AIA® Document A133™ – 2009

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

AGREEMENT made as of the _____ day of _____ in the year 20__
(In words, indicate day, month and year.)

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

Austin Community College District
9101 Tuscany Way
Austin, Texas 78754
Attn: _____
Telephone: (512) 223-1023
Facsimile: (512) 223-1030

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

_____
_____
_____
Attn: _____
Telephone: (___) ___-____
Facsimile: (___) ___-____

for the following Project:
(Name and address or location)

_____

Owner's Fixed Construction Budget: $_____
This amount represents Owner's Fixed Construction Budget on the date this Contract was executed. Owner may modify this amount during the Preconstruction Phase.

Construction Manager's Portion of the Fixed Construction Budget:
$_____

This amount represents all Work for the Project to be provided by Construction Manager, including labor, materials and general conditions, the Construction Manager's Fee, and any contingency approved by Owner. This amount may be the same as the Owner's Fixed Construction Budget: $_____

The Architect:
(Name, legal status and address)

_____
_____

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™–2007, 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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_____
Attn: _____
Telephone: (___) ___-____
Facsimile: (___) ___-____

The Owner's Designated Representative:
(Name, address and other information)

_____
_____
_____
Attn: _____
Telephone: (___) ___-____
Facsimile: (___) ___-____

The Construction Manager's Designated Representative:
(Name, address and other information)

_____
_____
_____
Attn: _____
Telephone: (___) ___-____
Facsimile: (___) ___-____

The Architect's Designated Representative:
(Name, address and other information)

_____
_____
_____
Attn: _____
Telephone: (___) ___-____
Facsimile: (___) ___-____

The Owner and Construction Manager agree as follows.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of the documents described in Section 1.1.1 of the General Conditions of the Contract for Construction AIA Document A201—2007 as modified by Owner and Construction Manager. As used in the Contract Documents, the term "General Conditions" or "A201-2007" shall refer to the AIA Document A201-2007 as modified by Owner and Contractor. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 of this Agreement and identified in the Guaranteed Maximum Price Amendment, together with revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8 of this Agreement. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. Priority of the documents constituting the Contract Documents is set out in Section 1.2.6 of A201-2007.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. 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.

§ 1.3 General Conditions

For the Preconstruction Phase, and the Construction Phase, the AIA Document A201™–2007, General Conditions of the Contract for Construction, as modified by Owner and Contractor shall apply, which document is incorporated herein by reference. The term "Contractor" as used in A201–2007 shall mean the Construction Manager.

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ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The foregoing notwithstanding, the Construction Phase cannot commence, and no construction services may be performed, until the Payment and Performance Bonds, and the Construction Manager's insurance, required by the Contract Documents, have been provided by Construction Manager and approved by Owner. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase Construction Manager shall perform the following Preconstruction Phase Work, and shall continue to provide the required services as needed throughout the duration of the Contract. Construction Manager shall use its good faith best efforts, skill, judgment, and abilities to perform the Work in a good and competent manner. The Construction Manager shall use qualified and experienced professionals and exercise reasonable care in preparing schedules and estimates. All services provided under this Contract shall be performed with the level of diligence, competence and skill generally prevailing for such services among construction managers at risk performing similar services for projects of similar scope, and complexity in Austin, Texas and its metropolitan area.

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

(Paragraphs deleted)

§ 2.1.1.1 Team Meetings. Schedule and conduct regular meetings with the Project Team during the appropriate design phases and Document reviews to advise them on Site considerations, selection of materials, building systems and equipment, and methods of delivery of materials, systems, and equipment. The Project Team shall be composed of the persons designated by Owner, and will generally consist of the Owner's Project Manager, the Construction Manager, Owner's Architect, any of Owner's third party contractors, and other consultants employed for the purpose of programming, design, and construction of the Project. The composition of the Project Team may vary at different stages of the Work and may be modified from time to time by Owner.

(Paragraph deleted)

§ 2.1.1.2 Recommendations and Information. Provide recommendations and information to the Project Team on: construction feasibility; availability of materials and labor; time requirements for installation and construction; development of a safety plan and responsibilities for safety precautions and programs; temporary Project facilities; equipment, materials and services for common use of the Construction Manager and Owner's third party contractors, if any; cost factors, including costs of alternative materials and possible cost savings; methods of verification for determining that the requirements and assignment of responsibilities are included in the Contract Documents; and any other matters necessary to accomplish the Work in accordance with the Progress Schedule and the Owner's Fixed Construction Budget.

§ 2.1.1.3 Public Hearings. At Owner's request, attend public meetings and hearings concerning the development and schedule of the Project.

(Paragraphs deleted)

§ 2.1.1.4 Decision Tracking Report. Create and continuously update a "Decision Tracking Report," which records all Work issues and the decisions in a format acceptable to Owner. The updates must be done at least monthly, immediately prior to the Application for Payment.

§ 2.1.1.5 Permits, Licenses, Fees. Confirm that all approvals, reviews, permits, insurance, licenses, certifications (including the certification by subcontractors as to workers compensation coverage required under this Contract) and bonds that are required for construction of the Work to commence have been received.

§ 2.1.1.6. Phased Construction. The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost of reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

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§ 2.1.2 Preconstruction Progress and Submittal Schedule.

§ 2.1.2.1 Within 30 days after the date this Contract is executed, develop and provide to Owner a Preconstruction Schedule for Owner's review and approval, with input from Owner and Owner's Architect which will include the activities of Construction Manager, Owner's Project Manager and Owner's Architect (consistent with the terms of the Professional Services Agreement between Architect and Owner) and other persons identified by Construction Manager and Owner. The Preconstruction Schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion.

§ 2.1.2.2 Within thirty (30) days after the date this Contract is executed, or at such other date agreed upon by Owner and Construction Manager in writing, submit to Owner and Architect a preliminary Progress Schedule in form reasonably acceptable to Owner. The preliminary Progress Schedule shall include, but not be limited to, the durations for all major items of Work to be performed, the start and finish dates of all such activities, and the Substantial Completion Date required by this Contract.

§ 2.1.2.3 Within thirty (30) days after the submission of the preliminary Progress Schedule, or at such other date agreed upon by Owner and Construction Manager in writing, submit to Owner and Architect for their approval, a more detailed Progress Schedule which will be a critical path method schedule depicting all significant activities which will occur on the Project; the duration of such activities; the Substantial Completion Date as provided by this Contract, and the precedence logic of such activities. Construction Manager shall update the Progress Schedules each month to reflect actual progress made and to forecast future progress of the Work, provided that the Substantial Completion Date may not be amended in such Progress Schedules. The updated Progress Schedule shall include submission of the Guaranteed Maximum Price proposal, components of the Work, times of commencement and completion required of each Subcontractor, ordering and delivery of materials and products, including those that must be ordered well in advance of construction, and the occupancy requirements of the Owner.

§ 2.1.2.4 At least fifteen (15) days prior to the submission of the first Application for Payment hereunder, and thereafter on a quarterly basis, submit to Owner a cash flow projection depicting the estimated projected monthly cash flow for the Work.

§ 2.1.2.5 Coordinate all Submittal Schedules for Shop Drawings and Samples required by the Contract Documents. These Submittal Schedules must provide a method for reviewing and processing the required Submittals, which is acceptable to Construction Manager, Owner and Architect.

§ 2.1.3 Lists of Personnel and Subcontractors. The Construction Manager must provide to Owner a list of key personnel, staff, and their respective duties, no later than ten days after the date this Contract has been executed.

§ 2.1.4 Constructability Review of Contract Documents.

§ 2.1.4.1 Mission. Implement and conduct a constructability review of all Contract Documents, following the widely recognized systematic analysis process that is used throughout private industry and governmental agencies. The resulting constructability review report must list discrepancies, errors or omissions among any of the Contract Documents, including all details and omissions that if left unattended may result in Change Orders or Claims once construction of the Work commences. The constructability review services required herein are intended to be comprehensive of the Work and must be completed prior to issuance of the Notice to Proceed on construction, unless otherwise approved by Owner in writing. If the Work is designed in stages, the review services must be completed on each stage prior to the issuance of the Notice to Proceed for such stage of the Work, unless otherwise required by Owner in writing. It is understood that the Construction Manager's review of the documents is made in the Construction Manager's capacity as a contractor and not as a licensed design professional, unless otherwise required by the scope of the Work. . The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, except to the extent that the Contractor knows or should reasonably know about an inconsistency between the Contract Documents and applicable law. Construction Manager shall promptly report to the Architect and Owner in writing any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require, and Construction Manager shall, in addition, include such information in the Constructability Review Report required by this Contract.

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§ 2.1.4.2 Review. Construction Manager agrees to conduct a constructability review to examine all Contract Documents, including without limitation, the Drawings and Specifications, to ensure that Project will be completed with a minimum of delays from excessive requests for information and Change Orders once the Project is under construction. The Construction Manager shall endeavor to detect any errors, omissions or inconsistencies in the design and other documents that affect or could affect the performance or constructability of the Work The review, at a minimum, must evaluate the workability of interrelated systems between civil, architectural, structural, mechanical, and electrical Drawings and Specifications, and review Architect's scheduled installation durations against actual installation requirements for systems integration, to ensure coordination between different design disciplines. Construction Manager will conduct a comprehensive analysis of the construction plans and details to ensure coordination of all systems in determining the ease of constructability and cost effectiveness of building the Project. If in reviewing the Contract Documents the Construction Manager discovers any discrepancies, errors or omissions, the Construction Manager must immediately notify the Owner and Architect in writing, even before incorporating such information into the Constructability Review Report

§ 2.1.4.3 Report. Prepare a "Constructability Review Report," which outlines items that in the Construction Manager's opinion may cause problems in the way the Project is proposed to be constructed and which will document any discrepancies, errors, omissions or potential problems with the Specifications and Drawings, construction plans and details that, if left unattended, may result in ineffective or inefficient constructability, Change Orders, or Claims once Project construction commences.

§ 2.1.4.4 Propose Solution. Construction Manager must propose the most practical solution to resolve the discrepancies, errors, omissions or potential problems, recommend alternative design suggestions for consideration, and document potential savings that require the minimum impact to the Progress Schedule and Fixed Construction Budget (or Cost of the Work) and further the best interest of the Project.

§ 2.1.4.5 Respond to Solution. The Owner and Architect will evaluate the proposed solution and provide a response to Construction Manager. If the approved solution adopted by Owner results in changes to the Contract Time, Fixed Construction Budget or Cost of the Work, the Contract will be equitably adjusted as agreed upon by the Owner and Construction Manager.

§ 2.1.4.6 Failure to Report or Obtain a Response. If Construction Manager performs the Work without reporting discrepancies, errors, omissions or other potential problems, or obtaining a response to its proposed solution to resolve such issues, then Construction Manager will be responsible for all costs and expenses resulting therefrom, including the cost of remedying the Work and overcoming time delays, unless and to the extent, such costs result from concealed conditions or conditions that could not have reasonably been anticipated or discovered.

§ 2.1.4.7 Assumption of Risk. Construction Manager assumes the risk of reviewing the Construction Documents for discrepancies, errors, omissions and potential problems and will not be entitled to any extensions of the Contract Time or to any adjustment of the Guaranteed Maximum Price on grounds that it failed to detect, misinterpreted or misunderstood any matter that could, or should, have been raised by the constructability review, (except for concealed conditions or conditions that could not have been reasonably anticipated or discovered) unless the Construction Manager advised Owner in writing of the discrepancies, errors, omissions and potential problems as required above, and proposed a solution and Owner confirmed in writing that the Construction Manager should proceed in accordance with the Contract Documents as originally given. Without limiting the generality of the foregoing, the Construction Manager will not be entitled to a Claim for adjustment in Contract Time , Cost of the Work, or Guaranteed Maximum Price under the Contract Documents due to the absence of any detail or specification in the Construction Documents, that the Construction Manager may require, or for any construction that may be found necessary as the Work progresses in order to complete the Work, which when clarified does not require elements beyond the normal means and methods nor require a material change in scope of the Work.

