software in any form, that embody or are derived from Confidential Information.

1.4 Use. Construction Manager agrees not to make any written use of or reference to Owner's name or registered or unregistered trademarks (or any names under which Owner conducts business or operations) for any marketing, public relations, advertising, display or other business purpose or make any use of Owner's facilities for any activity related to the express business purposes and interests of Owner pursuant to the Agreement, without the prior written consent of Owner, which consent may be withheld or granted in Owner's sole and absolute discretion. Construction Manager agrees not to utilize, either directly or indirectly, any Confidential Information in order to facilitate or create direct business relationships with business customers of Owner.

1.5 Open Records Request or Similar Requests for Information. In the event that Construction Manager receives a request to disclose all or any part of the Confidential Information under the terms of the Texas Public Information Act, a subpoena or other order issued by a court of competent jurisdiction or by another governmental agency, Construction Manager shall: (i) notify Owner of the existence, terms, and circumstances surrounding such a request within one (1) business day of the receipt of the request; (ii) notify the entity requesting the information that such a request for information should be submitted to Owner, not Construction Manager; (iii) provide the entity requesting the information the contact information of Owner's public information coordinator; and (iv) forward all responsive information to Owner within two (2) business days of the receipt of the request.

1.6 Confidentiality Provisions Applicable to Owner. Subject to the provisions of Section 1.7 below, Owner shall keep confidential all information, in whatever form, produced, prepared, or observed by Construction Manager to the extent that such information is stamped "Confidential Information" or otherwise determined to be confidential by Applicable Laws.

1.7 Public Records. Notwithstanding any provisions of the Agreement to the contrary, Construction Manager understands that Owner will comply with the Texas Public Information Act, Tex. Gov't. Code Ch. 552. If contacted by Owner, Construction Manager will cooperate with Owner in the production of documents responsive to the request. Construction Manager agrees to provide the documents responsive to the request in the format and within the time frame specified by Owner. Construction Manager may request that Owner seek an opinion from the Office of the Attorney General of Texas. However, the final decision whether to seek a ruling from the Office of the Attorney General of Texas will be made by Owner in its sole discretion to comply with the legal requirements of the Texas Public Information Act. Additionally, Construction Manager will notify Owner's general counsel within twenty-four (24) hours of receipt of any third-party requests for information written, produced, collected, assembled, or maintained in connection with the Agreement and/or any amendment to the Agreement. The Agreement and/or any amendment to the Agreement and all data and other information generated or otherwise obtained in its performance is subject to the Texas Public Information Act. Construction Manager agrees to maintain the confidentiality of information received from Owner during the performance of the Agreement, including information which discloses confidential personal information particularly, but not limited to, social security numbers. Furthermore, Construction Manager is required to make any information created or exchanged with the State pursuant to the Agreement, and not otherwise accepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public as specified by Owner at no additional charge to the Owner.

2. Suspension and Debarment. Construction Manager, on behalf of itself and its employees, agents, representatives, and Subcontractors, represents that as of the date of, and at all times during the term of, the Agreement, the following shall be true, complete, and correct:

2.1 Construction Manager is in compliance or will comply with, to the extent applicable, Owner's compliance program and all applicable federal and state laws and regulations therein, including, but not limited to, federal and state healthcare fraud and abuse provisions;

2.2 Construction Manager is not a target or subject of a federal or state criminal, civil, or administrative investigation;

2.3 Construction Manager is not a party to any actual or threatened criminal, civil, or administrative action or proceeding concerning a potential violation of federal or state laws including, but not limited to, federal or state healthcare fraud and abuse provisions;

2.4 Construction Manager has not been convicted of any crime relating to any federal and/or state program; and

2.5 Construction Manager is not, and has not previously been, excluded, debarred, suspended, or otherwise deemed ineligible from participating in any federal or state healthcare program or other federal or state program.

During the term of the Agreement, Construction Manager shall immediately give Owner written notice if Construction Manager is not in compliance with any provision of this Section 2. Upon the occurrence of

such event, whether or not notice is given to Owner, Owner may terminate the Agreement effective immediately upon written notice to Construction Manager.

3. Historically Underutilized Businesses. Construction Manager will proactively comply with Owner's established policies regarding the utilization of S/W/MBE/HUB entities and goals, and all other applicable administrative rules and statutes relating to utilization of S/W/MBE/HUB entities for the Project.

