

AIA® Document C171™ – 2013

Standard Form of Agreement Between Owner and Program Manager for use in a Multiple Project Program

AGREEMENT made as of the « 27th » day of «October» in the year
«TWO THOUSAND TWENTY-ONE»
(In words, indicate day, month and year.)

BETWEEN the Program Manager’s client identified as the Owner:
(Name, legal status, address and other information)

«Frisco Independent School District»
«5515 Ohio Drive »
«Frisco, Texas 75035 »
«Phone: 469.633.6000 »
«E-mail: _____ »

«Frisco Community Development Corporation»
«6101 Frisco Square Blvd »
«Frisco, Texas 75034-4420 »
«Phone: 972-292-5105 »
«E-mail: _____ »

«City of Frisco»
«George A. Purefoy Municipal Center »
«6101 Frisco Square Blvd »
«Frisco, Texas 75034 »
«Phone: 972-292-5105 »
«E-mail: _____ »

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

«CBRE Heery, Inc.
2100 McKinney Ave., Suite 700
Dallas, Texas 75201
«Phone: 214.979.6100»
«E-mail: _____ »

for the following Program (“Project”):
(Name, location, and detailed description of the group of buildings and/or site
improvement projects included in the Program)

«Frisco Performing Arts Center and Parking Garage - Frisco, Texas»

The Owner and Program 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.

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

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NOTE: Any reference hereinafter this one, to an AIA™ Document or any AIA Documents included in the Contract Documents shall refer to such document “as modified for this Project”. In addition, any reference to AIA Documents shall all be considered to have included the Trademark “™” after the AIA reference, whether or not included in the text. The AIA Documents are registered intellectual property of the American Institute of Architects. No use may be made of this AIA document other than as Contract Documents for this Project.

ARTICLE 1 PROGRAM INFORMATION AND INITIAL INFORMATION

§ 1.1 This Agreement is based on the Program Information and Initial Information set forth in Sections 1.2 and 1.3.

§ 1.2 Program Information

This Project is for the construction of a minimum 1,250 seat main performance hall, but not to exceed 1,500 seats (the “Performance Hall”) and a minimum of a 250 seat community venue, but not to exceed 350 seats (the “Community Venue”), with ancillary and support structures, and entertainment uses and related infrastructure improvements for the benefit of the public as further designed by the parties and a parking garage containing a minimum of 1,100 structured parking spaces that will provide at least the minimum required public parking for the Performing Arts Center (the “PAC”) and parking spaces to be leased to HP Frisco Holdings, LLC, or its affiliate (“Hall”) (the “Parking Garage”).

The Project will be comprised of four condominium units that will consist of: (i) a unit for the Performance Hall to be owned by Fisd (the “Performance Hall Unit”); (ii) the Community Venue to be owned by the City (the “Community Venue Unit”) (the common elements supporting the “Performance Hall Unit” and the “Community Venue Unit” will be owned jointly by the City and Fisd); (iii) 200 full time public parking spaces in the Parking Garage to be owned by the City and/or FCDC (the “200 Parking Unit”); and (iv) 900 parking spaces in the Parking Garage to be used for private and public parking to be owned by the City and/or FCDC (the “900 Parking Unit”) (collectively the “Units” or the “Development”).

The Project will be a condominium project comprised of the Units and will be subject to the Master Condominium Declaration (as defined below). The respective owners of each Unit are referred to as a Unit Owner or Unit Owners.

Each Unit will include such Unit’s respective undivided ownership interest in and to the master common elements (the “Master Common Elements”), as further set forth in that certain Master Condominium Declaration for the

Development to be recorded in the Official Public Records of Collin County, Texas (as amended from time to time, the “Master Condominium Declaration”) to create the master condominium (the “Master Condominium”). Each Unit Owner within the Master Condominium shall be a member of a mandatory condominium association (the “Master Association”) created to administer and manage the Master Condominium, including the Master Common Elements, and exercise those rights arising on behalf of the Unit Owners under the Master Condominium Declaration and Legal Requirements (as further defined in the Master Condominium Declaration), including but not limited to Chapter 82 of the Texas Property Code, more commonly known as the Texas Uniform Condominium Act governing the creation and administration of condominium regimes in the State of Texas. The Master Condominium Declaration and such other instruments creating and governing the Master Association and the operation and administration of the Master Condominium shall be collectively referred to herein as the “Master Condominium Documents.”

§ 1.2.1 Preliminary description of the projects comprising the Program:

(Identify proposed use, size, or other known information for each project in the Program.)

« addressed above »

§ 1.2.2 Location of each project in the Program:

« addressed above »

§ 1.2.3 Preliminary assessment of the condition of existing facilities or sites, if any:

(Identify or describe written reports of the conditions of existing facilities or sites.)

«See information in Section 1.2.1. »

§ 1.2.4 Funding source:

(Identify anticipated funding sources, and deadlines or schedules related to funding, as well as whether funding is authorized.)

«The parties agree and acknowledge that compensation under this Agreement are PAC Facilities Costs under that certain Master Development Agreement for Facilities and Related Improvements (the "MDA"), as amended, entered into by and among the City, FCDC, FISC, and Hall. The parties agree and acknowledge that FISC shall have no financial obligations associated with the Parking Garage including maintenance and operation costs after completion. »

§ 1.2.5 The Owner’s budget for the Program, including the budgets for each project in the Program:

(Provide the Owner’s total budget for the Program and, if known, a line-item breakdown of all costs described in Section 3.4.1.)

«Owner’s budget for the Program is currently estimated to be ONE HUNDRED MILLION DOLLARS (\$100,000,000). »

§ 1.2.6 The Owner’s intended procurement or delivery methods for design and construction of the projects in the Program.

Per the MDA, the Architect must be an architectural firm experienced in the design of performing arts and entertainment facilities of the nature contemplated herein (the “Architect”) who shall have the primary responsibility for the design of the PAC and the Parking Garage and shall be engaged by *the City and FISC (the "Public Entities")* , as applicable, on or before January 3, 2022.

Per the MDA, following the selection of the Architect, the Public Entities and the FCDC will select and retain, within six months, a construction manager at risk (the “CMAR”) to provide preconstruction services during the development of the PAC Plans and the Parking Garage Final Plans (as applicable, the “CMAR Contract”).

«Subject to the Owner’s Board of Trustees’ determination of best value for the project. »

§ 1.2.7 Anticipated scheduling information:

(Include overall Program duration and milestones. If known, include proposed dates for commencement and completion of design, commencement and completion of construction, occupancy, and any other critical scheduling information for each project in the Program.)