§ 2.1.4.8 Extent of Responsibility. . ANY PROVISION IN THIS CONTRACT OR IN ANY OF THE CONTRACT DOCUMENTS TO THE CONTRARY NOTWITHSTANDING, IT IS UNDERSTOOD AND AGREED THAT REGARDLESS OF FAULT, ARCHITECT AND CONSTRUCTION MANAGER SHALL BE JOINTLY AND SEVERALLY LIABLE FOR ENSURING THAT THE LOWEST BONA FIDE GUARANTEED MAXIMUM PRICE PROPOSAL DOES NOT EXCEED CONSTRUCTION MANAGER'S PORTION OF THE FIXED CONSTRUCTION BUDGET. IF THE CONSTRUCTION MANAGER'S PORTION OF THE FIXED

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CONSTRUCTION BUDGET IS EXCEEDED BY THE CONSTRUCTION MANAGER'S LOWEST BONE FIDE GUARANTEED MAXIMUM PRICE PROPOSAL, THEN THE OWNER SHALL EITHER (1) GIVE WRITTEN APPROVAL OF AN INCREASE IN SUCH FIXED LIMIT, (2) AUTHORIZE REBIDDING OF THE PROJECT WITHIN A REASONABLE TIME, (3) ABANDON THE PROJECT, OR (4) COOPERATE IN REVISING THE PROJECT SCOPE AND QUALITY AS REQUIRED TO REDUCE THE CONSTRUCTION COST. IF OWNER SELECTS OPTION (4), THE ARCHITECT, WITHOUT ADDITIONAL CHARGE TO OWNER, SHALL MODIFY THE DRAWINGS AND SPECIFICATIONS AS NECESSARY TO COMPLY WITH THE FIXED CONSTRUCTION BUDGET, AND CONSTRUCTION MANAGER SHALL RE-PERFORM ALL PRECONSTRUCTION SERVICES WHILE THE MODIFICATIONS TO THE DRAWINGS AND SPECIFICATIONS ARE BEING PERFORMED, AT NO ADDITIONAL COST TO OWNER. IN ADDITION TO THE FOREGOING, IF THE CONSTRUCTION MANAGER AND OWNER CANNOT DEFINE A LOWEST BONA FIDE GUARANTEED MAXIMUM PRICE WITHIN THE CONTRACTOR'S PORTION OF THE FIXED CONSTRUCTION BUDGET, THEN CONSTRUCTION MANAGER SHALL PAY FOR ALL COSTS OF REPRINTING AND READVERTISING FOR REBIDDING THE PROJECT AS REDESIGNED. AS USED IN THIS CONTRACT, THE TERMS "BID" OR "BIDDING" SHALL REFER TO ANY SELECTION PROCESS USED IN CONNECTION WITH THE PROJECT, INCLUDING COMPETITIVE SEALED PROPOSALS.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. The estimate shall be based on the total cost to the Owner of all elements of the Project designed or specified by the Architect and its consultants. The Architect shall, throughout the Preconstruction Phase, provide Construction Manager with adequate information for estimating the construction costs. The cost estimate shall include (1) the cost at current market rates of labor and materials, furnished by the Owner, and equipment designed, specified or specially provided by the Architect, together with a reasonable allowance for contingencies for market conditions at the time of bidding, and (2) the cost at current market rates of labor and materials to be furnished by the Construction Manager, (including the cost of general conditions in an amount agreed to by Owner and Construction Manager in an amount not to exceed the general conditions described in Construction Manager's Proposal to Owner) and the Construction Manager's fee for construction phase services as provided in this Contract, together with a reasonable allowance for contingencies to be included for market conditions at the time of bidding as approved by Owner. Construction Manager shall itemize the information in (1) and (2) separately, and shall ask Owner and Architect for all information on items to be provided by Owner or Architect as stated in (1) in order to accurately prepare the cost estimate. The items described in (2) shall sometimes be referred to herein as the Construction Manager's Portion of the Fixed Construction Budget. If the Architect or Construction Manager suggest alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. Architect is required to provide Owner with an independent written Statement of Probable Construction Cost at 50% and 100% completion of the Design Development Documents. Construction Manager and Architect shall compare their estimates at each such stage and shall review portions of their estimates that are materially different from one another. Construction Manager and Architect shall determine the cause of the differences, correct any errors and reconcile their estimates. Architect and Construction Manager shall promptly notify Owner in the event they are unable to agree on a reconciliation of the estimates or if the probable construction cost exceeds the Owner's Fixed Construction Budget.

§ 2.1.5.3 If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect. The Fixed Construction Budget is $30,000,000.00. The Construction Manager's Portion of the Fixed Construction Budget (as defined in Section 2.1.5.1) is $30,000,000.00.

§ 2.1.6

(Paragraphs deleted)

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Value Engineering

§ 2.1.6.1 Limited Value Engineering. Whenever the term "Value Engineering" is used in connection with the Contract Documents or the Work, it has its commonly accepted meaning within the construction industry and does not imply the practice of professional engineering without a license. If any Value Engineering activities constitute the professional practice of engineering, then such activities must be performed by an engineer licensed in Texas. Unless in the scope of services Owner has required Construction Manager to perform a detailed Value Engineering analysis of the Project, or has otherwise directed the Construction Manager to perform a detailed analysis, the time to perform Preconstruction Phase services does not allow for an additional detailed Value Engineering exercise, or extensive revision and redesign of the Project. However, the Owner is interested in any Value Engineering recommendations proposed by the Construction Manager to the degree that they can be accomplished in the time allowed and to the extent that any proposed changes can be accomplished with limited revisions to the Contract Documents. In addition, if the extent that Construction Manager's estimated construction costs exceed the Fixed Construction Budget, Value Engineering solutions may be proposed. Value Engineering activities must be performed concurrently with, and without delay to, the milestones established for the Project.

§ 2.1.6.2 VEP Preparation. As a minimum, the Construction Manager shall include the following information in each Value Engineering Proposal ("VEP"):

a) A description of the difference between the existing and proposed design, the comparative advantages and disadvantages of each, a justification when an item's function is being altered, the effect of the change on system or facility performance;

b) A list and analysis of design criteria or specifications that must be changed if the VEP is accepted;

c) A separate detailed estimate of the impact on project cost of each VEP, if accepted and implemented by the Owner; and

d) A description and estimate of costs the Owner may incur implementing the VEP, such as design change cost. (Architect will be directed to provide input on the estimate.)

§ 2.1.6.3 Value Engineering Review and Approval. The proposed Value Engineering solutions will be promptly reviewed by Architect, whose review will consider all Project areas implicated in the VEP and will make a recommendation to the Owner. Owner will approve or reject Architect's recommendations with reasonable promptness. The Architect will incorporate any approved VEP - into the Contract Documents. The responsibility for the cost of any changes to the Contract Documents shall be determined in accordance with the provisions of this Contract.

§ 2.1.7 Budget and Cost Control. The Construction Manager shall perform the Budget and Cost Control services described below.

§ 2.1.7.1 Cost Management Report. As part of the negotiation of the Guaranteed Maximum Price, provide an initial Cost Management Report that compares Owner's Fixed Construction Budget for the Work to Construction Manager's estimated construction costs. If Construction Manager's estimated construction costs exceed the Owner's Construction Budget, unless otherwise directed by Owner in writing, develop reasonable strategies to be reviewed by the Architect and subject to approval by the Owner to reduce the costs estimated to be incurred during the Construction Phase of the Work.

§ 2.1.7.2 Schedule of Values. As part of the negotiation of the Guaranteed Maximum Price, provide an initial Schedule of Values, including all costs for general conditions. Owner will review the initial contents and format for the Schedule of Values and suggest any revisions or request any additional information. The Schedule of Values must conform to the requirements of the Contract Documents and be subdivided into component parts in sufficient detail to serve as the basis for Progress Payments during the Project, and will be updated as needed, but at least monthly, prior to submitting each Application for Payment.

§ 2.1.7.3 Procurement and Estimates. Prepare and be responsible for all Subcontractor procurement and construction cost estimates.

§ 2.1.7.4 Advise; Recommendation- and Progress Schedule. Advise the other members of the Project Team immediately, if at any time the Construction Manager has knowledge or belief that the Owner's Fixed Construction

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Budget or Progress Schedule will not be met, and make recommendations to the Project Team for corrective action to bring the costs down or to bring the Project back on Schedule.

§ 2.1.8 LEED™ Develop a Leadership in Energy & Environmental Design (LEED™) management implementation plan, documentation, and tracking methodology acceptable to Owner.

§ 2.1.9 Construction Planning.

§ 2.1.9.1 Long Lead Items. Identify any "Long Lead Items" and expedite the procurement by both Construction Manager and Owner of long lead items to ensure delivery and installation for all Construction Trades Packages by the dates provided on the Progress Schedule.

§ 2.1.9.2 Assistance. If requested and approved by Owner, participate with Architect in preparing performance specifications and requests for technical proposals for the procurement and installation of systems and components.

§ 2.1.9.3 List of Possible Subcontractors. Furnish to the Owner and Architect for their information and review, a list of possible Subcontractors, including suppliers, for furnishing principal portions of the Work or specially fabricated items, from whom proposals will be requested. Construction Manager shall comply with applicable SLBE and ESLBC requirements in compiling the list. Architect will promptly notify Construction Manager if Architect or Owner has an objection to any Subcontractor or supplier. The receipt of such list shall not require Owner or Architect to make any investigations of the persons identified on the list, nor will waive the right of the Owner or Architect to object to or reject any proposed Subcontractor or supplier.

§ 2.1.9.4 SLBE and ESLBE Compliance. The Construction Manager shall be in full compliance with all requirements imposed by the Small Business Development Office in furtherance of Owner's Small Business Development Program as set forth by Board of Trustees Policy G-2, Sections D through F, including, but not limited to, compliance with Small Local Business Enterprise (SLBE) and Emerging Small Local Business Enterprise (ESLBE) outreach, participation, and reporting requirements as defined within this Board Policy.

§ 2.1.9.5 Pre-bid and/or Pre-proposal Conferences. Schedule and conduct pre-bid and/or pre-proposal conferences with interested proposers, subcontractors, material suppliers, and equipment suppliers, and record minutes of same. Coordinate the dates and times of such meetings with the availability of Owner's Project Manager and Architect and relevant consultants.

§ 2.1.9.6 Bids and/or Competitive Sealed Proposals for Subcontractor/Trade Contractor Selection.

§ 2.1.9.6.1 Construction Manager Solicitation. Construction Manager shall develop subcontractor interest in the Project. In coordination with Owner and in accordance with Texas Government Code Section 2269.255, Construction Manager shall publicly advertise and solicit bids and/or competitive sealed proposals from subcontractors or trade contractors to perform all major elements of the Work other than the minor Work that may be included in general conditions. If under the terms of a grant received by Owner or other terms of the Contract Documents, Construction Manager is required to specifically solicit bids or proposals from historically underutilized businesses ("HUBs"), disadvantaged business enterprises, SLBEs, ESLBEs or other groups, Construction Manager will comply with such requirements.

If competitive sealed proposals are solicited, Construction Manager and Owner shall jointly agree on the criteria for determination of best value for award of competitive sealed proposals. Construction Manager shall receive and open all bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to persons not employed by the Construction Manager, Architect or Owner. Owner and Architect shall be invited to attend the opening of all bids and/or competitive sealed proposals. Construction Manager shall make the bids and proposals available to Owner immediately after opening. Owner, Architect and Construction Manager will evaluate the bids and proposals. All bids or proposals will be made public after the later of the award of the contract or the seventh day after the date of final selection of bids or proposals. Without limiting the generality of the requirement, Construction Manager will follow this process in the development of the Construction Trades Packages.

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§ 2.1.9.6.2 Construction Manager Self-Performance. Construction Manager may seek to perform portions of the Work itself, if Construction Manager submits its bid or proposal for those portions of the Work in the same manner as all other trade contractors or subcontractors and the Owner determines that the Construction Manager's bid or proposal provides the best value for the Owner. Owner's determination in such matters is final.

§ 2.1.9.6.3 Alternate Subcontractors/Trade Contractors. If Construction Manager reviews, evaluates, and recommends to Owner a bid or proposal from any trade contractor or subcontractor, but Owner requires another bid or proposal to be accepted, then, in accordance with the terms of this Contract, Owner shall compensate Construction Manager by a change in price, time, or guaranteed maximum price for any additional cost and risk, which has been demonstrated to Owner's satisfaction, that Construction Manager incurs because of Owner's requirement that another bid or proposal be accepted, unless the Owner requires that a different subcontractor be used due to debarment, or other good cause. The provisions of Section 2.3.2.2 of this Contract shall apply. In the event of a conflict between the provisions of §2.1.9.5.2 above, and this section (c), § 2.1.9.5.2 shall control.

§ 2.1.9.6.4 Scoring. Construction Manager must provide Owner and Architect with its scoring matrix, or other similar tool used for evaluating responses for Owner's review and reasonable approval. After soliciting bids and proposals, Construction Manager must provide Owner and Architect the completed matrix or other scoring tool which shows the score for each subcontractor or trade contractor that submits a response to a competitive sealed proposal.

§ 2.1.9.6.5 Replacement. If a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected in accordance with the requirements of this Section, the Construction Manager may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements.

§ 2.1.9.7 Quality Control Plan. Develop a quality control Work plan to assure requirements of the Contract Documents are met with a minimum of remedial work. The Construction Manager will plan for scheduling all needed tests with Owner, Architect and appropriate consultants and any applicable testing agencies.

§ 2.1.9.8 Temporary Site Facilities. Construction Manager shall review the Contract Documents to ensure that adequate temporary facilities are provided as necessary to enable the Subcontractors to perform their work and provisions have been made for all Project Site facilities necessary for Construction Manager to manage, inspect, and supervise the Work. Further, Construction Manager shall provide Owner's third party contractors, if any, access to the Project site; access to the sanitary facilities; access to temporary water and power on site; and access to the site for minor storage. Construction Manager is not required to provide storage containers or large storage space, office trailers, dumpsters for recycling, or hauling services for Owner's third party contractors unless Owner and Construction Manager otherwise agree.

§ 2.1.9.9 Safety Plans Construction Manager is responsible for initiating, maintaining, and supervising all safety precautions in connection with the Work, and shall submit safety plans to Owner for its review and approval.

§ 2.1.9.10 Labor Analysis. Provide an analysis of the types and quantities of labor required for the Work and review the appropriate categories of labor required for critical phases or stages of the Work. Make recommendations for actions that will minimize adverse effects of labor shortages on the Progress Schedule.

§ 2.1.11 Notices and Compliance with Laws

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

§ 2.1.12 Owner's Third Party Contracts. Consult with and make recommendations to the Owner, the Architect, and any applicable Owner's third party contractors on the acquisition schedule for (as applicable) fixtures, furniture, equipment, materials, information technology systems, and other systems. Coordinate the purchase, delivery, and installation of such items in accordance with the Progress Schedule as may be required to establish milestones on the Progress Schedule for complete installation prior to the Substantial Completion Date and any LEED's milestone.

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§ 2.1.13 Failure to Perform Preconstruction Phase Services.

