



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 2018
(In words, indicate day, month and year.)

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

Round Rock Transportation and Economic Development Corporation ("TEDCO")
(for address for notice purposes see **Exhibit A**)

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

Hensel Phelps
(for address for notice purposes see **Exhibit A**)

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

Round Rock Convention Center
(See Project description below for additional detail)

The Architect:
(Name, legal status and address)

HKS, Inc.

(Paragraphs Deleted)

The Owner and Construction Manager agree as follows:

ADDITIONS AND DELETIONS:

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

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

AIA Document A201™–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.

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 3 OWNER'S RESPONSIBILITIES
- 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 6 COST OF THE WORK FOR CONSTRUCTION PHASE
- 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 8 INSURANCE AND BONDS
- 9 DISPUTE RESOLUTION
- 10 TERMINATION OR SUSPENSION
- 11 MISCELLANEOUS PROVISIONS
- 12 SCOPE OF THE AGREEMENT

Init.

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 PROJECT

The Project is for the construction of a 200,000 square foot Convention Center is owned by the City of Round, Rock, Texas (the “City”). In conjunction with the construction of the Project herein, is a new resort including approximate 1000-key hotel, 200,000 square foot Indoor Water Park, 150,000 square foot Indoor Theme Park, Lobby, retail, multiple food and beverage locations, 4,000 parking spaces, all related and requisite back-house support, facilities, and infrastructure to operate the facilities, and certain onsite public improvements (“Kalahari Project”), included as part of the larger project is a and constructed under a separate contract (all together the scopes of Work for the Project and the Kalahari Project make up the master project (“Master Project”). This is one of two agreements, which together, cover the Master Project.

§ 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 industry respected skill and judgment in furthering the interests of the Owner consistent with the terms of the Contract as defined in the General Conditions. The Construction Manager shall furnish construction administration, management services and supervision; furnish at all times an adequate supply of workers and materials; and perform the Work in an expeditious and economical manner consistent with the Owner’s interests and with the terms of the Contract. The Owner shall endeavor to promote harmony and cooperation among the Owner, the City, the Architect, Construction Manager, and other persons or entities employed by Owner for the Project. For notice purposes attached hereto is **Exhibit A - List of Designated Representatives and Contact Persons.**

§ 1.2.1 Owner. The Owner is a Type-B corporation created under the authority of Chapter 505 of the Texas Local Government Code.

§ 1.2.1.1 Owner Related Parties. The term “Owner Related Parties” refer to the following identified parties, together with their owners, members, managers, affiliates, general or limited partners, joint venture partners, and each of their respective directors, officers, employees, or successors:

City of Round Rock, Texas, a Texas home-rule municipality

Note: Construction Manager acknowledges and agrees that, notwithstanding the rights and benefits of the Owner Related Parties arising under this Contract, Construction Manager is not contracting with such Owner Related Parties other than the Owner (or its assigns as provided herein) and that Construction Manager shall have no contractual cause of action against such Owner Related Parties arising from this Contract, except as may otherwise be expressly agreed in writing between the Construction Manager and such Owner Related Party.

§ 1.2.1.2 Owner’s Designated Representative. Owner has designated a city employee and a third-party to act as its Owner’s Designated Representative (“Owner’s Designated Representative”) for the Project as designated in **Exhibit A**. Except as otherwise directed in writing by Owner, Construction Manager shall furnish to Owner’s Designated Representative copies of all notices and written communications by or through Construction Manager to Owner or the Architect, contemporaneously with such notice to Owner and/or Architect. Construction Manager shall cooperate fully with the Owner’s Designated Representative and shall provide Owner’s Designated Representative full access to the Project, to the same extent as required for the Owner and/or Architect. Notices to Owner’s Designated Representative shall be sent as set forth in **Exhibit A**. Construction Manager shall be entitled to rely upon direction and decisions made by Owner’s Designated Representative except to the extent that Owner has expressly provided written direction to the contrary.

§ 1.2.2 The City of Round Rock, Texas. The City of Round Rock, Texas (the “City”) is the vested and legal owner of the real property on which the Project will be located in Round Rock, Texas (the “Land”) more particularly described in **Exhibit B – Legal Description**, which is attached hereto. Notice is hereby given that the fee interest in the Land shall not be subject to liens for improvements made by the Owner. Liens against the City’s fee interest in the Land are prohibited. Neither the Construction Manager nor any subcontractor of any tier (“Subcontractor” or “Subcontractors” as defined herein) shall have any lien rights (constitutional or statutory) against the City’s fee interest in the Land. Construction Manager, and each Subcontractor, must include a clause substantially the same as the foregoing clause in each contract that Construction Manager, or that Subcontractor, enters into with persons providing labor, services, or materials so that such persons are put on notice that they are prohibited from filing liens against the Land with respect to their work for Construction Manager or any subcontractor, as applicable. Construction Manager, and each Subcontractor, must require that such persons acknowledge receipt of such notice and agree that they are prohibited from filing liens against the City’s fee interest in the land with respect to their work for the Construction Manager or that Subcontractor, as applicable.

§ 1.2.2.1 Third-Party Beneficiary. Construction Manager acknowledges and agrees that the scope of Work included in this Agreement is part of a larger Master Project, and that the scopes of Work together between the Convention Center Project and the Kalahari Project make up the Master Project. Construction Manager agrees that KR Acquisitions LLC and KR CC, Inc. are intended third-party beneficiaries of the Master Project, including but not limited to the agreement between Construction Manager and the City for the Convention Center scope of Work.

§ 1.2.3 Construction Manager. Construction Manager is engaged as an independent business, and agrees to perform the Work as an independent construction manager and not as the agent, employee, or servant of Owner. Subject to approvals from the Owner, Construction Manager has and hereby retains the right to exercise full control and supervision of the Work. Construction Manager agrees to be responsible for all such matters. Construction Manager agrees to be responsible for its own acts and those of its subordinates, employees, and Subcontractors during the term of this Agreement. Nothing contained herein or inferable herefrom shall be construed to make Construction Manager the agent, servant or employee of Owner, or create any partnership, joint venture, or other association between Construction Manager and Owner, or any of the Owner Related Parties. Any direction or instruction by Owner of any of its authorized representatives with respect to the Work shall relate to the results the Owner desires to obtain from the Work and shall in no way affect Contractor’s independent contractor status.

§ 1.2.4 Key Persons. Construction Manager’s key personnel (“Key Personnel”) are named on **Exhibit C – Key Personnel and Rate Schedule**, which is attached hereto, and are those persons who have been assigned to the Project and who will devote a substantial amount of time in performing the obligations and responsibilities of the Construction Manager under the Construction Documents, along with Construction Manager’s fixed wage and salary rates for respective classifications of personnel performing services for the Project. During the term of this Agreement, Construction Manager shall not substitute or change Key Personnel or the rates quoted therein without the Owner’s prior written approval.

§ 1.3 GENERAL CONDITIONS

The General Conditions of the Contract are incorporated herein by reference as if fully set forth herein. The term “Contractor” as used in the General Conditions shall mean the Construction Manager.

§ 1.4 STANDARD OF CARE IN PERFORMING THE WORK. Construction Manager represents and warrants to the Owner the following:

- (a) Construction Manager, Key Personnel, and Subcontractors are knowledgeable and experienced in providing services comparable to those necessary to complete the Work and with the needs and requirements for this type of Project;
- (b) Construction Manager, Key Personnel, and Subcontractors performing Work under this Agreement shall perform every part of the Work hereunder in accordance with this Agreement and Applicable Laws. It is not Construction Manager’s responsibility to ascertain that the Specifications, Plans, and Drawings are in accordance with Applicable Law, but the Construction Manager shall promptly inform the Architect

and Owner if Construction Manager has knowledge, recognizes, or discovers that the Specifications, Plans, Drawings or other Contract Documents, are not in accordance with Applicable Laws;

(d) For purposes of this Agreement, the term “**Standard of Care**” shall mean the exercise of a degree of care in performing the Work in a manner consistent with the same level of care and skill exercised by knowledgeable and experienced professional construction managers competent in the construction of facilities of a similar nature and complexity in accordance with customarily accepted good and sound professional practices and procedures; and

(e) Construction Manager, Key Personnel, and Subcontractors possess the skills and experience to coordinate, allocate, and manage the Work of the various trade contractors to ensure that Work as completed is fit for its intended use, fully operational, free of latent defects, and fully warranted.

§ 1.5 CONSTRUCTION MANAGER SHALL BE RESPONSIBLE FOR THE PROPER PERFORMANCE OF THE WORK.

Construction Manager has visited the site and examined the conditions affecting the Work and agrees that it is sufficiently familiar with the site and all observable conditions affecting the same and with the Specifications, Plans, and Drawings that Construction Manager has been able to make a sound determination of each in order for Construction Manager to bind itself to this Agreement. Construction Manager shall be responsible for the construction of the Project and the Work based on the Specifications, Plans, and Drawings, determining the scope of all subcontracts and for all the bidding of all Work necessary for Construction Manager to complete the Work and fully perform hereunder. Construction Manager remains responsible for the complete and integrated operations of the Work notwithstanding the allocations of scopes of the Work among different trade contractors. Notwithstanding the foregoing, Construction Manager is not responsible for any unforeseen and concealed conditions that the Construction Manager did not discover or have notice prior to the start of construction without the use of physically intrusive methods provided that Construction Manager complies with the applicable General Conditions and other provisions of the Contract Documents.

ARTICLE 2 CONSTRUCTION MANAGER’S RESPONSIBILITIES

The Construction Manager shall perform the services described in this Article, the General Conditions, and elsewhere in the Contract Documents. At the Owner’s option, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases shall proceed concurrently.

§ 2.1 PRECONSTRUCTION PHASE

§ 2.1.1 The Construction Manager’s preconstruction phase responsibilities (if any) are set forth in a separate agreement concerning same.

§ 2.1.2 LONG-LEAD TIME ITEMS. The Construction Manager shall prepare, for the Architect’s review and the Owner’s acceptance, a procurement schedule for items that must be ordered well in advance of construction, or in advance of reaching a final Guaranteed Maximum Price as provided herein. 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, and Owner will, to a reasonable level coordinate delivery of such items, and store such items as to be protected from theft, damage, or destruction. 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.

§ 2.1.3 CONSTRUCTION MANAGER’S REPRESENTATIONS

In addition to other representations and warranties contained in the Contract Documents, and without limiting same, the Construction Manager represents and warrants the following to the Owner as an inducement to the Owner to execute this Agreement and the GMP Amendment (at the time the GMP Amendment is agreed to by the parties):

- (a) it will perform all Work called for hereunder in a good and workmanlike manner and in accordance with all legal requirements and the Contract Documents;
- (b) that it shall strictly comply with and satisfy all legal requirements applicable to the Construction Manager's means and methods of the Work;
- (c) that it is financially solvent, able to pay its debts as they come due and possesses sufficient working capital to complete the Work and perform its obligations hereunder;
- (d) that it possesses the requisite level of experience and expertise in the business administration, construction, construction management, and superintendence of the projects of this size, complexity, and nature of the Project, and it will perform the Work in accordance with its Standard of Care as set forth herein;
- (e) that it is able to furnish the tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations hereunder;
- (f) that it is authorized to do business in the municipality in which the Project is located and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Project;
- (g) that its execution of the Agreement (and the GMP Amendment) and its performance hereunder are within its duly authorized powers;
- (h) that it understand the restrictions imposed on the handling of construction payments received by the Owner pursuant to any Applicable Law and that it will fully comply with those provisions and the provisions of any applicable subcontract or purchase order in the handling of all payments made by the Owner to the Construction Manager pursuant to this Agreement; and
- (i) it is aware of the critical time restrictions for performance of the Work.

The foregoing representations and warranties are in addition to, and not in lieu of, any and all other responsibilities and liabilities imposed upon the Construction Manager by law with respect to the Construction Manager's duties, obligations, and performance of the Work. All representations and warranties, including this section, shall survive the Final Completion of the Work or the earlier termination of this Agreement.

§ 2.1.4 COMPLIANCE WITH LAWS

The Construction Manager shall comply with Applicable Laws, as defined herein (including Prevailing Wage laws, if applicable), regulations, and special requirements of the Contract Documents regarding equal opportunity and affirmative action programs.

§ 2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND AMENDMENTS

§ 2.2.1 The Guaranteed Maximum Price will be established in a multiple step process. When the Construction Documents are thirty percent (30%) complete, the Construction Manager will propose a GMP Proposal ("GMP Proposal No. 1") in a form reasonably required by the Owner. GMP Proposal No. 1 will include the following:

- (a) a statement of the Guaranteed Maximum Price, which shall include the Cost of the Work (organized by trade categories or systems or other method as may be requested by Owner), the Construction Manager's Fee, the Construction Manager's lump sum general conditions costs, the Construction Manager's Contingency (as defined in Section 2.2.10 below), and a deductive amount for any savings incurred for bought-out, completed, or partially completed Work included in any duly executed Work Authorization Amendments approved prior to establishing the Guaranteed Maximum Price;
- (b) a list of any clarifications and assumptions upon which the Guaranteed Maximum Price is predicated; and

- (c) the date for Critical Milestones, Substantial Completion of the entire Work, and Final Completion of the entire Work.

Upon presentation of GMP Proposal No. 1, the Owner shall, with reasonable promptness, exercise one of the following three options: (1) accept the GMP Proposal by executing an amendment (“**GMP Amendment No. 1**”); (2) reject the GMP Proposal – in which case the Owner shall only be responsible for payment for the Construction Manager’s preconstruction services (through separate agreement) and any work performed in accordance with any duly approved and authorized Work Authorization Amendment; or (3) enter into negotiations with the Construction Manager and ultimately either accept or reject a revised GMP Proposal.

§ 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. In any GMP Proposals, the Construction Manager shall also identify which Drawings and Specifications the Construction Manager contends will require revision in order to reflect the Construction Manager’s proposed assumptions and clarifications.

§ 2.2.3 When the Construction Documents are 100% complete, the Construction Manager shall carefully study and evaluate for the purpose of establishing the GMP the design and documents and with reasonable promptness, but not more than 90 days, shall conduct a final scope review and buy-out of each of the major trade Subcontractors. The Owner shall participate in the scope review and buy-out process and may also direct the Architect to participate as well. Based on the final buy-out prices, the Construction Manager shall submit a GMP Proposal (“GMP Proposal No. 2”). The GMP Proposal No. 2 will include items listed in Section 2.2.1 and 2.2.2, but shall also include a list of allowances or unit prices; and a list of the documents and their revision dates upon which the GMP Proposal No. 2 is based. Upon presentation of GMP Proposal No. 2, the Owner shall, with reasonable promptness, exercise one of the following three options: (1) accept the GMP Proposal No. 2 by executing an amendment regarding same; (2) reject the GMP Proposal No. 2; or (3) enter into negotiations with the Construction Manager and ultimately either accept or reject a revised GMP Proposal No. 2.