.1 Anticipated dates of Program commencement and completion:

.1 Commencement of design, if other than the date of this Agreement:

«_____»

.2 Completion of design:

«April 30, 2023 »

.3 Commencement of construction

«April 30, 2023 »

.4 Completion of construction

«October 15, 2024 »

.2 Other Program scheduling information:

«_____»

§ 1.2.8 Other information regarding the Program:

The PAC shall be open and available to the general public in accordance with the terms of the Master Condominium Documents and at such times, subject to any required fees for entry, rental, during which the PAC is open and in operation, except for those limited times when portions of the facility are used for anything other than as a multi-purpose venue to attract the public for entertainment, social, and educational events and related uses.

«_____»

§ 1.3 Initial Information

(Insert the requested Initial Information below. For information that is not to be provided, insert a statement such as “not applicable,” “unknown at time of execution” or “to be determined later by mutual agreement.”)

§ 1.3.1 The Owner will retain the following consultants and contractors:

(List name, discipline, address and other information. If the Owner will retain a consultant or contractor for some, but not all, projects in the program, indicate the project(s) for which the consultant or contractor is retained.)

«To be determined in accordance with the MDA. »

§ 1.3.2 The Program Manager will retain the consultants identified in Sections 1.3.2.1 and 1.3.2.2:

§ 1.3.2.1 Consultants retained under Basic Services:

(List name, discipline, address and other information. If the Program Manager will retain a consultant for some, but not all, projects in the program, indicate the project(s) for which the consultant or contractor is retained.)

«None. »

§ 1.3.2.2 Consultants retained under Additional Services:

(List name, discipline, address and other information. If the Program Manager will retain a consultant for some, but not all, projects in the program, indicate the project(s) for which the consultant or contractor is retained.)

«None. »

§ 1.3.3 The Owner identifies the following representative in accordance with Section 5.4: Representatives for each Owner will be designated through a separate notice. This Section 1.3.3 will be supplemented by the City, FCDC, and FISD within 30 days of the date of this Agreement through a written notice to the parties.

<< _____ >>
<< _____ >>

«§ 1.3.4 The persons or entities, in addition to the Owner’s representative, who are required to review and approve the Program Manager’s submittals to the Owner are as follows:
(List name, address and other information.)

<<None. >>

§ 1.3.5 The Program Manager identifies the following representative in accordance with Section 2.4; provided, however, this Section 1.3.5 will be supplemented by Program Manager within 30 days of the date of this Agreement through a written notice to the parties:
(List name, address and other information.)

<< _____ >>
<< _____ >>
<< _____ >>
<< _____ >>
<< _____ >>
<< _____ >>

§ 1.3.6 Other Initial Information on which the Agreement is based:

«The Program Manager will act as a key management and technical consultant on program-wide management, implementation, and technical issues. The Program Manager will provide program-wide services including but not limited to overall program management, program review and evaluation, review cost estimates received, program scheduling, value engineering, procurement evaluation, project analysis, cost-benefit analyses, constructability reviews, claims analysis and negotiation, construction inspection and analysis, and program reports. The Program Manager will provide full and comprehensive project management services with personnel who maintain appropriate licenses that meet State requirements. »

§ 1.4 The Owner and Program Manager may rely on the Program Information and Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Program Manager shall appropriately adjust the schedules, and the Program Manager’s services.

ARTICLE 2 PROGRAM MANAGER’S RESPONSIBILITIES

§ 2.1 The Program Manager shall provide the services as set forth in this Agreement.

§ 2.1.1 To the extent of any conflict between the terms of this Agreement or any related Contract Documents, the terms specifying the greater quality or quantity will control; provided, however, to the extent of any conflict between the terms of this Agreement and the MDA, the MDA will control as to the obligations and agreements among the City, FCDC, and FISD. The foregoing reference to conflicts and the MDA is not intended to affect the rights, remedies or obligations of Program Manager under this Agreement.

§ 2.2 The Program Manager shall perform its services consistent with the skill and care ordinarily provided by program managers practicing in the same or similar locality under the same or similar circumstances. The Program Manager shall perform its services as expeditiously as is consistent with such skill and care and the orderly progress of the Program.

§ 2.3 Upon written request of the Owner, the Program Manager will remove from the Program any employee of the Program Manager to whom the Owner makes a reasonable objection. The Program Manager shall replace any such employee with an equally or greater qualified employee in a timely manner.

§ 2.4 The Program Manager shall identify a representative authorized to act on behalf of the Program Manager with respect to the Program.

§ 2.5 Except with the Owner's knowledge and consent, the Program Manager shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Program Manager's judgment with respect to the Program.

§ 2.6 The Program Manager shall provide its services in cooperation with the services provided by the Owner and the Owner's consultants and contractors and shall coordinate its services with those services provided by the Owner and the Owner's consultants and contractors. The Program Manager shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants and contractors. The Program Manager shall provide prompt written notice to the Owner if the Program Manager becomes aware of any error, omission or inconsistency in such services or information.

§ 2.7 The Program Manager shall maintain the following insurance for the duration of this Agreement plus one (1) year. No deletions or restrictions from coverage are allowed without the approval of Owner.

§ 2.7.1 Commercial General Liability with policy limits of «ONE MILLION DOLLARS» (\$«1,000,000.00») for each occurrence and TWO MILLION (\$2,000,000.00) in the aggregate for bodily injury and property damage. Commercial General Liability with policy limits of «TWO MILLION DOLLARS» (\$«2,000,000.00») annual products-completed operations aggregate and «ONE MILLION DOLLARS» (\$«1,000,000.00») in the aggregate for personal and advertising injury. The Owner shall be included as an additional insured on the Program Manager's Commercial General Liability policy. Commercial General Liability insurance shall cover liability including, but not limited to, liability arising from premises, operations, independent contractors, products-completed operations, property damage, personal injury, and contractual liability specifically in support of, but not limited to, the indemnity section of this Agreement and all other insurable provisions of this Agreement. Excess liability or umbrella insurance coverage of not less than ONE MILLION DOLLARS (\$1,000,000.00) unless Commercial General Liability limits of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00) or more for each occurrence can be provided as a substitute for the Excess Liability requirement.