4. Equal Opportunity. Construction Manager shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. Construction Manager shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief. Such action shall include, but not be limited to, the following: (i) employment, upgrading, demotion, or transfer; (ii) recruitment or recruitment advertising; (iii) layoff or termination; (iv) rates of pay or other forms of compensation; and (v) selection for training, including apprenticeship. Construction Manager shall post in conspicuous places, available to employees or applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination Section. Construction Manager shall include this Section in all subcontract agreements pertaining to the services to be provided under the Agreement.

5. Nondiscrimination. In their execution of the Agreement, the parties and others acting by or through them shall comply with all federal and state laws prohibiting discrimination, harassment, and sexual misconduct. To the extent not in conflict with federal or state law, the parties agree not to discriminate on the basis of race, color, national origin, age, sex, religion, disability, veterans' status, sexual orientation, gender identity or gender expression. Any breach of this covenant may result in termination of the Agreement.

6. Immigration Reform. The Immigration Reform and Control Act of 1986, as amended, the Immigration Act of 1990, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, require that all employees hired since 1986 provide proof of identity and employment eligibility before they can work in the United States. Owner is committed to complying with all applicable immigration laws of the United States and requires compliance by all contractors, subcontractors, and consultants who contract with the Owner. Construction Manager shall not place any employee of Construction Manager at a worksite, nor shall Construction Manager permit any employee, nor any Subcontractor, to perform any work on behalf of, or for the benefit of, Owner without first confirming said employee's authorization to lawfully work in the United States. Construction Manager states that Construction Manager: (i) maintains and follows an established policy to verify the employment authorization of its employees and to ensure continued compliance for the duration of employment; (ii) has verified the identity and employment eligibility of all employees in compliance with Applicable Law; (iii) has established internal safeguards and reporting policies to encourage its employees to report any suspected violations of immigration policies or of immigration law promptly to Construction Manager's senior management; and (iv) is without knowledge of any fact that would render any employee or any Subcontractor ineligible to legally work in the United States. Construction Manager further acknowledges, agrees, and states that it: (i) has complied, and shall at all times during the term of the Agreement comply, in all respects with the Immigration Reform and Control Act of 1986 and 1990, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, and all of the laws, rules, and regulations relating thereto; (ii) has properly maintained, and shall at all times during the term of the Agreement properly maintain, all records required by the Department of Homeland Security, Immigration and Customs Enforcement, including, without limitation, the completion and maintenance of the Form I-9 for each of Construction Manager's employees; and (iii) has responded, and shall at all times during the term of the Agreement respond, in a timely fashion to any inspection requests related to such I-9 Forms. During the term of the Agreement, Construction Manager

shall, and shall cause its directors, officers, managers, agents and employees to, fully cooperate in all respects with any audit, inquiry, inspection or investigation that may be conducted by Owner or any state or county agency of Construction Manager or any of its employees. Construction Manager acknowledges, agrees, and represents that all Subcontractors permitted by it to perform services hereunder will be required to agree to these same terms as a condition to being awarded a contract for the performance of such services.

7. E-Verify. By entering into the Agreement, Construction Manager certifies and ensures that it utilizes and will continue to utilize, for the term of the Agreement, the U.S. Department of Homeland Security's E-Verify system, in accordance with the U.S. Department of Homeland Security's rules, to determine the eligibility of: (i) all persons employed to perform duties within the State of Texas, during the term of the Agreement; and (ii) all persons (including all Subcontractors) assigned by the Construction Manager to perform services pursuant to the Agreement, within the United States of America. Construction Manager shall provide, upon request of Owner and if available, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three (3) most recent hires that match the criteria above, by the Construction Manager and Subcontractors, as proof that this provision is being followed. If this certification is falsely made, the Agreement may be immediately terminated, at the discretion of Owner, and at no fault to Owner, with no prior notification. Construction Manager shall also be responsible for the costs of any re-solicitation that Owner must undertake to replace the terminated Agreement. For persons not eligible for E-Verify screening, Construction Manager (along with all Subcontractors) shall provide, upon request by Owner, another form of documentation of proof of eligibility to work in the United States of America.