§ 2.2.4 Upon acceptance of a GMP Amendment No. 1, the Owner may, in writing, direct the Construction Manager to begin specified portions or phases of the Work. Construction Manager shall not incur Costs of the Work without the Owner’s prior written approval. In the time between GMP Proposal No. 1 and GMP Proposal No. 2, In the event that the Owner rejects the GMP Proposal No. 2 and no amendment is entered into regarding same, the Owner shall either: (1) pay the Construction Manager the Cost of the Work incurred to date and Fee thereon incurred with the Owner’s prior approval, but the Owner shall have no further liability to the Construction Manager; or (2) elect in writing to proceed with the Project under the GMP Amendment No. 1.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price Proposal(s). 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 Owner shall be entitled to full access to all details of the process of developing the GMP Proposals. It is the intent of this Agreement that allowances, assumptions, clarifications, and other loose elements that could lead to change orders after any Guaranteed Maximum Price is determined to be held to a minimum.

§ 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, 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 any 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 To the extent any sales, rental, or use of labor, equipment or materials for the Project are subject to sales or use tax under Applicable Law, 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 that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

Construction Manager acknowledges that the Work is tax exempt. Construction Manager shall perform the Work and administer the Contract in a manner in which maintains the tax exempt status of the Work. Owner shall provide tax exempt certificates and specify the Work which is tax exempt.

§ 2.2.10 CONSTRUCTION MANAGER'S CONTINGENCY. Any GMP Proposal shall contain the Construction Manager's Contingency as part of the Guaranteed Maximum Price (the "**Construction Manager's Contingency**"). The Construction Manager's Contingency shall be made available by Owner, only upon prior written approval by Owner, for use by the Construction Manager to cover increases in the cost of the Work incurred by Construction Manager for unforeseen causes or details not reasonably anticipated by the Construction Manager at the time of the execution of this Agreement, such as increases in bid or negotiated contracts. Construction Manager's Contingency is not intended for changes in the scope of the Work or for reimbursement of expenses and costs not otherwise recoverable as Cost of the Work under Article 6 of this Agreement, such as originating from further development of the Construction Documents after GMP Proposal No. 2 (as defined herein) and such corresponding Amendment, increased Costs of the Work that do not result from an Owner-change order, cost overrun, any additional costs due to Unexcused Delays, or to employ Corrective Measures as may be required of Owner pursuant to Section 8.2.4 of the General Conditions, or costs caused by defaults by Subcontractors that are not recoverable from the Subcontractor or its insurer or surety, including costs of correcting defective work or the warranty work. The Construction Manager's Contingency shall not be available for Owner-initiated changes to the Construction Documents unless mutually agreed upon by Owner and Construction Manager. The Construction Manager shall not earn a Fee on unused Contingency. The Construction Manager shall not be entitled to additional General Conditions Costs, unless mutually agreed upon by Owner and Construction Manager. The Construction Manager shall maintain records detailing the use of the Construction Manager's Contingency after Owner's approval and shall make those available for the Owner's review upon request and shall submit the records with the monthly payment application. The Owner shall have the right to approve or reject any expenditure from the Construction Manager's Contingency in its sole reasonable discretion, subject only to the Construction Manager's rights under the disputes resolution provisions of this Agreement.

Construction Manager's Contingency: three percent (3%) of the estimated Cost of the Work component of the Guaranteed Maximum Price (without such Contingency) as initially established and set forth in the GMP Amendment(s).

Sums may be charged to the Construction Manager's Contingency only to the extent that the same have been paid or are to be actually paid by Construction Manager. Notwithstanding anything in the Contract Documents to the contrary, no charge shall be made against the Construction Manager's Contingency without the prior written approval of the Owner.

§ 2.2.11 After execution of the GMP Amendment No. 2, the GMP will be modified only for Owner-initiated changes or other circumstances specifically authorized by this Agreement.

§ 2.2.12 Some phases of the Work may be ready for construction before it is appropriate to arrive at an overall Guaranteed Maximum Price for the entire Project. If the Owner elects to proceed with any packages of the Work before the parties arrive at an overall Guaranteed Maximum Price, the Construction Manager shall develop proposals for any phases of the Work identified by the Owner.

§ 2.2.13 Until a Guaranteed Maximum Price for the entire Project has been established and accepted by the Owner through a duly executed GMP Amendment, the Construction Manager and Owner agree to use a work authorization amendment ("**Work Authorization Amendment**") in a mutually acceptable format to authorize work to begin

based on a specified scope and a specified “not to exceed” price. The price and the scope of Work identified with each previously approved Work Authorization Amendment will be included in the Guaranteed Maximum Price at the time the Contract Documents are sufficiently complete to establish the Guaranteed Maximum Price. Prior to the Owner’s acceptance of the Guaranteed Maximum Price for the entire Work, Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work for Construction Phase services, except as the Owner may specifically authorize in an executed Work Authorization Amendment as required herein.

§ 2.2.14 Except as otherwise agreed by Owner and Construction Manager, when a GMP Proposal for any portion of the Work is agreed upon by the parties pursuant to a Work Authorization Amendment, the Guaranteed Maximum Price amounts for those portions which have been previously approved by the Owner shall be combined and shall be used in pricing those portions of the Work covered by such Guaranteed Maximum Price proposals, and all separate Guaranteed Maximum Price proposals previously agreed to by the parties shall be of no further force and effect.

§ 2.2.15 In submitting the GMP Proposal, the Construction Manager represents that it will provide every item, system, or element of Work that is identified, shown or specified in the GMP Proposal or the supporting documents, along with all necessary or ancillary materials and equipment for their complete operating installation, unless specifically excepted by the Owner. Upon Owner’s acceptance of the GMP Proposal, the Construction Manager shall not be entitled to any increase in the Guaranteed Maximum Price due to the continued refinement of the Construction Documents or the absence or addition of any detail or specification that may be required in order to complete the construction of the Project or applicable Work package, except as expressly qualified in the GMP Amendment.

§ 2.2.16 As GMP Amendment and Guaranteed Maximum Price are referenced herein, GMP Amendment shall mean the GMP Amendment with the latest date which was duly executed by the parties and made a modification of this Agreement, and Guaranteed Maximum Price shall mean the not to exceed value in the GMP Amendment.

§ 2.3 CONSTRUCTION PHASE

§ 2.3.1 GENERAL. The Construction Phase shall commence on the Owner’s issuance of a Notice to Proceed. If the Owner directs the Construction Manager to commence only some portion(s) of the construction, the Construction Manager shall only enter into those subcontracts and purchase orders necessary for the directed work and shall proceed with the limited portion of construction.

§ 2.3.2 ADMINISTRATION

§ 2.3.2.1 It is the intent of this Agreement that as many as possible of the elements of the Project be subject to vigorous competition. Except as otherwise approved by Owner in advance in writing, all Subcontracts (including purchase orders) shall be awarded pursuant to competitive bids.

- (a) If the Construction Manager intends to bid Work by its own forces (“Self-Perform Work”), other than supervision of the Work, or through an affiliated or related party (as defined herein), Construction Manager shall notify Owner in writing of such intent and how the bid pricing shall be obtained. Construction Manager must obtain Owner’s prior written approval prior to the solicitation of bids. If approved, Construction Manager must competitively bid against no less than three (3) trade contractors (when feasible). All bids, including Construction Manager’s bid, shall be submitted directly to Owner and shall be opened by Owner. Construction Manager must submit its bid to Owner no less than 24 hours in advance of when other bids are due.
- (b) The Construction Manager shall not subcontract out general conditions, supervision of the entire Work, or project management of the entire Work.
- (c) 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 Owner, along with its recommendations concerning such bids. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids; however the Construction Manager shall be entitled to obtain bids from other qualified bidders. The Construction Manager shall endeavor to obtain at least three (3) bids for each subcontract (except for purchase orders aggregating less than \$50,000.00 in connection with the Project) and in no case less than two (2) from parties not affiliated with or related to the Construction Manager.

(d) For the purpose of this subparagraph, “affiliate” or “related party” is any entity controlling, controlled by, or under common control with Construction Manager, or any entity in which any officer, director, member, employee, partner, or shareholder of the Construction Manager, or any member of such person’s immediate family has a direct or indirect interest. The Construction Manager shall not accept any bid without the Owner’s prior written approval. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

(e) If a specific bidder among those whose bids are delivered by the Construction Manager to the Owner and Architect (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the 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.

(f) Subcontracts and agreements with suppliers at all tiers shall conform generally to the payment provisions in Sections 7.1.8 and 7.1.9 of this Agreement and the terms regarding payments contained in the General Conditions , and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If upon Owner approval, the Subcontract is awarded on a cost plus 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.

(g) If the Construction Manager recommends a specific bidder that may be considered a “related party” or “affiliate” according to this Section, 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.

§ 2.3.2.2 The Construction Manager shall schedule and conduct weekly meetings or at a frequency reasonably specified by the Owner, at which the Owner, Architect, Construction Manager, and appropriate Subcontractors can discuss the status of the Work.. The Construction Manager shall prepare and distribute meeting minutes to the Owner and Architect within five (5) days of the meeting, which shall be subject to the Owner’s and Architect’s review and comment.

§ 2.3.2.3 As part of the GMP Proposals the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work consistent with the requirements of the Contract Documents, and submittal schedule in accordance with Sections 2.3.2 and 3.10 of the General Conditions.

§ 2.3.2.4 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 as set forth in this Agreement. The monthly reports shall include, but not be limited to, the following:

(a) **Daily Log.** The Construction Manager shall maintain, and make available to the Owner and Architect upon request, a daily log containing a record for each day of weather, portions of the Work in progress, Subcontractors working on site, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other relevant information that Owner may reasonably require.

(b) **Shop Drawing Schedule.** The Construction Manager shall develop a schedule for submittal and review of Submittals and Shop Drawings, product data, and samples, with input from Owner and Architect. The schedule shall show dates for submission and subsequent review by all necessary parties and shall be coordinated with the Schedule and Critical Milestones. The Construction Manager shall update the Submittal/Shop Drawing schedule weekly and submit to Owner for its review.

(c) **Change Order/Change Order Request Log.** The Construction Manager shall maintain a Change Order and Change Order Request log for the purpose of tracking and recording all Change Orders and Change

Order Requests (Owner requested changes, Design requested changes, the Construction Manager requested changes, field requested changes, etc.) whether they have a cost/schedule impact or not. At a minimum, this log shall contain:

- (i) Change Order Number;
- (ii) Description of Change;
- (iii) Nature of Change;
- (iv) Date Requested;
- (v) Initiator;
- (vi) Subcontractor impact report;
- (vii) Date Review by the Architect;
- (viii) Date reviewed by Construction Manager;
- (ix) Cost Implication of the Change;
- (x) Schedule Implication of the Change;
- (xi) Description of Other Potential Impact to Project; and
- (xi) Date Approved or Disapproved by Owner.

As part of the requirements for Final Completion, the Change Order Log shall be delivered to the Owner.

(d) Request for Information ("RFI") Log. The Construction Manager shall maintain an RFI Log for the purpose of tracking and recording all RFIs. At a minimum, this log shall contain:

- (i) RFI number;
- (ii) Description;
- (iii) Date Requested;
- (iv) Initiator;
- (v) Specification, Drawing (Sheet No. or Detail) Referenced;
- (vi) Schedule and/or Cost Impacts;
- (vii) Subcontractor Impacts;
- (viii) Date Answered; and
- (ix) Priority.

(e) Material and Equipment Procurement Log. The Construction Manager shall maintain and regularly update a schedule for the purchase and delivery of materials and equipment requiring long-lead time procurement. The Construction Manager shall expedite and coordinate delivery of these purchases. The Construction Manager shall include in its weekly progress reports a status log of long-lead time items.

(f) Safety Report. The Construction Manager shall develop, implement, and maintain jobsite safety, training and protocol programs. At all times during the course of the Project and the Work, the Construction Manager shall be responsible for the overall safety of the site. Accordingly, the Construction Manager shall maintain records of meetings, inspections, and incidents. The Construction Manager shall maintain an accurate record of all accidents and incidents relating to work performed under this Agreement resulting in death, injury, occupational disease, or damage to property, materials, supplies, or equipment. The Construction Manager shall provide Owner copies of all accident reports filed with federal, state, and local governmental agencies and such additional data as may be requested by Owner. The Construction Manager shall maintain accurate records related to safety at the site, and provide a monthly report regarding same to Owner, including but not limited to the following:

- (i) Man-hours for reporting period;
- (ii) Total man-hours worked for the Project to date;
- (iii) Recordable injuries and lost work days; and
- (iv) Identify any hazards or discrepancies.

§ 2.3.2.5 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.

§ 2.4 CONSTRUCTION MANAGER SHALL REMEDY DEFECTIVE WORK

§ 2.4.1 The Construction Manager represents and warrants that the Work shall be (1) free from all defects; (2) conform to the requirements as set forth in the Specifications, Plans, and Drawings; and (3) comply with Applicable Law with regard to the means and methods of construction and Construction Manager's scope of Work. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective Work at Owner's sole and reasonable discretion.

§ 2.4.2 All defective Work shall be taken down, removed, and replaced with work of a quality required by the Contract Documents, without an increase in the Guaranteed Maximum Price or Construction Manager's Fee, whether observed before Substantial Completion of the Work and whether or not fabricated, installed, or completed. The Construction Manager shall bear all costs of correcting defective work, including but not limited to additional testing and inspections, compensation for the Architect's services or another design professional's services, and costs and expenses made necessary by the defective work. If the defective Work has not been cured within a reasonable time period to be mutually determined by the parties, Owner shall have the right, on five (5) days written notice to the Construction Manager, to remove or cause to be removed all defective Work or materials, and to have the Work or material corrected and the Construction Manager shall be obliged to pay to Owner all expenses so incurred. If Owner removes the unsatisfactory Work, Owner may deduct from any future payments to the Construction Manager due under this Agreement the amounts so expended by Owner. If Owner does not deduct such amounts and the Construction Manager fails to pay all unpaid amounts on Owner demand, recourse may be made immediately to any applicable bonds. Construction Manager shall not use its Contingency to pay for such costs under this Section 2.4 unless expressly approved by Owner in writing. Costs incurred due to defective work are not otherwise reimbursable.

§ 2.5 CONSTRUCTION MANAGER SHALL REACH SUBSTANTIAL COMPLETION TIMELY.

§ 2.5.1. Time is of the essence. At all times during this Project, time is of the essence for Construction Manager's performance of the Work.

§ 2.5.2. Liquidated Damages. The parties acknowledge that if the Construction Manager is not able to achieve the Critical Milestones, if any, or Substantial Completion (as defined in General Conditions Section 9.8) by the dates set forth in the GMP Amendment, as said dates may be modified from time to time in strict accordance with the provisions of the Contract Documents, then the Owner will suffer damages as a result. The parties further acknowledge that it is difficult at this time to determine with precision those damages and that the parties desire to provide for liquidated damages as the sole and exclusive remedy in lieu of actual, or any other type of, damages in the event that the Construction Manager is not able to achieve the Critical Milestones or Substantial Completion by the date required ("**Liquidated Damages**"). Construction Manager agrees to pay to Owner, as liquidated damages and not as a penalty, the sum set forth in the table included in **Exhibit D – Liquidated Damages Schedule**, which is attached hereto, per calendar day for each calendar day after the date for the Critical Milestone or Substantial Completion until such time as the Construction Manager achieves the Critical Milestone or Substantial Completion. Notwithstanding this provision, the Construction Manager shall meet the Critical Milestone or the date of Substantial Completion and cannot choose merely to accept liquidated damages even if such damages will be less than the cost of acceleration to meet the respective date(s).