§ 2.7.2 Automobile Liability covering owned, hired, and non-owned automobiles operated by the Program Manager with policy limits of «ONE MILLION DOLLARS» (\$«1,000,000.00») combined single limit and aggregate for bodily injury and property damage. The Owner shall be named as an additional insured on the Program Manager's Automobile Liability policy.

§ 2.7.3 The Program Manager may use umbrella or excess liability insurance to achieve the required coverage for Commercial General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies. The Owner shall be included as an additional insured on the Program Manager's umbrella or excess insurance policy.

§ 2.7.4 Workers' Compensation at statutory limits and Employers' Liability insurance in the amount of «ONE MILLION DOLLARS» (\$«1,000,000.00») for each employee for bodily injury by accident, «ONE MILLION DOLLARS» (\$«1,000,000.00») each employee for bodily injury by disease, and «ONE MILLION DOLLARS» (\$«1,000,000.00») per disease aggregate policy limit, or within the statutory limits, whichever is greater. Program Manager will provide and maintain this coverage and waive subrogation in favor of the Owner.

§ 2.7.5 Professional Liability covering the Program Manager's negligent acts, errors and omissions in its performance of services with policy limits of «THREE MILLION DOLLARS » (\$ «3,000,000.00 ») per claim and THREE MILLION DOLLARS (\$3,000,000.00) in the aggregate.

§ 2.7.6 Program Manager shall procure and maintain crime insurance with a policy limit of ONE MILLION DOLLARS (\$1,000,000). The policy shall include coverage for all directors, officers, agents and employees of Project Manager and shall include the Owner as loss payee. Policies shall provide coverage for computer crime/fraud.

§ 2.7.7 The Program Manager shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.7. The certificates will show the Owner as an additional insured on the Commercial General Liability, Automobile Liability, and umbrella or excess policies.

§ 2.7.8 The Program Manager will require the Program Manager's consultants to provide insurance in the amounts listed in this Article 2.

§ 2.7.9 The required insurance must be written by a company licensed to do business in Texas at the time the policy is issued. In addition, the company must be acceptable to the Owner.

§ 2.7.10 Insurance provided pursuant to this Article shall be considered a part of the Program Manager's Basic Services and shall not be a Reimbursable Expense under this Agreement.

§ 2.7.11 For the sake of clarity and the avoidance of doubt, the Additional Insureds and Indemnitees shall be included as additional insureds on all insurance policies procured by Program Manager except Worker's Compensation/Employer's Liability and Professional Liability by endorsements approved by Owner.

§ 2.7.12 Program Manager's insurance shall not be called upon to respond to or cover the negligence or willful misconduct of Owner or any Additional Insured.

ARTICLE 3 SCOPE OF PROGRAM MANAGER'S BASIC SERVICES

§ 3.1 General

§ 3.1.1 The Program Manager's Basic Services consist of those described in this Article 3. The Program Manager shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Program Manager shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs employed in connection with the construction of the projects in the Program, nor shall the Program Manager be responsible for the failure of the Owner's consultants or contractors to perform services for, or the construction of, a project in accordance with the plans, specification or other contract or legal requirements. The Program Manager shall be responsible for the Program Manager's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Owner's consultants or contractors.

§ 3.1.2 The Program Manager shall periodically review the development of the design for each project in the Program and provide recommendations for systems, materials, equipment and techniques that are utilized to achieve the Design Standards established pursuant to Section 3.3.4. The Program Manager shall provide advice on construction feasibility, availability of materials and labor, and procurement and time requirements for installation and construction.

§ 3.1.3 The Program Manager shall determine the need for retaining consultants to provide professional and other services for each project in the Program, and assist the Owner in reviewing qualifications and selecting any such consultants.

§ 3.1.4 The Program Manager shall assist the Owner in selecting the services of independent testing laboratories, review their reports and make recommendations to the Owner.

§ 3.1.5 The Program Manager shall assist the Owner in reviewing the qualifications of, and in selecting and retaining the CMAR and any other contractors for each project in the Program.

§ 3.1.6 The Program Manager shall assist the Owner in reviewing the qualifications of, and in selecting and retaining architects for each project in the Program.

§ 3.1.7 The Program Manager shall assist the Owner in managing the Owner's consultants including architecture, geotechnical testing, material testing, civil, surveyor, etc.

§ 3.1.8 The Program Manager shall assist the Owner in establishing building information modeling and digital data protocols for the projects in the Program as appropriate.

§ 3.1.9 Program Manager shall at all times adequately staff the Program with a Program Management Team and appropriate administrative support as necessary to fulfill all obligations under this Agreement. Membership of this team will be stable, and any proposed personnel changes must be approved in advance by Owner's Representative. The Program Management Team will work directly with the Owner's Representative throughout the Program and will keep the Owner's Representative and any other designated representatives apprised of Program progress.

§ 3.1.10 Program Manager shall assist the Owner in making presentations and answering questions from project stakeholders, and shall provide updates to the Owner to be uploaded on the to the Owner's website for public information.

§ 3.1.11 Program Manager shall put in place a system of weekly updates and reporting to the Owner's Representative to keep Owner informed of Program status and issues requiring attention.

§ 3.1.12 Program Manager shall, at all times, represent, protect, and defend Owner interests in all interactions with construction contractors and suppliers, design professionals and other third-party contractors, consultants, or professionals.

§ 3.2 Program Management Plan

§ 3.2.1 In order to ascertain the requirements of the Program, the Program Manager shall review and discuss with the Owner the Program Information and Initial Information, along with any other information listed below to be furnished by the Owner. The Program Manager and the Owner shall discuss the feasibility of incorporating sustainable objectives in the Program.

(List other information to be furnished by the Owner.)

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§ 3.2.2 The Program Manager shall develop and document a Program Management Plan reflecting the scope and related requirements of the Program and submit the Program Management Plan to the Owner for approval. The Program Management Plan shall include a description of, and requirements pertaining to, the following:

- .1 Program management approach and organization, including executive, management and team staffing plan and responsibilities;
- .2 Program planning and development activities, including strategic planning, prioritizing, and defining scope, schedule and budget of the projects in the Program;
- .3 Program management controls, including scope, budget/cost, schedule, and quality management plan;
- .4 Procurement strategies and procedures, including strategy for procurement of design services and construction; procedures for pre-purchase of material, systems, and equipment; evaluating and approving substitutions;
- .5 Authorization processes and procedures, including administrative approval processes and responsibilities, and key documentation for: professional services and preconstruction services; processes and procedures for project construction procurement, such as award, contracting, notice to proceed, change orders, payment certification; and project closeout;
- .6 Program communication procedures, including systems, meetings, reporting, investigation, and records;
- .7 Development of design process guidelines, including assessment, prioritization, project scope definition, design development, coordination, and permit process;
- .8 Development of construction process guidelines, including preconstruction and construction administration services, construction phase processes and procedures, program coordination, change order management, commissioning, and project closeout procedures; and
- .9 Project acceptance and turnover guidelines relating to contract completion and closeout management, including record documentation, manuals and warranties.