8. Entities that Boycott Israel. Pursuant to *Tex. Gov't. Code §2271.002*, Construction Manager certifies that either (i) it meets an exemption criteria under *Tex. Gov't. Code §2271.002*; or (ii) it does not boycott Israel and will not boycott Israel during the term of the Agreement. Construction Manager shall state any facts that make it exempt from the boycott.

9. Entities that Boycott Energy Companies. Pursuant to *Tex. Gov't. Code §2274.002*, Construction Manager certifies that either (i) it meets an exemption criteria under *Tex. Gov't. Code §2274.002*, or (ii) it does not boycott companies that engage in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and do not commit or pledge to meet environmental standards beyond applicable federal and state law ("Energy Companies") and will not boycott Energy Companies during the term of the Agreement. "Boycott Energy Company" has the meaning provided in *Tex. Gov't. Code §809.001*. Construction Manager shall state any facts that make it exempt from verification.

10. Entities that Discriminate against Firearms Entities or Trade Associations. Pursuant to *Tex. Gov't. Code §2274.002*, Construction Manager certifies that either (i) it meets an exemption criteria under *Tex. Gov't. Code §2274.002*, or (ii) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association (as defined under *Tex. Gov't. Code §2274.001*) and will not discriminate during the term of the Agreement against a firearm entity or firearm trade association. Construction Manager shall state any facts that make it exempt from verification.

11. Prohibition Against Contracting with Companies Engaged in Business with Iran, Sudan, or other Foreign Terrorist Organizations. In accordance with *Tex. Gov't. Code §2252.152*, Owner is prohibited from entering into a governmental contract (as defined in *Tex. Gov't. Code §2252.151(3)*) with a company that is identified on a list prepared and maintained under *Tex. Gov't. Code §§806.051, 807.051, or 2252.153*. If Construction Manager is on the above-referenced list, the Agreement will be considered void or voidable and Owner will not be responsible to pay Construction Manager for any services performed.

12. Excluded Parties. Construction Manager certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.

13. No Conflicts. Construction Manager represents that Construction Manager has no actual or potential conflicts of interest in providing services to Owner under the Agreement and that Construction Manager's provision of services under the Agreement would not reasonably create an appearance of impropriety.

14. Deceptive Trade Practices Act; Unfair Business Practices Disclosures. Construction Manager represents and states that it has not been found liable of Deceptive Trade Practices Act violations under *Tex. Bus. & Com. Code Ch. 17* or of any unfair business practice in any administrative hearing or court suit. Construction Manager further certifies that it has no officers who have served as officers of other entities who have been found liable of Deceptive Trade Practices violations or of any unfair business practices in an administrative hearing or court suit. In the event that allegations of Deceptive Trade Practices violations under *Tex. Bus. & Com. Code Ch. 17* or of any unfair business practices against either Construction Manager or any of Construction Manager's officers have occurred or are currently pending in an administrative proceeding or in a lawsuit filed with any court, then Construction Manager has disclosed all such matters to Owner and provided a brief description of each allegation, information regarding the administrative body or court before which the matter is pending, and the current status of the matter.

15. Disclosure of Interested Parties. Construction Manager certifies that, if the value of the Agreement or the anticipated value of the Agreement exceeds One Million Dollars (\$1,000,000), it has complied with *Tex. Gov't. Code §2252.908* and *1 Tex. Admin. Code §§46.1* through *§46.3* as implemented by the Texas Ethics Commission (TEC), if applicable, and has provided the Owner with a fully executed TEC Form 1295, certified by the TEC and signed and notarized by the Construction Manager.

16. General and Criminal Background Checks

16.1 Construction Manager represents that Construction Manager and Construction Manager's employees have not been convicted of a felony criminal offense, or of a crime involving moral turpitude, or that, if such a conviction has occurred, Construction Manager has fully advised Owner as to the facts and circumstances surrounding the conviction.

16.2 Construction Manager, and all of Construction Manager's employees and Subcontractors that will perform any work or services on-Site at a county-owned property shall be subject to a criminal background check. Any expense associated with such criminal background check shall be borne by Construction Manager.