§ 2.1.13.1 If Construction Manager fails to timely perform any of the Preconstruction Phase services set out herein, and if, in the Owner's judgment, Owner determines that the Project is not on schedule, the Owner shall notify Construction Manager and may request that the Construction Manager immediately provide Owner and Architect with a recovery plan. The recovery plan must include any and all actions necessary to get the Project back on schedule and may include any of the following items or such similar measures, which must remain in effect until the progress of the Work is back on schedule in Owner's sole judgment:

a) An increase in staff resources having the expertise necessary to assist Construction Manager's key personnel to perform the required services;

b) An increase in office equipment or tools, including computers, software, telephones, faxes, etc., as needed to expedite delivery of the required services; and

c) An increase in hours of Work or number of shifts.

§ 2.1.13.2 If Owner approves the recovery plan, Construction Manager shall proceed with the performance of services in accordance with the terms of the recovery plan. Construction Manager is not entitled to payment, reimbursement, or an increase in Construction Manager's fee, or the Guaranteed Maximum Price for any additional effort it applies to the services or the Work under this section.

§ 2.1.13.3 Failure to immediately act to provide a recovery plan for Owner's approval or to implement an approved recovery plan, is grounds for termination for cause.

§ 2.1.13.4 The rights and remedies provided in this section are not exclusive and are in addition to all other rights and remedies that Owner may have under this Contract or at law or equity.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee, which shall be an amount equal to or less than the Owner's Fixed Construction Budget. The Guaranteed Maximum Price proposal shall expressly set out all qualifications, clarifications and assumptions made by Construction Manager in establishing its proposal. The Architect will review the proposed Guaranteed Maximum Price and verify that the clarifications, qualification or assumptions are reasonable relative to the design intent and can be accommodated in the Construction Documents. Architect shall promptly notify Owner in the event that it believes the clarifications, qualification or assumptions are not reasonable or cannot be so accommodated. In the event the Architect determines that there is a problem with the Guaranteed Maximum Price proposal, or if the proposal exceeds the Construction Manager's Portion of the Fixed Construction Budget, then Owner, Architect and Construction manager shall meet to discuss and endeavor to resolve the problem. In any event, Owner shall have the rights set forth in Section 2.1.4. 8 of this Contract.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

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

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

.2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;

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.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;

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

.5 A date by which the Owner must accept the Guaranteed Maximum Price, which must not be less than 60 days after the date the proposal is submitted to Owner; and

.6 The contingencies described in Section 2.2.4.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use, in an amount approved by Owner, to cover those costs that are reimbursable as the Cost of the Work as provided in the Agreement but not included in a Change Order. The Construction Manager's contingency may only be used with Owner's prior written consent. Without limiting the generality of the foregoing, the Construction Manager's contingency cannot be used to pay or reimburse Construction Manager for costs or expenses which Construction Manager is required to pay without reimbursement under the Contract Documents, or for which Construction Manager is liable under the terms of the Contract due to the fault, negligence or default of the Construction Manager, Subcontractors, suppliers or anyone for whose acts any of them may be liable. The estimated Cost of the Work shall also include an amount approved by the Owner as an Owner's Contingency for the Owner's exclusive use to cover unexpected costs which change the scope of the Work.

§ 2.2.5 Construction Manager shall issue a report to Owner and Architect with its proposal stating that the Construction Documents are generally consistent with the Guaranteed Maximum Price assumptions. The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase as described in Section 2.3.2.1, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager for which Owner is liable for payment under applicable law that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed. Owner is exempt from the payment of sales, use and other taxes under Texas law, and Construction Manager shall take all actions required to obtain the exemption in connection with the Work as described in the General Conditions.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

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§ 2.3.1.2
The Construction Phase shall commence upon the satisfaction of all of the following: (1) Owner's acceptance and execution of the Guaranteed Maximum Price proposal, (2) the Owner's issuance of a Notice to Proceed, and (3) the provision by Construction Manager and approval by Owner of the payment and performance bonds and insurance required to be provided under the terms of the Contract.

§ 2.3.2 Administration

§ 2.3.2.1 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 by other appropriate agreements with the Construction Manager. The selection of Subcontractors and the performance of Work by the Construction Manager shall be in accordance with the provisions of § 44.038 of the Texas Education Code and Chapter 2267 of the Texas Government Code in effect on the date hereof, which provisions are incorporated herein by reference.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, has not been debarred from performance, and to whom Owner does not have a reasonable objection, 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 Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner. Any adjustment must be made by Change Order executed at the time the Owner requires the other bid to be accepted or it shall be conclusively determined that Construction Manager has agreed that no such adjustment is required.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

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

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule for their review and approval in accordance with Section 3.10 of A201–2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner or Architect. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner. The Construction Manager shall maintain at the Work site, and make available for viewing by Architect and Owner, record Drawings for the Project on which Construction Manager has noted, in a timely manner, all deviations in the Work as performed from the Drawings provided by the Architect for the Project.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

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§ 2.4 Professional Services
Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials
Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

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

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence at the request of the Construction Manager.

§ 3.1.3 During the Preconstruction Phase, the Owner shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Architect, which shall include contingencies for changes in the Work and other costs which are the responsibility of the Owner. The Owner's Fixed Construction Budget as of the date of this Contract, is set out on the first page of this Agreement.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner as provided in the General Conditions but shall exercise proper precautions relating to the safe performance of the Work.

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

§ 3.1.4.2 The Owner shall furnish surveys agreed upon by Owner and Construction Manager.

§ 3.1.4.3 The Owner shall furnish services of geotechnical engineers agreed upon by Owner and Construction Manager.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents or as agreed upon by Owner and Construction Manager with reasonable promptness.

§ 3.2 Owner's Designated Representative
The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization as hereinafter provided. This representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager, except to the extent that such decisions and approvals are required to be made by Owner's officers or Board of Trustees. Except as otherwise expressly provided in A201—2007, the Architect does not have such authority. Changes in the scope of Work, the Contract Sum, and the Guaranteed Maximum Price will generally require approval by the Board of Trustees.

(Paragraph deleted)

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§ 3.3 Architect
The Owner shall retain an Architect to provide services, duties and responsibilities in connection with this Project.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
§ 4.1 Compensation
§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

A stipulated sum equal to _____ Dollars ($_____) for Preconstruction Services. Subject to the terms of this Agreement, Owner shall pay the stipulated sum in three equal payments as follows: (1) $_____ upon receipt of Construction Manager's Schematic Design Estimate after it has been reviewed and reconciled with Architect's estimate; (2) $_____ upon Owner's approval of Construction Manager's Guaranteed Maximum Price Proposal at the end of the Design Development Phase (or at such other time as agreed upon by the parties for delivery); and (3) $_____ upon Construction Manager's delivery of report to the Owner and Architect stating that the Construction Documents are generally consistent with the GMP assumptions and clarifications.

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

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions which are approved by Owner.

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

§ 4.2.2
§ 4.2.2 Payments under the Contract are due and payable within 30 days after presentation of the Construction Manager's invoice or as otherwise required by Chapter 2251 of the Texas Government Code. Undisputed amounts not paid when due shall bear interest at the rate provided by Chapter 2251 of the Texas Government Code. (*Insert rate of monthly or annual interest agreed upon.)*

%

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

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

A stipulated sum equal to ____% of the Cost of the Work included in the Guaranteed Maximum Price proposal accepted by Owner as established in Exhibit "A" to this Contract, provided that the sum of the Cost of the Work and the Construction Manager's Fee shall not exceed the Guaranteed Maximum Price. Stipulated sum of Construction Manager's fee is equal to one and _____ percent (____%) of $_____, which is $_____. The costs of the General Conditions shall not exceed the costs for General Conditions shown in Construction Manager's proposal. The cost of the General Conditions shall be part of the Cost of the Work.

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

See Article 13 below and Section 5.3.5 below and any other relevant provision of the Contract Documents.

Any provision in the Contract Documents to the contrary notwithstanding, if the Construction Manager's Fee is a stipulated sum and the Contract is terminated prior to completion of the entire scope of the Work, and the Construction Manager is entitled to payment for Work performed under the terms of the Contract, then the Construction Manager's Fee payable to Construction Manager for Work performed in accordance with the Contract Documents will be a percentage of the stipulated sum based on the percentage completion of the Work at the time of termination, subject to the Guaranteed Maximum Price limitation adjusted to the percentage of completion.

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

See Section 13 below and any other relevant provision in the Contract Documents

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:
(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit ($0.00)

§ 5.1.6 The Cost of the Work shall include the general conditions proposed by Construction Manager as part of its proposal to Owner which are incorporated herein by reference, adjusted to the extent necessary by Change Order, or in an express provision of this Agreement, to reflect the terms of this Contract, and provided, however, that all Cost of the Work shall be charged to and payable by Owner based on the actual costs incurred by Construction Manager subject to the Guaranteed Maximum Price limitation provided herein. The amount charged for On-Site Project Management as described in the general conditions shall be based on the actual time spent by such persons in performing the Work for this Project.

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.
(Insert specific provisions if the Construction Manager is to participate in any savings.) The Cost of the Work shall be charged to and payable by the Owner based on the actual costs incurred subject to the Guaranteed Maximum Price limitation provided herein. In the event the actual Cost of the Work paid by Contractor plus the Contractor's Fee is less than the Guaranteed Maximum Price established by the Contract Documents (including approved Change Orders), the Owner shall be entitled to 100% of the savings. The stipulated sum of Construction Manager's fee will not be reduced due to savings returned to the Owner.

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work

§ 5.3.1 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 Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General

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Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work as agreed upon by the Construction Manager and Owner.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction and the applicable provisions of this Agreement.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of the changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

§ 5.3.6 The provisions of Section 13.8 of this Agreement shall apply to Change Orders.

§ 5.3.7 Substantial Completion Date. The Work shall be Substantially Complete within the time period provided in the Guaranteed Maximum Price Amendment.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean actual costs necessarily incurred by the Construction Manager in the proper performance of the Work subject to the Guaranteed Maximum Price limitation set forth in this Contract. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7. All wages paid under this Contract by Construction Manager and subcontractors must not be less than the prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed for regular days, holidays and overtime work, as determined in accordance with Section 2258.022 of the Texas Government Code and other applicable law, a copy of which prevailing wage rate is attached as Exhibit "B" to this Agreement and incorporated herein. Construction Manager shall be responsible for complying with all requirements of law with regard to the prevailing wage rate and for any penalties or liabilities imposed by law for failure to pay the prevailing wage rate as specified herein, and Owner may withhold all appropriate funds, including additional wages to satisfy Construction Manager's obligations.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment. OWNER SHALL BE DEEMED TO HAVE APPROVED SUCH COSTS ONLY IF THE CONSTRUCTION MANAGER HAS PROVIDED OWNER WITH A WRITTEN BREAKDOWN OF THE COSTS PRIOR TO INCURRING SUCH COSTS, AND THE APPROXIMATE DOLLAR AMOUNTS ATTRIBUTABLE THERETO, AND OWNER HAS APPROVED SUCH COSTS IN WRITING.

§ 6.2 Labor Costs

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

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§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval for the portion of the time spent working on this Project.
(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, with Owner's prior consent, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3, and comply with any of Owner's requirements with regard to labor burdens.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, only with the Owner's prior approval. Owner shall be deemed to have approved these payments only if the Construction Manager has provided Owner with a written breakdown of these payments, and the approximate cost of these payments, and obtained Owner's written approval to the same prior to the execution of the Guaranteed Maximum Price.

§ 6.3 Subcontract Costs
Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction
§ 6.4.1 Costs, including transportation and offsite storage as provided in Section 6.5.6, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed but required 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.

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

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

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

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

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§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work, if approved in advance by Owner.

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

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

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

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

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

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

§ 6.6.6 Intentionally deleted.

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

§ 6.6.8 Intentionally deleted.

§ 6.6.9 Subject to 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.

§ 6.7 Other Costs and Emergencies

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

§ 6.7.2 Costs reasonably 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 Section 10.4 of AIA Document A201–2007.

§ 6.7.3 If Owner's approval is required for any costs under any of the provisions of this Agreement, such approval must be given in a writing signed by Owner.

(Paragraph deleted)

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 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 6.2,;

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

.3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;

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

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

.6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;

.7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;

.8 Costs for services incurred during the Preconstruction Phase; and

.9 Costs for insurance which Owner has not required to be provided for this Project.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Subject to the provision of Section 5.2.1, Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, 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.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, 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 Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, 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 Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 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, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by applicable law.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

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

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

Init.
/
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§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the 5th day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the 5th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made as provided in Section 4.2.2 above, subject to the terms and provisions of the Contract Documents.

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

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

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

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

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201–2007;

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

.3 Add the Construction Manager's Fee. The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.4 Subtract retainage of five percent (5%) from the sum of .1, .2 and .3;

.5 Subtract the aggregate of previous payments made by the Owner;

.6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.7 Subtract amounts, if any, for which the Architect or Owner has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007 or withheld payment in accordance with the provisions of the Contract Documents.

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§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements. Retainage withheld on contracts shall be 5% unless otherwise agreed upon by the Owner and Construction Manager.

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

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, less retainage and any other amounts which Owner is authorized to withhold shall be made by the Owner to the Construction Manager when

.1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment;

.3 a final Certificate for Payment has been issued by the Architect;

.4 the surety has consented to final payment; and

.5 Construction Manager has provided all warranties, instructions, training, and satisfied all requirements for finalling-out the Project required by the Contract Documents.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows: within 30 days after the date such payment is due in accordance with Chapter 2251 of the Texas Government Code. Retainage withheld by Owner and payable to Construction Manager shall be paid to Construction Manager within 30 days after the final payment is due.

