

**ADDENDUM to  
The 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  
AIA Document A133-2019**

This Addendum to the *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*, AIA Document A133-2019 ("Addendum") is entered into this 14 day of June, 2022, by and between Pogue Construction Co., L.P., (the "Construction Manager") and the Town of Prosper, Texas, (the "Owner"). This Addendum is entered into to delete from, amend, replace, modify, add to, and/or supplement the *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*, AIA Document A133-2019 (the "Agreement"), as set forth herein below.

**WITNESSETH:**

**WHEREAS**, the Owner and Construction Manager desire to enter into the Agreement for the construction of the Town of Prosper Fire Station No. 4, RFP No. 2022-46-B; and

**WHEREAS**, the Owner and Construction Manager desire to clarify and revise certain of the terms and provisions contained in the Agreement; and

**WHEREAS**, the Owner and Construction Manager would not enter into the Agreement save and except for the clarifications and revisions contained herein;

**NOW, THEREFORE, FOR AND IN CONSIDERATION** of the covenants, duties and obligations herein contained together with the covenants, duties and obligations contained in the Agreement, the parties do mutually agree that except as provided for below, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect. In the event of any conflict or inconsistency between the provisions set forth in this Addendum and the Agreement, this Addendum shall govern and control. In consideration of the foregoing, and for other good and valuable consideration, the parties agree to modify the Agreement as follows:

**I.**

The following amendments, modifications, replacements, additions, and/or deletions are hereby made to those Sections and Articles of the Agreement identified herein below as follows:

1. Section 1.1 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1 The Owner's Initial Information on which this Agreement is based is generally set forth in the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings.

2. Section 1.1.1 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.1 The Owner's program for the Project is generally set forth in the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings, and may be further explained in this Section 1.1.1, and modified and defined by and through the process set out in Section 4.1.1.

3. Section 1.1.2 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.2 The Project's physical characteristics are generally set forth in the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings, and may be further explained in this Section 1.1.2.

4. Section 1.1.3 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6, is generally set forth in the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings. The Owner's budget for the Guaranteed Maximum Price may be restated and/or further detailed in this Section 1.1.3 and may be further modified and updated by and through the processes set out in the Contract Documents.

5. Section 1.1.4 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.4 The Owner's anticipated design and construction milestone dates are generally set forth in the Owner's Request for Proposals together with any addenda thereto, if

any, and the Owner's Specifications and Drawings. The Owner's anticipated design and construction milestone dates may be restated and/or further detailed in this Section 1.1.4 and may be further modified and updated by and through the processes set out in the Contract Documents.

6. Section 1.1.5 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, if any, are generally set forth in the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings. The Owner's requirements for accelerated or fast-track scheduling, or phased construction, if any, may be restated and/or further detailed in this Section 1.1.5, and may be further modified and updated by and through the processes set out in the Contract Documents.

7. Section 1.1.6 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project, if any, is generally set forth in the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings. The Owner's anticipated Sustainable Objective for the Project, if any, may be restated and/or further detailed in this Section 1.1.6, and may be further modified and updated by and through the processes set out in the Contract Documents.

8. Section 1.1.6.1 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager will complete such other and additional documents as may be agreed to be necessary for a full and complete set of Contract Documents.

9. Section 1.1.7 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.7 Intentionally omitted.

10. Section 1.1.8 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.8 The Owner identifies the following person to initially represent the Town in accordance with Section 4.2, it being understood that such representatives shall have the authority to bind the Owner only to the extent expressly authorized by the Owner and shall have no implied authority and that the Owner reserves the right to replace and/or designate, in writing, one or more persons to represent the Owner.

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11. Section 1.1.9 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.9 Intentionally omitted.

12. Section 1.1.10 and subsections .1, .2 and .3 are hereby amended by deleting said provisions in their entirety and replacing such provisions with the following provision:

§ 1.1.10 The Owner shall retain such consultants and contractors as the Owner deems necessary, which consultants or contractors may include one or more of the following:

13. Section 1.1.13 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services is generally set forth in, or can be determined by the Construction Manager based on, the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings.

14. Section 1.1.14 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work is generally set forth in, or can be determined by the Construction Manager based on, the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings.

15. Section 1.1.15 is hereby amended by deleting said provision in its entirety.
16. Section 1.2 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.2 The Owner and Construction Manager may generally rely on the Initial Information contained in the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings. Both parties, however, recognize that such information may materially change during the development of the Guaranteed Maximum Price.

17. Section 2.1 is hereby amended by deleting the last two sentences of this section.
18. Section 2.3 is hereby amended by deleting Sections 2.3, 2.3.1 and 2.3.2 in their entirety and replacing such provisions with a new Section 2.3, a new Section 2.3.1, and a new Section 2.3.2 to read as follows:

#### § 2.3 General Conditions

The General Conditions of the Agreement shall be as set forth in AIA Document A201™-2017, *General Conditions of the Contract for Construction*, as modified by the Addendum to the *General Conditions of the Contract for Construction*, AIA Document A201-2017 (referred to collectively as the "A201-2017 Documents"), which A201-2017 Documents are incorporated herein by reference. Whenever the Agreement or this Addendum refers to AIA Document A201-2017 such reference shall also mean and include the Owner's Addendum to the *General Conditions of the Contract for Construction*, AIA Document A201-2017. The term "Contractor" as used in the A201-2017 Documents shall mean the Construction Manager.

#### § 2.3.1 Professional Services

Section 3.12.10 of the A201-2017 Documents shall apply to both the Preconstruction and Construction Phases.

### § 2.3.2 Hazardous Materials

The Construction Manager shall have no responsibility for the handling, removal, or disposal or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB), lead paint, or other hazardous materials. The Construction Manager shall have no responsibility to initially discover the presence of such hazardous materials on the project site but shall have an affirmative duty to immediately report to the Owner the existence of such materials actually known by the Construction Manager or the Construction Manager's consultants to be present on the project site. Provided, however, that these limitations shall not apply if the Construction Manager places or allows such hazardous materials to be placed on the Project site.