16.3 All criminal background check forms for the Construction Manager and all of Construction Manager's employees and Subcontractors that will initially commence any work on-Site must be fully completed and submitted to Owner within **fifteen (15)** Days of the date of the appropriate notice of award, and the process thereafter must be diligently pursued by Construction Manager. All criminal background checks must be completed before the Construction Manager, or any employee or Subcontractor, performs any services at the Site.

16.4 All criminal background checks must be accomplished by the Texas Department of Public Safety (the "DPS"), which includes fingerprint processing by an independent third-party company selected by DPS. Upon receipt of the fingerprints of the Construction Manager and Construction Manager's employees and Subcontractors, DPS, or Owner, will adjudicate the results of the criminal background searches in accordance with Owner's background check requirements

and guidelines. The failure to timely secure criminal background check clearance shall not be considered a legitimate delay in the performance of the services hereunder.

17. Use of Owner Property. Construction Manager is prohibited from using Owner Property for any purpose other than performing services authorized under the Agreement. "Owner Property" includes, but is not limited to: Owner's office space, identification badges, Owner information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any Owner issued software, the Owner's Virtual Private Network (VPN client)) information, and any other resources of Owner. Construction Manager shall not remove Owner Property from the Owner's campus. Construction Manager may not use any computing device to access Owner's network or e-mail. Construction Manager shall not perform any maintenance services on Owner's Property unless the Agreement expressly authorizes such services. During the time that Owner Property is in the possession of Construction Manager, Construction Manager shall be responsible for (i) all repair and replacement charges incurred by Owner that are associated with loss of Owner Property or damage beyond normal wear and tear; and (ii) all charges attributable to Construction Manager's use of Owner Property that exceeds the scope of the Agreement. Construction Manager shall fully reimburse such charges to Owner within **ten (10)** Days of Construction Manager's receipt of Owner's notice of amount due. Use of Owner Property for a purpose not authorized by the Agreement shall constitute breach of the Agreement and may result in termination of the Agreement and the pursuit of other remedies available to Owner under contract, at law, or in equity.

18. Drug-Free Work Place. Construction Manager, Construction Manager's employees, and Subcontractors shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law No. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and Construction Manager, Construction Manager's employees, and Subcontractors shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

19. No Smoking. All facilities where Work is to be performed or services rendered are nonsmoking buildings. Construction Manager, Subcontractors, and all of their employees are prohibited from smoking in all areas except in areas designated for smoking.

20. Signage. Neither Construction Manager, nor any Subcontractor, shall display or distribute any advertising signs or notices of any kind whatsoever upon Owner's premises without the prior written permission of Owner.

EXHIBIT D

OWNER-PROVIDED INFORMATION

Owner shall, with reasonable promptness, provide Construction Manager a copy of, or reasonable access to, the following information and documentation regarding the Project:

1. Owner's Construction, Renovation and Maintenance Activity Safety Policy dated 06/07/2021.
2. Owner's Rules and Regulations for Construction.
3. Owner's HIPAA Policy.

EXHIBIT E
PRECONSTRUCTION INVOICE FORMAT
(SEE ATTACHED)

Project Name:

Billing Period: MM/DD/YY to MM/DD/YY

PRECONSTRUCTION SERVICES							
Role	Hourly Rate	Previous Hours	Previous Invoiced Amount	Hours this Period	Amount Invoiced this Period	Cummulative Hours	Cummulative Amount Invoiced
TOTAL PRECONSTRUCTION SERVICES TO DATE							
DESIGN SERVICES							
Role	Hourly Rate	Previous Hours	Previous Invoiced Amount	Hours this Period	Amount Invoiced this Period	Cummulative Hours	Cummulative Amount Invoiced
TOTAL DESIGN SERVICES TO DATE							

EXHIBIT F

PRECONSTRUCTION HOURLY RATES/SALARIES/WAGES

Project Executive	\$ 219.20
Preconstruction Director	\$ 188.46
Preconstruction Manager	\$ 148.84
HUB Coordinator	\$ 113.19
Scheduler	\$ 136.96
Estimator	\$ 105.27
Estimator	\$ 97.34
Senior MEP Estimator	\$ 168.65
Electrical Estimator	\$ 168.65
Project Director	\$ 172.31
Senior Project Manager	\$ 148.84
Project Engineer	\$ 93.19
Project Superintendent	\$ 156.39
BIM/VDC Manager	\$ 121.11
Safety	\$ 129.03