§ 3.2.3 The Program Manager shall obtain the Owner's approval of the Program Management Plan, and any subsequent revisions to the Program Management Plan. The Program Manager shall meet with the Owner to discuss the Program Management Plan and any necessary revisions at intervals appropriate to the progress of the work, but not less than once each calendar month.

§ 3.3 Information Management and Standards

§ 3.3.1 **Program Management Information System.** The Program Manager shall implement and, for the duration of the Program, maintain and upgrade as necessary a web-based Program Management Information System to be used to receive, distribute, and maintain Program Reports, Program Schedules, and other information, reports and documentation as agreed by the Owner and the Program Manager. Activities under the Program will be scheduled and documented through the Program Management Information System. The Program Management Information System shall organize information by project, activity, or relevant categories, as determined by the Program

Manager and Owner. The Program Manager shall collect information pertaining to the Program, and update the Program Management Information System on a weekly basis unless otherwise agreed. The Program Management Information System shall contain, at a minimum, current status on contracts, budget, schedule and quality on a Program and project basis.

§ 3.3.2 The Owner shall have access to all information in the Program Management Information System. Other Program and project participants shall have access to specific information only as approved by the Owner. Upon the completion of each project in the Program, the Program Manager shall preserve the documentation and information contained in the Program Management Information System and provide a copy to the Owner.

§ 3.3.3 The Program Manager shall develop protocols and standards for the exchange and use of information in digital form to be integrated into the Program Management Information System. The Program Manager shall provide information to the Owner and the Owner's consultants and contractors, as required for the duration of the Program, regarding the use of the Program Management Information System.

§ 3.3.4 **Design Standards.** The Program Manager shall assist the Owner, and Owner's Design Manager, if any, in developing and periodically updating Design Standards for the Owner's approval. The Design Standards shall provide a functional, aesthetic, and quality framework for the projects in the Program and shall include the following: planning criteria (including area, volume, equipment, finish, technical services and other relevant functional requirements for typical spaces); specifications and performance requirements (including sustainable design criteria) for materials, systems, components and assemblies organized by classification system as agreed upon with the Owner; drawing, building information modeling, and documentation standards (including requirements for interim and final contract document deliverables); typical design details of selected conditions; and, procurement, contracting and general requirements. The Design Standards shall incorporate any existing Owner design standards.

§ 3.3.5 Prior to the start of the design of each project, the Program Manager shall make the Owner-approved Design Standards available to the Owner's design consultants through the Program Management Information System.

§ 3.3.6 **Program Report.** The Program Manager shall prepare a Program Report in a single volume to include the following information for each Project: executive summary narrative; executive summary cost report; master schedule; summary of Owner-occupied space and scheduling of intermittent moves of existing functions; and updated Program Schedule; actual and anticipated costs related to the Program; cost and payment reports for each consultant and construction contract; cash-flow projections; proposed and approved change orders; any claims pertaining to the Program Manager, Owner, and Owner's other consultants and contractors; summary of equipment planning and procurement. The Project-specific report shall include a summary report, progress report, and the presentation of post-construction maintenance schedules and procedures for each Project. The Program Manager shall participate in update meetings with Owner and stakeholder groups as directed by Owner's Representative.

§ 3.4 Program Budget Control

§ 3.4.1 If the Owner has not established a Program Budget, the Program Manager and the Owner shall collaborate to prepare a preliminary Program Budget, which shall include the costs for the Program Manager's services, the costs of the services of the Owner's other consultants, the costs for design and construction of each project in the Program, and additional details necessary for the Owner to prepare a complete Program Budget. The Owner shall review and approve in writing the preliminary Program Budget. The Program Manager shall provide monthly reports on the Program Budget, or at intervals otherwise agreed to by the Owner and Program Manager below. The Program Manager shall organize the Program Budget in a manner that will allow costs to be tracked using the Program Management Information System.

(If the Program Manager is required to provide Program Budget reports at intervals other than monthly, set forth such intervals below.)

« »

§ 3.4.2 The Program Manager shall develop and implement a system of budget and cost controls to assist the Owner in the management of Program and project costs. The Program Manager shall prepare cash flow projections of costs for the Program.

§ 3.4.3 The Program Manager shall review estimates prepared by the Owner's consultants and contractors and produce a report identifying variances from the Program Budget along with recommendations for resolving such variances.

§ 3.4.4 The Program Manager shall share information regarding the Program Budget with the Owner's consultants as authorized by the Owner.

§ 3.4.5 The Program Manager shall assist the Owner in identifying Program-wide procurement and cost saving opportunities.

§ 3.4.6 The Program Manager shall report the cost impact on the Program Budget of proposed contracts, change orders, and proposed contract amendments from the Owner and the Owner's consultants and contractors. The Program Manager will establish and maintain a Project Change Control System that will provide for the management, tracking, and documentation of all changes to each Project. The design of the Change Control System must be approved by the Owner's Representative, and will be amended, as necessary, at the discretion of the Owner's Representative.

§ 3.4.7 The Program Manager will review, analyze, and make recommendations regarding cost, schedule, and quality impacts of all changes in scope submitted for consideration for Owner and/or Owner's Representative, by the design team or by other Program Managers, and/or by Contractors. The Program Manager will analyze and negotiate both the scope and cost of all changes for Owner approval, and on a monthly basis, will report to Owner's representative the impact of all changes on Project cost, schedule, and quality.

§ 3.4.8 The Program Manager will provide cost review of submissions by any Construction Manager at Risk on any project for which the Construction Manager at Risk construction delivery method is selected by the Owner.