19. The opening paragraph of Article 3, "Construction Manager's Responsibilities," is hereby amended by amending the first sentence to read as follows:

The Construction Manager's Preconstruction Phase responsibilities are generally set forth in the Owner's Request for Proposals together with any addenda thereto, if any, the Owner's Specifications and Drawings, Sections 3.1 and 3.2 of this Agreement, and in the applicable provisions of the A201-2017 Documents.

20. Section 3.1.1 is hereby amended in part by adding the following language to the end of that section:

The Construction Manager shall certify to the Owner that the facility, to the best of his knowledge, has been constructed in accordance with the Architect's construction documents. The certification shall be in a form that is acceptable to the Owner and Architect.

21. Section 3.1.3 is hereby amended in part by adding a new section 3.1.3.4 to read as follows:

§ 3.1.3.4 During the Preconstruction Phase the Construction Manager shall review the Contract Documents to ascertain whether the components of the mechanical, electrical, and plumbing systems may be constructed without interference

with each other, or with the structural or architectural components of the Project. In the event conflicts between such systems are discovered, the Construction Manager shall promptly notify the Owner and the Architect in writing.

22. Section 3.1.3 is hereby amended in part by adding a new section 3.1.3.5 to read as follows:

§ 3.1.3.5 Notwithstanding any provision of this Agreement or the A201-2017 Documents to the contrary, the Construction Manager shall not be entitled to additional compensation for any delay or disruption to the Work arising from any conflict between the mechanical, electrical, and plumbing systems with each other, or with the structural or architectural components of the Project if such conflicts could have been discovered by the Construction Manager through the exercise of reasonable diligence and the Owner and Architect were not informed of such conflicts as required by Section 3.1.3.4. Provided, however, that this provision shall apply only with respect to conflicts appearing in the Drawings and Specifications provided for the Construction Manager's review prior to proposal of a Guaranteed Maximum Price.

23. Section 3.1.4 is hereby amended by deleting said provision in its entirety and replacing said provision with the following provision:

§ 3.1.4 When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall coordinate with the Project schedule already developed by the Architect. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; the occupancy requirements of the Owner; and the proposed dates of Substantial Completion and Final Completion. Updates shall be provided with each estimate of the Cost of the Work required by Section 3.1.6, below, and whenever changes in the proposed Work or conditions may materially alter the latest schedule.

24. Section 3.1.6.2 is hereby amended in part by adding the phrase “until such time as the Owner and the Construction Manager agree on a Guaranteed Maximum Price for the Work” at the end of the first sentence of that section.
25. Section 3.1.6.2 is hereby further amended in part by adding the phrase “to reduce the cost and/or maintain the budget” at the end of the final sentence of that section.
26. Section 3.1.11.2 is hereby amended by deleting said provision in its entirety and replacing said provision with the following provision:

§ 3.1.11.2 The Construction Manager shall seek to develop subcontractor and supplier interest in the Project. All subcontracts shall be awarded pursuant to the procedures set forth in Section 9.1.

27. Section 3.1.14 is hereby amended by deleting said provision in its entirety and replacing said provision with the following provision:

The Construction Manager's Preconstruction Phase responsibilities are generally set forth in the Owner's Request for Proposals together with any addenda thereto, if any, the Owner's Specifications and Drawings, Sections 3.1 and 3.2 of this Agreement, and in the applicable provisions of the A201-2017 Documents. Notwithstanding the foregoing, such Preconstruction Phase responsibilities may be modified by and through an amendment or change order to this Agreement and/or the Contract Documents.

28. Section 3.2.1 is hereby amended by deleting section 3.2.1 in its entirety and replacing it with a new section 3.2.1 to read as follows:

§ 3.2.1 When the Construction Drawings and Specifications are one hundred percent (100%) complete, or as otherwise agreed by the Owner and Construction Manager, the Construction Manager shall propose a Guaranteed Maximum Price, including contingencies as described in Section 3.2.4, which shall be the sum of the estimated Cost of the Work and the Construction Manager's fee. The Guaranteed Maximum Price shall be proposed no later than 30 days after approval of the Construction Drawings and Specifications by the Owner. The Guaranteed Maximum Price shall be submitted on form AIA A133-2019, Exhibit A, unless otherwise directed by the Owner.



29. Section 3.2.2 is hereby amended by deleting section 3.2.2 in its entirety and replacing it with a new section 3.2.2 to read as follows:

§ 3.2.2 To the extent that the Contract Documents 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.

30. Subsection .2 of section 3.2.3 is hereby amended by deleting said subsection in its entirety and replacing it with a new subsection .2 to read as follows:

.2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal;

31. Subsection .3 of section 3.2.3 is hereby amended by deleting said subsection in its entirety and replacing it with a new subsection .3 to read as follows:

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

32. Subsection .4 of section 3.2.3 is hereby amended by deleting the word "and" immediately following the semi-colon.

33. Subsection .5 of section 3.2.3 is hereby amended by deleting said subsection in its entirety and replacing it with a new subsection .5 to read as follows:

.5 A date by which the Owner must accept the Guaranteed Maximum Price, but in any event not less than sixty (60) days after submission of the Guaranteed Maximum Price; and

34. Section 3.2.3 is hereby amended by adding a new subsection .6 to read as follows:

.6 A statement that the proposed Guaranteed Maximum Price is not based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager on other than a fixed fee basis; and

35. Section 3.2.3 is hereby amended by adding a new subsection .7 to read as follows:

.7 If Owner requests, Construction Manager shall make available for inspection the background documents and information that form the basis of the Construction Manager's Guaranteed Maximum Price proposal.

36. Section 3.2.4 is hereby amended by deleting section 3.2.4 in its entirety and replacing it with a new section 3.2.4 to read as follows:

In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order (the "Construction Manager's Contingency").

37. Section 3.2.5 is hereby amended by adding the following sentence at the end of section 3.2.5 to read as follows:

The Owner shall be allowed not less than sixty (60) days after receipt to review and take action on the Construction Manager's Guaranteed Maximum Price proposal.