EXHIBIT G

WORK PACKAGE AUTHORIZATION TEMPLATE

WORK PACKAGE AUTHORIZATION NO. _____

Project: Main Campus Replacement Hospital and Pavilion North Expansion 1575 S. Main Street, Fort Worth, Texas 76104 (the “Project”)

Date: _____, 202__

To: Austin Commercial, LP (“Construction Manager”)

Agreement: Standard Form of Agreement Between Owner and Construction Manager as Constructor – AIA Document A133 – 2019, dated _____, 202__ (the “Agreement”)

Capitalized terms as used herein such as “Owner”, “Construction Manager”, “Subcontractor”, and “Project” shall each have the meanings set forth in the Agreement. Definitions set forth in Section 1.1 of the A201-2017 are hereby fully incorporated into this Work Package Authorization as if copied verbatim herein.

Pursuant to Section 3.3 of the Agreement, the following scope of Work is authorized as a Work Package in connection with the above-referenced Project:

1. Scope of Work:

- (a) Construction Manager is authorized to proceed with the following scope of Work:

[Describe scope of Work]

- (b) Construction Manager intends to utilize the following Subcontractors in connection with the Work Package:

Subcontractor	Scope of Work	Contract Amount

Total: \$ _____

- (c) Construction Manager intends to self-perform the following scope of Work:

[Describe scope of Work]

2. Notice to Proceed:

Construction Manager is hereby given Notice to Proceed with the scope of Work described above as of the ____ day of _____, 202__.

3. Authorized Amount:

The authorized amount of this Work Package Authorization (“Authorized Amount”), subject to approved Change Orders, shall not exceed (*check one*):

<input type="checkbox"/>	A lump sum amount of \$_____, which sum is inclusive of all labor, materials, equipment, fees, and profit/mark-ups.
<input type="checkbox"/>	\$_____, which includes (a) the Cost of the Work, plus (b) Construction Manager’s Fee of [\$_____/____%], plus (c) a Contingency of [\$_____/____%].

The Authorized Amount shall not be exceeded without the express written authorization of Owner.

4. Allowances:

The following Allowances are included in the Authorized Amount:

- (a)
- (b)
- (c)

5. Alternates:

The following Alternates have been accepted by Owner and are included in the Authorized Amount:

- (a)
- (b)
- (c)

6. Unit Prices:

The Authorized Amount is based upon the following Unit Prices:

Item	Units and Limitations	Price Per Unit (\$0.00)
1.		
2.		
3.		
4.		

Supporting Documentation Attached (Check if Applicable):

- ☐ Construction Manager's Schedule of Values is attached hereto as **Attachment 1**.
- ☐ A breakdown of Construction Manager's General Conditions Costs is attached hereto as **Attachment 2**.
- ☐ Construction Manager's Labor Burden Schedule is attached hereto as **Attachment 3**.
- ☐ A list of Drawings and Specifications is attached hereto as **Attachment 4**.
- ☐ A schedule for the scope of Work authorized herein is attached hereto as **Attachment 5**.
- ☐ Assumptions, Clarifications, and Qualifications for the scope of Work authorized herein are attached hereto as **Attachment 6**.
- ☐ A list of the Construction Manager's Key Personnel is attached hereto as **Attachment 7**.
- ☐ A list of Construction Manager-Owned Equipment Rental Rates is attached hereto as **Attachment 8**.
- ☐ Construction Manager's Quality Control Plan for the scope of Work authorized herein is attached hereto as **Attachment 9**.
- ☐ Construction Manager's Performance and Payment Bonds for the Work covered under this Work Package Authorization.

****In accordance with the requirements of *Tex. Gov't. Code § 2269.258 and § 2253.001 et seq.* and **Exhibit B** to the Agreement, the performance and payment bonds must be in penal sums equal to 100% of the Work Package authorized and in the form required by Owner, attached as **Attachment 10**.**

- ☐ Certificates of Insurance (Subcontractors):

(No Work shall be performed unless and until Construction Manager has verification that the Subcontractors performing Work under this Work Package Authorization have provided the insurance coverages with the designated policy limits required under **Exhibit B** to the Agreement. Construction Manager shall send evidence of Subcontractors' insurance coverage to Owner.)