§ 7.2.2 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work not caused by Construction Manager, its subcontractors or anyone for whom Construction Manager is liable, then, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

(Paragraphs deleted)

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and

§ 8.1 *For all phases of the Project, the Construction Manager* shall provide insurance as required in Exhibit "B" to this Agreement, and shall require subcontractors to provide insurance as required therein and in Article 13 of this Agreement. The Construction Manager must provide Owner with a Certificate of Insurance showing the required coverage at the time Construction Manager executes this Agreement. Builder's Risk may be provided at the time the Amendment establishing the Guaranteed Maximum Price is signed by Construction Manager, provided that Construction Manager will provide Owner with a Certificate of Insurance at that time showing that the required coverage has been obtained.

§ 8.2 Unless Owner requires Payment and Performance Bonds at the time this Contract is executed, Construction Manager will furnish Payment and Performance bonds, each in the amount of 100% of the Guaranteed Maximum

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Price, within 10 days after Construction Manager executes the Amendment to this Agreement which establishes the Guaranteed Maximum Price. If Payment and Performance Bonds are not required to be furnished at the time this Contract is executed, Construction Manager must furnish a bid bond or other financial security acceptable to Owner to ensure that the Construction Manager will furnish the required Payment and Performance Bonds when a Guaranteed Maximum Price is established. Notwithstanding anything herein to the contrary, all bonds must comply with Chapter 2253, Texas Government Code, including the requirement that such bonds must be executed by a corporate surety licensed to do business in Texas in accordance with Article 7.19-1, Texas Insurance Code. Such bonds shall be on forms supplied or approved by Owner. Surety shall be listed as an approved surety by the U.S. Treasury Department. If any surety on any bond becomes insolvent or is unable to perform its obligations thereunder, the Construction Manager shall immediately furnish replacement bonds, or if such bonds cannot be obtained, equivalent security reasonably acceptable to Owner to protect the interests of Owner and persons furnishing labor and materials to the Project.

§ 8.3 No construction phase services may be performed under this Contract until the bonds and insurance have been provided to and approved by Owner.

Type of Insurance or Bond	Limit of Liability or Bond Amount ($0.00)

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. Any provisions in the Contract Documents to the contrary notwithstanding, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

[ ] Arbitration pursuant to Section 15.4 of AIA Document A201–2007

[X] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment by both parties, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

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§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be -compensated for Preconstruction Phase services performed prior to receipt of a notice of termination which comply with the terms of the Contract.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase, 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 10.1.2:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination less any amounts which Owner is authorized to withhold, retain or set-off under the terms of the Contract or applicable law ;

.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 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, as calculated in accordance with Section 5.1.2 for payment upon termination less any amounts Owner is authorized to withhold, retain or set off; and

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

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 which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. 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 10, 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, and shall allow termination of the subcontract in the event Owner or Contractor terminates this Contract.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement for work, equipment or rentals provided prior to termination of such contracts , if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, and the Construction Manager's Fee shall be calculated as provided in Section 5.1.2.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

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ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract. The foregoing notwithstanding, Owner shall have the right to assign this Agreement, and all of the Contract Documents to the Bond Trustee for the bond issuance used to finance the construction of the Work (or its designee) and such Trustee or its designee shall have the right to assume the position of Owner under the Contract Documents.

§ 11.5 Other provisions:

Subcontracts, purchase orders and rental agreements entered into by the Construction Manager shall contain provisions permitting assignment to the Owner upon default by Construction Manager under the Contract Documents. If the Owner accepts such assignment, the Owner shall be responsible for the payment of amounts which would have been reimbursable to Construction Manager under this Agreement and for which payment has not already been made to the Construction Manager. Construction Manager shall be responsible for the payment of any other amounts payable under the Contract. If the Owner elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager shall terminate such subcontract, purchase order or rental agreement.

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 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 except for those constituting part of the Contract Documents. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- **.1** AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- **.2** AIA Document A201–2007, General Conditions of the Contract for Construction
- **.3** AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:
- **.4** AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
- **.5** Other documents:

(List other documents, if any, forming part of the Agreement.)

- **.1** Owner's solicitation documents and Construction Manager's responses and proposals.
- **.2** Exhibits "B," and "C" hereto.
- **.3** Exhibit "A" (Guaranteed Maximum Price Amendment) when and if signed by the parties.

ARTICLE 13 ADDITIONAL PROVISIONS

§ 13.1 Liquidated Damages The Owner shall have the right to retain from the amounts otherwise payable to contractor under this Contract the sum of $_____ per day, for each and every calendar day of unexcused delay in achieving Substantial Completion. Any sums due and payable hereunder by the Construction Manager shall be

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payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by Owner, estimated at or before the time of executing this Agreement. When the Owner reasonably believes that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required to, withhold from any amounts otherwise due the Construction Manager an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Construction Manager overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Construction Manager those funds withheld, but no longer applicable, as liquidated damages.

§ 13.2 Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, the term "including" is not limiting and the terms "hereof," "herein," "hereunder" and similar terms in the Contract Documents refer to the Contract Documents as a whole and not to any particular provision thereof, unless stated otherwise. Additionally, the parties hereto acknowledge that they have carefully reviewed this Contract and have been advised by counsel of their choosing with respect thereto, and that they understand its contents and agree that this Contract shall not be construed more strongly against any part hereto regardless of who is responsible for its preparation.

§ 13.3 The Contract is performable in the county in Texas in which the Project site is located and the Contract shall be governed by and interpreted in accordance with the laws of the State of Texas. To the maximum extent permitted by applicable law the parties agree that venue for any action brought under or in connection with the Contract Documents shall lie in courts of competent jurisdiction in Travis County, Texas, or if suit cannot be brought or maintained in state courts in Texas, then in federal courts for the Western District of Texas, Austin Division or other appropriate federal court with jurisdiction in Texas.

§ 13.4 In the event of any suit or action arising out of or in connection with the Contract Documents, the prevailing party in such proceedings shall be entitled to recover reasonable attorney fees and court costs.

§ 13.5 Notice. All notices required to be given under the Contract must be in writing. Any notice required or permitted to be given under the Contract shall be deemed delivered, whether or not actually received, three days after it is deposited in the U. S. Mail, when sent by certified mail, return receipt requested, postage prepaid, correctly addressed to the party's designated representative at the address provided in this Agreement, with a copy sent to such party by facsimile or email on the date of deposit into the mail. Notice given in any other manner shall be deemed delivered when actually received. Either party may change its address for notice by giving notice of the change of address in accordance with this provision. The Architect must be copied on notice sent to the Owner.

§ 13.6 Selection of Subcontractors

.1 The Construction Manager shall publicly advertise and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the Work in accordance with Section 2269.255 of the Texas Government Code and the applicable SLBE and ESLBE and other requirements established by Owner applicable to this Project. Minor work that may be in the general conditions identified in Construction Manager's Proposal need not be publicly advertised but must be advertised in a manner to meet applicable SLBE and ESLBE requirements for this Project. The public advertising requirements are described in Section 2.1.9.6 of this Agreement.

.2 The Construction Manager will include the following documents and procedures in the bid or proposal documents from trade contractors and subcontractors:

a. Exhibit "B" attached to this Contract;
b. Exhibit "C" attached to this Contract; and
c. Any other terms applicable to Subcontractors required by the Contract Documents.

.3 Construction Manager shall comply with, and shall cause all subcontractors to comply with, the applicable provisions of this Contract, including the applicable provisions of Exhibits "B" and "C" hereto.

.4 Construction Manager shall comply and shall require all subcontractors furnishing labor for this Project to comply with any requirements established by Owner to use local workers from certified

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local training programs, including training programs provided by the Owner. Owner shall establish the criteria for determining whether a training program meets the requirements of this section.

§ 13.7 Substantial Completion. Any provision in the Contract Documents to the contrary notwithstanding, if any of the facilities to be constructed or modified under this Contract require the issuance of a Certificate of Occupancy or other regulatory approval, then Substantial Completion of any such facilities, shall not be deemed to have been attained for those facilities prior to the date on which an unconditional Certificate of Occupancy or other regulatory approval is obtained.

§ 13.8 Change Orders. All proposals for a change involving an increase or decrease in the amount of the Contract Sum shall be submitted by the Construction Manager in a completely itemized breakdown form which shall include but not be limited to the following:

a. Material quantities and input prices (separated into trades),
b. Labor costs,
c. Construction equipment,
d. Worker's Compensation and Commercial General Liability insurance and other insurance required by the Contract Documents,
e. Social Security Tax.
f. General Conditions

On proposals involving both increases and decreases in the amount of the Cost of the Work, overhead and profit will be allowed on the net increase. No percentages for overhead and profit will be allowed on Tax. Full credit, but without overhead, shall be given for deductions.

The percentages for overhead and profit to be allowed to the Construction Manager or subcontractors on increases shall not exceed the following:

Combined Percentage Allowed (Overhead and Profit)

To Construction Manager for Work performed by the contractor's own forces – same percentage as Construction Manager's Fee

To Construction Manager for work performed by other than his own forces – 5%

To Subcontractor for Work performed by his own forces – 10%

To Subcontractor for work performed by other than his own forces – 5%

Allowable percentages shall include all costs for preparing change order (office personnel, field layout, general conditions and supervision if required by the change).

General Conditions will be adjusted if equitable, if a Time Extension is granted as part of the Change Order.

For any changes in Work, overhead and profit will be calculated, at a maximum, for the Construction Manager and at most one subcontractor.

§ 13.9 Safe Access. If the building will be used or occupied by Owner or members of the public, the Construction Manager shall be responsible for maintaining safe routes of travel from sidewalks and parking areas to the building, and shall reroute access as necessary to maintain safe access during construction.

§ 13.10 The Construction Manager must comply with all applicable state and federal laws, including but not limited to laws concerned with labor, equal employment opportunity, safety, minimum wage and prevailing wage rates requirements under Chapter 2258 of the Texas Government Code, and in ACC Board of Trustees Board Policy G-2, Sections D through F. Construction Manager shall require all subcontractors to comply with the provisions of this Section 13.10.

§ 13.11 The Construction Manager and each subcontractor who performs Work under this Contract, must pay not less than the prevailing wage rates attached as Exhibit "B" hereto and incorporated herein. In addition, the foregoing notwithstanding, Contractor and each subcontractor shall pay laborers at a minimum, the greater of (1) the minimum wage requirement established by Owner or (2) the wages to which the laborer would be entitled under the applicable Davis-Bacon wage rates described in Exhibit "B" hereto.

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§ 13.12 A Construction Manager or subcontractor who violates the provisions of Chapter 2258 for payment of prevailing wage rates shall pay to Owner $60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated herein.

§ 13.13 The Construction Manager and each subcontractor shall keep a record showing:

(1) the name and occupation of each worker employed by the Construction Manager or subcontractor in the construction of the Work; and

(2) the actual per diem wages paid to each worker.

The record shall be open at all reasonable hours to inspection by officers and agents of Owner.

§ 13.14 In the event of a complaint of a breach of these requirements by Construction Manager or a subcontractor, Owner shall have the right to make a determination as provided by law, and to retain any amount due under the Contract pending a final determination of the violation.

§ 13.15 All workers performing labor on this Project must be certified as having successfully completed OSHA 10 training from a qualified training program prior to performing work on this Project and all construction managers and supervisors must be certified as having successfully completed OSHA 30 training from a qualified training program prior to performing supervisory services on this Project.

§13.16 Inclusion of SLBE and ESLBE firms. Contractor will take appropriate action for the economic inclusion of SLBE and ESLBE firms in all phases of this Project, including, but not limited to: (a) compliance with good faith efforts requirements in soliciting maximum practicable participation of Small Local Business Enterprises, (b) use of joint venture incentives to encourage SLBE and ESLBE participation at prime contract level, (c) compliance with mandatory SLBE and ESLBE subcontracting goals, (d) and assisting in setting of participation goals and administration of waiver process for SLBE subcontract participation requirements (e) performance of contract administration functions related to support of Owner's Small Business Development Program including, but not limited to , outreach efforts to encourage prospective SLBE firms to become certified, to bid, and to participate in ACC contract opportunities; mentor-protégé program oversight; technical assistance referrals for SLBE firms; reporting on utilization and payments to all subcontractors including SLBE and ESLBE participation in prime contract and subcontractors, onsite monitoring of performance of SLBE and ESLBE firms; and assisting in SLBE participation goal-setting; and administration of waiver process for SLBE subcontract participation requirements.

By signing this Agreement or providing or causing to be provided a certificate of insurance coverage, the Construction Manager is certifying to the Owner that all employees of the Construction Manager who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project Construction Manager is also warranting that it will require all subcontractors to provide worker's compensation coverage on all employees who will provide services on the Project for the duration of the Project and to provide written certifications of such coverage to Construction Manager. Construction Manager will provide the certifications to Owner. Providing false or misleading information may subject the Construction Manager or subcontractor to administrative penalties, criminal penalties, civil penalties, or other civil actions. The Construction Manager's failure to comply with any of these provisions is a breach of contract by the Construction Manager which entitles the Owner to declare the contract void if the Construction Manager does not remedy the breach within ten days after receipt of notice of breach from the Owner.

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

AUSTIN COMMUNITY COLLEGE DISTRICT	CONSTRUCTION MANAGER
OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
(Printed name and title)	*(Printed name and title)*

Init.
/
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Additions and Deletions Report for

AIA® Document A133™ – 2009

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PAGE 1

AGREEMENT made as of the _____ day of _____ in the year 20__

...

(Name, legal status and address)

Austin Community College District
9101 Tuscany Way
Austin, Texas 78754
Attn: _____
Telephone: (512) 223-1023
Facsimile: (512) 223-1030

...

(Name, legal status and address)

_____
_____
_____
Attn: _____
Telephone: (___) ___-____
Facsimile: (___) ___-____

...

(Name and address or location)

_____

Owner's Fixed Construction Budget: $_____
This amount represents Owner's Fixed Construction Budget on the date this Contract was executed. Owner may modify this amount during the Preconstruction Phase.