38. Section 3.2.9 is hereby amended by deleting section 3.2.9 in its entirety and replacing it with a new Section 3.2.9 to read as follows:

§ 3.2.9 The Guaranteed Maximum Price shall include no amount for sales or use taxes for which Texas municipal corporations are exempt and for which the Owner has timely provided to the Construction Manager an appropriate tax exemption certificate or other required verification of the Owner's tax-exempt status. Such taxes shall not be reimbursable costs under Article 7.

39. Section 3.2 is hereby amended by adding a new Section 3.2.10, a new Section 3.2.11, and a new Section 3.2.12 to read as follows:

§ 3.2.10 Except with the Owner's prior written consent, the Construction Manager shall not include any allowances in its proposed Guaranteed Maximum Price.

§ 3.2.11 By its submission of a Guaranteed Maximum Price proposal, the Construction Manager agrees that any applicable buy-out savings, discounts, rebates, refunds,

unused allowances, other amounts received from the sale of surplus materials and equipment, and other cost savings shall be returned to the Owner without sharing with the Construction Manager, unless the Owner specifically agrees otherwise in writing. Savings shall be identified and submitted with each application for payment submitted by Construction Manager and shall be fully reconciled with the Construction Manager's submission of the final payment application.

§ 3.2.12 The Construction Manager is discouraged from seeking bidder's interest or entering into a transaction with a "related party," as that term is defined by Section 7.8.1, below. If the Construction Manager, nonetheless, concludes that it may be in the Owner's best interest to seek bidder's interest or enter into a transaction with a related party, then the Construction Manager shall comply with Section 7.8.2, below, before seeking bidder's interest or entering into a transaction with a related party.

40. Section 3.3.1.1 is hereby amended by deleting section 3.3.1.1 in its entirety and replacing it with a new section 3.3.1.1 to read as follows:

§ 3.3.1.1 The Construction Phase shall commence upon the issuance to the Construction Manager of the Notice to Proceed for all or a portion of the Work.

41. Section 3.3.1.2 is hereby amended by deleting section 3.3.1.2 in its entirety and replacing it with a new section 3.3.1.2 to read as follows:

§ 3.3.1.2 The Contract Time shall be measured from the date of commencement of the Construction Phase.

42. Section 3.3.1 is hereby amended by adding a new section 3.3.1.3 and a new section 3.3.1.4 to read as follows:

§ 3.3.1.3 The Construction Manager shall achieve Substantial Completion of the entire Work not later than the date set out in the Agreement, subject to adjustment of this Contract Time as provided in the Contract Documents.

§ 3.3.1.4 The Construction Manager and the Construction Manager's surety shall be liable for and shall pay to the Owner the sums hereinafter stipulated as liquidated damages for each calendar day of delay until the Work is substantially complete: One Thousand and No/One Hundredths Dollars

(\$1,000.00) per day or part of a day pursuant to and in accordance section 6.1.6, below.

43. Section 3.3.2.2 is hereby amended by deleting section 3.3.2.2 in its entirety and replacing it with a new section 3.3.2.2 to read as follows:

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of the A201-2017 Documents.

44. Article 3, "Construction Manager's Responsibilities," is hereby amended by adding a new section 3.4 to read as follows:

§ 3.4 The Construction Manager shall be responsible for all construction surveys and staking. Dimensions of Work shall not be determined by scale or rule but figured dimensions shall be followed at all times. The Construction Manager shall compare all drawings and verify all dimensions and shall take any and all measurements necessary to verify the Drawing dimensions in relation to conditions already established at the Project site before laying out the Work. Any discrepancy will be immediately called to the attention of the Architect and Owner by the Construction Manager. The Construction Manager will be held responsible for subsequent errors which could have been avoided.

45. Section 4.1.2 is hereby amended by deleting section 4.1.2 in its entirety and replacing it with a new section 4.1.2 to read as follows:

§ 4.1.2 This Project is a public project governed by Chapter 2253 of the Texas Government Code. Prior to the Owner's execution of the Guaranteed Maximum Price Amendment, the Owner acting by and through the Town Council of the Town of Prosper, Texas, approved the Owner's execution of the Guaranteed Maximum Price Amendment and authorized the expenditure of funds up to, and set aside funds in an amount not to exceed the full amount of the Guaranteed Maximum Price Amendment for the Construction Manager's full and complete performance of the Project in strict accordance with the Contract Documents.

46. Section 4.1.3 is hereby deleted in its entirety.

47. Section 4.1.6 is hereby deleted in its entirety.

48. Section 4.2 is hereby amended by deleting section 4.2 in its entirety and replacing it with a new section 4.2 to read as follows:

§ 4.2 Owner's Designated Representative

The Owner is the Town of Prosper, Texas, acting by and through its Town Council, and is referred to throughout the Contract Documents as if singular in number. The Owner may designate in writing one or more persons to represent the Owner; however, such representatives shall have the authority to bind the Owner only to the extent expressly authorized by the Owner and shall have no implied authority.

49. Section 4.2.1 is hereby deleted in its entirety.

50. Section 4.3 is hereby amended by deleting section 4.3 in its entirety and replacing it with a new section 4.3 to read as follows:

§ 4.3 Architect

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

51. Article 4, "Owner's Responsibilities," is hereby amended by adding a new section 4.4 to read as follows:

§ 4.4 Inspection and Testing

The Owner shall provide or contract for, independently of the Construction Manager, the inspection services, the testing of construction materials engineering and the verification testing services necessary for acceptance of the Work by the Owner. Notwithstanding the foregoing, the Construction Manager shall be responsible for the performance of all energy inspections.

52. Section 5.1.1 is hereby amended by inserting the following language in the space, provided for such purpose, following the parenthetical at the end of section 5.1.1:

Compensation for the pre-construction services described in Sections 3.1 and 3.2 is separate from and in addition to the compensation described in Section 6.1, provided however, if

the Construction Phase does not commence for any reason, the Construction Manager's compensation for the services described in Sections 3.1 and 3.2 shall be a total amount not to exceed Fifteen Thousand and No/One Hundredths Dollars (\$ 15,000.00).