§ 3.5 Program Schedule Control

§ 3.5.1 The Program Manager shall prepare a Program Schedule showing priorities, sequences, durations, and responsible parties for major design, pricing, construction and Owner activities; establishing the overall duration of the Program; and identifying critical milestone dates. The Program Manager shall update and expand the level of detail and status of the Program Schedule as the Program progresses. The updates will include all adjustments to be made to the Program and individual Project cost control and resource management systems. The Program Manager will analyze and report to the Owner's Representative on all schedules submitted by the Owner, the design team, the Contractor, and other contractors. The Program Schedule shall also incorporate or identify

- .1 dates for approvals and permits;
- .2 project specific milestones and design and construction schedules, including dates of commencement and completion;
- .3 components that need to be ordered or procured for the overall Program by the Owner, if any; and
- .4 the Owner's occupancy requirements and any portions of the Program having occupancy priority.

§ 3.5.2 The Program Manager shall provide recommendations for project sequencing and phasing to meet overall Program objectives.

§ 3.5.3 The Program Manager shall provide recommendations on the milestone dates and durations in the design and construction schedules as they are developed for the projects in the Program.

§ 3.5.4 The Program Manager shall monitor and report on the progress of the Program and indicate to the Owner observed deviations from the Program Schedule or key milestones of the individual project schedules that may impact substantial completion or final completion. The Program Manager shall include the reports in the Program Management Information System. The Program Manager shall consult with the Owner and the Owner's consultants and contractors to develop recovery plans when the schedules or objectives are not being met.

§ 3.6 Program Quality Control

§ 3.6.1 The Program Manager shall establish, and distribute quality control guidelines that define the obligations of the Program Manager, Owner, and the Owner's consultants and contractors. The Program Manager will provide the Owner's Representative with monthly budget, cost, and business reports for each Project within the Program, which will include an exceptions report that forecasts problems and provides recommendations for remedial action.

§ 3.6.2 The Program Manager shall periodically review the development of the design for each project in the Program for conformance with the Program requirements and Design Standards. The Program Manager shall provide a list of observed deviations from the Design Standards and discuss resolution of the observed deviations with the Owner and, as appropriate, the Owner's consultants and contractors.

§ 3.6.3 The Program Manager shall confirm that each contractor has prepared a safety program and project specific quality control plan.

§ 3.6.4 The Program Manager shall advise the Owner of observations it makes regarding deficiencies in the performance of the Owner's consultants and contractors.

§ 3.7 Other Services

§ 3.7.1 Upon the Owner's written request, the Program Manager shall provide reasonable assistance in the areas of community and public relations, in order to enhance and maintain public awareness in furtherance of the interests of the Program and the Owner.

§ 3.7.2 The Program Manager shall schedule and conduct meetings with the necessary Program participants to coordinate the progress of the Program. The Program Manager shall also prepare minutes of such meetings and include them, as appropriate, in the Program Management Information System. For all construction-related meetings for the Program, Program Manager will prepare and distribute meeting notes and ensure coordination of issues raised during the meetings with all responsible Project stakeholders. This will include the weekly progress meetings, which the Program Manager will chair. Meeting notes will be issued to all parties involved in the meetings no later than three (3) working days following the date of the meeting.

§ 3.7.3 The Program Manager shall develop a strategy, procedure, and schedule to assist the Owner in obtaining the required reviews and approvals of authorities having jurisdiction over each project in the Program.

§ 3.7.4 The Program Manager shall assist the Owner in developing and implementing protocols for the review and processing of changes or proposed changes in the scope of design or construction for projects in the Program, and the corresponding contracts for design and construction.

§ 3.7.5 The Program Manager shall assist the Owner in developing and implementing protocols for the review and processing of applications for payment for the Program and the projects in the Program.

§ 3.7.6 Any agreement between the Owner or the Program Manager on behalf of the Owner, and consultants or contractors arising out of the Program, must first be approved by the Owner's legal counsel.

§ 3.7.7 Upon the written request of the Owner, the Program Manager shall evaluate and provide input to the Owner on claims arising out of the Program.

§ 3.7.8 The Program Manager shall assist the Owner in establishing a procedure for tracking and submission of records, warranties, guarantees, and documents pertaining to systems verification and project close-out, for projects in the Program.

§ 3.7.9 The Program Manager shall determine in general that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents, endeavoring to guard the Owner against defects and deficiencies in the Work. The Program Manager shall notify the Architect and Owner of any Work that does not conform to the Contract Documents and shall reject such work unless the Owner objects to the rejection within twenty-four hours of such notification. Whenever the Program Manager considers it necessary or advisable, the Program Manager will have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed, or completed. The Program Manager shall notify and receive approval from the Owner prior to ordering any such inspection or testing which will result in additional cost to the Owner. However, neither the Program Manager's authority to reject Work or order inspection or testing nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Program Manager or Owner to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work. The Program Manager shall be responsible for providing at no additional cost to the Owner the program management

services made necessary by major defects or deficiencies in the Contractor's work which the Program Manager should have discovered through reasonable care.

§ 3.8 PROGRAM MANAGEMENT

Description of Program Management services also includes:

§ 3.8.1 Preliminary Services – Selection Process

- .1 Recommend consultants (including the evaluation of architect and CMAR) for the Project, coordinating the process for selection, reviewing, analyzing, and negotiating proposed contracts for execution by Owner, if requested.