The Authorized Amount of this Work Package Authorization will be included in the Final Guaranteed Maximum Price as set forth in Section 3.3 of the Agreement. Any fee included in this Work Package Authorization shall be deducted from the Work Package Authorization if, upon determination of the Final Guaranteed Maximum Price, the Work under the Work Package Authorization is incomplete. Fee shall be included in the Final Guaranteed Maximum Price only once. All terms and conditions of the Agreement shall continue in full force and effect and shall apply to the scope of Work to be performed under this Work Package Authorization.

OWNER:

**TARRANT COUNTY HOSPITAL DISTRICT D/B/A
JPS HEALTH NETWORK**

By: _____
Name: _____
Title: _____

CONSTRUCTION MANAGER:

AUSTIN COMMERCIAL, LP

By: _____
Name: _____
Title: _____

EXHIBIT H

GENERAL CONDITIONS COST TEMPLATE

<u>General Conditions Cost Categories</u>	<u>Amount</u>
On-Site Project Management Staff:	
Project Executive/Director	\$ 1,610,533
Sr. Project Manager(s)	\$ 3,055,576
Project Manager(s)	\$ 7,514,786
Project Support Staff:	
Accountant(s)	\$ 1,418,207
Estimator(s)	in Preconstruction
Expeditor(s)	with Project Managers
Loss Prevention Coordinator(s)	included
Quality Control Engineer(s)/Coordinator(s)	\$ 1,881,136
Scheduler(s)	\$ 576,265
Diversity Program Manager/Coordinator	\$ 161,875
Superintendent(s)	\$ 8,756,483
Assistant Superintendent(s)	\$ 3,266,389
Safety Manager/Coordinator/Assistant(s)	\$ 1,260,496
Bonds and Insurance:	
Builder's Risk Insurance	to be cost of work per contract
General Liability Insurance (unless OCIP)	\$ 6,393,500
Payment and Performance Bonds	\$ 5,592,757
Other Project Insurance as Required by the Agreement	
Temporary Project Utilities:	
Dumpsters for trailer compound only	\$ 65,000
Fencing and Covered Walkways site perimeter and trailers only	\$ 42,000
Monthly Telephone/Internet Service	\$ 122,402
Project Electricity service to trailers only	\$ 251,963
Project Entrance(s)	by site contractor in cost of work
Project Water service to trailers only	\$ 111,201
Site Erosion Control (BMP)	\$ 103,364
Street Rental and Barricades	\$ 210,000
Temporary Toilets	\$ 345,000
Telephone/Internet System Installation PM Systems, QA/QC Systems, and Project IT Infrastructure	\$ 2,321,850
Temporary Fire Protection	\$ 86,600

Trash Removal/Cleanup	will be a bid package with cost of work
Temp Water Distribution and Meters Temp	in Project Water
Electrical Distribution and Meters	in Project Electricity
Field Offices and Office Supplies:	
AGC Fees	included in fee
Drinking Water and Accessories	\$ 313,167
Employee Identification System	\$ 13,540
First Aid Supplies	\$ 43,841
Job Photos/Videos	\$ 10,825
Mobilization and Demobilization (Equipment Only)	will be included in cost of work
Monthly Office Supplies	\$ 87,683
Monthly Office Trailer Rental Costs	\$ 814,473
Move-In/Out and Office Setup & Personal Computers	\$ 1,161,735
Office Clean-Up/Janitorial Services	\$ 56,013
Project Specific Signage	\$ 47,300
Postage/Special Shipping	\$ 103,952
Project/As-Built Drawings	included
Partnering Costs*	\$150,000
Project Reference Manuals	included
Project Milestone Event(s)*	included
Security System/Watchman	\$ 30,000
Radios	with cost of work
Remote Parking Expenses*	with cost of work
Reproduction Services	\$ 27,063
Safety Material and Equipment	\$ 12,521
Storage Trailers	\$ 20,459
Copier Rental	\$138,354
Mobile Phones	\$ 379,202

*Construction Manager shall submit specific justification and all estimated costs to Owner for approval prior to incurring any such costs.

Items that the Construction Manager intends to keep after the completion of the Project shall not be included in the General Conditions. Examples include, but are not limited to, company computers, laptops, projectors, iPads, printers, and furniture.