53. Section 5.1.2 is hereby deleted in its entirety.

54. Section 5.1.2.1 is hereby deleted in its entirety.

55. Section 5.1.3 is hereby amended by inserting the following phrase in the corresponding spaces provided for such purpose between the phrase "extend beyond" and the phrase "months of" in section 5.1.3:

"Six (6) calendar"

56. Section 5.2.2 is hereby amended by deleting section 5.2.2 in its entirety and replacing it with a new section 5.2.2 to read as follows:

§ 5.2.2 Payments are due and payable 30 days from the date the Construction Manager's application for payment, approved by the Architect, is received by the Owner. Past due payments shall bear interest in accordance with the Texas Prompt Payment Act. No interest shall ever be due on any disputed amounts.

57. Section 6.1.1 is hereby amended by deleting section 6.1.1 in its entirety and replacing it with a new section 6.1.1 to read as follows:

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

58. Section 6.1.2 is hereby amended by deleting section 6.1.2 in its entirety and replacing it with a new section 6.1.2 to read as follows:

The Construction Manager's fee shall be based on one (1) and Seventy-Four/One Hundredths percent (1.74%) of the actual Cost of the Work as defined in Article 7 and less any applicable buy-out savings, discounts, rebates, refunds, unused allowances, other amounts received from the sale of surplus materials and equipment, and other cost savings.

59. Section 6.1.3 is hereby amended by deleting section 6.1.3 in its entirety and replacing it with a new section 6.1.3 to read as follows:

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work shall be by formal written Change Order approved by the Owner.

60. Section 6.1.4 is hereby amended by deleting section 6.1.4 in its entirety and replacing it with a new section 6.1.4 to read as follows:

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work shall be no more than ten percent (10%) of the subcontractor's cost, for overhead, and shall be no more than five percent (5%) of the subcontractor's cost, for profit:

61. Section 6.1.5 is hereby amended by deleting section 6.1.5 in its entirety and replacing it with a new section 6.1.5 to read as follows:

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed Twenty-Five Thousand and No/100 Dollars (\$25,000.00).

62. Section 6.1.6 is hereby amended by deleting Section 6.1.6 in its entirety and replacing it with a new Section 6.1.6 to read as follows:

§ 6.1.6 Liquidated Damages for Failure to Complete on Time.

North Central Texas Council of Governments Standard Specifications for Public Works Construction Standards ("NCTCOG Specifications") Item 108.8, Delays; Extension of Time; Liquidated Damages shall apply, except to the extent it is conflict with, or is otherwise amended by, this Section 6.1.6. The Construction Manager understands and agrees that time is of the essence in performing and completing the Work. The Owner and Construction Manager acknowledge that the actual damages the Owner may sustain if the Construction Manager fails to complete the Work on time are uncertain and will be difficult to ascertain. Consequently, the Construction Manager agrees to pay to the Owner the sum of One Thousand and No/One Hundredths Dollars (\$ 1,000.00) for each calendar day or part of a calendar day that completion of any Work required under the Contract Documents is overdue. This amount is payable as reasonable and just compensation for failure to complete the Work on time. This



amount is payable as liquidated damages and not as a penalty.

63. Section 6.1.7 is hereby amended by deleting Section 6.1.7 in its entirety and replacing it with a new Section 6.1.7 to read as follows:

**§ 6.1.7 Delays: Extension of Time: Liquidated Damages**

In addition to the requirements of NCTCOG Specifications Item 108.8 Delays; Extension of Time; Liquidated Damages, the following provisions shall be applied to Item 108.8 and be incorporated in to the NCTCOG Specifications as Item 108.8.2:

**"108.8.2 Unforeseeable Cause**

The term "unforeseeable cause" as it is used in Item 108.8 shall mean:

1. An act of God in the form of unusually severe weather conditions, including storms, flood, fire, or similar event, that could not have been anticipated or guarded against and which materially affects the Work site, including access or egress thereto;
2. A riot or war situation actually involving the site or actually preventing the Construction Manager from working on the site, but not including any situation involving suppliers off site other than those essential suppliers as supplied to OWNER;\* or
3. An epidemic, pandemic, or quarantine restrictions that actually involves the site and actually prevents the Construction Manager and the Construction Manager's employees and subcontractors from physically working on the site, but not including any situation involving Construction Manager's employees, subcontractors, and suppliers off site other than those essential suppliers as supplied to OWNER,\* and then only to the extent that:
  - a. Construction Manager promptly reports the epidemic, pandemic, or quarantine restrictions to the Owner in writing within five (5) business



days after the epidemic, pandemic, or quarantine restrictions first impact the site;

- b. Construction Manager identifies and tracks the work that was prevented from being performed in accordance with the Construction Manager's Gantt Chart for each day lost together with the number of Construction Manager's employees and subcontractors assigned to the performance of such work that were prevented from physically working on the site as a direct result of the epidemic, pandemic, or quarantine restrictions; and
  - c. The Construction Manager uses its best efforts to identify and hire employees and subcontractors to continue the performance of the Work and fully documents such efforts to perform the work to the extent reasonably practicable given the limitations imposed by the epidemic, pandemic, or quarantine restrictions that impact the site.
4. An unanticipated strike involving the forces actually working on the Project or involving the employees of those essential suppliers,\* but no other labor stoppage.

\* The Construction Manager must identify its essential suppliers in writing within five (5) business days of the Notice to Proceed. Any supplier that is not so identified shall not be considered an essential supplier justifying an extension of time for a delay caused by an Unforeseeable Cause.

No event shall be deemed an Unforeseeable Cause for the purposes of this Agreement unless it actually and directly necessitates a delay in the Work which could not be otherwise remedied by taking reasonably prudent steps, and the Construction Manager could not reasonably adjust the schedule of the remaining Work to deal with, make up for, or otherwise work around the delays resulting from the Unforeseeable Cause(s)."

64. Section 6.1 is hereby amended by adding a new Section 6.1.8 to read as follows:

§ 6.1.8 Claims for Additional Time.