§ 3.8.2 Pre-Design and Design Development Series

- .1 Management of Owner's consultants including architecture, geotechnical testing, environmental, material testing, civil surveyor, etc.
- .2 Develop overall Project Management Plan and communications procedures, providing a budget and milestone schedule, including, construction feasibility, local labor conditions, material shortages, long lead items, and building industry standards.
- .3 Organize and develop a milestone schedule, including the planning phase, the design phase, project completion, building shell completion, design durations, permitting, governmental approvals, third-party contractors, and all critical items.
- .4 Develop a master budget by category of real estate, soft costs, and hard costs; and monitor budgets by category (i.e., design, construction, equipment, relocation expenses, "FF&E", etc.).
- .5 Assist the design team to develop, create, and value-engineer the design and construction documents that reflect the parties' requirements.
- .6 Monitor the overall design process; advise parties on design, construction, and occupancy sequencing, phasing these activities to ensure maximum efficiency; monitor the design of the Project for constructability.
- .7 Establish a budget pricing mechanism to verify Project objectives are accomplished; and evaluate opportunities to reduce cost .
- .8 Coordinate with the architect for finalization and approval of drawings and specifications, MEP, hardscape, and landscape plans.
- .9 Coordination with the City of Frisco related to land-use requirements including permits, licenses, and certificates, as needed.
- .10 Assist with Owner's cooperation and coordination with the staging and original construction, including, without limitation, making accommodations reasonable under the circumstances for field or site conditions. For purposes of this paragraph, "staging" means all staging and marshalling of construction vehicles, materials, equipment, contractors, subcontractors, materialmen and suppliers as are needed with respect to the original construction, "original construction" means all work or changes of any kind whatsoever related to the PAC and Parking Garage, structural or non-structural, performed in accordance with the current plans and specifications for the construction of the PAC and Parking Garage, and "work" means all acts, activities, design, development, construction, installations, improvements and other work (including landscaping) related to the PAC and Parking Garage.
- .11 Provide advice regarding Owner's participation in a Controlled Insurance Program that will remain in effect through the statute of repose. **§ 3.8.3 Construction Oversight Phase**
 - .1 Manage the Work of the CMAR; "Work" defined as construction or services necessary or incidental to fulfill the contractor's obligations pursuant to its agreement with the Owner. Coordinate Work with the activities and responsibilities of the Owner, architect and consultants to ensure work is being completed in accordance with contract documents. Conduct site visits; Quality Assure and Quality Control as outlined in the MDA Agreement.
 - .2 Meet strict budget requirements; identify and aggressively pursue cost-saving opportunities.
 - .3 Require construction team to maintain an on-site recording-keeping system which will be sufficient in detail to satisfy an audit by Owner.
 - .4 Coordinate aspects of the work involving municipal authorities, agencies & utility companies.
 - .5 Recommend and manage necessary or desirable change orders.
 - .6 Coordinate efforts by all appropriate parties to complete the punch list items identified by the Architect, CMAR and Owner.
 - .7 Furniture, Fixtures & Equipment assistance.
 - .8 Signage coordination, including wayfinding, branding, and marketing support.

- .9 Attend job meetings to discuss procedures, progress, problems, and scheduling.
- .10 Coordinate work with the activities and responsibilities of the owner, architect, and consultants to ensure work is being completed in accordance with contract documents.
- .11 Peripheral Buyouts include assisting in scope development and acquisition, as needed.

§ 3.8.4 Post-Construction Phase

- .1 Coordinate all required inspections and approvals necessary to permit occupancy; Final Completion.
- .2 Provide for the close out of all agreements; assist CMAR in preparing final report to Owner confirming final project costs, close out information and related documentation.
- .3 Coordinate the preparation of punch list indicating any outstanding work and require that these items be completed in an expeditious manner.
- .4 Coordinate delivery and assure completeness of all operations and maintenance manuals, warranties, guarantees, and extra stock materials. Schedule turn-over meetings, as necessary.
- .5 Verify all claim releases required to issue final certificate of completion and final payment to the construction team, and forward to client.
- .6 Expedite preparation of “as-built” drawings in accordance with the terms of the specifications.
- .7 Monitor the expeditious follow-up and correction of all punch list items.
- .8 Provide for the close out of all agreements; prepare a final report to Owner confirming final project costs, close out information and related documentation.

§ 3.8.5 Closeout Phase

- .1 Facilitate A/E and Owner checkouts of utilities and assist in initial start-up and testing of systems.
- .2 Coordinate the demonstration and training for equipment and services.
- .3 Coordinate the timing and conditions for furniture delivery and installation with Contractor and Owner schedules.
- .4 Facilitate A/E in substantial completion inspections, and furnishing to Owner guarantees, affidavits, releases, bonds, keys, manuals, record drawings, and maintenance stocks.
- .5 Review closeout documents for thoroughness and compliance with project requirements. Address missing items with Contractor and A/E.
- .6 Represent the Owner during final inspections and walk-through.
- .7 Facilitate training meetings for Owner staff in use of new facilities, components and equipment.

§ 3.8.6 Warranty Phase

- .1 Establish protocol for reporting warranty deficiency.
- .2 Disposition warranty claim and identify appropriate party for response; architect, contractor or Owner.
- .3 Establish tracking of warranty items and corrective actions.
- .4 Coordinate and participate in 11-month warranty walk through and review.
- .5 Develop warranty actions as identified during 11-month warranty walk through.
- .6 Prepare warranty phase transition plan for Owner responsibility of future Warranty needs.

§ 3.8.7 Communications Activities

- .1 Prepare for and participate in community (PTO, Campus, City etc.) Bond Update Meetings.
- .2 Prepare for and participate in Citizen’s Bond Advisory Committee Meetings.
- .3 Prepare weekly Bond update reports for consumption by the Owner.
- .4 Prepare monthly Bond update reports for consumption by the Owner.
- .5 Attend monthly Board of Trustees and City Council meetings.
- .6 Prepare charts, graphs, photos, status summaries and other reporting for Owner web site.
- .7 Prepare for and participate in Owner/Architect/Contractor Meetings.

§ 3.9 Required Deliverables from Program Manager will include, but not be limited to, the following:

- .1 Master Project Schedule;
- .2 Master Project Scopes of Work;
- .3 Master Project Budget;
- .4 Internet Project Status reporting site;
- .5 Monthly and Periodic Executive Status Reports (for Board of Trustees and City Council, including budget allocation vs. remaining balance, project timeline, and overall project progress;
- .6 Project Team Organization/Responsibility Matrix;
- .7 Communication flow diagram;
- .8 Construction Oversight model;

- .9 Meeting Agendas;
- .10 Minutes from Project Meetings within three (3) days of meeting;
- .11 Action Logs;
- .12 Change Order Log;
- .13 Owner/Architect, Construction Contractor and other contracts and documents;
- .14 Internet Project Status reporting site;
- .15 Construction Close-Out Documents Checklist;
- .16 Contract Close-out Documents Checklist;
- .17 Move-in/Move-out and Relocation Coordination Checklist;
- .18 Post-Occupancy Evaluation/Warranty Tracking;
- .19 Daily Weather Log;
- .20 Request For Information Log;
- .21 Inspectors Daily Reports;
- .22 Equipment Operations and Maintenance Manuals;
- .23 Complete sets of As-Built drawings for each project;
- .24 Resource-Loaded Scheduling and Estimating; Gant chart-type of calendar;
- .25 Inspection Log;
- .26 Tracking of Agency Approvals;
- .27 Cost Verification/Cost Estimating; and
- .28 Cost Review.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services, unless designated below as Basic Services, but may be required for the Program. The Program Manager shall provide the listed Additional Services only if specifically designated in the table below as the Program Manager's responsibility, and the Owner shall compensate the Program Manager as provided in Section 10.3, except if designed below as Basic Services, which are compensated as part of Basic Services as set forth in Article 10.1.