Construction Manager's Portion of the Fixed Construction Budget: $_____
This amount represents all Work for the Project to be provided by Construction Manager, including labor, materials and general conditions, the Construction Manager's Fee, and any contingency approved by Owner. This amount may be the same as the Owner's Fixed Construction Budget: $_____

...

(Name, legal status and address)

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PAGE 2

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PAGE 3

The Contract Documents consist of ~~this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the 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.~~ the documents described in Section 1.1.1 of the General Conditions of the Contract for Construction AIA Document A201—2007 as modified by Owner and Construction Manager. As used in the Contract Documents, the term "General Conditions" or "A201-2007" shall refer to the AIA Document A201-2007 as modified by Owner and Contractor. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 of this Agreement and identified in the Guaranteed Maximum Price ~~Amendment and~~ Amendment, together with revisions prepared by the Architect and furnished by the Owner as described in Section ~~2.2.8.~~ 2.2.8 of this Agreement. 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.~~Priority of the documents constituting the Contract Documents is set out in Section 1.2.6 of A201-2007.

...

For the Preconstruction Phase, and the Construction Phase, the AIA Document A201™–2007, General Conditions of the Contract for Construction, ~~shall apply only as specifically provided in this Agreement. For the Construction~~

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~~Phase, the general conditions of the contract shall be as set forth in A201–2007,~~ as modified by Owner and Contractor shall apply, which document is incorporated herein by reference. The term "Contractor" as used in A201–2007 shall mean the Construction Manager.

PAGE 4

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The foregoing notwithstanding, the Construction Phase cannot commence, and no construction services may be performed, until the Payment and Performance Bonds, and the Construction Manager's insurance, required by the Contract Documents, have been provided by Construction Manager and approved by Owner. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase Construction Manager shall perform the following Preconstruction Phase Work, and shall continue to provide the required services as needed throughout the duration of the Contract. Construction Manager shall use its good faith best efforts, skill, judgment, and abilities to perform the Work in a good and competent manner. The Construction Manager shall use qualified and experienced professionals and exercise reasonable care in preparing schedules and estimates. All services provided under this Contract shall be performed with the level of diligence, competence and skill generally prevailing for such services among construction managers at risk performing similar services for projects of similar scope, and complexity in Austin, Texas and its metropolitan area.

...

~~**§ 2.1.2 Consultation**~~
~~The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.~~

§ 2.1.1.1 Team Meetings. Schedule and conduct regular meetings with the Project Team during the appropriate design phases and Document reviews to advise them on Site considerations, selection of materials, building systems and equipment, and methods of delivery of materials, systems, and equipment. The Project Team shall be composed of the persons designated by Owner, and will generally consist of the Owner's Project Manager, the Construction Manager, Owner's Architect, any of Owner's third party contractors, and other consultants employed for the purpose of programming, design, and construction of the Project. The composition of the Project Team may vary at different stages of the Work and may be modified from time to time by Owner.

~~**§ 2.1.3** When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.~~

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§ 2.1.1.2 Recommendations and Information. Provide recommendations and information to the Project Team on: construction feasibility; availability of materials and labor; time requirements for installation and construction; development of a safety plan and responsibilities for safety precautions and programs; temporary Project facilities; equipment, materials and services for common use of the Construction Manager and Owner's third party contractors, if any; cost factors, including costs of alternative materials and possible cost savings; methods of verification for determining that the requirements and assignment of responsibilities are included in the Contract Documents; and any other matters necessary to accomplish the Work in accordance with the Progress Schedule and the Owner's Fixed Construction Budget.

§ 2.1.1.3 Public Hearings. At Owner's request, attend public meetings and hearings concerning the development and schedule of the Project.

~~**§ 2.1.4 Phased Construction**~~

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

§ 2.1.1.4 Decision Tracking Report. Create and continuously update a "Decision Tracking Report," which records all Work issues and the decisions in a format acceptable to Owner. The updates must be done at least monthly, immediately prior to the Application for Payment.

§ 2.1.1.5 Permits, Licenses, Fees. Confirm that all approvals, reviews, permits, insurance, licenses, certifications (including the certification by subcontractors as to workers compensation coverage required under this Contract) and bonds that are required for construction of the Work to commence have been received.

§ 2.1.1.6. Phased Construction. The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost of reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 2.1.2 Preconstruction Progress and Submittal Schedule.

§ 2.1.2.1 Within 30 days after the date this Contract is executed, develop and provide to Owner a Preconstruction Schedule for Owner's review and approval, with input from Owner and Owner's Architect which will include the activities of Construction Manager, Owner's Project Manager and Owner's Architect (consistent with the terms of the Professional Services Agreement between Architect and Owner) and other persons identified by Construction Manager and Owner. The Preconstruction Schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion.

§ 2.1.2.2 Within thirty (30) days after the date this Contract is executed, or at such other date agreed upon by Owner and Construction Manager in writing, submit to Owner and Architect a preliminary Progress Schedule in form reasonably acceptable to Owner. The preliminary Progress Schedule shall include, but not be limited to, the durations for all major items of Work to be performed, the start and finish dates of all such activities, and the Substantial Completion Date required by this Contract.

§ 2.1.2.3 Within thirty (30) days after the submission of the preliminary Progress Schedule, or at such other date agreed upon by Owner and Construction Manager in writing, submit to Owner and Architect for their approval, a more detailed Progress Schedule which will be a critical path method schedule depicting all significant activities which will occur on the Project; the duration of such activities; the Substantial Completion Date as provided by this Contract, and the precedence logic of such activities. Construction Manager shall update the Progress Schedules each month to reflect actual progress made and to forecast future progress of the Work, provided that the Substantial Completion Date may not be amended in such Progress Schedules. The updated Progress Schedule shall include submission of the Guaranteed Maximum Price proposal, components of the Work, times of commencement and completion required of each Subcontractor, ordering and delivery of

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materials and products, including those that must be ordered well in advance of construction, and the occupancy requirements of the Owner.

§ 2.1.2.4 At least fifteen (15) days prior to the submission of the first Application for Payment hereunder, and thereafter on a quarterly basis, submit to Owner a cash flow projection depicting the estimated projected monthly cash flow for the Work.

§ 2.1.2.5 Coordinate all Submittal Schedules for Shop Drawings and Samples required by the Contract Documents. These Submittal Schedules must provide a method for reviewing and processing the required Submittals, which is acceptable to Construction Manager, Owner and Architect.

§ 2.1.3 Lists of Personnel and Subcontractors. The Construction Manager must provide to Owner a list of key personnel, staff, and their respective duties, no later than ten days after the date this Contract has been executed.

§ 2.1.4 Constructability Review of Contract Documents.

§ 2.1.4.1 Mission. Implement and conduct a constructability review of all Contract Documents, following the widely recognized systematic analysis process that is used throughout private industry and governmental agencies. The resulting constructability review report must list discrepancies, errors or omissions among any of the Contract Documents, including all details and omissions that if left unattended may result in Change Orders or Claims once construction of the Work commences. The constructability review services required herein are intended to be comprehensive of the Work and must be completed prior to issuance of the Notice to Proceed on construction, unless otherwise approved by Owner in writing. If the Work is designed in stages, the review services must be completed on each stage prior to the issuance of the Notice to Proceed for such stage of the Work, unless otherwise required by Owner in writing. It is understood that the Construction Manager's review of the documents is made in the Construction Manager's capacity as a contractor and not as a licensed design professional, unless otherwise required by the scope of the Work. . The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, except to the extent that the Contractor knows or should reasonably know about an inconsistency between the Contract Documents and applicable law. Construction Manager shall promptly report to the Architect and Owner in writing any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require, and Construction Manager shall, in addition, include such information in the Constructability Review Report required by this Contract.

§ 2.1.4.2 Review. Construction Manager agrees to conduct a constructability review to examine all Contract Documents, including without limitation, the Drawings and Specifications, to ensure that Project will be completed with a minimum of delays from excessive requests for information and Change Orders once the Project is under construction. The Construction Manager shall endeavor to detect any errors, omissions or inconsistencies in the design and other documents that affect or could affect the performance or constructability of the Work The review, at a minimum, must evaluate the workability of interrelated systems between civil, architectural, structural, mechanical, and electrical Drawings and Specifications, and review Architect's scheduled installation durations against actual installation requirements for systems integration, to ensure coordination between different design disciplines. Construction Manager will conduct a comprehensive analysis of the construction plans and details to ensure coordination of all systems in determining the ease of constructability and cost effectiveness of building the Project. If in reviewing the Contract Documents the Construction Manager discovers any discrepancies, errors or omissions, the Construction Manager must immediately notify the Owner and Architect in writing, even before incorporating such information into the Constructability Review Report

§ 2.1.4.3 Report. Prepare a "Constructability Review Report," which outlines items that in the Construction Manager's opinion may cause problems in the way the Project is proposed to be constructed and which will document any discrepancies, errors, omissions or potential problems with the Specifications and Drawings, construction plans and details that, if left unattended, may result in ineffective or inefficient constructability, Change Orders, or Claims once Project construction commences.

§ 2.1.4.4 Propose Solution. Construction Manager must propose the most practical solution to resolve the discrepancies, errors, omissions or potential problems, recommend alternative design suggestions for consideration, and document potential savings that require the minimum impact to the Progress Schedule and Fixed Construction Budget (or Cost of the Work) and further the best interest of the Project.

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§ 2.1.4.5 Respond to Solution. The Owner and Architect will evaluate the proposed solution and provide a response to Construction Manager. If the approved solution adopted by Owner results in changes to the Contract Time, Fixed Construction Budget or Cost of the Work, the Contract will be equitably adjusted as agreed upon by the Owner and Construction Manager.

§ 2.1.4.6 Failure to Report or Obtain a Response. If Construction Manager performs the Work without reporting discrepancies, errors, omissions or other potential problems, or obtaining a response to its proposed solution to resolve such issues, then Construction Manager will be responsible for all costs and expenses resulting therefrom, including the cost of remedying the Work and overcoming time delays, unless and to the extent, such costs result from concealed conditions or conditions that could not have reasonably been anticipated or discovered.

§ 2.1.4.7 Assumption of Risk. Construction Manager assumes the risk of reviewing the Construction Documents for discrepancies, errors, omissions and potential problems and will not be entitled to any extensions of the Contract Time or to any adjustment of the Guaranteed Maximum Price on grounds that it failed to detect, misinterpreted or misunderstood any matter that could, or should, have been raised by the constructability review, (except for concealed conditions or conditions that could not have been reasonably anticipated or discovered) unless the Construction Manager advised Owner in writing of the discrepancies, errors, omissions and potential problems as required above, and proposed a solution and Owner confirmed in writing that the Construction Manager should proceed in accordance with the Contract Documents as originally given. Without limiting the generality of the foregoing, the Construction Manager will not be entitled to a Claim for adjustment in Contract Time , Cost of the Work, or Guaranteed Maximum Price under the Contract Documents due to the absence of any detail or specification in the Construction Documents, that the Construction Manager may require, or for any construction that may be found necessary as the Work progresses in order to complete the Work, which when clarified does not require elements beyond the normal means and methods nor require a material change in scope of the Work.

§ 2.1.4.8 Extent of Responsibility. . ANY PROVISION IN THIS CONTRACT OR IN ANY OF THE CONTRACT DOCUMENTS TO THE CONTRARY NOTWITHSTANDING, IT IS UNDERSTOOD AND AGREED THAT REGARDLESS OF FAULT, ARCHITECT AND CONSTRUCTION MANAGER SHALL BE JOINTLY AND SEVERALLY LIABLE FOR ENSURING THAT THE LOWEST BONA FIDE GUARANTEED MAXIMUM PRICE PROPOSAL DOES NOT EXCEED CONSTRUCTION MANAGER'S PORTION OF THE FIXED CONSTRUCTION BUDGET. IF THE CONSTRUCTION MANAGER'S PORTION OF THE FIXED CONSTRUCTION BUDGET IS EXCEEDED BY THE CONSTRUCTION MANAGER'S LOWEST BONE FIDE GUARANTEED MAXIMUM PRICE PROPOSAL, THEN THE OWNER SHALL EITHER (1) GIVE WRITTEN APPROVAL OF AN INCREASE IN SUCH FIXED LIMIT, (2) AUTHORIZE REBIDDING OF THE PROJECT WITHIN A REASONABLE TIME, (3) ABANDON THE PROJECT, OR (4) COOPERATE IN REVISING THE PROJECT SCOPE AND QUALITY AS REQUIRED TO REDUCE THE CONSTRUCTION COST. IF OWNER SELECTS OPTION (4), THE ARCHITECT, WITHOUT ADDITIONAL CHARGE TO OWNER, SHALL MODIFY THE DRAWINGS AND SPECIFICATIONS AS NECESSARY TO COMPLY WITH THE FIXED CONSTRUCTION BUDGET, AND CONSTRUCTION MANAGER SHALL RE-PERFORM ALL PRECONSTRUCTION SERVICES WHILE THE MODIFICATIONS TO THE DRAWINGS AND SPECIFICATIONS ARE BEING PERFORMED, AT NO ADDITIONAL COST TO OWNER. IN ADDITION TO THE FOREGOING, IF THE CONSTRUCTION MANAGER AND OWNER CANNOT DEFINE A LOWEST BONA FIDE GUARANTEED MAXIMUM PRICE WITHIN THE CONTRACTOR'S PORTION OF THE FIXED CONSTRUCTION BUDGET, THEN CONSTRUCTION MANAGER SHALL PAY FOR ALL COSTS OF REPRINTING AND READVERTISING FOR REBIDDING THE PROJECT AS REDESIGNED. AS USED IN THIS CONTRACT, THE TERMS "BID" OR "BIDDING" SHALL REFER TO ANY SELECTION PROCESS USED IN CONNECTION WITH THE PROJECT, INCLUDING COMPETITIVE SEALED PROPOSALS.