The Construction Manager shall be entitled to an extension of the contract time for delays or disruptions due to unusually severe weather in excess of that normally experienced at the job site only as determined from climatological data set forth in this subsection. The Construction Manager shall bear the entire economic risk of all weather delays and disruptions and shall not be entitled to any increase in the Guaranteed Maximum Price by reason of such delays or disruptions. Rainy days shall not be considered an abnormal or adverse weather condition for which an extension of time will be granted unless and except in those months during which the actual cumulative number of rainy days within the month exceed the historical average cumulative number of rainy days for said month, provided that the rainfall prevented the execution of major items of work on normal working days. A rain day is defined as a day when rainfall exceeds one-tenth (.1) inch during a twenty-four (24) hour period. The historical number of Weather Days per calendar month is as follows, based upon regional weather data from the National Weather Service (Dallas / Fort Worth, TX Weather Forecast Office):

Average Weather Days per Month

Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sept.	Oct.	Nov.	Dec.
3	2	3	2	4	3	3	2	3	3	2	2

The number of rain days shown in the Rainfall Table for the first and last months of this Agreement will be prorated in determining the total number of rain days expected during the period of this Agreement. Time extensions may also be granted for any day following a period of precipitation during which muddy conditions exist and prevent performance of major items of work conducted on normal working days, which muddy conditions are subject to confirmation by the Owner.

Requests for an extension of time pursuant to this subsection shall be promptly submitted to the Owner and no later than fourteen (14) days after the event(s) giving rise to such claim. The notice shall, in writing, specify the nature and duration of

the delays or disruptions and the anticipated effect such weather days will have on the Construction Manager's abilities to perform its obligations along with a plan to deal with the effects of such weather days and proposed amendments to all affected schedules and the Gantt Chart necessarily resulting therefrom. Failure to timely submit a complete notice of claim for delays and extension of time for completion due to abnormal or adverse weather conditions or rainy days pursuant to this subsection shall result in the denial of a request for extra time for performance under the Contract Documents. In the event of such failure, no adjustment shall be made to the Guaranteed Maximum Price, and the Construction Manager shall not be entitled to claim or receive any additional compensation as a result of or arising out of any delay resulting in the adjustment of the working time, due to any of the factors outlined within this subsection.

No payment, compensation, or adjustment of any kind (other than the extensions of time provided for in the Contract Documents) shall be made to the Construction Manager for damages because of hindrances or delays from any cause other than intentional interference of the Owner, whether such hindrances or delays be avoidable or unavoidable, and the Construction Manager agrees that he will make no claim for compensation, damages or mitigation of liquidated damages for any such delays."

65. Section 6.3.3 is hereby amended by deleting section 6.3.3 in its entirety and replacing it with a new section 6.3.3 to read as follows:

§ 6.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "costs" and "fee" as used in Article 7 of the AIA A201-2017 Documents shall have the meanings assigned to them in the AIA A201-2017 Documents and shall not be modified by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts subject to the written approval of the Owner.

66. Section 6.3.5 is hereby amended by deleting Section 6.3.5 in its entirety and replacing it with a new Section 6.3.5 to read as follows:

§ 6.3.5 In the case of changes in the Work, the fee will be adjusted as provided for in Section 6.1, if both parties agree that the scope of services has changed significantly. No change in the Work, whether by way of alteration or addition to the Work, shall be the basis of an addition to the Guaranteed Maximum Price or a change in the Contract Time unless and until such alteration or addition has been authorized by a written change order executed and issued in accordance with and in strict compliance with the requirements of the Contract Documents. This requirement is of the essence of the Contract Documents. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is in fact any such unjust enrichment, shall be the basis for any claim to an increase in the Guaranteed Maximum Price or change in the Contract Time.

67. Section 7.2.4 is hereby amended by deleting Section 7.2.4 in its entirety and replacing it with a new Section 7.2.4 to read as follows:

§ 7.2.4 Costs paid or incurred by the Construction Manager for payroll taxes, insurance, and customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3, and provided that such costs are directly attributable to work performed on this Project only and percentages of such wages and salaries as set forth in the staff rate sheet provided by Construction Manager for each employee of Construction Manager working on the Project.

68. Section 7.3 is hereby amended by deleting the last four (4) words “subcontracts and this Agreement” and replacing that phrase with the phrase “Guaranteed Maximum Price Amendment.”

69. Section 7.4.2 is hereby amended by deleting Section 7.4.2 in its entirety and replacing it with a new Section 7.4.2 to read as follows:

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Construction Manager’s property at the completion of the Work and the actual cost of such excess

materials as was originally billed to Owner shall be credited to the Owner as a deduction from the Cost of the Work.

70. Section 7.5 is hereby amended by deleting Sections 7.5.4, 7.5.5 and 7.5.6 in their entirety, and replacing Section 7.5.4 with a new Section 7.5.4 to read as follows:

§ 7.5.4 Costs of document reproductions; facsimile transmissions to the extent only that information being transmitted via facsimile cannot be transmitted via email or some Internet protocol; long-distance telephone calls with third-parties unrelated to CMAR; postage and parcel delivery charges for bulky items that cannot be transmitted electronically via email or some Internet protocol; one hard-wired (or "landline") telephone at the site, if necessary, and a pro rata portion of wireless telephone service expenses to the extent only that such wireless telephones are required for use on this Work Site and then only to the extent actually used for the Project; and, reasonable petty cash expenses of the site office subject to Owner's approval of the basis or justification for any and all expenses having a cumulative total in excess of \$100.00 in any month.

71. Sections 7.6.1.1 and 7.6.1.2 are hereby deleted in their entirety.

72. Section 7.6.2 is hereby amended by deleting Section 7.6.2 in its entirety and replacing it with a new Section 7.6.2 to read as follows:

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work, for which the Construction Manager is liable, and that are not permanently installed in the Work.

73. Section 7.6.4 is hereby amended by deleting Section 7.6.4 in its entirety and replacing it with a new Section 7.6.4 to read as follows:

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.4.3 of AIA Document A201-2017 or by other provisions of the Contract Documents.