The Liquidated Damages for the Critical Milestones and Substantial Completion are cumulative. Nonetheless, in the event that the Construction Manager is responsible for Liquidated Damages for failing to meet one or more Critical Milestones, but nonetheless achieves Substantial Completion by the required date and the Construction Manager is not otherwise in default of its obligations under the Contract Documents, the Owner may, in its discretion, waive liquidated damages for the Critical Milestones.

§ 2.6 BUILDING INFORMATION MODELING. The Construction Manager (including all of its Subcontractors) shall utilize state of the art technology in all phases of the Work as part of the Guaranteed Maximum Price. This includes, without limitation, building information modeling for real time dynamic building modeling in 3D for all components of the Work ("BIM"). The Construction Manager shall cooperate with the Architect in the preparation and completion of the models.

§ 2.7 Construction Manager shall instruct Owner and its operating personnel in the proper use, maintenance, and emergency repair of all systems and equipment at the time of Substantial Completion and before final acceptance of

the Work by the Owner. Contractor shall call particular attention to safety measures that should be followed during operation of any such systems or equipment.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 3.1.1 The Owner and Construction Manager shall discuss and address the Owner's requirements and expectations for the Project, including 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 **Owner's Evidence of Financial Arrangements.** 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 in accordance with Chapter 56 of the Texas Business and Commerce Code. Thereafter, the Construction Manager may only request such evidence if the Owner fails to make payments to the Construction Manager as the Contract Documents require. Construction Manager shall keep any information provided by Owner under this provision confidential, whether or not such information is specifically marked "Confidential" and prevent disclosure to any third-party. To the extent that the information provided by Owner pursuant to this provision is permitted to be provided to any Subcontractor on the Project, Construction Manager shall (1) require the Subcontractor to comply with **Exhibit I** of this Agreement in the Subcontract and attachment of **Exhibit I** to its Subcontract, and (2) require Subcontractor to sign a Non-disclosure Agreement in a form acceptable to the Owner. Notwithstanding the foregoing, any and all information provided under this clause is subject to the provisions of **Exhibit I**, it being the intent of this Agreement that whichever provisions are more strict shall control.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project based upon consultation with the Construction Manager and Architect.

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** Upon reasonable and specific request by the Construction Manager, the Owner shall furnish information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness so as not to delay the progress of the Work after receiving the Construction Manager's written request for such information or services and details as to the time by which Owner's response is required. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of 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 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.

§ 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 recommendations.

§ 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 so as not to cause delay in the progress of the Work after receiving the Construction Manager's written request for such information or services and details as to the time by which Owner's response is required. The

Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.2 OWNER'S DESIGNATED REPRESENTATIVE

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's Designated Representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of the General Conditions, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.3 ARCHITECT

The Owner has retained an Architect to provide services, duties and responsibilities with regard to the design of the Project.. Upon request of the Construction Manager, 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.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 Compensation for the Construction Manager's preconstruction phase services, if any, is set forth in a separate agreement.

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

The Owner shall pay the Construction Manager for the Construction Phase Services as follows:

§ 5.1 COMPENSATION

For the Construction Manager's proper performance of the Work as described in the Contract Documents, the Owner shall pay the Construction Manager in current funds, and amount which shall not exceed the Guaranteed Maximum Price, as set forth herein. 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, except as limited by the Guaranteed Maximum Price, shall be 2.75% of the Cost of the Work (as defined herein below) actually incurred by the Construction Manager in the performance of the Work. Notwithstanding the provisions set forth in Section 5.1.3 below, Construction Manager shall be entitled to earn its Fee on approved Change Orders.

§ 5.1.2 For authorized changes in the Work that result in an increase or decrease in the Guaranteed Maximum Price, the Construction Manager's Fee shall be increased or decreased accordingly. The Construction Manager's Fee shall be the Construction Manager's complete fee compensation (which includes Construction Manager's profit and indirect overhead) and, together with the payment for the Cost of the Work for those costs which are expressly set forth in Sections 6.1 through 6.7 of this Agreement, shall constitute Construction Manager's sole reimbursement for indirect and direct costs and expenses, general conditions, and profit arising from or attributable to the performance of the Work as described herein.

§ 5.1.3 Limitations, if any, on a Subcontractors' reimbursable costs, as well as overhead and profit for changes in the cost of its portion of the Work are, except as otherwise expressly approved in writing by Owner, as provided in **Exhibit E- "Change Order Pricing"**, and as follows:

Subcontractor's combined markup for overhead and profit on additive Work shall not exceed twelve percent (12%) of the actual direct cost of the additional Work that such Subcontractor self performs.

If any lower-tier subcontractor performs part or all of the additional Work, then such lower-tier subcontractor shall only be entitled overhead and profit not to exceed twelve percent (12%) of the actual direct cost of the additional Work. Subcontractor shall be entitled to a maximum of five (5%) percent mark-up on lower-tier subcontractor Work. The total combined mark-up for Subcontractor and lower-tier subcontractor shall not exceed seventeen (17%) percent.

For any deductive adjustment to the Guaranteed Maximum Price for a change in the Work, Subcontractor's Overhead and Profit will be marked-down at the same percentage and on the same basis as mark-ups for increases as provided above.

§ 5.2. GUARANTEED MAXIMUM PRICE

§ 5.2.1 The sum of the Cost of the Work, Construction Manager's lump sum general conditions costs as set forth in **Exhibit F – General Conditions Costs**, which is attached hereto, and the Construction Manager's Fee (as set forth in Section 5.1.1 above) is guaranteed by the Construction Manager not to exceed the amount set forth in the GMP Amendment subject only to additions and deductions by Change Order properly approved and executed as provided in the Contract Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. Such maximum "not to exceed" value as adjusted by approved changes in the Work is referred to in the Contract Documents as the **"Guaranteed Maximum Price"** or **"GMP."**

§ 5.2.2 **Savings Treatment.** Savings, which shall be defined herein as when the sum of the total, reimbursable Cost of the Work incurred by the Construction Manager and the total Construction Manager's Fee is less than the Guaranteed Maximum Price, will be shared 75% to Owner 25% to Construction Manager payable to Construction Manager upon completion of the Work. The Owner shall pay the Construction Manager its share of the Savings as part of the Construction Manager's final Application for Payment following Final Completion; however, Owner shall not be obligated to pay such share of any Savings to the extent (1) this Contract is not delivered in accordance with the Contract Time, (2) is terminated prior to Substantial Completion for the non-performance of Construction Manager; (3) if Construction Manager is in material breach of any provision of this Agreement; or (4) any fraud or negligence by Construction Manager. Notwithstanding the foregoing, for the purposes of determining Shared Savings, any unused allowances shall not be part of the Shared Savings and the final Guaranteed Maximum Price shall be reduced accordingly.

§ 5.3 CHANGES IMPACTING GUARANTEED MAXIMUM PRICE

§ 5.3.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Subparagraph 7.1.3 and 7.1.4 of the General Conditions.

§ 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 in accordance with Article 7 of the General Conditions. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work only as provided in the Contract Documents and subject to the requirements thereof, including the timely notice requirements applicable portions of Section 4.3.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the GMP Amendment may be determined by any of the methods listed in Section 7.3.3 of the General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior written consent on the basis of cost plus a fee), the terms "cost" and "fee" and "mark-up" as used in Section 7.3.3.3 of the General Conditions and the term "costs" and a reasonable allowance for overhead and profit, which all combined shall be no more than the agreed upon percentage set forth in Section 5.1.3, as used in Section 7.3.7 of the General Conditions shall have the meanings assigned to them in General Conditions. 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 this Agreement, unless the Owner has furnished the Construction Manager with prior written approval of the form and substance of a subcontract, in which case such adjustments shall be calculated in accordance with the terms and conditions of that subcontract.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of General Conditions 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 Notwithstanding the foregoing in this Section 5.3, no change in the Construction Manager's Fee or overhead will be allowed for any additive or deductive change orders except as specifically provided for in this Agreement.

§ 5.3.6 Except as otherwise expressly provided herein or in the GMP Amendment, in calculating an adjustment to the Guaranteed Maximum Price for a change in the Work resulting in a change to the Construction Manager's onsite overhead and administrative expense, including Construction Manager's General Conditions Costs, such adjustment shall be based upon the actual estimated increase or reduction of such costs rather than a percentage or otherwise pre-determined mark-up or mark-down.

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 costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior written consent of the Owner. The Cost of the Work shall include only the items expressly permitted in Article 6.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval in writing prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.2 Labor Costs

§ 6.2.1 Wages and salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site (for such Work that Construction Manager is authorized to perform through its personnel, other than Self-Perform Work) or, with the Owner's prior written approval, at off-site workshops, and only to the extent such workers are actually performing Work directly related to the Project.

§ 6.2.2 Wages and salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval. Such rates shall not exceed those set forth on Exhibit C, unless approved in advance in writing by Owner.

§ 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, but only for that portion of their time required for the Work. Such rates shall not exceed those set forth on **Exhibit C**, unless approved in advance in writing by Owner.

§ 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, and

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all other employee benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, for such employees based upon wages or salaries reimbursable as Cost of the Work pursuant to Sections 6.2.1 through 6.2.3 above shall be included in the fixed wage or salary rates as set forth in **Exhibit C** attached hereto. Such wage or salary rates (including markups for benefits) for the respective classification of personnel performing Work or services hereunder are agreed upon and fixed as set forth in **Exhibit C** and such rates are not subject to audit.

However, the time chargeable to the Project hereunder for such employees or that portion of the wages allocable to the Cost of the Work are subject to audit.

§ 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, with the Owner's prior written approval.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts properly entered into in accordance with the requirements of the Contract Documents.

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

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction; provided, that such materials and equipment are obtained pursuant to the terms of the Contract Documents.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed but required to provide reasonable allowance for waste and spoilage. Unused excess materials, if any, shall be properly stored and protected during performance of the Work and handed over to the Owner 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. Notwithstanding the foregoing, any items used but not consumed, which are paid for by the Owner shall, at the Owner's option, become the property of the Owner and shall be delivered to the Owner upon completion of the Work in accordance with instructions furnished by the Owner.

§ 6.5.2 Rental charges for Construction Manager-owned or leased vehicles assigned to those personnel defined in Section 6.2.1 and 6.2.2 above, 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 thereof. Rates of Construction Manager-owned equipment and quantities of equipment shall be in keeping with industry standards. In no event shall the Construction Manager be entitled to reimbursement for any cumulative total of rental charges in connection with any single piece of machinery or equipment in excess of eighty percent (80%) of its fair market value as of the date that such machinery or equipment is first put into service in connection with the Work. The Construction Manager shall pay, without reimbursement, any such excess rental charges.

§ 6.5.3 Costs of removal of debris from the site of the Work.

§ 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.

§ 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. Provided, however, that daily travel to and from the Project site is not considered reimbursable travel. The amount included in the Cost of Work with respect to automobile travel expenses shall be based on the mileage allowance permitted for ordinary and necessary business deduction under Section 162 of the Internal Revenue Code of 1986, as amended.

§ 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 and requirements of Lender, if any, and Owner, including but not limited to providing Owner with photographs of all materials received and stored, copies of bills of sale, insurance coverage in place for materials stored offsite, and protecting materials from theft or damage.

§ 6.6 Miscellaneous Costs

§ 6.6.1 The actual cost of premiums for that portion of insurance and bonds that can be directly attributed to this Contract, based upon such minimum limits for coverage as required by **Exhibit H** (Insurance Requirements) attached hereto, which rates shall be final for the duration of the Project (and only subject to adjustment for changes in the scope or duration of the Project).

If Owner requests, Construction Manager shall purchase Subcontractor Default insurance to cover the default of its Subcontractors, such Subcontractor Default insurance cost shall be reimbursable as Cost of the Work at the rate of one point three five percent (1.35%) of the value of the subcontracts, including the purchase orders, covered by such Subcontractor Default insurance, and Construction Manager shall not be entitled to a markup for general conditions or Fee on Subcontractor Default Insurance.

§ 6.6.2 Subject to Section 13.6 of the General Conditions, sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager 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.

§ 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.

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

§ 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 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.

§ 6.6.9 Reasonable travel expenses for travel outside of Texas pursuant to specific request by Owner, and only as approved in advance by Owner.

§ 6.7 Emergencies and Repairs to Damaged or Nonconforming Work

§ 6.7.1 Costs incurred in taking action to prevent threatened damage, injury, or loss in case of an emergency not caused by the Construction Manager, its Subcontractors, Suppliers, or anyone over whom Construction Manager has control or whom Construction Manager is responsible, affecting the safety of persons and property, as provided in Section 10.3.3 of the General Conditions.

§ 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 herein;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided for in Section 6.6;
- .3 Overhead and general expenses, except as may be expressly included in Section 6.1 herein;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .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 to the Owner as set forth in this Agreement or required by Applicable Law, including but not limited to costs for the correction of damaged, defective, or non-conforming Work, indemnity obligations, and similar costs excluded from reimbursement
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in properly approved and executed 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 reimbursed under one category of 6.1 through 6.7 shall not be reimbursed under another category.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 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 secured.

§ 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 General Conditions Costs

§ 6.10.1 Construction Manager's General Conditions expenses as identified in the General Conditions Costs shall be a lump sum amount, which is set forth in **Exhibit F** attached hereto. These expenses include rented or purchased materials and equipment used by the Contractor at the Project site office in connection with the Work, and items as set forth in **Exhibit F**. Costs which are reimbursable but not included as "Cost of the Work" in Section 6.1 shall be included by Construction Manager in its lump sum General Conditions Costs.

§ 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 accounting practices and management under this Contract and as evidence of all costs incurred. The accounting and control systems shall be subject to the approval of the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon twenty-four (24) hours' 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 no less than six (6) years after Final Payment, or for such longer period as may be required by Applicable Law.

§ 6.12 Records subject to audit, examination, and copying include, without limitation, accounting records (hard copy as well as electronic versions), written policies and procedures, bid documents, schedule analyses, Subcontract files, certified payrolls (if any), original estimates, correspondence, Change Order files, back charge logs and supporting documents, general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends, agreements, purchase orders, contracts, commitments, memoranda, and any and all other sources of information and matters that may have any bearing on or pertain to any matters, rights, duties, or obligations under or covered by any Contract Document (all the foregoing as "Records"). Records shall include all forms of materials, including hard copy, electronic, computerized, and digitized. If the final audit by Owner of the Construction

Manager's Records (and any other relevant data including correspondence, emails, and this Agreement) reveals an overcharge, including, without limitation, any untimely request for payment, the Construction Manager shall pay the Owner upon demand an amount equal to one hundred percent of such overcharge and the administrative expense incurred in determining the overcharge. Notwithstanding anything herein, if the final audit reveals an overcharge for payment in excess of one hundred thousand (\$100,000) then the Construction Manager shall, in addition to repayment of such overcharge, reimburse Owner either ten thousand dollars (\$10,000) or fifty percent (50%) of the actual cost of the audit, whichever is greater.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 PROGRESS PAYMENTS

§ 7.1.1 Based upon Applications for Payment submitted to the Owner and Architect by the Construction Manager, including, without limitation, all required supporting documentation, and Certificates for Payment issued by the Architect and approved by the Owner, 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 from the first (1st) of each month through and including the last day of such month ("**Payment Period**").

