

# **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 12th day of April in the year **2023**  
*(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)*

**J.T. VAUGHN CONSTRUCTION, LLC**  
9160 Sterlint Street, Suite 100  
Irving, Texas 75063

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

**PSYCHIATRIC EMERGENCY CENTER**  
1500 South Main Street  
Fort Worth, Texas 76104

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

**Beck Architecture, LLC**  
464 Bailey Avenue, Suite 210  
Fort Worth, Texas 76107

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

**Broadbuss-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 preconstruction and construction services for the JPS Psychiatric Emergency Center ("PEC"), 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 PEC is roughly 76,496 square feet based on 100% Design Development documents dated 1/17/2023. The two-story PEC will be located on an existing parking lot directly adjacent to the Trinity Springs Pavilion facility at the intersection of Allen Avenue and Jennings Avenue. A connector of approximately 4,577 SF will be constructed between the PEC and Trinity Springs Pavilion (the "PEC Connector"). Approximately 3,832 SF of renovation will occur within Trinity Springs Pavilion to provide a new administrative suite. This includes modifications to existing parking lot and driveway. Due to

site conditions, there is a change in elevation between the PEC and the Trinity Springs Pavilion. The PEC Connector will contain a combination of elevators and stairs. The PEC building systems will function as a stand-alone building. The PEC Connector building systems will tie into the existing Trinity Springs Pavilion systems. One air handling unit will be replaced and will be sized to accommodate the additional PEC Connector square footage.

The Project is located on approximately 17.469 acres in the City of Fort Worth, Tarrant County, Texas (the "Project Site"). The legal description of the Project Site is as follows:

Lot 1, Block 1, John Peter Smith Hospital Site, As Recorded in Vol. 388-214, Page 99, Plat Records, Tarrant County, Texas

**§ 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.)

See Section 3.2.1 below.

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

.1 Design phase milestone dates, if any:

100% CD Structure Package Issue: 3/14/2023

100% CD Final Package Issue: 4/25/2023

.2 Construction commencement date:

November 30, 2022

.3 Substantial Completion date or dates:

January 31, 2025

.4 Other milestone dates:

N/A

**§ 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.)

N/A

**§ 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.)

N/A

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

**Adam Lane**  
**JPS Health Network**

Init.

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1500 South Main Street  
Fort Worth, Texas 76104  
Telephone: 817-702-9998  
Email: [ALane02@jpshealth.org](mailto:ALane02@jpshealth.org)

**Darrick Walls**  
**Broaddus-LeVis**  
916 Bryan Avenue  
Fort Worth, Texas 76104  
Telephone: 817-691-2062  
Email: [dwalls@broaddususa.com](mailto:dwalls@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](mailto: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.)*

**.1 Geotechnical Engineer:**

Alliance Geotechnical Group  
3228 Halifax Street  
Dallas, Texas 75247

**.2 Civil Engineer:**

Teague, Nall, & Perkins (TNP)  
5237 N. Riverside Drive, Suite 100  
Fort Worth, Texas 76137  
Contact: Scott Gibson  
817-336-5773