74. Sections 7.6.5 through 7.6.11 are hereby deleted in their entirety.

75. Section 7.7.1 is hereby amended by deleting Section 7.7.1 in its entirety and replacing it with a new Section 7.7.1 to read as follows:

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

76. Sections 7.7.3 and 7.7.4 are hereby deleted in their entirety.
77. Section 7.8.2 is hereby amended by adding the following sentence to the end of that Section: "Transactions with a related party based on any method of compensation other than a lump sum are prohibited."
78. Section 7.9.1 is hereby amended by deleting the phrase "The Cost of the Work shall not include the items listed below" and replacing it with the phrase "The Cost of the Work shall exclude items including, but not limited to, those items listed below."
79. Section 7.9.1 is hereby amended, in part, by deleting Section 7.9.1.6 in its entirety and replacing it with a new Section 7.9.1.6 to read as follows:

§ 7.9.1.6 Costs due to the negligence of the Construction Manager, the Construction Manager's Subcontractors or suppliers, or the failure of the Construction Manager or the Construction Manager's Subcontractors or suppliers to fulfill a specific responsibility to the Owner set forth in this Agreement.

80. Section 8.1 is hereby amended by deleting the first sentence in its entirety.
81. Article 8, "Discounts, Rebates and Refunds," is hereby amended, in part, by inserting the following provision as a new Section 8.3:

§ 8.3 Costs of inspections and testing of work ordered by the Contractor where the work was not performed or completed in accordance with the scheduling of such inspections and testing and the inspection or testing lab is not notified shall be credited to the Owner as a deduction from the Cost of the Work.

82. Section 9.1 is hereby amended by deleting section 9.1 in its entirety and replacing it with a new section 9.1 to read as follows:

§ 9.1 All portions of the Work, other than minor work, site clean-up, etc. ("General Conditions"), shall be performed by trade contractors or subcontractors, including the Construction Manager, who have been selected using competitive bids or competitive sealed proposals. With the

Owner's approval, the Construction Manager shall publicly advertise and solicit either competitive bids or competitive sealed proposals in accordance with the policies and procedures approved by Owner. The Construction Manager shall include specific notices of the following statutory requirements in the information to bidders:

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

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

.3 A notice of the sales tax exemption for the project and the procedure for obtaining any required exemption verification or certificates.

Nothing herein shall prevent the Construction Manager from including other notices required or allowed by law. On all portions of the Work for which the Construction Manager does not submit a bid or proposal, the Construction Manager and the Owner shall receive and open all trade contractor and subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process. On any portion of the Work for which the Construction Manager submits a bid or proposal, the Owner shall receive and open the trade contractors', subcontractors' and Construction Manager's bids or proposals, but shall not disclose the contents of the bids or proposals until the selection process therefore is completed. All bids or proposals shall be made public within seven (7) days after the date of final selection.

83. Section 9.1.1 is hereby amended by deleting section 9.1.1 in its entirety and replacing it with a new section 9.1.1 to read as follows:

§ 9.1.1 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, and (4) offers the best value to the Owner, 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.

84. Section 9.2 is hereby amended by deleting Section 9.2 in its entirety and replacing it with a new section 9.2 to read as follows:

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

85. Section 11.1.3 is hereby amended by deleting Section 11.1.3 in its entirety and replacing it with a new Section 11.1.3 to read as follows:

§ 11.1.3 The Owner will pay an approved Application for Payment within thirty (30) days after the date such approved Application for Payment is received by the Owner from the Architect. Notwithstanding the foregoing the Owner shall not be required to pay any disputed amounts that the Owner believes were erroneously approved by the Architect. Past due payments and any disputed amounts shall bear interest in accordance with the Texas Prompt Payment Act.

86. Section 11.1.4 is hereby amended by adding the following sentence at the end of Section 11.1.4 to read as follows:

Each Application for Payment shall be accompanied by a release of claims and liens in the form acceptable to the Owner.

87. Section 11.1.5 is hereby amended by deleting Section 11.1.5 in its entirety and replacing it with a new Section 11.1.5 to read as follows:



§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work. The Construction Manager's Contingency and the Construction Manager's Fee shall be shown as separate individual items. Construction Manager shall use AIA Document G702 for Application and Certificate for Payments and shall use AIA Document G703 for necessary continuation sheets related to AIA Document G702, or shall use such documents in a similar format approved by the Owner.

88. Section 11.1.5.1 is hereby amended in part by deleting the second sentence and replacing said sentence with a new sentence to read as follows:

The schedule of values, once approved by the Owner, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

89. Section 11.1.5.3 is hereby amended by deleting Section 11.1.5.3 in its entirety and replacing it with a new Section 11.1.5.3 to read as follows:

§ 11.1.5.3 When the Construction Manager allocates costs from the Construction Manager's Contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect and the Owner. Similarly, when the Construction Manager shifts costs from one line item to one or more different line items in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect and the Owner.

90. Section 11.1.7.1.3 is hereby deleted in its entirety.

91. Section 11.1.7.2.2 is hereby amended by deleting Section 11.1.7.2.2 in its entirety and replacing it with a new Section 11.1.7.2.2 to read as follows:

§ 11.1.7.2.2 The amount, if any, for Work that remains uncorrected and for which the Owner or Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017;

92. Section 11.1.7.2.4 is hereby amended by deleting Section 11.1.7.2.4 in its entirety and replacing it with a new Section 11.1.7.2.4 to read as follows:

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

93. Section 11.1.8 is hereby amended by inserting the following phrase in the corresponding spaces, provided for such purpose, immediately after the phrase “as retainage, from the payment otherwise due”:

“Retainage shall be five percent (5%).”

94. Section 11.1.8.2 is hereby deleted in its entirety.

95. Section 11.1.7.7 is hereby amended by deleting Section 11.1.7.7 in its entirety and replacing it with a new Section 11.1.7.7 to read as follows:

§ 11.1.7.7 The Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate of Payment as provided in Section 9.5 of the A201-2017 Documents;

96. Article 11, “Payments for Construction Phase Services,” is hereby amended by adding a new section 11.1.11 to read as follows:

**§ 11.1.11** In conjunction with any application for payment submitted by the Construction Manager, the Construction Manager shall comply with the release, lien waiver and other documentation requirements set forth in, but not limited to, §9.3.3 and §9.10.2 of the A201-2017 Documents.

97. Section 11.2.1.1 is hereby amended by deleting the phrase “AIA Document A201-2017” and replacing it with the phrase “A201-2017 Documents.”