(Designate the Additional Services the Program Manager shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit. AIA Contract Document numbers are cited, where applicable, to provide a basis for the proposed scope of services, but may need to be revised to be applicable in the Program Management context.)

Services	Responsibility (Program Manager, Owner or not provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Community communications not included in Section 3.7.1	Basic Service*	
§ 4.1.2 [Subsection Deleted.]		
§ 4.1.3 Project Specific Construction Management	Basic Service*	
§ 4.1.4 Assistance with sustainability certifications		
§ 4.1.5 [Subsection deleted.]		
§ 4.1.6 Design Management Services (B171™–2013)		
§ 4.1.7 Existing facilities analysis		
§ 4.1.8 Site Selection Analysis (B203™–2007)		
§ 4.1.9 Economic analysis		
§ 4.1.10 Project Programming (B202™–2009)		
§ 4.1.11 Master planning	Basic Service*	
§ 4.1.12 Early procurement of materials and equipment	Basic Service*	
§ 4.1.13 FF&E procurement coordination	Basic Service*	
§ 4.1.14 Detailed cost estimating	Basic Service*	
§ 4.1.15 Life cycle analysis	Basic Service*	
§ 4.1.16 Move coordination	Basic Service*	
§ 4.1.17 Coordination of hazardous material testing or	Basic Service*	

Services	Responsibility (Program Manager, Owner or not provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
abatement		
§ 4.1.18 Other project specific services:		
§ 4.1.19 Other Program specific services:		
§ 4.1.20 Informative website data/information provided and regularly updated	Basic Service*	
§ 4.1.21 Website Management		
§ 4.1.22 Technology services not applicable to construction	Basic Service*	
§ 4.1.23 Furniture, Fixtures, and Equipment Coordination	Basic Service*	

* The term “Basic Service” will have the same meaning as Article 3 and shall be provided to the Owner at no additional cost. Notwithstanding any provision of this Article to the contrary, services made necessary as a result of Program Manager’s failure to timely provide accurate or complete information, approvals or clarifications, or to timely render a decision shall be considered Basic Services.

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Program Manager’s responsibility, if not further described in an exhibit attached to this document.

«Services are self-explanatory. »

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating this Agreement. Except for services required due to the fault of the Program Manager, any Additional Services provided in accordance with this Section 4.3 shall entitle the Program Manager to compensation pursuant to Section 10.4.

§ 4.3.1 [Paragraph Deleted.]

§ 4.3.2 [Paragraph Deleted.]

ARTICLE 5 OWNER’S RESPONSIBILITIES

§ 5.1 The Owner shall provide and update information regarding requirements for, and limitations on, the Program in a timely manner, including the information in Article 1; other objectives, schedule constraints and criteria, and site requirements; and any other information either described in Article 5 or required for the Program Manager to perform its services a reasonable time after receipt of a written request from Program Manager.

§ 5.2 The Owner shall establish and periodically update the Program Budget including (1) the Program Manager’s costs, (2) design and constructions costs, (3) the Owner’s other costs, and (4) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Program Budget, the Owner shall promptly notify the Program Manager, and in consultation with Program Manager and the Owner’s other consultants and contractors, agree to corresponding changes in project scopes, features or quality.

§ 5.3 The Owner shall retain all contractors and consultants necessary to carry out the Program except for those consultants retained by the Program Manager as listed in Section 1.3.2. The Owner shall provide the Program Manager with a copy of all executed agreements between the Owner and its consultants and contractors, and any modifications to those agreements.

§ 5.4 The Owner shall identify a representative authorized to act on the Owner’s behalf with respect to the Program. The Owner shall render decisions in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Program Manager’s services.

§ 5.5 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the sites included within the Program, and written legal descriptions of those sites. 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 an appropriate benchmark at each project location.

§ 5.6 The Owner 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.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Program, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 [Paragraph Deleted.]

§ 5.9 The Owner shall provide prompt written notice to the Program Manager if they become aware of any fault or defect in the Program, including errors, omissions or inconsistencies in any documents produced by, or services provided by, the Program Manager.

§ 5.10 [Paragraph Deleted.]

§ 5.11 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Program Manager's consultants through the Program Manager about matters arising out of or relating to the Program. The Owner shall notify the Program Manager of any such communication that affects the Program. The Owner shall promptly notify the Program Manager of any direct communications that may affect the Program Manager's services.

§ 5.12 The Owner shall provide the Program Manager access to the project sites and other facilities under the Owner's control and associated with the Program. The Owner shall obligate its contractors to provide the Program Manager access to the project sites wherever work is in preparation or progress.

§ 5.13 For each project in the Program, the Owner shall purchase and maintain or require its contractors to purchase and maintain property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial contract sum, plus the value of subsequent contract modifications and cost of materials supplied or installed by others, comprising total value for the entire project at the site on a replacement cost basis without optional deductibles. These policies shall cover reasonable compensation for Program Manager's services and expenses required as a result of such insured loss. Owner shall maintain commercially reasonable amounts of insurance or self-insurance covering its third party liability exposure for bodily injury and property damage to third parties caused by Owner's negligence.

ARTICLE 6 COPYRIGHTS AND LICENSES

§ 6.1 The Program Manager assigns to the Owner its rights, including copyright, in its Instruments of Service. The Program Manager shall obtain a similar assignment to the Owner from the Program Manager's consultants consistent with this Agreement. For purposes of this Agreement, Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Program Manager, the Owner, and their consultants and contractors under their respective services agreements. Instruments of Service may include, without limitation studies, surveys, models, sketches, drawings, specifications, and other similar materials. In no event shall Instruments of Service be deemed to include methodologies, systems, procedures, management tools, software, ideas, inventions, know-how and other intellectual capital that Program Manager has developed, created or acquired prior to performing Services under this Agreement, or develops, creates or acquires during the term hereof or thereafter if not originally and specifically created for Owner.

§ 6.2 The Program Manager and Owner warrant that in transmitting any information, including Instruments of Service, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the project.

§ 6.3 The Owner shall have exclusive ownership of all data in the Program Management Information System and the Program Management Plan developed or contributed by the Program Manager or the Program Manager's

consultants and contractors. Ownership of the data in the Program Management Information System and the Program Management Plan does not include ownership of any proprietary software developed and owned by the Program Manager and used in connection with the collection, manipulation, or publication of the data in the Program Management Information System and the Program Management Plan. The Program Manager shall take all steps reasonably necessary to allow the Owner to exercise the Owner's rights to own and utilize the data in the Program Management Information System and the Project Management Plan after termination of the Owner's rights to use any proprietary software. The Program Manager shall include provisions consistent with the provisions in this Section 6.3 in the Program Manager's agreements with the Program Manager's consultants. Ownership of data obtained from or compiled, developed or contributed by the Owner's consultants or contractors will be controlled by the terms of the Owner's agreements with those consultants or contractors.