**.3 Other, if any:**

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

**See Exhibit J**

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

Jason Aboujeib  
Beck Architecture, LLC  
464 Bailey Avenue, Suite 210

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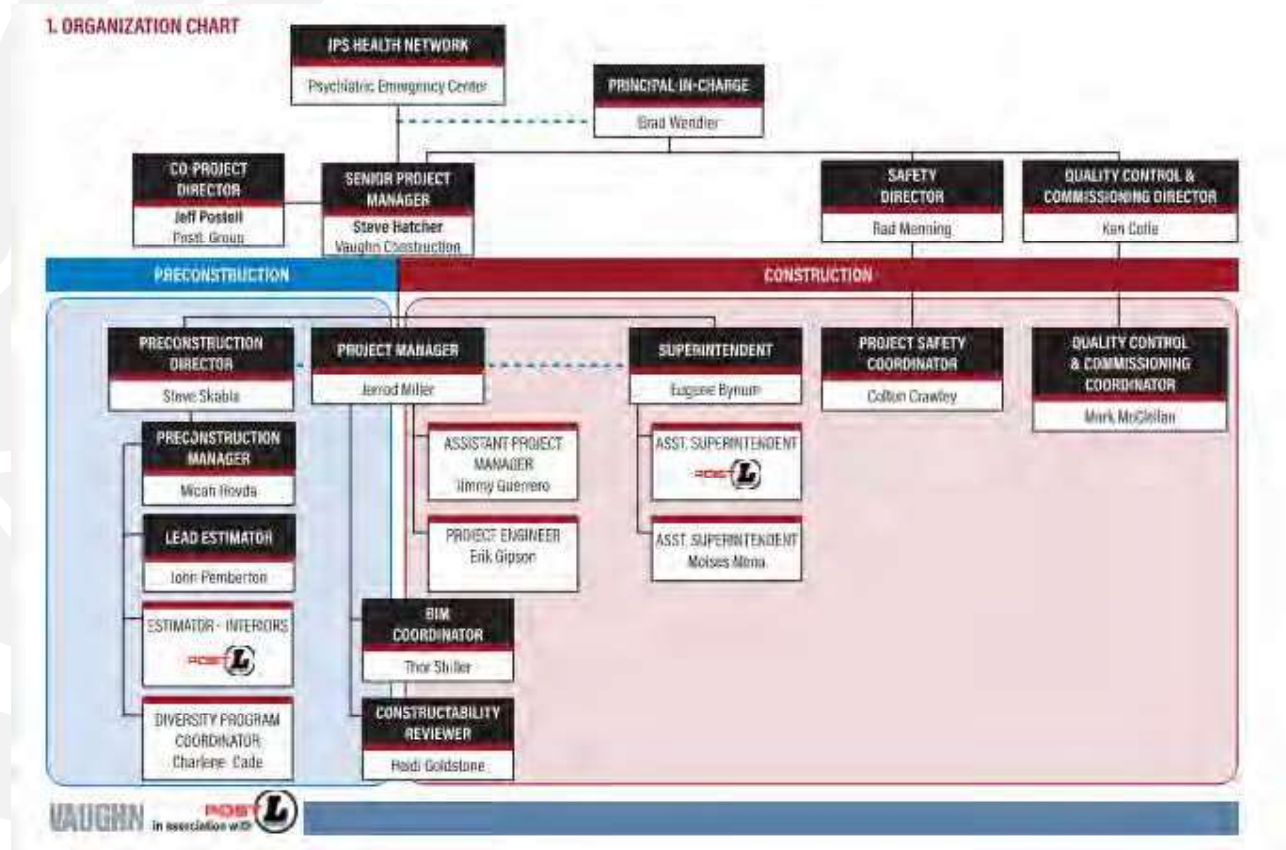
Fort Worth, Texas 76107

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

Brad Wendler  
9160 Sterling Ave, Suite 100  
Irving, TX 75063  
Telephone: (972) 922-5598  
Email: bwendler@vaughnconstruction.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.)



§ 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:

Init.

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User Notes:

(809727557)

N/A

§ 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.

§ 2.1.1 Notwithstanding anything to the contrary herein, the Parties recognize that Owner and Construction Manager entered into that certain *AIA A133-2019 Standard Form Agreement Between Owner and Construction Manager as Constructor*, dated October 19, 2022 for the construction of the Psychiatric Emergency Center (PEC) – Connector Project located at 1500 S Main Street, Fort Worth, Texas 76104 (the "Prior Agreement") (such Prior Agreement, including the exhibits and General Conditions and modifications thereto, including the 50% Design Development IGMP dated August 30, 2022, shall collectively be referred to as the "Prior Contract"). Owner and Construction Manager hereby agree that this Contract shall replace and supersede the Prior Contract. Notwithstanding the foregoing, the Parties also recognize that Owner and Construction Manager executed the following Work Package Authorizations pursuant to the Prior Contract, which are hereby incorporated into this Agreement by reference and attached hereto as **Exhibit K – Prior Work Package Authorizations**:

1. Work Package Authorization No. 1, dated November 4<sup>th</sup>, 2022, for an Authorized Amount not to exceed **One Million Five Hundred Nineteen Thousand Two Hundred Fifty-Two and No/100 Dollars (\$1,519,252.00)**
2. Work Package Authorization No. 2, dated February 17, 2023 for an Authorized Amount not to exceed **Thirty-Seven Thousand Two Hundred Ninety-Four and No/100 Dollars (\$37,294.00)**

§ 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**. Insurance shall be maintained at all times during Preconstruction Services, Construction Services and performance of the Work by Construction Manager and its Subcontractors under this Agreement. 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.

*(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 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 and

☒ [100%] Design Development Documents or

☐ Owner's Estimated Construction Cost,

an Initial Guaranteed Maximum Price of **Sixty-One Million Two Hundred Forty Thousand Eight Hundred Forty-Six and No/100 Dollars (\$61,240,846.00)** has been provided by Construction Manager. The Initial Guaranteed Maximum Price (IGMP) is based upon and includes the IGMP Proposal dated **April 4, 2023**, attached as **Exhibit I**. 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 45 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 **in advance** by the Owner (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. Contingency is the Owner's to expend for the purposes outlined above and 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.

**§ 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 Hundred Forty Thousand and No/100 Dollars (\$140,000.00)** (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.)*

**3.83%**

§ 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 unless previously approved by Owner and then only based on demonstrated increases in actual cost to Construction Manager. 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, **One Thousand and No/100 Dollars (\$1000.00) per Day** until Substantial Completion of the Work is achieved.

§ 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. If liquidated damages are actually recovered by Owner, the above-stated liquidated damages provided for herein 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.)*

N/A

**§ 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 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 and premiums for Subcontractor bonds or Subcontractor default insurance are NOT reimbursable as a General Conditions Cost or Cost of the 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, located at the Site or used in furtherance of the Work, with the Owner's prior approval.

§ 7.6.7 *[Intentionally Deleted. See Section 7.5.4]*.

§ 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;
- .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 **20<sup>th</sup> Day** of the month (or the next business day if the 20<sup>th</sup> 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 **25<sup>th</sup> Day** of the month (or the next business day if the 25<sup>th</sup> 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 (30<sup>th</sup>)** 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 Subcontractor's 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.)*

N/A

**§ 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.)*

N/A

**§ 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:**

**Adam Lane**

**Vice President, Chief Facilities Management Officer**

1500 South Main Street

Fort Worth, Texas 76104

Telephone: 817.702.9998

Email: [ALane02@jpshealth.org](mailto:ALane02@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](mailto:dwalker10@jpshealth.org)

**IF TO THE PROJECT MANAGER:**

**Darrick Walls**

**Broaddus-LeVis**

916 Bryan Avenue

Fort Worth, Texas 76104

Telephone: 817.691.2062

Email: [dwalls@broaddususa.com](mailto:dwalls@broaddususa.com)

**IF TO THE CONSTRUCTION MANAGER:**

**Brad Wendler**

9160 Sterling Ave, Suite 100

Irving, TX 75063

Telephone: (972) 922-5598

Email: [bwendler@vaughnconstruction.com](mailto:bwendler@vaughnconstruction.com)

with a copy to:

**Danny Thompson**

10355 Westpark Drive

Houston, Texas 77042

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.

*(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
- Exhibit H:** General Conditions Cost Template
- Exhibit I:** Initial Guaranteed Maximum Price Proposal, dated April 4, 2023
- Exhibit J:** Owner Consultants
- Exhibit K:** Prior Work Package Authorizations
  - Exhibit K-1:** WPA No. 1
  - Exhibit K-2:** WPA No. 2

*(Table deleted)*

*(Paragraph deleted)*

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

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**

**CONSTRUCTION MANAGER:**

**J.T VAUGHN CONSTRUCTION, LLC**

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

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

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

Danny Thompson, Chief Executive Officer  
\_\_\_\_\_  
*(Printed name and title)*