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. The estimate shall be based on the total cost to the Owner of all elements of the Project designed or specified by the Architect and its consultants. The Architect shall, throughout the Preconstruction Phase, provide Construction Manager with adequate information for estimating the construction costs. The cost estimate shall include (1) the cost at current market rates of labor and materials, furnished by the Owner, and equipment designed, specified or specially provided by the Architect, together with a reasonable allowance for contingencies for market conditions at the time

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of bidding, and (2) the cost at current market rates of labor and materials to be furnished by the Construction Manager, (including the cost of general conditions in an amount agreed to by Owner and Construction Manager in an amount not to exceed the general conditions described in Construction Manager's Proposal to Owner) and the Construction Manager's fee for construction phase services as provided in this Contract, together with a reasonable allowance for contingencies to be included for market conditions at the time of bidding as approved by Owner. Construction Manager shall itemize the information in (1) and (2) separately, and shall ask Owner and Architect for all information on items to be provided by Owner or Architect as stated in (1) in order to accurately prepare the cost estimate. The items described in (2) shall sometimes be referred to herein as the Construction Manager's Portion of the Fixed Construction Budget. If the Architect or Construction Manager ~~suggests~~ suggest alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. ~~The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.~~Architect is required to provide Owner with an independent written Statement of Probable Construction Cost at 50% and 100% completion of the Design Development Documents. Construction Manager and Architect shall compare their estimates at each such stage and shall review portions of their estimates that are materially different from one another. Construction Manager and Architect shall determine the cause of the differences, correct any errors and reconcile their estimates. Architect and Construction Manager shall promptly notify Owner in the event they are unable to agree on a reconciliation of the estimates or if the probable construction cost exceeds the Owner's Fixed Construction Budget.

§ 2.1.5.3 If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect. The Fixed Construction Budget is $30,000,000.00. The Construction Manager's Portion of the Fixed Construction Budget (as defined in Section 2.1.5.1) is $30,000,000.00.

§ 2.1.6 ~~Subcontractors and Suppliers~~

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

Value Engineering

§ 2.1.6.1 Limited Value Engineering. Whenever the term "Value Engineering" is used in connection with the Contract Documents or the Work, it has its commonly accepted meaning within the construction industry and does not imply the practice of professional engineering without a license. If any Value Engineering activities constitute the professional practice of engineering, then such activities must be performed by an engineer licensed in Texas. Unless in the scope of services Owner has required Construction Manager to perform a detailed Value Engineering analysis of the Project, or has otherwise directed the Construction Manager to perform a detailed analysis, the time to perform Preconstruction Phase services does not allow for an additional detailed Value Engineering exercise, or extensive revision and redesign of the Project. However, the Owner is interested in any Value Engineering recommendations proposed by the Construction Manager to the degree that they can be accomplished in the time allowed and to the extent that any proposed changes can be accomplished with limited revisions to the Contract Documents. In addition, if the extent that Construction Manager's estimated construction costs exceed the Fixed Construction Budget, Value Engineering solutions may be proposed. Value Engineering activities must be performed concurrently with, and without delay to, the milestones established for the Project.

§ 2.1.6.2 VEP Preparation. As a minimum, the Construction Manager shall include the following information in each Value Engineering Proposal ("VEP"):

a) A description of the difference between the existing and proposed design, the comparative advantages and disadvantages of each, a justification when an item's function is being altered, the effect of the change on system or facility performance;

b) A list and analysis of design criteria or specifications that must be changed if the VEP is accepted;

c) A separate detailed estimate of the impact on project cost of each VEP, if accepted and implemented by the Owner; and

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d) A description and estimate of costs the Owner may incur implementing the VEP, such as design change cost. (Architect will be directed to provide input on the estimate.)

§ 2.1.6.3 Value Engineering Review and Approval. The proposed Value Engineering solutions will be promptly reviewed by Architect, whose review will consider all Project areas implicated in the VEP and will make a recommendation to the Owner. Owner will approve or reject Architect's recommendations with reasonable promptness. The Architect will incorporate any approved VEP - into the Contract Documents. The responsibility for the cost of any changes to the Contract Documents shall be determined in accordance with the provisions of this Contract.

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

§ 2.1.7.1 Cost Management Report. As part of the negotiation of the Guaranteed Maximum Price, provide an initial Cost Management Report that compares Owner's Fixed Construction Budget for the Work to Construction Manager's estimated construction costs. If Construction Manager's estimated construction costs exceed the Owner's Construction Budget, unless otherwise directed by Owner in writing, develop reasonable strategies to be reviewed by the Architect and subject to approval by the Owner to reduce the costs estimated to be incurred during the Construction Phase of the Work.

§ 2.1.7.2 Schedule of Values. As part of the negotiation of the Guaranteed Maximum Price, provide an initial Schedule of Values, including all costs for general conditions. Owner will review the initial contents and format for the Schedule of Values and suggest any revisions or request any additional information. The Schedule of Values must conform to the requirements of the Contract Documents and be subdivided into component parts in sufficient detail to serve as the basis for Progress Payments during the Project, and will be updated as needed, but at least monthly, prior to submitting each Application for Payment.

§ 2.1.7.3 Procurement and Estimates. Prepare and be responsible for all Subcontractor procurement and construction cost estimates.

§ 2.1.7.4 Advise; Recommendation- and Progress Schedule. Advise the other members of the Project Team immediately, if at any time the Construction Manager has knowledge or belief that the Owner's Fixed Construction Budget or Progress Schedule will not be met, and make recommendations to the Project Team for corrective action to bring the costs down or to bring the Project back on Schedule.

§ 2.1.8 ~~**Extent of Responsibility**~~

~~**The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.~~**LEED™** Develop a Leadership in Energy & Environmental Design (LEED™) management implementation plan, documentation, and tracking methodology acceptable to Owner.

§ 2.1.9 ~~**Notices and Compliance with Laws**~~**Construction Planning.**

§ 2.1.9.1 Long Lead Items. Identify any "Long Lead Items" and expedite the procurement by both Construction Manager and Owner of long lead items to ensure delivery and installation for all Construction Trades Packages by the dates provided on the Progress Schedule.

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§ 2.1.9.2 Assistance. If requested and approved by Owner, participate with Architect in preparing performance specifications and requests for technical proposals for the procurement and installation of systems and components.

§ 2.1.9.3 List of Possible Subcontractors. Furnish to the Owner and Architect for their information and review, a list of possible Subcontractors, including suppliers, for furnishing principal portions of the Work or specially fabricated items, from whom proposals will be requested. Construction Manager shall comply with applicable SLBE and ESLBC requirements in compiling the list. Architect will promptly notify Construction Manager if Architect or Owner has an objection to any Subcontractor or supplier. The receipt of such list shall not require Owner or Architect to make any investigations of the persons identified on the list, nor will waive the right of the Owner or Architect to object to or reject any proposed Subcontractor or supplier.

§ 2.1.9.4 SLBE and ESLBE Compliance. The Construction Manager shall be in full compliance with all requirements imposed by the Small Business Development Office in furtherance of Owner's Small Business Development Program as set forth by Board of Trustees Policy G-2, Sections D through F, including, but not limited to, compliance with Small Local Business Enterprise (SLBE) and Emerging Small Local Business Enterprise (ESLBE) outreach, participation, and reporting requirements as defined within this Board Policy.

§ 2.1.9.5 Pre-bid and/or Pre-proposal Conferences. Schedule and conduct pre-bid and/or pre-proposal conferences with interested proposers, subcontractors, material suppliers, and equipment suppliers, and record minutes of same. Coordinate the dates and times of such meetings with the availability of Owner's Project Manager and Architect and relevant consultants.

§ 2.1.9.6 Bids and/or Competitive Sealed Proposals for Subcontractor/Trade Contractor Selection.

§ 2.1.9.6.1 Construction Manager Solicitation. Construction Manager shall develop subcontractor interest in the Project. In coordination with Owner and in accordance with Texas Government Code Section 2269.255, Construction Manager shall publicly advertise and solicit bids and/or competitive sealed proposals from subcontractors or trade contractors to perform all major elements of the Work other than the minor Work that may be included in general conditions. If under the terms of a grant received by Owner or other terms of the Contract Documents, Construction Manager is required to specifically solicit bids or proposals from historically underutilized businesses ("HUBs"), disadvantaged business enterprises, SLBEs, ESLBEs or other groups, Construction Manager will comply with such requirements.

If competitive sealed proposals are solicited, Construction Manager and Owner shall jointly agree on the criteria for determination of best value for award of competitive sealed proposals. Construction Manager shall receive and open all bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to persons not employed by the Construction Manager, Architect or Owner. Owner and Architect shall be invited to attend the opening of all bids and/or competitive sealed proposals. Construction Manager shall make the bids and proposals available to Owner immediately after opening. Owner, Architect and Construction Manager will evaluate the bids and proposals. All bids or proposals will be made public after the later of the award of the contract or the seventh day after the date of final selection of bids or proposals. Without limiting the generality of the requirement, Construction Manager will follow this process in the development of the Construction Trades Packages.

§ 2.1.9.6.2 Construction Manager Self-Performance. Construction Manager may seek to perform portions of the Work itself, if Construction Manager submits its bid or proposal for those portions of the Work in the same manner as all other trade contractors or subcontractors and the Owner determines that the Construction Manager's bid or proposal provides the best value for the Owner. Owner's determination in such matters is final.

§ 2.1.9.6.3 Alternate Subcontractors/Trade Contractors. If Construction Manager reviews, evaluates, and recommends to Owner a bid or proposal from any trade contractor or subcontractor, but Owner requires another bid or proposal to be accepted, then, in accordance with the terms of this Contract, Owner shall compensate Construction Manager by a change in price, time, or guaranteed maximum price for any additional cost and risk, which has been demonstrated to Owner's satisfaction, that Construction Manager incurs because of Owner's requirement that another bid or proposal be accepted, unless the Owner requires that a different subcontractor be

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used due to debarment, or other good cause. The provisions of Section 2.3.2.2 of this Contract shall apply. In the event of a conflict between the provisions of §2.1.9.5.2 above, and this section (c), § 2.1.9.5.2 shall control.

§ 2.1.9.6.4 Scoring. Construction Manager must provide Owner and Architect with its scoring matrix, or other similar tool used for evaluating responses for Owner's review and reasonable approval. After soliciting bids and proposals, Construction Manager must provide Owner and Architect the completed matrix or other scoring tool which shows the score for each subcontractor or trade contractor that submits a response to a competitive sealed proposal.

§ 2.1.9.6.5 Replacement. If a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected in accordance with the requirements of this Section, the Construction Manager may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements.

§ 2.1.9.7 Quality Control Plan. Develop a quality control Work plan to assure requirements of the Contract Documents are met with a minimum of remedial work. The Construction Manager will plan for scheduling all needed tests with Owner, Architect and appropriate consultants and any applicable testing agencies.

§ 2.1.9.8 Temporary Site Facilities. Construction Manager shall review the Contract Documents to ensure that adequate temporary facilities are provided as necessary to enable the Subcontractors to perform their work and provisions have been made for all Project Site facilities necessary for Construction Manager to manage, inspect, and supervise the Work. Further, Construction Manager shall provide Owner's third party contractors, if any, access to the Project site; access to the sanitary facilities; access to temporary water and power on site; and access to the site for minor storage. Construction Manager is not required to provide storage containers or large storage space, office trailers, dumpsters for recycling, or hauling services for Owner's third party contractors unless Owner and Construction Manager otherwise agree.

§ 2.1.9.9 Safety Plans Construction Manager is responsible for initiating, maintaining, and supervising all safety precautions in connection with the Work, and shall submit safety plans to Owner for its review and approval.

§ 2.1.9.10 Labor Analysis. Provide an analysis of the types and quantities of labor required for the Work and review the appropriate categories of labor required for critical phases or stages of the Work. Make recommendations for actions that will minimize adverse effects of labor shortages on the Progress Schedule.

§ 2.1.11 Notices and Compliance with Laws

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

§ 2.1.12 Owner's Third Party Contracts. Consult with and make recommendations to the Owner, the Architect, and any applicable Owner's third party contractors on the acquisition schedule for (as applicable) fixtures, furniture, equipment, materials, information technology systems, and other systems. Coordinate the purchase, delivery, and installation of such items in accordance with the Progress Schedule as may be required to establish milestones on the Progress Schedule for complete installation prior to the Substantial Completion Date and any LEED's milestone.

§ 2.1.13 Failure to Perform Preconstruction Phase Services.

§ 2.1.13.1 If Construction Manager fails to timely perform any of the Preconstruction Phase services set out herein, and if, in the Owner's judgment, Owner determines that the Project is not on schedule, the Owner shall notify Construction Manager and may request that the Construction Manager immediately provide Owner and Architect with a recovery plan. The recovery plan must include any and all actions necessary to get the Project back on schedule and may include any of the following items or such similar measures, which must remain in effect until the progress of the Work is back on schedule in Owner's sole judgment:

a) An increase in staff resources having the expertise necessary to assist Construction Manager's key personnel to perform the required services;

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b) An increase in office equipment or tools, including computers, software, telephones, faxes, etc., as needed to expedite delivery of the required services; and

c) An increase in hours of Work or number of shifts.

§ 2.1.13.2 If Owner approves the recovery plan, Construction Manager shall proceed with the performance of services in accordance with the terms of the recovery plan. Construction Manager is not entitled to payment, reimbursement, or an increase in Construction Manager's fee, or the Guaranteed Maximum Price for any additional effort it applies to the services or the Work under this section.