98. Section 11.2.2 is hereby amended by deleting the phrase “AIA Document A201-2017” and replacing it with the phrase “A201-2017 Documents” in both the second and third sentences of said section.

99. Section 11.2.3 is hereby amended by deleting the phrase “A201-2017” at the end of the first sentence and replacing it with the phrase “A201-2017 Documents.”

100. Article 11, “Payments for Construction Phase Services,” is hereby amended by adding a new Section 11.2.5 to read as follows:

**§ 11.2.5** The Contract shall not have been fully performed until all work required by the Construction Documents including but not limited to the following have been performed:

- .1 provision of record or as-built drawings executed or complete in both “.dwg” and “.tiff” formats;
- .2 provision of executed or complete certificates of documents evidencing warranties and owner-operators manuals;
- .3 provision of all documents evidencing required testing, inspection, verification and other engineering or consulting services required under the construction contract;
- .4 insuring agreements and bonds covering all periods of construction and any subsequent periods required under the contract.

101. Article 12, entitled “Dispute Resolution,” including all Sections thereof is hereby deleted in its entirety and replaced with a new Article 12 also entitled “Dispute Resolution” to read as follows:

**§ 12.1** All disputes arising out of this Agreement shall be resolved in accordance with the provisions of Article 15 of the A201-2017 Documents.

102. Article 13, entitled “Termination or Suspension,” including all Sections and Subsections thereof is hereby deleted in its entirety and replaced with a new Article 13 also entitled “Termination or Suspension” to read as follows:

### **ARTICLE 13 TERMINATION OR SUSPENSION**

**§ 13.1** Prior to execution by both parties of the Guaranteed Maximum Price Amendment, the Owner may terminate this agreement, with or without cause, at any time upon twenty-four hours’ notice. In the event such termination is for the convenience of the Owner, the Construction Manager shall be compensated for all Preconstruction Phase services actually performed prior to receipt of notice of termination, not to exceed the compensation set forth in Section 4.1.1.

**§ 13.2** Following execution by both parties of the Guaranteed Maximum Price Amendment, the Owner may terminate this

agreement, with or without cause, at any time. In the event such termination is for the convenience of the Owner, the Construction Manager shall be compensated for reasonable costs incurred prior to notice of termination, profits on only that portion of the work actually performed prior to termination, and reasonable demobilization costs.

**§ 13.3** Following execution by both parties of the Guaranteed Maximum Price Amendment, if the Project work is stopped for a period of ninety days through no act or fault of the Construction Manager, then the Construction Manager may, upon ten additional days written notice to the Owner, terminate this agreement and recover from the Owner payment for all work actually performed, for any loss sustained upon any materials, tools, equipment, and machinery, and profits on only that portion of the work actually performed prior to termination. If the cause of the work stoppage is removed prior to the end of the ten-day notice period, the Construction Manager may not terminate this agreement.

**§ 13.4** The Owner or the Construction Manager may terminate this agreement for cause as provided in Article 14 of the A201-2017 Documents.

103. Section 14.2, "Successors and Assigns," is hereby deleted in its entirety and replaced with a new Section 14.2, "Successors and Assigns," to read as follows:

**§ 14.2 Successors and Assigns**

The parties' rights with respect to assignment of this Agreement shall be in accordance with Article 13.2 of the General Conditions, AIA A-201-2017.

104. Section 14.3, entitled "Insurance and Bonds," is hereby deleted in its entirety and replaced with a new Section 14.3 also entitled "Insurance and Bonds" to read as follows:

**§ 14.3 Insurance and Bonds**

For all phases of the Project, the Construction Manager shall purchase and maintain insurance and shall provide bonds in accordance with the Contract Documents and the Request for Proposals.

105. Section 14.4 is hereby deleted in its entirety and replaced with a new Section 14.4, "Conflict of Interest," to read as follows:

**§ 14.4 Conflict of Interest**

**§ 14.4.1** Construction Manager covenants and agrees that Construction Manager and its associates and employees will have no interest, and will acquire no interest, either direct or indirect, which will conflict in any manner with the performance of the services called for under this Agreement. All activities, investigations and other efforts made by Construction Manager pursuant to this Agreement will be conducted by employees, associates or subcontractors of Construction Manager.

**§ 14.4.2** In addition, to the extent that this Agreement (a) must be approved by the Town's governing body before it may be signed or (b) has a value of \$1,000,000, or more, Construction Manager shall comply with the requirements of Texas Government Code § 2252.908 by completing and submitting Form 1295 to the Texas Ethics Commission ("Commission") at the time Construction Manager submits this signed Agreement to Owner, and as follows:

Form 1295 Filing Process: The Commission has made available on its website a new filing application that must be used to file Form 1295. The Construction Manager must use the application to enter the required information on Form 1295 and print a copy of the completed form, which will include a certification of filing that will contain a unique certification number. An authorized agent of the Construction Manager must sign the printed copy of the form and complete the "unsworn declaration" which includes, among other things, the date of birth and address of the authorized representative signing the form. The completed Form 1295 with the certification of filing must be filed with the Owner.

The Owner must notify the Commission, using the Commission's filing application, of the receipt of the filed Form 1295 with the certification of filing not later than the 30th day after the date the Agreement binds all parties to the Agreement. The Commission will post the completed Form 1295 to its website within seven business days after receiving notice from the Owner.

Form 1295 Availability: Certificate of Interested Parties Form is available from the Texas Ethics Commission website at the following address:

<https://www.ethics.state.tx.us/filinginfo/1295/>

For questions regarding and assistance in filling out Form 1295, please contact the Texas Ethics Commission at 512-463-5800.

106. Section 14.5 is hereby deleted in its entirety and replaced with a new Section 14.5, "Prohibition on Contracts with Companies Boycotting Israel," to read as follows:

**§ 14.5 Prohibition on Contracts with Companies Boycotting Israel.**

In accordance with Chapter 2270, Texas Government Code, a Texas governmental entity may not enter into an agreement with a company for the provision of goods or services unless the agreement contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement.