§ 7.1.3 Construction Manager shall comply with the terms and conditions set forth in Section 9.3 of the General Conditions, including by way of example, submitting to Owner the pencil draw Draft Application for Payment on or before the twenty-fifth (25th) day of the current Payment Period, with the final and complete Application for Payment due on the fifth (5th) day of the month immediately following such Payment Period.

§ 7.1.4 Provided an Application for Payment properly submitted pursuant to Section 9.3 of the General Conditions and this Agreement, is received by the Architect and the Owner not later than the fifth (5th) day following the Payment Period (the "**Submission Date**") and Architect issues a Certificate of Payment with respect to such Application of Payment pursuant to Section 9.4 of the General Conditions, the Owner shall make payments under the Certificate of Payment, as required by the Contract Documents, to the Construction Manager not later than thirty five (35) days following the Submission Date. The Owner, if the Application for Payment is not acted upon by the Architect within five (5) days of submission and the Application for Payment was timely submitted and complete and in full compliance with the provisions of the General Conditions and Construction Manager is not otherwise the cause of such delay, shall make an independent determination of the *amounts due and shall proceed with making any payment which may then be due.*

§ 7.1.5 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 reasonably required by the Owner, Architect, or Lender to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager plus any retainage applicable to previous progress payments, less (2) that portion of those payments attributable to the Construction Manager's Fee, plus (3) payrolls for the period covered by the present Application for Payment.

§ 7.1.6 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 is customary in the industry, with such changes as the Architect or the Owner may reasonably require. This schedule, unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.7 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.

§ 7.1.8 In addition to the other items required by the Contract Documents, each Application for Payment shall be accompanied by the following, all in form and substance reasonably satisfactory to the Owner:

- (a) A certification from Construction Manager certifying that:
 - (i) The Application for Payment represents the actual costs then due Construction Manager under the terms of this Agreement.
 - (ii) The Application for Payment does not include a request for payment for Work previously paid for or included in a previous Application for Payment.
 - (iii) All Work covered by the Application for Payment has been completed in accordance with this Agreement, the Specifications, Plans and Drawings, and properly approved Change Orders.
 - (iv) There are no known Mechanics' Liens outstanding at the date of the Application for Payment.
 - (v) All due and payable bills (except for amounts in dispute with Subcontractors) with respect to the Work have been paid to date or are included in the amount requested in the Application for Payment.
 - (vi) There is no known basis for the filing of any Mechanics' Liens for or relating to the Work, except for (a) unpaid bills included in the Application for Payment, all of which shall be paid from the amount due to Construction Manager with respect to the Application for Payment, or (b) amounts in dispute with Subcontractors.
 - (vii) Subject to receipt of payment, Construction Manager waives any Mechanics' Lien rights to the extent of such payment.
 - (viii) To the best of Construction Manager's knowledge, there is no default, or event, which with the passage of time or giving of notice, or both, would constitute default under this Agreement.
 - (ix) The remaining balance of the GMP is, in Construction Manager's reasonable estimation sufficient to complete construction of the remaining portion of the Work.
 - (x) Construction Manager warrants that title to all Work and materials covered by an Application for Payment shall pass to Owner upon the receipt of payment by Construction Manager, free and clear of all Mechanics' Liens, claims, security interest or encumbrances.
- (b) A duly executed and acknowledged Construction Manager's Statement showing all Subcontractors and suppliers with whom the Construction Manager has entered into trade contracts or purchase orders, the amount of each such trade contract or purchase order, and the amount requested for any Subcontractor or supplier in the Application for Payment;
- (c) Duly executed conditional waivers and releases of liens from the Construction Manager and all Subcontractors and Suppliers, as found in **Exhibit G – Lien Waivers**, which are attached hereto, or as required by Applicable Law for all Work performed, for the Payment Period covered by the applicable Application of Payment contingent only upon receipt of payment for such Work. After Pay Application Number 1 and **as a condition to receipt of payment for the next Pay Application, Construction Manager will provide Owner with Unconditional Waivers and Releases of Lien (in accordance with the forms attached as Exhibit G or in compliance with Applicable Law) from Construction Manager and all Subcontractors for the Work performed in the preceding month and for which Construction Manager received payment; and**
- (d) Such other customary information, documentation and materials as the Owner or the Architect may reasonably request, including but not limited to evidence of payment sufficient to show payment to Subcontractors of any tier and suppliers.

§ 7.1.9 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 the General Conditions;

- .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, less retainage of ten percent (10%). 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 ten percent (10%) from that portion of the Work that the Construction Manager self-performs;
- .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 the General Conditions.

All retainage hereunder may be reduced or otherwise limited at Owner's discretion, subject to any requirements of Owner's lender and the submission of lien waivers and documentation as required by Owner. Approximately every ninety (90) days, Contractor shall submit to Owner a summary of that portion of the Work that has been completed as of the submission date and Owner may, but shall not be required to, release retainage for all or some of the work.

Notwithstanding the foregoing, Owner shall not pay retainage without a fully executed final lien waiver conditioned upon payment that complies with Texas law, and Construction Manager shall provide to the Owner fully executed unconditional lien waivers as provided herein.

§ 7.1.10 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.

§ 7.1.11 Notwithstanding any of the other terms of this Section 7.1 to the contrary, if at any time during the progress of the Work or before the Final Payment is made, any Lien or claim of Lien is filed, or notification to withhold money for labor or material furnished by the Construction Manager under the Construction Documents is served on the Owner relating to any Work for which the Construction Manager has received payment under the Construction Documents, Owner shall have the right to withhold from any further payments due the Construction Manager, an amount sufficient to discharge any or all such Liens or claims to the extent the lien or claim is not secured by a bond sufficient to discharge the lien or claim. Any release or receipted voucher in settlement of such Liens or claims in form and content satisfactory to Owner, must be furnished to Owner by the Construction Manager before any money withheld may be paid to the Construction Manager. If following Owner's notice any such Lien or claim of Lien against the Project is not discharged, released or otherwise settled in a manner satisfactory to the Owner promptly following Owner's notice thereof, Owner shall have the right, but not obligation, to satisfy any and all such liens or claims from the withheld money.

§ 7.2 FINAL PAYMENT

§ 7.2.1 Final payment shall be made by the Owner to the Construction Manager when:

- (1) the Contract has been fully performed (including, without limitation, completion of punch list items and the satisfaction of the requirements set forth in Subparagraphs 9.8.1 and 9.8.2 of the General Conditions) by the Construction Manager, except for the Construction Manager's responsibility to correct nonconforming Work, if any, that has not yet been discovered and to satisfy other requirements, if any, which necessarily survive final payment;
- (2) a final Application for Payment and a final accounting of the Cost of the Work have been submitted by the Construction Manager and reviewed by the Owner's accountants and approved by the Owner as in accordance with the requirements of the Contract Documents;

- (3) final Certificate of Payment has been issued by the Architect and approved by the Owner, as in accordance with the requirements of the Contract Documents;
- (4) operations manuals, manufacturer's warranties of materials or equipment incorporated into the Project and a duly executed assignment of such warranties, in a form and substance acceptable to Owner, have been delivered to Owner; and
- (5) the Construction Manager has delivered to Owner conditional final releases of liens from the Contractor and all Subcontractors and suppliers of any tier, in the form attached as **Exhibit G** or in conformance with the requirements of Applicable Law for effective releases of lien claims regarding the Project, along with the all bills paid affidavit as set forth in the General Conditions.

Owner and its accountants shall act promptly in reviewing the foregoing information delivered by Construction Manager and Owner shall make final payment not more than thirty-one (31) days after the date the Construction Manager has met the requirements of the Contract Documents for final payment as determined by the Owner.

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

- (a) Take the sum of the Cost of the Work substantiated by the Owner's final accounting and the Construction Manager's Fee; but in no event more than the Guaranteed Maximum Price.
- (b) Subtract amounts, if any, for which the Owner or Architect withholds, in whole or in part, payment or final Certificate of Payment as provided in the Contract Documents; and
- (c) Subtract the aggregate of previous payments made by the Owner.

If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner upon demand.

The Owner's accountants will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Owner and 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 Subparagraph 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 of the General Conditions.

§ 7.2.3 If the Owner's accountants 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 proceed in accordance with Section 4.3 of the General Conditions. Unless otherwise agreed by the parties, a claims proceeding with respect to a disputed final payment amount shall be brought by the Construction Manager no later than 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to initiate such proceedings 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 undisputed amounts. **In the event of a disputed Claim by Owner against Construction Manager with respect to any amount or circumstance covered by any final Application for Payment, Owner may withhold from the Final Payment an amount not to exceed one-hundred (100%) percent of the disputed Claim.**

§ 7.2.4 No interest shall be payable to the Construction Manager on overdue amounts under any provision of the Contract Documents, except as may be required under Applicable (state) Law. Notwithstanding the foregoing, Construction Manager shall be paid interest at a rate of prime plus one percent (1%) per annum for payments made beyond the final Application for Payment due date and which were not being rightfully withheld in accordance with the Contract Documents.

§ 7.2.5 Owner may engage a title company of Owner's choice to issue an endorsement, on or before the forty-fifth (45th) day after the day on which a Notice of Completion pertaining to the Work was filed, stating that no

mechanics or materialmen's liens appear of record as a result of labor performed on or materials delivered to the Work.

§ 7.2.6 Acceptance by Construction Manager of each payment provided for in this Agreement shall be a representation by Construction Manager to Owner that all Work required by this Agreement to be performed before such payment became due has been completed by Construction Manager in accordance with the terms and conditions of this Agreement and in accordance with the Drawings and Specifications. Acceptance of Final Payment by Construction Manager, any Subcontractor, Sub-subcontractor or material supplier shall constitute a waiver of all claims by that payee, except for those claims previously made in writing and identified by that payee as unsettled at the time of Construction Manager's final Application for Payment.

§ 7.2.7 Construction Manager will, within 10 days of receipt of Final Payment, provide Owner with Unconditional Waivers and Releases of Lien (in accordance with the forms attached as Exhibit G or in compliance with Applicable Law) from Construction Manager and all Subcontractors.

ARTICLE 8

INSURANCE AND BONDS

§ 8.1 INSURANCE

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance as set forth in **Exhibit H – Insurance Requirements** attached hereto.

§ 8.2 PERFORMANCE AND PAYMENT BONDS

If requested by Owner, and prior to the commencement of the Work by the Construction Manager, the Construction Manager shall provide payment and performance bonds in the penal sum of 100% of the Guaranteed Maximum Price from a surety or sureties acceptable to the Owner for the Work. The Owner shall reimburse the Construction Manager for the cost of the premiums for the bonds upon presentation to the Owner of the actual invoice for the premium for the bonds as set forth in 6.6.1. The bond forms shall be AIA A312, or as otherwise required by Owner. The surety or sureties shall appear on Treasury Department Circular 570 with approval to issue bonds in the amount required hereunder. The Owner's receipt of the fully executed bonds is a condition precedent to the Owner's obligation to make any payments otherwise due hereunder. Any decrease in the Guaranteed Maximum Price shall not reduce the penal amount of the bond unless specifically provided for in said Change Order and Owner shall be entitled a pro rata refund of premiums paid for the bond in that event. If the surety thereon becomes insolvent or if its right to do business or license to issue bonds in the state in which the project is located is revoked, the Construction Manager shall immediately notify Owner of such event and within three (3) days following notification furnish alternative bonds in conformance with this Paragraph. If the Construction Manager fails to post replacement bonds, the Owner shall have the right, at its option, to terminate the Construction Manager for default and the Contractor and its surety shall remain liable for all obligations hereunder.

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 Section 4.3 of the General Conditions, and then if not resolved therein, through the method of dispute resolution selected in Article 15.

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, the Owner may terminate this Agreement upon not less than seven (7) days' written notice to the Construction Manager for the Owner's convenience and without cause.

§ 10.1.2

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 Owner shall pay to the Construction Manager an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1; 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. Construction Manager's recovery as expressly authorized in this Section 10.1.2 shall be Construction Manager's sole and exclusive remedy in the event of the Owner's termination of the Contract pursuant to Section 10.1.1 above.

§ 10.1.3 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.

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

§ 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 the General Conditions.

§ 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 the General Conditions shall not exceed the amount the Construction Manager would otherwise have received pursuant to Section 10.1.2 of this Agreement.

§ 10.3 SUSPENSION

The Work may be suspended by the Owner as provided in Article 14 of the General Conditions. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of the General Conditions, 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.

§ 10.4 LIMITATION OF DAMAGES UPON TERMINATION

Construction Manager agrees that, upon Construction Manager’s termination for cause (or Owner’s termination for convenience), Construction Manager’s recovery for damages and lost profits, if any, for Owner’s breach (or early termination), shall be limited as set forth in this Article 10 of the Agreement and Article 14 of the General Conditions.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in the General Conditions.

§ 11.2 OWNERSHIP AND USE OF DOCUMENTS

Section 1.5 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

§ 11.3 GOVERNING LAW

Section 13.1 of the General Conditions 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. The Construction Manager shall not assign this Agreement without the written consent of the Owner. Owner may, upon written notice to the Construction Manager and without the consent of the Construction Manager assign this Contract and Owner’s rights thereunder as provided in the General Conditions. In addition to, and without limiting its rights hereunder, Owner may upon written notice to the Construction Manager and without the consent of the Construction Manager, also assign this Contract to a parent, subsidiary, or affiliated entity of the Owner, and in addition that the Owner may assign this Agreement to a lender providing financing for the Project. Except as provided in Section 13.2.2 of the General Conditions, 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.

§ 11.5 **CONFIDENTIALITY** Construction Manager recognizes that many facts of Owner’s operations are valuable business secrets. Accordingly, Construction Manager will treat all of Owner’s data and information that become known or are made available to Construction Manager in a confidential manner. Without limiting the foregoing, Construction Manager agrees to comply with the confidentiality and non-disclosure requirements attached hereto as **Exhibit I -Non-Disclosure and Confidentiality Requirements**. The provisions of this Section shall survive the termination of this Contract. Further, the provisions of this Section shall be expressly incorporate into all agreements with Subcontractors entered into by Construction Manager in connection with the Project.

§ 11.6 ATTORNEYS’ FEES

In any dispute by the parties hereto arising out of or related to this Agreement, the party or parties whose position is selected, awarded, or successful (regardless of whether damages are awarded) will be awarded its attorneys' fees, costs, and expenses incurred in connection with the dispute. The fact finder will determine the prevailing party and award to such prevailing party, in addition to any other relief to which such party is entitled to recover, its attorneys' fees, costs, and expenses incurred in connection with the dispute.