§ 2.1.13.3 Failure to immediately act to provide a recovery plan for Owner's approval or to implement an approved recovery plan, is grounds for termination for cause.

§ 2.1.13.4 The rights and remedies provided in this section are not exclusive and are in addition to all other rights and remedies that Owner may have under this Contract or at law or equity.

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§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's ~~Fee.~~ Fee, which shall be an amount equal to or less than the Owner's Fixed Construction Budget. The Guaranteed Maximum Price proposal shall expressly set out all qualifications, clarifications and assumptions made by Construction Manager in establishing its proposal. The Architect will review the proposed Guaranteed Maximum Price and verify that the clarifications, qualification or assumptions are reasonable relative to the design intent and can be accommodated in the Construction Documents. Architect shall promptly notify Owner in the event that it believes the clarifications, qualification or assumptions are not reasonable or cannot be so accommodated. In the event the Architect determines that there is a problem with the Guaranteed Maximum Price proposal, or if the proposal exceeds the Construction Manager's Portion of the Fixed Construction Budget, then Owner, Architect and Construction manager shall meet to discuss and endeavor to resolve the problem. In any event, Owner shall have the rights set forth in Section 2.1.4. 8 of this Contract.

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

.5 A date by which the Owner must accept the Guaranteed Maximum ~~Price.~~ Price, which must not be less than 60 days after the date the proposal is submitted to Owner; and

.6 The contingencies described in Section 2.2.4.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include ~~its~~ a contingency for the Construction Manager's exclusive ~~use to cover those costs considered~~ use, in an amount approved by Owner, to cover those costs that are reimbursable as the Cost of the Work as provided in the Agreement but not included in a Change Order. The Construction Manager's contingency may only be used with Owner's prior written consent. Without limiting the generality of the foregoing, the Construction Manager's contingency cannot be used to pay or reimburse Construction Manager for costs or expenses which Construction Manager is required to pay without reimbursement under the Contract Documents, or for which Construction Manager is liable under the terms of the Contract due to the fault, negligence or default of the Construction Manager, Subcontractors, suppliers or anyone for whose acts any of them may be liable. The estimated Cost of the Work shall also include an amount approved by the Owner as an Owner's Contingency for the Owner's exclusive use to cover unexpected costs which change the scope of the Work.

§ 2.2.5 Construction Manager shall issue a report to Owner and Architect with its proposal stating that the Construction Documents are generally consistent with the Guaranteed Maximum Price assumptions. The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal.

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In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

...

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction ~~Phase,~~ Phase as described in Section 2.3.2.1, unless the Owner provides prior written authorization for such costs.

...

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager for which Owner is liable for payment under applicable law that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed. Owner is exempt from the payment of sales, use and other taxes under Texas law, and Construction Manager shall take all actions required to obtain the exemption in connection with the Work as described in the General Conditions.

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The Construction Phase shall commence upon the satisfaction of all of the following: (1) Owner's acceptance and execution of the ~~Construction Manager's~~ Guaranteed Maximum Price ~~proposal or~~ proposal, (2) the Owner's issuance of a Notice to Proceed, ~~whichever occurs earlier.~~and (3) the provision by Construction Manager and approval by Owner of the payment and performance bonds and insurance required to be provided under the terms of the Contract.

...

§ 2.3.2.1 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 by other appropriate agreements with the Construction Manager. The ~~Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.~~selection of Subcontractors and the performance of Work by the Construction Manager shall be in accordance with the provisions of § 44.038 of the Texas Education Code and Chapter 2267 of the Texas Government Code in effect on the date hereof, which provisions are incorporated herein by reference.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, has not been debarred from performance, and to whom Owner does not have a reasonable objection, 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 Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner. Any adjustment must be made by Change Order executed at the time the Owner requires the other bid to be accepted or it shall be conclusively determined that Construction Manager has agreed that no such adjustment is required.

...

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule for their review and approval in accordance with Section 3.10 of A201–2007.

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§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the ~~Owner.~~ Owner or Architect. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner. The Construction Manager shall maintain at the Work site, and make available for viewing by Architect and Owner, record Drawings for the Project on which Construction Manager has noted, in a timely manner, all deviations in the Work as performed from the Drawings provided by the Architect for the Project.

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§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence ~~as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.~~ at the request of the Construction Manager.

§ 3.1.3 ~~The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.~~ During the Preconstruction Phase, the Owner shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Architect, which shall include contingencies for changes in the Work and other costs which are the responsibility of the Owner. The Owner's Fixed Construction Budget as of the date of this Contract, is set out on the first page of this Agreement.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The ~~Owner shall also furnish any other information or services under the Owner's control and relevant to the~~ Construction ~~Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction~~ Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner as provided in the General Conditions but shall exercise proper precautions relating to the safe performance of the Work.

...

§ 3.1.4.2 The Owner shall furnish surveys ~~describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.~~ agreed upon by Owner and Construction Manager.

§ 3.1.4.3 The ~~Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to 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~~

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~~recommendations.~~Owner shall furnish services of geotechnical engineers agreed upon by Owner and Construction Manager.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents ~~with reasonable promptness. The Owner shall 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.~~or as agreed upon by Owner and Construction Manager with reasonable promptness.

...

The Owner shall ~~identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render~~ designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization as hereinafter provided. This representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction ~~Manager. Except as otherwise provided in Section 4.2.1 of A201–2007,~~ Manager, except to the extent that such decisions and approvals are required to be made by Owner's officers or Board of Trustees. Except as otherwise expressly provided in A201—2007, the Architect does not have such authority. ~~The term "Owner" means the Owner or the Owner's authorized representative.~~Changes in the scope of Work, the Contract Sum, and the Guaranteed Maximum Price will generally require approval by the Board of Trustees.

~~§ 3.2.1 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.~~

The Owner shall retain an Architect to provide services, duties and responsibilities ~~as described in AIA Document B103™–2007, Standard Form of Agreement Between Owner and Architect, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.~~in connection with this Project.

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A stipulated sum equal to _____ Dollars ($_____) for Preconstruction Services. Subject to the terms of this Agreement, Owner shall pay the stipulated sum in three equal payments as follows: (1) $_____ upon receipt of Construction Manager's Schematic Design Estimate after it has been reviewed and reconciled with Architect's estimate; (2) $_____ upon Owner's approval of Construction Manager's Guaranteed Maximum Price Proposal at the end of the Design Development Phase (or at such other time as agreed upon by the parties for delivery); and (3) $_____ upon Construction Manager's delivery of report to the Owner and Architect stating that the Construction Documents are generally consistent with the GMP assumptions and clarifications.

...

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar ~~contributions.~~contributions which are approved by Owner.

...

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§ 4.2.2 ~~Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid ( ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.~~
§ 4.2.2 Payments under the Contract are due and payable within 30 days after presentation of the Construction Manager's invoice or as otherwise required by Chapter 2251 of the Texas Government Code. Undisputed amounts not paid when due shall bear interest at the rate provided by Chapter 2251 of the Texas Government Code.

...

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current ~~funds.~~ funds for the Construction Manager's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

...

A stipulated sum equal to ____% of the Cost of the Work included in the Guaranteed Maximum Price proposal accepted by Owner as established in Exhibit "A" to this Contract, provided that the sum of the Cost of the Work and the Construction Manager's Fee shall not exceed the Guaranteed Maximum Price. Stipulated sum of Construction Manager's fee is equal to one and _____ percent (____%) of $_____, which is $_____. The costs of the General Conditions shall not exceed the costs for General Conditions shown in Construction Manager's proposal. The cost of the General Conditions shall be part of the Cost of the Work.

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See Article 13 below and Section 5.3.5 below and any other relevant provision of the Contract Documents.

Any provision in the Contract Documents to the contrary notwithstanding, if the Construction Manager's Fee is a stipulated sum and the Contract is terminated prior to completion of the entire scope of the Work, and the Construction Manager is entitled to payment for Work performed under the terms of the Contract, then the Construction Manager's Fee payable to Construction Manager for Work performed in accordance with the Contract Documents will be a percentage of the stipulated sum based on the percentage completion of the Work at the time of termination, subject to the Guaranteed Maximum Price limitation adjusted to the percentage of completion.

...

See Section 13 below and any other relevant provision in the Contract Documents

...

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed ~~percent (%) of~~ the standard rate paid at the place of the Project.

...

§ 5.1.6 The Cost of the Work shall include the general conditions proposed by Construction Manager as part of its proposal to Owner which are incorporated herein by reference, adjusted to the extent necessary by Change Order, or in an express provision of this Agreement, to reflect the terms of this Contract, and provided, however, that all Cost of the Work shall be charged to and payable by Owner based on the actual costs incurred by Construction Manager subject to the Guaranteed Maximum Price limitation provided herein. The amount charged for On-Site Project Management as described in the general conditions shall be based on the actual time spent by such persons in performing the Work for this Project.

...

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(Insert specific provisions if the Construction Manager is to participate in any savings.) The Cost of the Work shall be charged to and payable by the Owner based on the actual costs incurred subject to the Guaranteed Maximum Price limitation provided herein. In the event the actual Cost of the Work paid by Contractor plus the Contractor's Fee is less than the Guaranteed Maximum Price established by the Contract Documents (including approved Change Orders), the Owner shall be entitled to 100% of the savings. The stipulated sum of Construction Manager's fee will not be reduced due to savings returned to the Owner.

...

§ 5.3.1 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 Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the ~~Work.~~Work as agreed upon by the Construction Manager and Owner.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for ~~Construction.~~Construction and the applicable provisions of this Agreement.

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§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of ~~such~~ the changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

§ 5.3.6 The provisions of Section 13.8 of this Agreement shall apply to Change Orders.

§ 5.3.7 Substantial Completion Date. The Work shall be Substantially Complete within the time period provided in the Guaranteed Maximum Price Amendment.

...

§ 6.1.1 The term Cost of the Work shall mean actual costs necessarily incurred by the Construction Manager in the proper performance of ~~the Work.~~ the Work subject to the Guaranteed Maximum Price limitation set forth in this Contract. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7. All wages paid under this Contract by Construction Manager and subcontractors must not be less than the prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed for regular days, holidays and overtime work, as determined in accordance with Section 2258.022 of the Texas Government Code and other applicable law, a copy of which prevailing wage rate is attached as Exhibit "B" to this Agreement and incorporated herein. Construction Manager shall be responsible for complying with all requirements of law with regard to the prevailing wage rate and for any penalties or liabilities imposed by law for failure to pay the prevailing wage rate as specified herein, and Owner may withhold all appropriate funds, including additional wages to satisfy Construction Manager's obligations.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment. OWNER SHALL BE DEEMED TO HAVE APPROVED SUCH COSTS ONLY IF THE CONSTRUCTION MANAGER HAS PROVIDED OWNER WITH A WRITTEN BREAKDOWN OF THE COSTS PRIOR TO INCURRING SUCH COSTS, AND THE APPROXIMATE DOLLAR AMOUNTS ATTRIBUTABLE THERETO, AND OWNER HAS APPROVED SUCH COSTS IN WRITING.

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§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior ~~approval.~~approval for the portion of the time spent working on this Project.

...

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, with Owner's prior consent, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through ~~6.2.3.~~6.2.3, and comply with any of Owner's requirements with regard to labor burdens.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, only with the Owner's prior approval. Owner shall be deemed to have approved these payments only if the Construction Manager has provided Owner with a written breakdown of these payments, and the approximate cost of these payments, and obtained Owner's written approval to the same prior to the execution of the Guaranteed Maximum Price.

...

§ 6.4.1 Costs, including transportation and ~~storage,~~ offsite storage as provided in Section 6.5.6, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed but required 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.

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§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the ~~Work.~~Work, if approved in advance by Owner.

...

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

...

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract ~~Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.~~Documents.

§ 6.6.6 ~~Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.~~Intentionally deleted.

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...

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

...

§ 6.7.2 Costs reasonably 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 Section 10.4 of AIA Document A201–2007.

§ 6.7.3 ~~Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of 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.~~If Owner's approval is required for any costs under any of the provisions of this Agreement, such approval must be given in a writing signed by Owner.

§ 6.7.4 ~~The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.~~

...

.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 ~~6.2, or as may be provided in Article 11;~~6.2.;

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.5 ~~Except as provided in Section 6.7.3 of this Agreement, costs~~ Costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

...

.7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; ~~and~~

.8 Costs for services incurred during the Preconstruction ~~Phase.~~Phase; and

.9 Costs for insurance which Owner has not required to be provided for this Project.

...

§ 6.9.1 Subject to the provision of Section 5.2.1, Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, 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.

...

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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, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by applicable law.

...

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

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§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the 5th day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the 5th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made ~~by the Owner not later than ( ) days after the Architect receives the Application for Payment.~~as provided in Section 4.2.2 above, subject to the terms and provisions of the Contract Documents.

...

.3 Add the Construction Manager's ~~Fee, less retainage of percent (%).~~ Fee. The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.4 Subtract retainage of ~~percent (%) from that portion of the Work that the Construction Manager self-performs;~~five percent (5%) from the sum of .1, .2 and .3;

...

.7 Subtract amounts, if any, for which the Architect or Owner has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document ~~A201–2007.~~A201–2007 or withheld payment in accordance with the provisions of the Contract Documents.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements. Retainage withheld on contracts shall be 5% unless otherwise agreed upon by the Owner and Construction Manager.

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§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, less retainage and any other amounts which Owner is authorized to withhold shall be made by the Owner to the Construction Manager when

...