Chapter 2270 does not apply to: (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) a contract that has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless the Construction Manager is not subject to Chapter 2270 for the reasons stated herein, the signatory executing this Agreement on behalf of the Construction Manager verifies by its signature on this Agreement that the Construction Manager does not boycott Israel and will not boycott Israel during the term of this Agreement.

107. Article 14, entitled "Miscellaneous Provisions," is hereby further amended by adding a new Section 14.6, "Prohibition on Contracts with Companies Boycotting Energy Companies," to read as follows:

**§ 14.6 Prohibition on Contracts with Companies Boycotting Energy Companies.**

In accordance with Senate Bill 13, 87th Leg., R.S., to be codified in Chapter 2274, Texas Government Code, a Texas governmental entity may not enter into a contract with a company for the provision of goods or services unless the

contract contains a written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract.

Chapter 2274 does not apply to: (1) a company that has fewer than ten (10) full-time employees; or (2) a contract that has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless the Construction Manager is not subject to Chapter 2274 for the reasons stated herein, the signatory executing this Agreement on behalf of the Construction Manager verifies by its signature on this Agreement that the Construction Manager does not boycott energy companies and will not boycott energy companies during the term of this Agreement.

108. Article 14, entitled "Miscellaneous Provisions," is hereby further amended by adding a new Section 14.7, "Prohibition on Contracts with Companies Boycotting any Firearm Entity or Firearm Trade Association," to read as follows:

**§ 14.7 Prohibition on Contracts with Companies Boycotting any Firearm Entity or Firearm Trade Association.**

In accordance with Senate Bill 19, 87th Leg., R.S., to be codified in Chapter 2274, Texas Government Code, a Texas governmental entity may not enter into a contract with a company for the provision of goods or services unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against any firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against any firearm entity or firearm trade association.

Chapter 2274 does not apply to: (1) a company that has fewer than ten (10) full-time employees; or (2) a contract that has a value of less than One Hundred Thousand Dollars (\$100,000.00). In addition, this provision does not apply to: (1) a contract with a sole-source provider; or (2) a contract for which the governmental entity did not receive any bids from a company that is able to provide the required written verification. Unless the Construction Manager is not subject to Chapter 2274 for the reasons stated herein, the signatory executing this Agreement on behalf of the Construction Manager verifies by its signature on this Agreement that the



Construction Manager does not boycott any firearm entity or firearm trade association and will not boycott any firearm entity or firearm trade association during the term of this Agreement.

109. Article 15, entitled "Scope of the Agreement," including all Sections and Subsections thereof is hereby deleted in its entirety.

## **II.**

In the event of conflict in the language of the Agreement and this Addendum, the terms of this Addendum shall be final, controlling and binding upon the parties. Where a portion of the Agreement is not amended, replaced, modified and/or supplemented by this Addendum, the unaltered portions of the Agreement shall remain in full force and effect.

## **III.**

This Addendum, when combined with the Agreement contains the entire agreement between Owner and Construction Manager with respect to the subject matter hereof, and except as otherwise provided herein cannot be modified without written agreement of the parties. Said Agreement shall be fully effective as written except that it shall be read as if the foregoing deletions, modifications and additions were incorporated therein word for word.

## **IV.**

This Addendum and the Agreement are entered into subject to the Prosper Town Charter and ordinances of Town, as same may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable State of Texas and federal laws. Construction Manager will make any and all reports required per federal, state or local law including, but not limited to, proper reporting to the Internal Revenue Service, as required in accordance with Construction Manager's income. Situs of this Contract is agreed to be Collin County, Texas, for all purposes, including performance and execution.

## **V.**

If any of the terms, provisions, covenants, conditions or any other part of this Addendum are for any reason held to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants, conditions or any other part of this Addendum shall remain in full force and effect and shall in no way be affected, impaired or invalidated.



**VI.**

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Addendum may be waived without written consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Addendum.

**VII.**

For purposes of this Addendum, including its intended operation and effect, the parties (Owner and Construction Manager) specifically agree and contract that: (1) the Addendum only affects matters/disputes between the parties to this Addendum, and is in no way intended by the parties to benefit or otherwise affect any third person or entity notwithstanding the fact that such third person or entity may be in contractual relationship with Owner or Construction Manager or both; and (2) the terms of this Addendum are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either Owner or Construction Manager.

**IN WITNESS WHEREOF**, the parties hereto have set their hands by their representatives duly authorized on the day and year first written above.

**OWNER:**

**TOWN OF PROSPER, TEXAS**

By: \_\_\_\_\_  
Harlan Jefferson, Town Manager

Date Signed: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Michelle Lewis Sirianni, Town Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Terrence S. Welch, Town Attorney

**CONSTRUCTION MANAGER:**

**POGUE CONSTRUCTION CO., LP**

a Texas Limited Partnership, acting by and  
through Ben Pogue, LC, a Texas Limited  
Liability Company, General Partner



By: \_\_\_\_\_  
Ben Pogue, President/Chief Executive  
Officer of Ben Pogue, LC, a Texas Limited  
Liability Company

Date Signed: 01/7/2022

THE STATE OF TEXAS,  
COUNTY OF COLLIN

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared Harlan Jefferson, Town Manager of the **TOWN OF PROSPER**, a Texas Municipal Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he has executed the same on the Town's behalf.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE \_\_\_\_  
DAY OF \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public Denton County, Texas  
My commission expires \_\_\_\_\_

THE STATE OF TEXAS,  
COUNTY OF Collin

This instrument was acknowledged before me on the 7 day of June, 2022, by Ben Pogue, in his capacity as President/Chief Executive Officer of Ben Pogue, LC, a Texas Limited Liability Company, General Partner of **Pogue Construction Co., LP**, a Texas Limited Partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that Ben Pogue is the President/Chief Executive Officer of Ben Pogue, LC, a Texas Limited Liability Company, which is the General Partner of **Pogue Construction Co., LP**, a Texas Limited Partnership, and that he executed the same on behalf of and as the act of Ben Pogue, LC, General Partner of **Pogue Construction Co., LP**.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 7  
DAY OF June, 2022.



Maria Carolina Haylow  
Notary Public 130232050 County Collin  
My commission expires 5/19/23