§ 11.7 AUTHORITY OF ARCHITECT

Notwithstanding any contrary provision contained herein, no consent, decision, determination, approval or certification to be made by Architect shall be binding upon Owner unless and to the extent agreed to in writing by Owner.

§ 11.8 LENDER'S REQUIREMENTS

The Construction Manager acknowledges that the Owner is financing the Work, or any portion thereof, with a loan from Owner's lender ("Lender"). Construction Manager shall provide to the lender (or lenders) furnishing financing for the development and construction of the Project any Project information that such lender(s) or its (their) designated representatives require or any such certification that Construction Manager is obligated to provide to the Owner under the Contract Documents. The Construction Manager further agrees to execute such documents as may be reasonably required by the lender or lenders furnishing financing for the development and construction of the Project and which are consistent with commercial practices for the financing of a project of the size and scope of the Project, including but not limited to the following examples: (a) a subordination of Construction Manager's lien rights (including a lien on removables or fixtures) to any liens of the lender(s) securing any obligations arising from the Project; (b) an agreement by Construction Manager to provide notice prior to suspension of the Work or termination of the Contract by Construction Manager and providing such lender(s) with an opportunity to cure Owner's default; (c) contingent assignment of this Agreement to the lender(s) in the event of a default by Owner under this Contract or under the documents creating the loan(s) provided that Construction Manager shall not be required to perform additional work for lender unless lender has assumed responsibility for payment of such additional work; (d) an agreement by Construction Manager to certify its compliance with the Contract Documents; and (e) acknowledgment that no Change Order or Construction Change Directive resulting in a material increase to the Contract Time or Cost of the Work will be effective without the consent of such lender(s). Construction Manager shall also agree to such modifications to this Agreement as such lender(s) may reasonably require, provided the Construction Manager's costs or time of performance are not increased unless this Agreement is equitably adjusted.

§ 11.9 OTHER PROVISIONS

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

§ 11.9.2 Partial Invalidity Does Not Invalidate the Agreement. The invalidity of any part, clause, or portion of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability or effect of the remainder of the Contract Documents.

§ 11.9.3 Survival. All provisions of the Contract which by their nature survive termination of this Agreement or final completion of the Work, including without limitation, all warranties, indemnities, indemnity obligations, confidentiality obligations, and insurance requirements that extend past completion of the Work, shall remain in force and effect after final completion or any termination.

§ 11.9.4 Section References. The section headings and cross references contained in the Contract Documents are for reference purposes only and shall not affect the meaning or interpretation of the Contract.

§ 11.9.5 Owner and Construction Manager both acknowledge and agree that each has reviewed the terms of this Agreement and has had an opportunity to consult an attorney. The parties further agree that the rule of contract construction that any ambiguities are resolved against the drafting party will be subordinated to the principle that the terms and provisions of this Contract will be construed fairly as to all parties and not in favor of or against any party.

§ 11.9.6 Unless as otherwise specifically stated herein, Owner's rights under this Agreement and elsewhere in the Contract Documents, are cumulative and not in limitation of any rights of the Owner (i) granted in the Contract Documents; or (ii) at law or in equity.

ARTICLE 12

SCOPE OF THE AGREEMENT

§ 12.1 This Agreement, along with the all Exhibits attached hereto which are incorporated by reference as if fully set forth herein, and the General Conditions, and any Modifications to this Agreement represent the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

Init.

§ 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, as modified by the Parties;
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction, as modified by the Parties.
- .3 Exhibits, attached hereto and incorporated by reference as if fully set forth herein as follows:
 - Exhibit A – List of Designated Representatives and Contact Persons**
 - Exhibit B - Legal Description of Land**
 - Exhibit C - Key Personnel**
 - Exhibit D –Liquidated Damages and Critical Milestones**
 - Exhibit E – Change Order Pricing**
 - Exhibit F – General Conditions Costs**
 - Exhibit G – Lien Waiver Forms**
 - Exhibit H – Insurance Requirements**
 - Exhibit I – Non-Disclosure and Confidentiality**
 - Exhibit J – Prevailing Wage Rates (Round Rock, TX)**
 - Exhibit K – Reserved**
 - Exhibit L – City/TEDCO Contribution Cap**
 - Exhibit M – Construction Manager’s Design-Build Scope of Work**
 - Exhibit N - General Description of Project Scope and List of Plans**
- .4 Any amendments or modifications duly approved and executed and made part of this Agreement.

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

[*END OF DOCUMENT*]

EXHIBITS TO
AGREEMENT AIA / A133 - 2009

BETWEEN
Round Rock Transportation and
Economic Development Corporation

AND
Hensel Phelps

PROJECT:
The City of Round Rock Convention Center
Round Rock, TX

TABLE OF CONTENTS

Exhibit A	LIST OF DESIGNATED REPRESENTATIVES AND CONTACT PERSONS
Exhibit B	PROJECT SITE DESCRIPTION
Exhibit C	CONSTRUCTION MANAGER'S KEY PERSONNEL AND RATES SCHEDULE
Exhibit D	CRITICAL MILESTONES AND LIQUIDATED DAMAGES
Exhibit E	CHANGE ORDER PRICING
Exhibit F	GENERAL CONDITIONS COSTS
Exhibit G	LIEN WAIVER FORMS
Exhibit H	INSURANCE REQUIREMENTS
Exhibit I	NON-DISCLOSURE AND CONFIDENTIALITY REQUIREMENTS
Exhibit J	PREVAILING WAGE RATES
Exhibit K	[Reserved].
Exhibit L	THE CITY OF ROUND ROCK/TEDCO'S MAXIMUM FINANCIAL RESPONSIBILITY PURSUANT TO AGREEMENT
Exhibit M	CONSTRUCTION MANAGER DESIGNED WORK

EXHIBIT A

LIST OF DESIGNATED REPRESENTATIVES AND CONTACT PERSONS

OWNER'S DESIGNATED REPRESENTATIVES:

Travis Wilkes
Dale Hensen (KR Acquisitions/Kalahari)

An additional Owner's Designated Representative may be added and the Owner's Designated Representative may be changed, effective only upon written notice to the Construction Manager executed by the then-current Designated Representative or an officer of the Owner.

Without limiting any other provisions of the Contract Documents, all notices of claims for changes to the Contract Time or the Contract Sum, notices of all other claims by Construction Manager or its subcontractors (of any tier) against the Owner, notices of default on the part of the Owner, notices demanding action or requiring cure by the Owner, or notices of termination or required as a condition of termination shall not be effective until and unless received by Owner's Designated Representative, with a copy contemporaneously sent to and received by the following:

Laurie Hadley
221 E. Main Street
Round Rock, Texas 78664

Stephan Sheets
309 E. Main Street
Round Rock, Texas 78664

The parties further acknowledge that Owner may retain the services of one or more additional consultants to assist the Owner in connection with the Project and that, upon Owner's written direction, Construction Manager shall copy such consultants with regard to such notices or communications as directed by Owner and shall cooperate fully with such consultants and provide access to the Project as reasonably required by such consultants.

No waiver, consent or modification of the terms of the Contract or Construction Manager's obligations to perform thereunder or any other approval shall be effective or enforceable against Owner except to the extent such waiver, consent, modification or approval is in writing and duly executed by Owner's Designated Representative. Without limiting the foregoing, all Change Orders, Change Directives, and Modifications must be executed by Owner's Designated Representative.

Consistent with the foregoing, no consultant retained by Owner, including but not limited to Owner's Project Manager, shall have authority to waive, excuse, or release Construction Manager with regard to any obligation arising under the Contract or to bind Owner with regard to any matter arising under the Contract or related to the Project, except to the extent expressly authorized in writing by the Owner's Designated Representative.

Architect's Designated Representative:

Richard Johnston
Steve Valenta
HKS Architects, Inc.
350 N Saint Paul Street
Suite 100
Dallas, TX 75201

All notices and other written communications to be provided by the Construction Manager to the Architect under the terms of the Contract shall be sent to the Architect's Designated Representative noted above.

Construction Manager's Designated Representative:

Michael Orlowski
Erik LaRue
Hensel Phelps
8326 Cross Park Dr.
Austin, TX 78754

All notices to be provided to the Construction Manager under the terms of the Contract, including but not limited to all preliminary notices for claims for changes in the Contract Time or Contract Sum, all notices of claim, or other written communications that affect the Contract Time or the Contract Sum or that assert any claim by the Owner against the Construction Manager shall be sent to the Construction Manager's Designated Representative noted above.

Upon written notice signed by the current Construction Manager's Designated Representative or a duly authorized corporate officer of the Construction Manager and delivered to Owner, additional persons may be added as Designated Representatives of the Construction Manager, subject to such restrictions on their authority as specified in the written notice.

EXHIBIT B

PROJECT SITE DESCRIPTION

Lot 2, 9.476 Acres, Block C
of the Final Plat of Kalahari Resort
and Replat of Bertil Telander Subdivision

EXHIBIT C

CONSTRUCTION MANAGER'S KEY PERSONNEL AND RATES SCHEDULE

Construction Manager shall have the following Key Personnel dedicated to the Project:

Michael Orlowski (Multiple Projects)
William Higgins (Multiple Projects)
Erik LaRue
Cody Adams
Scott Sansom
Ed Kowalski

Pursuant to Sections 6.2.2 and 6.2.3 of the Agreement, wages or salaries of Construction Manager's personnel, to the extent reimbursable as Cost of the Work under the Contract Documents, shall be reimbursed based upon the following rates, subject to such Labor Burden as authorized herein:

Position	Hourly Rate
Operations Manager	\$109.38
Project Manager	\$98.17
Design Manager	\$98.17
General Superintendent	\$119.94
Project Superintendent	\$98.67
Mep Superintendent	\$98.67
Area Superintendent	\$86.38
Project Engineer	\$70.14
Vdc Engineer	\$82.24
Project Scheduler	\$82.24
Safety Manager	\$83.23
QC Manager	\$90.92
QC Engineer	\$79.22
Office Engineer	\$58.65
Chief Estimator	\$109.38
Senior Estimator	\$98.17
Estimator	\$74.57

The foregoing Wage and/or Salary rates and Labor Burden for the respective personnel or classifications of personnel performing Work or services hereunder are agreed upon and fixed, and such rates are not subject to audit. However, the time chargeable to the Project hereunder for such employees or that portion of the wages allocable to the Cost of the Work are subject to audit.

Further, the proper classification of employees charged to the Cost of the Work (when rates are based upon classification) is subject to verification as reasonably required by the Owner.

EXHIBIT D

CRITICAL MILESTONES AND LIQUIDATED DAMAGES

LIQUIDATED DAMAGES SCHEDULE

Construction Manager acknowledges the date required by the Contract Documents for the Substantial Completion of the entire Work of the Master Project (including both Convention Center Contract and Kalahari Hotel, Waterpark, and Onsite Improvements Contract) are essential to the Owner's beneficial use of the improvements to be constructed hereunder and, therefore, time is of the essence in meeting each of those dates.

Accordingly, the parties hereto expressly agree that, if the Construction Manager fails to meet such Contract Time requirements, subject to adjustments as provided in the Contract Documents, the Owner shall, as its sole remedy for delay damages arising out of the failure to meet such Contract Time requirements, be entitled to retain and/or recover from the Construction Manager, as Liquidated Damages and not as a penalty, the respective amounts set forth below, which are hereby agreed to be a reasonable estimate of damages the Owner will incur as a result of Construction Manager's failure to meet the applicable Contract Time requirements.

Liquidated Damages for the entire Work:

If the Construction Manager shall neglect, fail, or refuse to achieve Substantial Completion of the entire Work of the Master Project (including both Convention Center Contract and Kalahari Hotel, Waterpark, and Onsite Improvements Contract) by the date required below for Substantial Completion of the entire Work, subject to adjustments in the Contract Time as provided in the Contract Documents, then the Construction Manager (and the Construction Manager's Surety, if any, in the case of default) agrees to pay to the Owner as Liquidated Damages, and not as a penalty or forfeiture, the sum or sums for each day of such delay as set forth below:

Substantial Completion Date	Amount of Liquidated Damages per Calendar Day
November 1, 2020	\$50,000 per day

Notwithstanding the foregoing, Liquidated Damages shall begin on November 23, 2020, and the time between November 1, 2020 and November 22, 2020 shall be referenced as the grace period ("Grace Period").

The foregoing Liquidated Damages apply to the delivery by Construction Manager of the entire Master Project by the Substantial Completion Date listed above, taking into account the Grace Period. The parties acknowledge that the Liquidated Damages amount is a singular amount applicable to the Master Project and not to be aggregated between the Convention Center Project and Kalahari Project.

EXHIBIT E

CHANGE ORDER PRICING

1. **Change Order Pricing Methods.** Whenever Change Order proposals to adjust the Guaranteed Maximum Price become necessary, the Owner will have the right to select the method of pricing to be used by the Construction Manager in accordance with the pricing provisions found in this Section. The options for the pricing of the Subcontractors' Work will be (1) Lump Sum Change Order Proposal or (2) Cost of the Work plus Fee Change Order Proposal as defined in the following provisions:

Lump Sum Change Order Proposals. The Construction Manager (through any lower tier subcontractor) will submit a properly itemized Lump Sum Change Order Proposal covering the additional work and/or the work to be deleted. This proposal will be itemized for the various components of work and segregated by labor, material, and equipment in a reasonably detailed format reasonably satisfactory to the Owner. Consistent with the foregoing, the Owner will require itemized Change Order proposals from the Construction Manager, Subcontractors, and Sub-subcontractors regardless of tier (Downstream Subcontractors). Details to be submitted will include estimates showing materials quantity take-offs, material prices by item, and related labor hour pricing information in such detail as reasonably required by Owner in order to determine how the proposed pricing was computed. Except as otherwise provided herein, such lump sum proposals shall be based upon costs reimbursable as Cost of the Work and subject to the limitations and conditions set forth in Articles 6 and 7 of the Agreement. Notwithstanding the foregoing, agreed reimbursement rates set out in the Agreement are only applicable to the Construction Manager, and agreed reimbursement rates set out in the respective Subcontract Agreements may be used for pricing for that Subcontractor's Change Order work.

Estimated labor costs shall be based on the actual cost per hour paid by the Construction Manager (for Self-Performed Work) and the respective Subcontractors and Downstream Subcontractors for those workers who are reasonably anticipated to perform the Change Order work. Estimated labor hours shall include hours only for those workmen and supervisory personnel directly involved in performing the Change Order work.

Labor burden allowable in Change Orders for Construction Manager's Self Perform Work shall be as set forth in Article 6 of the Agreement. Labor burden allowable in Change Orders for Subcontractors and Downstream Subcontractors shall be defined as employer's net actual cost of payroll taxes (FICA, Medicare, SUTA, FUTA), net actual cost for employer's cost of union benefits (or other usual and customary fringe benefits actually paid, if the employees are not union employees), and net actual cost to employer for worker's compensation insurance.