.2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; ~~and~~

.3 a final Certificate for Payment has been issued by ~~the Architect.~~ the Architect;

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.4 the surety has consented to final payment; and

.5 Construction Manager has provided all warranties, instructions, training, and satisfied all requirements for finalling-out the Project required by the Contract Documents.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows: within 30 days after the date such payment is due in accordance with Chapter 2251 of the Texas Government Code. Retainage withheld by Owner and payable to Construction Manager shall be paid to Construction Manager within 30 days after the final payment is due.

§ 7.2.2 ~~The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven 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 Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.~~If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work not caused by Construction Manager, its subcontractors or anyone for whom Construction Manager is liable, then, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

~~**§ 7.2.3** 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 request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.~~

~~**§ 7.2.4** If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.~~

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and ~~the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2007.~~
§ 8.1 *For all phases of the Project, the Construction Manager* shall provide insurance as required in Exhibit "B" to this Agreement, and shall require subcontractors to provide insurance as required therein and in Article 13 of this Agreement. The Construction Manager must provide Owner with a Certificate of Insurance showing the required coverage at the time Construction Manager executes this Agreement. Builder's Risk may be provided at the time the Amendment establishing the Guaranteed Maximum Price is signed by Construction Manager, provided that Construction Manager will provide Owner with a Certificate of Insurance at that time showing that the required coverage has been obtained.

§ 8.2 Unless Owner requires Payment and Performance Bonds at the time this Contract is executed, Construction Manager will furnish Payment and Performance bonds, each in the amount of 100% of the Guaranteed Maximum

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Price, within 10 days after Construction Manager executes the Amendment to this Agreement which establishes the Guaranteed Maximum Price. If Payment and Performance Bonds are not required to be furnished at the time this Contract is executed, Construction Manager must furnish a bid bond or other financial security acceptable to Owner to ensure that the Construction Manager will furnish the required Payment and Performance Bonds when a Guaranteed Maximum Price is established. Notwithstanding anything herein to the contrary, all bonds must comply with Chapter 2253, Texas Government Code, including the requirement that such bonds must be executed by a corporate surety licensed to do business in Texas in accordance with Article 7.19-1, Texas Insurance Code. Such bonds shall be on forms supplied or approved by Owner. Surety shall be listed as an approved surety by the U.S. Treasury Department. If any surety on any bond becomes insolvent or is unable to perform its obligations thereunder, the Construction Manager shall immediately furnish replacement bonds, or if such bonds cannot be obtained, equivalent security reasonably acceptable to Owner to protect the interests of Owner and persons furnishing labor and materials to the Project.

~~(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)~~**§ 8.3** No construction phase services may be performed under this Contract until the bonds and insurance have been provided to and approved by Owner.

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§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. ~~However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services,~~ Any provisions in the Contract Documents to the contrary notwithstanding, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute ~~resolution, and Section 9.3 of this Agreement shall not apply.~~resolution.

...

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

...

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price ~~Amendment,~~ Amendment by both parties, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be ~~equitably compensated~~ compensated for Preconstruction Phase services performed prior to receipt of a notice of ~~termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.~~termination which comply with the terms of the Contract.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction ~~Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the~~ Phase, 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 10.1.2:

.1 Take the Cost of the Work incurred by the Construction Manager to the date ~~of termination;~~of termination less any amounts which Owner is authorized to withhold, retain or set-off under the terms of the Contract or applicable law ;

.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 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, ~~an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~ as calculated in accordance with Section 5.1.2 for payment upon termination less any amounts Owner is authorized to withhold, retain or set off; and

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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 which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. 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 10, 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.~~above, and shall allow termination of the subcontract in the event Owner or Contractor terminates this Contract.

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

...

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, ~~except that~~ and the Construction Manager's Fee shall be calculated as ~~if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.~~provided in Section 5.1.2.

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The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract. The foregoing notwithstanding, Owner shall have the right to assign this Agreement, and all of the Contract Documents to the Bond Trustee for the bond issuance used to finance the construction of the Work (or its designee) and such Trustee or its designee shall have the right to assume the position of Owner under the Contract Documents.

...

Subcontracts, purchase orders and rental agreements entered into by the Construction Manager shall contain provisions permitting assignment to the Owner upon default by Construction Manager under the Contract Documents. If the Owner accepts such assignment, the Owner shall be responsible for the payment of amounts which would have been reimbursable to Construction Manager under this Agreement and for which payment has not already been made to the Construction Manager. Construction Manager shall be responsible for the payment of any other amounts payable under the Contract. If the Owner elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager shall terminate such subcontract, purchase order or rental agreement.

...

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§ 12.1 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.~~ oral except for those constituting part of the Contract Documents. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

...

(List other documents, if any, forming part of the Agreement.)

.1 Owner's solicitation documents and Construction Manager's responses and proposals.
.2 Exhibits "B," and "C" hereto.
.3 Exhibit "A" (Guaranteed Maximum Price Amendment) when and if signed by the parties.

ARTICLE 13 ADDITIONAL PROVISIONS

§ 13.1 Liquidated Damages The Owner shall have the right to retain from the amounts otherwise payable to contractor under this Contract the sum of $_____ per day, for each and every calendar day of unexcused delay in achieving Substantial Completion. Any sums due and payable hereunder by the Construction Manager shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by Owner, estimated at or before the time of executing this Agreement. When the Owner reasonably believes that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required to, withhold from any amounts otherwise due the Construction Manager an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Construction Manager overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Construction Manager those funds withheld, but no longer applicable, as liquidated damages.

§ 13.2 Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, the term "including" is not limiting and the terms "hereof," "herein," "hereunder" and similar terms in the Contract Documents refer to the Contract Documents as a whole and not to any particular provision thereof, unless stated otherwise. Additionally, the parties hereto acknowledge that they have carefully reviewed this Contract and have been advised by counsel of their choosing with respect thereto, and that they understand its contents and agree that this Contract shall not be construed more strongly against any part hereto regardless of who is responsible for its preparation.

§ 13.3 The Contract is performable in the county in Texas in which the Project site is located and the Contract shall be governed by and interpreted in accordance with the laws of the State of Texas. To the maximum extent permitted by applicable law the parties agree that venue for any action brought under or in connection with the Contract Documents shall lie in courts of competent jurisdiction in Travis County, Texas, or if suit cannot be brought or maintained in state courts in Texas, then in federal courts for the Western District of Texas, Austin Division or other appropriate federal court with jurisdiction in Texas.

§ 13.4 In the event of any suit or action arising out of or in connection with the Contract Documents, the prevailing party in such proceedings shall be entitled to recover reasonable attorney fees and court costs.

§ 13.5 Notice. All notices required to be given under the Contract must be in writing. Any notice required or permitted to be given under the Contract shall be deemed delivered, whether or not actually received, three days after it is deposited in the U. S. Mail, when sent by certified mail, return receipt requested, postage prepaid, correctly addressed to the party's designated representative at the address provided in this Agreement, with a copy sent to such party by facsimile or email on the date of deposit into the mail. Notice given in any other manner shall be deemed delivered when actually received. Either party may change its address for notice by giving notice of the change of address in accordance with this provision. The Architect must be copied on notice sent to the Owner.

§ 13.6 Selection of Subcontractors

.1 The Construction Manager shall publicly advertise and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the Work in accordance with Section 2269.255 of the Texas Government Code and the applicable SLBE and ESLBE and other requirements established by Owner applicable to this Project. Minor work that may be in

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the general conditions identified in Construction Manager's Proposal need not be publicly advertised but must be advertised in a manner to meet applicable SLBE and ESLBE requirements for this Project. The public advertising requirements are described in Section 2.1.9.6 of this Agreement.

.2 The Construction Manager will include the following documents and procedures in the bid or proposal documents from trade contractors and subcontractors:

a. Exhibit "B" attached to this Contract;

b. Exhibit "C" attached to this Contract; and

c. Any other terms applicable to Subcontractors required by the Contract Documents.

.3 Construction Manager shall comply with, and shall cause all subcontractors to comply with, the applicable provisions of this Contract, including the applicable provisions of Exhibits "B" and "C" hereto.

.4 Construction Manager shall comply and shall require all subcontractors furnishing labor for this Project to comply with any requirements established by Owner to use local workers from certified local training programs, including training programs provided by the Owner. Owner shall establish the criteria for determining whether a training program meets the requirements of this section.

§ 13.7 Substantial Completion. Any provision in the Contract Documents to the contrary notwithstanding, if any of the facilities to be constructed or modified under this Contract require the issuance of a Certificate of Occupancy or other regulatory approval, then Substantial Completion of any such facilities, shall not be deemed to have been attained for those facilities prior to the date on which an unconditional Certificate of Occupancy or other regulatory approval is obtained.

§ 13.8 Change Orders. All proposals for a change involving an increase or decrease in the amount of the Contract Sum shall be submitted by the Construction Manager in a completely itemized breakdown form which shall include but not be limited to the following:

a. Material quantities and input prices (separated into trades),

b. Labor costs,

c. Construction equipment,

d. Worker's Compensation and Commercial General Liability insurance and other insurance required by the Contract Documents,

e. Social Security Tax.

f. General Conditions

On proposals involving both increases and decreases in the amount of the Cost of the Work, overhead and profit will be allowed on the net increase. No percentages for overhead and profit will be allowed on Tax. Full credit, but without overhead, shall be given for deductions.

The percentages for overhead and profit to be allowed to the Construction Manager or subcontractors on increases shall not exceed the following:

Combined Percentage Allowed (Overhead and Profit)

To Construction Manager for Work performed by the contractor's own forces – same percentage as Construction Manager's Fee

To Construction Manager for work performed by other than his own forces – 5%

To Subcontractor for Work performed by his own forces – 10%

To Subcontractor for work performed by other than his own forces – 5%

Allowable percentages shall include all costs for preparing change order (office personnel, field layout, general conditions and supervision if required by the change).

General Conditions will be adjusted if equitable, if a Time Extension is granted as part of the Change Order.

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For any changes in Work, overhead and profit will be calculated, at a maximum, for the Construction Manager and at most one subcontractor.

§ 13.9 Safe Access. If the building will be used or occupied by Owner or members of the public, the Construction Manager shall be responsible for maintaining safe routes of travel from sidewalks and parking areas to the building, and shall reroute access as necessary to maintain safe access during construction.

§ 13.10 The Construction Manager must comply with all applicable state and federal laws, including but not limited to laws concerned with labor, equal employment opportunity, safety, minimum wage and prevailing wage rates requirements under Chapter 2258 of the Texas Government Code, and in ACC Board of Trustees Board Policy G-2, Sections D through F. Construction Manager shall require all subcontractors to comply with the provisions of this Section 13.10.

§ 13.11 The Construction Manager and each subcontractor who performs Work under this Contract, must pay not less than the prevailing wage rates attached as Exhibit "B" hereto and incorporated herein. In addition, the foregoing notwithstanding, Contractor and each subcontractor shall pay laborers at a minimum, the greater of (1) the minimum wage requirement established by Owner or (2) the wages to which the laborer would be entitled under the applicable Davis-Bacon wage rates described in Exhibit "B" hereto.

§ 13.12 A Construction Manager or subcontractor who violates the provisions of Chapter 2258 for payment of prevailing wage rates shall pay to Owner $60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated herein.

§ 13.13 The Construction Manager and each subcontractor shall keep a record showing:

(1) the name and occupation of each worker employed by the Construction Manager or subcontractor in the construction of the Work; and

(2) the actual per diem wages paid to each worker.

The record shall be open at all reasonable hours to inspection by officers and agents of Owner.

§ 13.14 In the event of a complaint of a breach of these requirements by Construction Manager or a subcontractor, Owner shall have the right to make a determination as provided by law, and to retain any amount due under the Contract pending a final determination of the violation.

§ 13.15 All workers performing labor on this Project must be certified as having successfully completed OSHA 10 training from a qualified training program prior to performing work on this Project and all construction managers and supervisors must be certified as having successfully completed OSHA 30 training from a qualified training program prior to performing supervisory services on this Project.

§13.16 Inclusion of SLBE and ESLBE firms. Contractor will take appropriate action for the economic inclusion of SLBE and ESLBE firms in all phases of this Project, including, but not limited to: (a) compliance with good faith efforts requirements in soliciting maximum practicable participation of Small Local Business Enterprises, (b) use of joint venture incentives to encourage SLBE and ESLBE participation at prime contract level, (c) compliance with mandatory SLBE and ESLBE subcontracting goals, (d) and assisting in setting of participation goals and administration of waiver process for SLBE subcontract participation requirements (e) performance of contract administration functions related to support of Owner's Small Business Development Program including, but not limited to , outreach efforts to encourage prospective SLBE firms to become certified, to bid, and to participate in ACC contract opportunities; mentor-protégé program oversight; technical assistance referrals for SLBE firms; reporting on utilization and payments to all subcontractors including SLBE and ESLBE participation in prime contract and subcontractors, onsite monitoring of performance of SLBE and ESLBE firms; and assisting in SLBE participation goal-setting; and administration of waiver process for SLBE subcontract participation requirements.

By signing this Agreement or providing or causing to be provided a certificate of insurance coverage, the Construction Manager is certifying to the Owner that all employees of the Construction Manager who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project

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Construction Manager is also warranting that it will require all subcontractors to provide worker's compensation coverage on all employees who will provide services on the Project for the duration of the Project and to provide written certifications of such coverage to Construction Manager. Construction Manager will provide the certifications to Owner. Providing false or misleading information may subject the Construction Manager or subcontractor to administrative penalties, criminal penalties, civil penalties, or other civil actions. The Construction Manager's failure to comply with any of these provisions is a breach of contract by the Construction Manager which entitles the Owner to declare the contract void if the Construction Manager does not remedy the breach within ten days after receipt of notice of breach from the Owner.

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AUSTIN COMMUNITY COLLEGE DISTRICT CONSTRUCTION MANAGER

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_____

(Signed)

_____

(Title)

_____

(Dated)

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