Cost of the Work Plus Fee Change Order Proposals. As an alternative to Lump Sum Change Order Proposals, the Owner may elect to have any Change Order work performed on a time and material plus a fee basis. Upon written notice to proceed, the Construction Manager shall perform such authorized extra Work (for Construction Manager's Self Perform Work) or shall cause its Subcontractors (and their Downstream Subcontractors) to perform such authorized extra Work at actual cost for direct labor (working foremen, journeymen, apprentices, helpers, etc.), actual cost of labor burden (allowable as provided above), actual cost of material used to perform the extra work, and actual cost of rental of major equipment (without any separate charge for administration, clerical expense, general supervision or superintendent of any nature whatsoever, including general foremen, or the cost or rental of small tools, minor equipment, or plant plus the approved markup for fee or profit and general conditions costs in an amount not to exceed the percentages as set forth in Section 5.1.3 of the Agreement. Owner and Construction Manager may agree in advance in writing on a maximum price for this work and Owner shall not be liable for any charge in excess of the maximum.

2. **Computing Subcontractor Costs.** Any adjustments to Subcontracts shall, except as otherwise agreed in writing by Owner and Construction Manager, be subject to the Change Order Pricing requirements as provided herein or as may be set forth in the respective Subcontract Agreement (which, in the event of a conflict, the terms of the respective Subcontract Agreement shall control provided that Owner has approved such conflicting terms). Except as otherwise expressly agreed by the Owner, any adjustment to Subcontracts with regard to mark-ups for overhead and profit shall be subject to the limits as set forth in Section 5.1.3 of the Agreement. It is understood that the Subcontractor Change Order Pricing Requirements apply to all types of contracts and/or subcontracts specifically including lump sum (or fixed price contracts), unit price contracts, and/or cost of the work plus fee contracts with or without a guaranteed maximum price. It is further understood that these Change Order Pricing Requirements will apply to all methods of change order pricing specifically including Lump Sum Change Order Proposals, unit price Change Order Proposals (to the extent the parties agree on unit pricing), and Cost of the Work Plus Fee Change Order Proposals.
3. **Accurate Change Order Pricing Information.** Construction Manager agrees to submit accurate documentation to support any Change Order Proposals or other contract price adjustments in accordance with the terms of the Contract with respect to pricing of Change Orders.
4. **Right to Verify Change Order Pricing Information.** Construction Manager agrees that any designated Owner's representative will have the right to examine the records of the Construction Manager to verify the accuracy and appropriateness of the documentation used to price Change Order Proposals. Construction Manager shall furnish Owner with copies of all Change Orders issued to Subcontractors.
5. **Deductive Change Orders and Net Deductive Changes.** The application of the markup percentages as set forth in Section 5.1.3. of the Agreement will apply to both additive and deductive Change Orders. In those instances where a change involves both additive and deductive work, the additions and deductions will be netted and the markup percentage adjustments will be applied to the net additive or deductive amount.
6. **Change Order Proposal Time and Construction Change Directive.** The Construction Manager's proposals for changes in the Guaranteed Maximum Price or the Contract Time shall be submitted promptly but within twenty one (21) calendar days of the Owner's request unless the Owner extends such period of time due to the circumstances involved or Construction Manager, by exercising reasonable diligence, is not able to finalize such proposal within fourteen calendar days. Construction Manager shall contractually require all Subcontractors to respond to requests for pricing in conformance with the pricing requirements herein and time impact information in an accurate, diligent and prompt manner to allow for Construction Managers' compliance with the twenty one day proposal submission requirement. If such proposals are not received in a timely manner, if the proposals are not acceptable to Owner, or if the changed work should be started immediately to avoid damage to the Project or costly delay, the Owner may issue a Construction Change Directive to the Construction Manager to proceed with the changes without waiting for the Construction Manager's proposal or for the formal Change Order. The cost or credit and/or time extensions will be determined by negotiations as soon as practical thereafter and incorporated in a Change Order to the Contract. In the event that the parties are unable to agree on the amount of the cost or credit of the changed work, the provisions of Section 7.3 of the General Conditions shall apply.

EXHIBIT F

GENERAL CONDITIONS COSTS

Convention Center Project lump sum General Conditions Costs are as follows:

Supervision-	\$1,574,205
Plans and Printing-	\$2,930
Job Site Office Complex-	\$176,337
Total Lump Sum General Conditions:	\$1,753,472

EXHIBIT G

LIEN WAIVER FORMS

Construction Manager shall use the following forms of lien waivers, or any form as may be required by Applicable Law, as required by the terms of the Agreement.

[See forms on following page.]

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

Project _____

Job No. _____

On receipt by the signer of this document of a check from _____ (maker of check) in the sum of \$ _____ payable to _____ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description).

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

Date _____ (Company name)
By _____ (Signature)
_____ (Title)

STATE OF TEXAS §
 §
COUNTY OF _____ §

Before me, the undersigned authority, on this day personally appeared _____ (name), the _____ (job title) of _____ (company name), known to me to be the person whose name was subscribed to the forgoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

To certify which, witness my hand and official seal on this the ____ day of _____, ____.

NOTARY PUBLIC – STATE OF TEXAS

CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Project: _____

Job No.: _____

On receipt by the signer of this document of a check from _____ (maker of check) in the sum of \$_____ payable to _____ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description).

This release covers the final payment to the signer for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted). Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date: _____

By _____

(Company name)
(Signature)
(Title)

STATE OF TEXAS §
 §
COUNTY OF _____ §

Before me, the undersigned authority, on this day personally appeared _____ (name), the _____ (job title) of _____ (company name), known to me to be the person whose name was subscribed to the forgoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

To certify which, witness my hand and official seal on this the ____ day of _____, _____.

NOTARY PUBLIC – STATE OF TEXAS

NOTICE: This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form.

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

Project _____
Job No. _____

The signer of this document has been paid and has received a progress payment in the sum of \$_____ for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the above referenced project to the following extent: This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to _____ (or person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished. The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

Date: _____ (Company name)
By: _____ (Signature)
Its: _____ (Title)

STATE OF TEXAS §
 §
COUNTY OF _____ §

Before me, the undersigned authority, on this day personally appeared _____ (name), the _____ (job title) of _____ (company name), known to me to be the person whose name was subscribed to the forgoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

To certify which, witness my hand and official seal on this the ____ day of _____, ____.

NOTARY PUBLIC – STATE OF TEXAS

NOTICE: This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form.

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Project:
Job No. _____

The signer of this document has been paid in full for all labor, services, equipment, or materials furnished to the property on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date: _____
By: _____ (Company)
_____ (Signature)
_____ (Title)

STATE OF TEXAS §
 §
COUNTY OF _____ §

Before me, the undersigned authority, on this day personally appeared _____ (name), the _____ (job title) of _____ (company name), known to me to be the person whose name was subscribed to the forgoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

To certify which, witness my hand and official seal on this the ____ day of _____, ____.

NOTARY PUBLIC – STATE OF TEXAS

EXHIBIT H

INSURANCE REQUIREMENTS

The following insurance requirements shall apply to the Master Project (as defined in the Agreement), which includes the Convention Center, Hotel and Indoor Waterpark, and certain onsite public improvements, and all insurance shall be in place prior to commencement of construction of the Work on any part of the Master Project, unless specified otherwise by Owner. For purposes of these insurance requirements the term "Owner" whether singular or plural shall include KR Acquisitions LLC; the City of Round Rock, Texas; and Round Rock Transportation and Economic Development Corporation ("TEDCO").

A. CONSTRUCTION MANAGER INSURANCE

Construction Manager shall procure and maintain at its own expense policies of insurance of the types and in the minimum amounts as follows:

All policies above must be provided through insurers authorized to do business in the state in which the Project is located. These insurers must have an A. M. Best rating of no less than A and a financial size of VIII or more. If other contract documents require more stringent financial security criteria, the more stringent requirements shall control.

1. **COMMERCIAL GENERAL LIABILITY ("CGL")**

Construction Manager shall provide and maintain during the term of the Work and for a period not less than ten (10) years after completion of the entire Work of the Master Project (as defined in the Agreement), including any warranty periods the following commercial general liability insurance.

Commercial General Liability written on an ISO Occurrence Coverage Form CG 00 01 (or a substitute form providing equivalent coverage):

Each Occurrence – Bodily Injury / Property	\$2,000,000
Personal Injury	\$2,000,000
General Aggregate	\$4,000,000
Products/Completed Operations Aggregate	\$4,000,000

If any of the insurance required to be maintained pursuant to this Agreement contains aggregate limits which apply to the operations of the Construction Manager other than those operations which are the subject of this Agreement, and such limits are diminished or reduced below the limits required hereunder after one or more incidents, occurrences, claims, settlements or judgments against such insurance or for any other reason, then Construction Manager shall take immediate steps to restore aggregate limits or shall maintain other insurance protection for such aggregate limits.

CGL Policy must include:

- Coverage for; premises and operations; products and completed operations; contractual liability of a type that provides coverage for the indemnification clause in this Contract; personal injury liability; employees as insureds; independent contractor protective liability; incidental medical malpractice; explosion, collapse and underground damage and must include, severability of interest language. It must also include coverage for cross liability claims between Insureds.
- General Aggregate on a "per project" basis.
- Additional Insured status using forms CG 20 10 (10 01) for ongoing operations and CG 20 37 (10 01) for completed operations or their equivalent to apply for:

KR Acquisitions, LLC; KR CC, Inc.; Kalahari Management Co. LLC; the City of Round, Rock, Texas; TEDCO; and their respective subsidiaries, parents, affiliates, and the directors, officers, employees, successors and assigns of these entities, and their lender(s). Additional Insured status shall be provided during construction and for the duration of any applicable statute of limitations and statute of repose after Substantial Completion of the Project. Coverage to apply on a primary and non-contributory basis.

- Waiver of Subrogation to the fullest extent allowable by law in favor of KR Acquisitions, LLC; KR CC, Inc.; Kalahari Management Co. LLC; the City of Round Rock, Texas; and TEDCO (as defined herein above); and their respective subsidiaries, parents, affiliates, and the directors, officers, employees, successors and assigns of these entities, and their lender(s).
- Policy must not exclude coverage for Exterior Insulation and Finish Systems (EIFS).

Construction Manager must agree to provide completed operations coverage under this policy during the construction phase and for the duration of the applicable statute of limitations and statute of repose (not less than 10 years) after substantial completion of the Project.

2. AUTOMOBILE LIABILITY

Construction Manager shall provide and maintain business automobile liability insurance coverage during the term of the Work, including any warranty periods, on a standard form (approved by the Texas Department of Insurance) written to cover all owned, hired, non-owned automobiles, and motor vehicles, subject to the following minimum limits:

Combined Single Limit	\$1,000,000
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Including bodily injury/property damage arising out of the use, ownership and / or maintenance of owned, non-owned and hired vehicles. The Automobile Liability policy shall include an endorsement (form TE 0202A for Projects located in Texas or substantial equivalent for projects located in other jurisdictions) providing thirty (30) days' notice of cancellation to Owner.

Policy must include:

- Additional Insured status for: KR Acquisitions, LLC; KR CC, Inc.; Kalahari Management Co. LLC; the City of Round Rock, Texas; and TEDCO; and each of their respective subsidiaries, parents, affiliates, and the directors, officers, employees, successors and assigns of these entities, and their lender(s).
- Waiver of Subrogation to the fullest extent allowable by law in favor of KR Acquisitions, LLC; KR CC, Inc.; Kalahari Management Co. LLC; the City of Round Rock, Texas; and TEDCO; and each of their respective subsidiaries, parents, affiliates, and the directors, officers, employees, successors and assigns of these entities, and their lender(s).
- Contractual liability
- Where transportation of any hazardous materials or pollutants may be required, the Automobile Liability insurance required by this Section shall include upset and overturn coverage and a broadened pollution endorsement. MCS 90 Endorsement should be included, where applicable.

3. WORKERS COMPENSATION/EMPLOYER LIABILITY

Construction Manager shall provide and maintain during the term of the Work, including any warranty periods, Workers' Compensation Insurance Coverage [as defined in Sec. 401.011(44) of the Texas Labor Code for Projects located in the State of Texas] for all Construction Manager's workers at the site of the Project with Employer's Liability Coverage with limits of:

Each Accident	\$1,000,000
Disease Policy Limit	\$1,000,000
Disease Each Employee	\$1,000,000

Limits can be achieved via a combination of primary and excess policies.

In case any work is sublet, the Construction Manager shall require all subcontractors similarly to provide Workers Compensation insurance for all of the subcontractors' employees unless such employees are covered by the protection afforded by Construction Manager.

Policy must include:

- Waiver of Subrogation to the fullest extent allowable by law in favor of KR Acquisitions, LLC; KR CC, Inc.; Kalahari Management Co. LLC; the City of Round Rock, Texas; and TEDCO; and their respective subsidiaries, parents, affiliates, and the directors, officers, employees, successors and assigns of these entities, and their lender(s).
- 4. UMBRELLA / EXCESS LIABILITY (OCCURRENCE POLICY FORM) - MINIMUM LIMITS OF LIABILITY**

Construction Manager shall provide and maintain during the terms of the Work, including any warranty periods, excess liability coverage on a policy form acceptable to Owner, providing coverage in excess of the limits specified above. Such policy shall have the same inception and expiration dates as the underlying liability policies and coverage no less broad than those in the primary policies or program:

Each Occurrence	\$150,000,000
Aggregate	\$150,000,000

Umbrella / Excess policies must schedule as underlying policies on a "follow form" basis: General Liability / Auto Liability / Employer's Liability.

Policy must include:

- Additional Insured status must apply as shown in the underlying General Liability and Automobile policy sections of this exhibit with respect to parties and coverage. Coverage to apply on a primary / non-contributory basis.
- Waiver of Subrogation must apply to the fullest extent allowable by law in favor of those identified in the underlying General Liability, Auto and Workers' Compensation policy sections within this exhibit.
- This policy must provide that if the underlying coverage is exhausted, the excess coverage will drop down as primary insurance.
- Umbrella / Excess Liability must be maintained and must include completed operations coverage during the construction phase and for the duration of any applicable statute of limitations and statute of repose (but in no event less than 10 years) after Substantial Completion of the Project.

5. PROFESSIONAL LIABILITY

Construction Manager shall provide and maintain on an annual basis, at its expense, professional liability coverage for claims or damages arising from professional services required by or through Construction Manager for the Project. Professional liability shall be required for anyone or any entity providing Professional Services.

Minimum limits of liability are:

Each Occurrence	\$25,000,000
Annual Aggregate	\$25,000,000

Policy must:

- Cover all professional services performed on behalf of Project.
- As respects any retroactive date or prior acts exclusion to which such coverage is subject, said retroactive date must pre-date both the date upon which any services hereunder are commenced and the date of this Agreement.

- Include Waiver of Subrogation to the fullest extent allowable by law in favor of KR Acquisitions, LLC; KR CC, Inc.; Kalahari Management Co. LLC; the City of Round Rock, Texas; and TEDCO; and their respective subsidiaries, parents, affiliates, and the directors, officers, employees, successors and assigns of these entities, and their lender(s).

Professional Liability Coverage must be maintained while actual work is being performed and for the duration of the applicable statute of limitations and statute of repose (but in no event less than 10 years) after substantial completion of the project.

6. POLLUTION LEGAL LIABILITY

Construction Manager shall provide and maintain during the term of the Work and a thirty (30) day extended reporting period, pollution liability insurance coverage, **including mold coverage**, with the following minimum limits:

Each Accident	\$25,000,000
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Policy must:

- As respects any retroactive date or prior acts exclusion to which such coverage is subject, said retroactive date must pre-date both the date upon which any services hereunder are commenced and the date of this Agreement.
- Include coverage for pollution legal liability, mold, third-party claims for bodily injury and property damage; remediation costs (clean-up); and first party discovery and third party claims.
- Include Additional Insured status for KR Acquisitions, LLC; KR CC, Inc.; Kalahari Management Co. LLC; the City of Round Rock, Texas; and TEDCO; and their respective subsidiaries, parents, affiliates, and the directors, officers, employees, successors and assigns of these entities, and their lender(s). Coverage to apply on a primary and non-contributory basis.
- Be maintained while actual work is being performed and for the duration of the applicable statute of limitations and statute of repose after substantial completion of the project.

B. SUBCONTRACTOR'S INSURANCE REQUIREMENTS

All Subcontractors shall obtain and maintain the insurance policies shown above (Sections 1 through 4) with the same coverage, terms and conditions and having the same or higher limits, with the exception of the additional insured coverage form which may be provided on the current ISO form or equivalent, and the Professional Liability, Pollution Liability and Umbrella/Excess Liability Limits which are shown in the exhibit immediately below titled: SUBCONTRACTOR'S INSURANCE REQUIREMENTS EXHIBIT.

It is only with the Owner's written permission that policy limits may be lower than stated. The term "subcontractor(s)" shall include subcontractor(s) of any tier.

It is the responsibility of Construction Manager to make certain their subs are aware of and in compliance with these requirements including the provision of Additional Insured and Waiver of Subrogation status to KR Acquisitions, LLC; KR CC, Inc.; Kalahari Management Co. LLC; City of Round Rock, Texas; and TEDCO; and their respective subsidiaries, parents, affiliates, and the directors, officers, employees, successors and assigns of these entities, and their lender(s).

SUBCONTRACTOR'S INSURANCE REQUIREMENTS EXHIBIT			
TYPE	UMBRELLA/EXCESS LIABILITY	PROFESSIONAL LIABILITY	POLLUTION LIABILITY
Plumbing, Process Piping, HVAC, Fire Protection, Electrical Contractors, Tower Crane	\$8,000,000 Each Occurrence/ \$8,000,000 Aggregate (Subs in this category must have a minimum combined limit between their General Liability and Umbrella/Excess Liability policies of no less than \$10,000,000 Each Occurrence/\$10,000,000 Aggregate)	Dependent on Services to be Performed	Dependent on Services to be Preformed – Required for anyone performing work that could have an environmental impact, including but not limited to: Environmental Testing, Drilling or Excavation
Foundation, Exterior Wall Panels, Concrete, Masonry, Steel & Misc. Iron, Drywall, Elevator, Windows/Curtainwall, Roofing, Indoor Fire Places, Resort Pools, Low Voltage, Utilities, Earthwork, Flooring	\$3,000,000 Each Occurrence/ \$3,000,000 Aggregate (Subs in this category must have a minimum combined limit between their General Liability and Umbrella/Excess Liability policies of no less than \$5,000,000 Each Occurrence/\$5,000,000 Aggregate)		
Low Hazard, e.g., Painting, Doors, Appliances, Millwork, Outdoor Fireplace, Window Treatments, Final Cleaning, Signage, Trash Control, Landscaping	\$1,000,000 Each Occurrence/ \$1,000,000 Aggregate (Subs in this category must have a minimum combined limit between their General Liability and Umbrella/Excess Liability policies of no less than \$3,000,000 Each Occurrence/\$3,000,000 Aggregate)		

C. CERTIFICATES OF INSURANCE

Construction Manager shall submit to Owner a Certificate of Insurance prior to commencement of construction. Owner will have the right, but not the obligation, to prohibit entry to the Project or Project Site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by Owner.

The Certificate must show details of the coverage required (i.e., waivers, additional insureds, primary / non-contributory and, forms when specified). All policies must include and, the Certificate must show that these policies will not be materially changed, cancelled or non-renewed without thirty (30) days' prior written notice to Owner, except for ten-days advance notice for non-payment. As Construction Manager's policies renew new certificates of insurance evidencing the agreed upon coverage, terms and conditions must be provided to Owner, prior to the renewal date. At the request of the Owner, copies of full policies must be provided to the Owner.

Construction Manager shall be responsible for verifying that all subcontractor's insurance is in compliance with the insurance requirements included within this Agreement and Construction Manager is responsible

for securing Certificates of Insurance from all Subs. **The Certificate must show details of the coverage required (i.e., waivers, additional insureds, primary / non-contributory and, forms when specified).** All policies must include and, the Certificate must show that these policies will not be materially changed, cancelled or non-renewed without thirty (30) days' prior written notice to Owner. As subcontractor's policies renew new certificates of insurance evidencing the agreed upon coverage, terms and conditions must be provided to Owner, prior to the renewal date. At the request of the Owner, copies of full policies must be provided to the Owner. **Construction Manager shall deliver to the Owner a copy of such Certificates of Insurance for their subcontractors prior to commencing the Work and, a copy of all renewal certificates prior to the renewal date.**

The insurance requirements set forth in this Section are not intended and shall not be construed to modify, limit or reduce any of the Construction Manager's duties of indemnity under the Contract. If Construction Manager or its subcontractors fail to obtain or maintain the required insurance, Owner shall have the right to treat such a failure as a breach of the Contract and to exercise all appropriate rights and remedies, including contract termination.

The acceptance of delivery by Owner of any certificate of insurance evidencing the required coverages and limits does not constitute approval or agreement by Owner that the insurance requirements have been met or that the insurance policies shown in the certificates of insurance are in compliance with the requirements of this Agreement.

For any of the coverages that are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage will be provided to the Owner at each policy renewal for at least ten years.

D. BUILDER'S RISK COVERAGE

Owner shall purchase and maintain, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of at least the initial Guaranteed Maximum Price, plus value of subsequent contract modifications and cost of materials supplied or installed by others, plus the value of the contents of the Project during construction for the entire Project at the site on a replacement cost basis, including costs to cover professional fees, without deductibles greater than \$50,000 per occurrence, except that the deductible for the Cost of Correction or Making Good Amended Endorsement (U-ZBR-0307-A) can be \$100,000. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until the project has reached Substantial Completion or until no person or entity other than the Owner has an insurable interest in the property, whichever is later. This insurance shall protect the interests of the Owner(s), Construction Manager, Subcontractors of every tier in the Project. The Construction Manager and Subcontractors of every tier shall be Additional Insureds under such policies and a Waiver of Subrogation shall apply.

This property insurance shall cover portions of the Work stored off the site and also portions of the Work in Transit.

Losses or claims not paid by insurance because such losses or claims fall within the deductible shall be borne by the Construction Manager to the extent Construction Manager's or its Subcontractors' negligence caused or are responsible for the loss. Likewise, deductibles paid for losses or claims shall be paid by Construction Manager to the extent Construction Manager or its Subcontractors' negligence caused or was responsible for the loss or claim. Construction Manager's or its Subcontractors' liability for any deductible will be the lesser of \$25,000 with the exception of water damage claims which trigger the Cost of Correction or Making Good Amended Endorsement (U-ZBR-0307-A). If the Cost of Correction or Making Good Amended Endorsement is triggered for any claim relating to water damage, Construction Manager or its Subcontractors, where their negligence caused or is responsible for the loss, will be subject to a \$50,000 deductible.

Partial occupancy or use shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise.

Loss of Use Insurance - The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused.

NOTE: It is not the responsibility of the Owner to insure machinery, tools, and any equipment that will not become a permanent part of the project. Such items are not insured under the Builder's Risk Policy.

E. OTHER TERMS AND CONDITIONS APPLICABLE TO INSURANCE

1. Policies where Additional Insured and/or where Waiver of Subrogation status is required as a part of this Agreement shall extend to the full limits of liability maintained by the Construction Manager, even if those limits of liability are in excess of those required by this Agreement.

2. Insurance effected or procured by Construction Manager will not reduce or limit Construction Manager's contractual obligation to indemnify and defend Indemnitees for claims or suits which result from or are connected with the performance of this Contract.

3. All liability policies required to be furnished and maintained by Construction Manager shall be primary insurance to any other insurance that may be available to Owner and the other Indemnitees identified in the Contract. It is the intent of the parties to this Contract that all insurance coverage required herein shall be primary to and shall seek no contribution from all insurance available to Owner and such other Indemnitees, with Owner's and such other Indemnified Parties' insurance being excess, secondary, and non-contributing.

4. Requirements by lenders for this project and/or, the land owner may cause the insurance requirements within this document to be revised. However, any changes would be usual and customary to their interests and are unlikely to impact the cost of Construction Manager's insurance.

5. Except as noted otherwise, all deductibles and self-insured retention amounts in the above-described liability insurance policies shall be assumed by, for the account of, and at the sole risk of the Construction Manager or Subcontractor.

F. SURETY REQUIREMENTS

1. Construction Manager's Bonds

Construction Manager will be required to furnish a statutory payment bond and a performance bond that complies with Texas law for the Convention Center Scope of Work.

Owner, at its discretion, may require Construction Manager to furnish a statutory payment bond and a performance bond that complies with Texas law for all other scopes of Work.

2. Subcontractors' Bonds

To the extent that premium costs for payment and performance bonds furnished by Construction Manager's subcontractors are expressly reimbursable under Article 6 of the Agreement as Cost of the Work, such bonds shall be in form and substance satisfactory to the Owner and furnished prior to the commencement of construction of the Work of the respective subcontract under the Contract Documents.

a. For each subcontractor bond, Construction Manager shall obtain from each such subcontractor and the subcontractor's surety a Dual or Multiple Obligatee Rider, on a form acceptable to the Owner, naming as additional obligees the Owner's Lender, and such other persons or entities as reasonably required for Owner's financing.

b. Each such surety bond must be executed by a responsible corporate surety acceptable to the Owner, holding a current certificate of authority from the United States

Department of Treasury to issue bonds to the federal government ("Treasury Listed"), and duly licensed and authorized to issue surety bonds in the jurisdiction in which the Project is located.

c. If approved by Owner in writing, Construction Manager may instead provide Subcontractor Default Insurance as recognized in Section 6.6.1 of the Agreement. All deductibles or losses that are attributable to subcontractor default but that fall below the deductibles shall be borne by the Construction Manager.

EXHIBIT I

NON-DISCLOSURE AND CONFIDENTIALITY REQUIREMENTS

1. Construction Manager recognizes and agrees that certain financial information furnished by Owner to Construction Manager regarding the financing of the Project and the Drawings and Specifications and other Contract Documents contain and comprise proprietary information and trade secrets of the Owner, its affiliates and third parties, and that the Drawings and Specifications and other Contract Documents and such other materials and information whether or not marked or specifically identified as CONFIDENTIAL (whether provided by the Owner or its affiliates or drawn or prepared by Construction Manager or any Subcontractor [of any tier] during performance of the Work) contain and comprise proprietary information and trade secrets of the Owner, its affiliates or third parties. Such trade secrets and proprietary information shall be regarded by Construction Manager as secret and confidential and Construction Manager, except for the purpose of the Contract, shall not publish or disclose to any third party or make use of such information without prior written consent transmitted by the Owner.
2. Construction Manager will obtain written agreements from its Subcontractors (or include provisions in its subcontract agreements) providing that such Subcontractors will hold secret and confidential all information which Construction Manager is required to regard as secret and confidential under this Contract for the purpose of their work for and on behalf of Construction Manager. Construction Manager will not disclose any information which it is required to regard as secret and confidential under this Contract to any Subcontractor or other third party who has not signed a written agreement that such party will hold secret and confidential all information which Construction Manager is required to regard as secret and confidential.
3. Neither Construction Manager nor any of its Subcontractors shall publish or release any publicity or public relations materials of any kind concerning or relating to this Contract, any Work to be performed pursuant thereto, any respective Project or proposed Project of the Owner, or any other activities of the Owner, unless such materials have first been reviewed and approved in writing by the Owner. Any request by a Subcontractor for consent in this respect shall not be acceded to unless such materials have first been reviewed and approved in writing by the Owner. This includes publication to social media, the internet, or any other public forum. This provision shall not apply to mandatory reports which Construction Manager or its Subcontractors are required by law to file with governmental authorities, or as may be ordered by a Court or legally required to provide by Applicable Law. Upon any such Court order or legal requirement, Construction Manager shall promptly notify Owner so that Owner may prevent such disclosure or seek applicable legal remedies.
4. The obligations of nonpublication, nondisclosure and nonuse imposed upon the parties shall apply (irrespective of any termination of the Contract) to all information except:
 - (a) Information which at the time of supply or thereafter is in the public domain (otherwise than by any fault or omission on the part of the recipient);
 - (b) Information which at the time of supply was in the possession of the recipient and was not acquired directly or indirectly from the other party or its affiliates; and
 - (c) Information which is at any time received from a third party having a bona fide right to supply it and which (and to the extent to which) the recipient is or becomes free from all or any obligations to such third party not to disclose or use the same.
5. Upon completion or earlier termination of this Contract, Construction Manager shall promptly deliver to Owner all drawings, specifications, and other information relating to the Work with regard to all such completed or terminated Projects, and all copies thereof in Construction Manager's possession; provided however, Construction Manager may retain one complete copy of all drawings, specifications and other information.
6. Construction Manager shall not use photographs of any respective Project or the existence of this Contract for the purposes of trade advertisement, publicity material, or other publication to third parties without Owner's prior written approval thereof.

EXHIBIT J

PREVAILING WAGE RATES

[See attached.]

RESOLUTION NO. R-2016-3760

WHEREAS, Texas Government Code Chapter 2258.022 requires a City to determine the general local prevailing rate of per diem wages for each craft or type of worker in the locality in which public work is to be performed; and

WHEREAS, a City is required to: (1) conduct a survey of wages received by classes of workers employed on projects of character similar to public works contracts awarded by a City; or (2) use the prevailing wages rate as determined by the United States Department of Labor (DOL) in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a et seq.), and its subsequent amendments; and

WHEREAS, the City of Round Rock ("City") has previously used the prevailing wage rate as determined by the DOL in accordance with the Davis-Bacon Act for its public works contracts; and

WHEREAS, City staff recently conducted a survey of wages received by classes of local workers employed on projects of character similar to the City's public works projects and determined that wages received by workers employed on similar projects are consistent with wage rates published by the Texas Workforce Commission for the Austin-Round Rock Area; and

WHEREAS, the 2015 Texas Workforce Commission Wage Rates are attached hereto as Exhibit "A"; and

WHEREAS, the City finds that based upon the results of the survey conducted, it is in the best interest to adopt the wage rates set forth by the Texas Workforce Commission for the Austin-Round Rock Area as the general prevailing wage rate for the City's public works contracts; Now therefore,

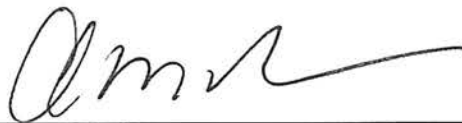
BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,

That in accordance with Texas Government Code Chapter 2258.022(a)(1), City staff conducted a survey to determine the general prevailing rate of per diem wages and has determined that the Austin-Round Rock Area wage rates published by the Texas Workforce Commission accurately reflect the general prevailing wage rates for the locality.

The City Council hereby adopts the wage rates published by the Texas Workforce Commission for the Austin-Round Rock Area, which establish the minimum rates that shall be used by all contractors or subcontractors on public works projects awarded by the City.

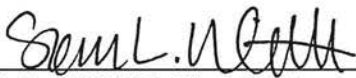
The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

RESOLVED this 8th day of September, 2016.



ALAN MCGRAW, Mayor
City of Round Rock, Texas

ATTEST:



SARA L. WHITE, City Clerk

EXHIBIT "A"

2015 ANNUAL TEXAS WORKFORCE COMMISSION WAGE RATES

Construction and Extraction Occupations	Hourly wage	\$11.92
First-Line Supervisors of Construction Trades and Extraction Workers	Hourly wage	\$20.16
Brickmasons and Blockmasons	Hourly wage	\$20.24
Carpenters	Hourly wage	\$12.42
Floor Layers, Except Carpet, Wood, and Hard Tiles	Hourly wage	\$12.74
Tile and Marble Setters	Hourly wage	\$11.79
Cement Masons and Concrete Finishers	Hourly wage	\$12.18
Construction Laborers	Hourly wage	\$10.08
Paving, Surfacing, & Tamping Equipment Operators	Hourly wage	\$11.28
Operating Engineers and Other Construction Equipment	Hourly wage	\$13.52
Drywall and Ceiling Tile Installers	Hourly wage	\$12.72
Electricians	Hourly wage	\$16.03
Glaziers	Hourly wage	\$12.51
Insulation Workers, Floor, Ceiling, and Wall	Hourly wage	\$12.67
Insulation Workers, Mechanical	Hourly wage	\$14.21
Painters, Construction and Maintenance	Hourly wage	\$11.67
Pipelayers	Hourly wage	\$12.77
Plumbers, Pipefitters, and Steamfitters	Hourly wage	\$14.39
Reinforcing Iron and Rebar Workers	Hourly wage	\$12.58
Roofers	Hourly wage	\$11.31
Sheet Metal Workers	Hourly wage	\$12.76
Structural Iron and Steel Workers	Hourly wage	\$13.50
Helpers—Brickmasons, Blockmasons, Stonemasons, and Tile and Marble Setters	Hourly wage	\$10.79
Helpers—Carpenters	Hourly wage	\$11.29

Helpers--Electricians	Hourly wage	\$11.24
Helpers--Painters, Paperhangers, Plasterers, and Stucco Masons	Hourly wage	\$10.68
Helpers--Pipelayers, Plumbers, Pipefitters, and Steamfitters	Hourly wage	\$10.57
Helpers, Construction Trades, All Other	Hourly wage	\$9.87
Construction and Building Inspectors	Hourly wage	\$20.15
Elevator Installers and Repairers	Hourly wage	\$22.36
Hazardous Materials Removal Workers	Hourly wage	\$14.15
Highway Maintenance Workers	Hourly wage	\$12.70
Septic Tank Servicers and Sewer Pipe Cleaners	Hourly wage	\$11.93
Construction and Related Workers, All Other	Hourly wage	\$13.13
Service Unit Operators, Oil, Gas, and Mining	Hourly wage	\$12.81
Earth Drillers, Except Oil and Gas	Hourly wage	\$16.02
Rock Splitters, Quarry	Hourly wage	\$10.84
Roustabouts, Oil and Gas	Hourly wage	\$11.17
Installation, Maintenance, and Repair Occupations	Hourly wage	\$12.31
First-Line Supervisors of Mechanics, Installers, and Repairers	Hourly wage	\$19.84
Computer, Automated Teller & Office Machinery Repairers	Hourly wage	\$10.44
Radio Mechanics	Hourly wage	\$11.48
Telecommunications Equipment Installers and Repair	Hourly wage	\$15.50
Avionics Technicians	Hourly wage	\$30.54
Electric, Motor, Power Tool, and Related Repairers	Hourly wage	\$13.59
Electrical and Electronic Installers and Repairers	Hourly wage	\$19.25
Electrical and Electronics Repairers, Commercial and Residential	Hourly wage	\$13.82
Electrical and Electronic Repairers, Powerhouse, Substation and Relay	Hourly wage	\$20.84
Electronic Equipment Installers and Repairers, Motor Vehicles	Hourly wage	\$12.95
Electronic Home Entertainment Equipment Installers	Hourly wage	\$10.93

Security and Fire Alarm Systems Installers	Hourly wage	\$15.47
Aircraft Mechanics and Service Technicians	Hourly wage	\$21.00
Automotive Body and Related Repairs	Hourly wage	\$14.86
Automotive Glass Installers and Repairers	Hourly wage	\$13.74
Automotive Service Technicians and Mechanics	Hourly wage	\$12.64
Bus & Truck Mechanics & Diesel Engine Specialists	Hourly wage	\$14.75
Farm Equipment Mechanics	Hourly wage	\$10.66
Mobile Heavy Equipment Mechanics, Except Engineers	Hourly wage	\$15.35
Motorcycle Mechanics	Hourly wage	\$11.07
Outdoor Power Equipment & Other Small Engine Mechanics	Hourly wage	\$11.95
Bicycle Repairs	Hourly wage	\$12.75
Tire Repairers and Changers	Hourly wage	\$10.26
Mechanical Door Repairers	Hourly wage	\$13.34
Control and Valve Installers and Repairers, Except Mechanical Door	Hourly wage	\$14.60
Heating, Air Conditioning and Refrigeration Mechanics and Installers	Hourly wage	\$14.41
Home Appliance	Hourly wage	\$13.32
Industrial Machinery Mechanics	Hourly wage	\$17.70
Maintenance Workers, Machinery	Hourly wage	\$14.54
Millwrights	Hourly wage	\$13.77
Electrical Power-Line Installers and Repairers	Hourly wage	\$17.74
Telecommunications Line Installers and Repairers	Hourly wage	\$14.32
Medical Equipment Repairers	Hourly wage	\$17.44
Precision Instrument & Equipment Repairers, Other	Hourly wage	\$14.27
Maintenance and Repair Workers, General	Hourly wage	\$11.61
Coin, Vending and Amusement Machine Servicers and Repairers	Hourly wage	\$10.73
Locksmiths and Safe Repairers	Hourly wage	\$12.69

Helpers—Installation, Maintenance and Repair Workers	Hourly wage	\$8.30
Installation, Maintenance & Repair Workers, Other	Hourly wage	\$10.50
Production Occupations	Hourly wage	\$9.92
First-Line Supervisor of Production and Operating Workers	Hourly wage	\$17.00
Coil Winders, Tapers, and Finishers	Hourly wage	\$11.69
Electrical and Electronic Equipment Assemblers	Hourly wage	\$11.78
Electrochemical Equipment Assemblers	Hourly wage	\$14.71
Structural Metal Fabricators and Fitters	Hourly wage	\$13.06
Team Assemblers	Hourly wage	\$9.95
Timing Device Assemblers, Adjuster & Calibrators	Hourly wage	\$15.98
Assemblers and Fabricators, All Other	Hourly wage	\$10.13
Computer-Controlled Machine Tool Operators, Metal and Plastic	Hourly wage	\$12.44
Numeric Tool and Process Control Programmers	Hourly wage	\$18.89
Extruding and Drawing Machine Setters, Operators	Hourly wage	\$10.93
Cutting, Punching, and Press Machine Setters, Operators	Hourly wage	\$10.29
Grinding, Lapping, Polishing, and Buffing Machine	Hourly wage	\$10.33
Lathe and Turning Machine Tool Setters, Operators	Hourly wage	\$14.17

EXHIBIT K

[RESERVED].

EXHIBIT L

THE CITY OF ROUND ROCK/TEDCO'S MAXIMUM FINANCIAL RESPONSIBILITY PURSUANT TO AGREEMENT

Construction Manager acknowledges that the Convention Center scope of Work is part of a larger Master Project, which includes the Convention Center, Hotel, Indoor Water Park, and Onsite Public Infrastructure. The Convention Center is owned by the City of Round Rock (the "City"), and the Master Project is being developed by KR Acquisitions LLC ("KRA") pursuant to a Master Development Agreement ("Master Development Agreement") between the City, TEDCO, and KRA. In accordance with the Master Development Agreement, the City/TEDCO has a maximum amount of funding to contribute to the design and construction of the Convention Center.

Construction Manager acknowledges that the City/TEDCO's total contribution to the Convention Center portion of the Master Project shall not exceed Forty Million and No/100 Dollars (\$40,000,000.00), which includes payments to HKS, Inc. ("HKS") for architectural services. The estimated total amount to be paid by the City to HKS is \$2,953,744.00. TEDCO shall pay to Construction Manager for Work under this Agreement, the difference between \$40,000,000 and the total amount due to HKS (the "City Contribution").

To the extent that the Contract Sum for the Convention Center pursuant to this Agreement exceeds the City Contribution, the amounts in excess of the City Contribution due and owing under the terms of the Agreement to Construction Manager shall be paid by KR CC, Inc. (the "KRCC Amount"). Under no circumstances shall the combined total amount of the City Contribution and KRCC Amount exceed the Guaranteed Maximum Price for the Convention Center. Notwithstanding anything to the contrary in the Agreement, Construction Manager agrees that the City/TEDCO's obligations for payment for construction of the Convention Center under the Agreement is limited to the City Contribution.

TEDCO acknowledges and agrees that any right to Liquidated Damages pursuant to this Agreement, if any, is hereby assigned to KR Acquisitions LLC and KR CC, Inc.

[SIGNATURES ON NEXT PAGE]

AGREED:

**ROUND ROCK TRANSPORTATION AND
ECONOMIC DEVELOPMENT CORPORATION**

By: Craig Morgan

Its: President

CITY OF ROUND ROCK, TEXAS

By: Craig Morgan, Mayor

**KR CC, Inc.,
a Delaware Corporation**

By: Todd R. Nelson

Its: President

**HENSEL PHELPS
a Delaware General Partnership**

By: _____

Its: _____

EXHIBIT M

CONSTRUCTION MANAGER DESIGNED WORK

Construction Manager agrees that portions of the Work may be required by the Contract to be designed and constructed by Construction Manager (the "Construction Manager Designed Work"). Construction Manager will cause the design of all Construction Manager Designed Work to be performed by one or more Subcontractors retained by Construction Manager (Design-Build Subcontractors).

Standard of Care. These Design-Build Subcontractors shall perform all professional design services required by the Contract consistent with the professional skill and care ordinarily provided by architects or engineers practicing in the same or similar locality under the same or similar circumstances, and with regard to projects of this nature, size, and complexity.

Owner-Supplied Information.

1. Owner or Architect, HKS, Inc., will provide Construction Manager with complete Project criteria, programming requirements, bridging documents, if any, and all other information reasonably necessary for Construction Manager to meet the Project requirements ("Owner-Supplied Information") in accordance with Contractor's schedule.

2. Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for Contractor's information and use the following, and which shall also be considered Owner-Supplied Information:

i. Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

ii. Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;

iii. Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Construction Manager to perform the Work;

iv. A legal description of the Site, as set forth in **Exhibit B** to the Agreement; and

v. To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Substances, in existence at the Site.

3. Construction Manager shall be entitled to reasonably rely on the accuracy of the information represented in the Owner-Supplied Information or any design specifications contained in the Owner-Supplied Information, but to the extent that Construction Manager recognizes inaccuracies or defects in such Owner-Supplied information, Construction Manager will notify Owner of same. Construction Manager shall be entitled to an adjustment in the Contract Sum, to the extent that Construction Manager incurs actual additional costs subject to the terms of the Agreement, and Contract Time to the extent Contractor's cost or time of performance have been adversely impacted by inaccurate Owner-Supplied Information, but only to the extent that the critical path is adversely impacted.

Work Product. All drawings, specifications, and other documents and electronic data furnished by Construction Manager to Owner ("**Work Product**") are deemed to be instruments of service and Owner shall be considered the owner of the instruments of service and shall have property interests therein consistent with the terms of the Agreement, including but not limited to any intellectual property rights, copyrights, and patents, subject to the Owner's payment for the instruments.

Construction Manager Performance. Subject to the Standard of Care, Construction Manager Designed work will be performed in accordance with the following requirements:

Construction Manager shall cause the respective Design-Build Subcontractor to prepare and submit to the Construction Manager and Owner and Architect for review and approval, drawings and specifications for the installation of the Construction Manager Designed Work (the "Construction Manager Designed Drawings") in accordance with the Owner-Supplied Information. The Construction Manager Designed Drawings shall be prepared and submitted in accordance with a submittal schedule established by the Contractor. The appropriate Subcontractor shall revise the Construction Manager Designed Drawings for the Construction Manager Designed Work as may be required by the Architect to conform to the Owner-Supplied Information and the Contract Documents.

Construction Manager shall cause the design of the Construction Manager Designed Work, the Construction Manager Designed Drawings, and the installation of the Construction Manager Designed Work to comply with (i) the requirements of the Contract Documents; and (ii) Applicable Law. Construction Manager shall obtain, or cause the appropriate Subcontractor to obtain all required approvals prior to the commencement of installation of the Construction Manager Designed Work.

Construction Manager and/or the Design-Build Subcontractors shall work with the Architect to coordinate the Construction Manager Designed Work with the Contract Documents; provided that, the Architect shall have overall responsibility to ensure that the Project Construction Documents, including the Construction Manager Designed Drawings are complete, fully coordinated and that the Construction Manager Designed Work interfaces properly with the other Construction Documents prepared by the Architect and the other consultants engaged by the Owner.

Neither the review nor approval by the Architect or the other consultants of the Owner with respect to the working drawings or other documents prepared by the Design-Build Subcontractor(s) hereunder shall relieve Construction Manager or the respective Design-Build Subcontractor of its obligations hereunder.

The design and engineering services required for any Construction Manager Designed Work shall be performed by person(s) or entity(ies) lawfully licensed to practice architecture or professional engineering in the state in which the Project is located and all Construction Manager Designed Drawings shall be properly sealed as required.

Except the extent cause by a Construction Manager or Design-Build Subcontractor(s) failure to comply with the Standard of Care in the performance of its professional services, the Contract Sum or Contract Time or GMP shall be adjusted to compensate Construction Manager for any changes to the Construction Manager Designed Work, including revisions to the Construction Manager Designed Drawings necessitated by the directives of the Architect or the Owner, changes to or errors in the Owner-Supplied Information or Construction Documents or the effects of any changes in the legal requirements enacted after the date of the Contract affecting the performance of the Work.