ARTICLE 7 CLAIMS AND DISPUTES

§ 7.1 General

§ 7.1.1 The Owner and Program Manager shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law.

§ 7.1.2 To the extent damages are covered by property insurance required under Section 5.13, the Owner and Program Manager waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in Section 5.13. The Owner or the Program Manager, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 7.1.3 THE PROGRAM MANAGER SHALL INDEMNIFY AND HOLD THE OWNER, THE OWNER'S LENDERS PROVIDING FINANCING FOR THE PROJECT, THE MASTER ASSOCIATION, THE OTHER CONDOMINIUM OWNERS, AND THEIR, OFFICERS, DIRECTORS, AND EMPLOYEES (THE "INDEMNITEES" AND INDIVIDUALLY "INDEMNITEE"), AND THE OWNER'S OFFICERS AND EMPLOYEES HARMLESS FROM AND AGAINST DAMAGES, LOSSES AND JUDGMENTS ARISING FROM CLAIMS BY THIRD PARTIES, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES RECOVERABLE UNDER APPLICABLE LAW, BUT ONLY TO THE EXTENT THEY ARE CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF THE PROGRAM MANAGER, ITS EMPLOYEES AND ITS CONSULTANTS IN THE PERFORMANCE OF SERVICES UNDER THIS AGREEMENT. ¹

§ 7.1.4 The Program Manager and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement.

§ 7.1.5 Excepting gross negligence, fraud, willful misconduct or the proceeds of Program Manager's insurance available with respect to the particular matter up to the required limits of the insurance policies set forth in Section 2.7, in no event shall Program Manager incur liability under this Agreement or otherwise relating to the Services beyond the amount of fees (excluding any reimbursed amounts) received by Program Manager under this Agreement during the prior 12 month period.

§ 7.2 Meet and Confer [Section Deleted.]

§ 7.3 Mediation

§ 7.3.1 Any claim, dispute or other matter in question arising out of or related to this Agreement not resolved by the meet and confer session shall be subject to mediation as a condition precedent to the initiation of arbitration. Mediation shall be initiated by any party making a written demand therefor to all other parties involved in such claim, dispute, or other matter. Any mediation of any claim, dispute, or other matter shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the time the dispute arises. With respect to such mediation, the parties shall, within 15 days after demand is filed agree upon a mediator who is: (i) a reputable person actively engaged in the construction industry or a lawyer experienced in the practice of construction law for a continuous period of not less than ten years; and (ii) not an affiliate of, or has had material business dealings with, any Owner, or any other party, including an affiliate of Owner, involved in the mediation. If the parties are unable to agree upon a mediator, a mediator having the qualifications set forth above shall be

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appointed by the American Arbitration Association office in Dallas, Texas. Such mediation shall occur within 30 days after the mediator has been agreed upon or appointed and shall occur at a mutually acceptable location in Frisco, Texas. The costs of such mediation services shall be shared equally (but each party shall bear the cost of their own travel and attorneys' fees); provided, however, that if the dispute is not resolved pursuant to such mediation, the provisions of Section 7.3.2 of this Agreement shall govern the payment of attorneys' fees and costs and expenses of mediation, arbitration or litigation under this Article 7.

§ 7.3.2 Unless the parties mutually agree otherwise, the mediation shall be administered in accordance with the following

- .1 Request for mediation shall be in writing.
- .2 In the event the Owner and Program Manager are unable to agree to a date for the mediation within thirty (30) days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred.
- .3 At all times during the course of any dispute resolution process, the Program Manager shall continue diligently and without delay to perform the services and obligations of the Agreement.
- .4 In no event shall a claim or dispute be initiated after the date when institution of legal or equitable proceedings based on such claim or dispute would be barred by the applicable statute of limitations.
- .5 All demands and all answering statements thereto which include any monetary claim, counterclaim or cross-claim must state the monetary amount being sought. If the monetary amount is unliquidated or has not been fully determined, the demand or answering statement seeking such recovery shall state, in good faith, the minimum amount of such monetary claim, exclusive of interest and attorneys' fees.
- .5 In any mediation of a dispute or claim, the mediator(s), as applicable, shall determine the prevailing party and award to such prevailing party, in addition to any other relief to which such party is entitled to recover, its reasonable attorneys' fees, expert witness fees, costs, and other reasonable expenses incurred in connection with the mediation of such claim or dispute.

§ 7.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the county where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 7.3.4 If the parties do not resolve a dispute through mediation pursuant to this Section 7.3, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Program Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

Arbitration pursuant to Section 7.4 of this Agreement

Litigation in a court of competent jurisdiction

Other: *(Specify)*

§ 7.4 Arbitration

§ 7.4.1 If Owner or Program Manager elects that a claim, dispute, or matter be resolved by arbitration, such arbitration shall be governed by the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect, unless the parties mutually agree otherwise. With respect to the arbitration, the parties shall, within 15 days after receipt of Owner's or Program Manager's notice of arbitration or within 15 days after entry of an order compelling arbitration, agree upon an arbitrator. If the parties cannot agree upon an arbitrator, a demand for arbitration shall be filed in writing with the American Arbitration Association at the office in Collin County with copies to all parties.

Arbitration shall be conducted with a single arbitrator unless the claim, demand, or amount in controversy exceeds \$750,000, in which case a panel of three arbitrators shall be used. If the amount in controversy exceeds \$750,000 and the parties cannot mutually agree upon three panel members, the parties shall be required to obtain a list of proposed neutral parties through the American Arbitration Association office in Dallas, Texas. The parties shall then proceed with the selection of panel members in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. Any arbitrator(s) utilized, whether appointed or agreed, must (i) be a reputable person(s) actively engaged in the construction industry or as a lawyer experienced in the practice of construction law for a continuous period of not less than ten years and (ii) not be an affiliate of, or have or have had

material business dealings with any Owner, any Owner Representative, or any other party, including an affiliate of Owner, involved in the arbitration. The arbitrator shall establish reasonable procedures and requirements for the production of relevant documents and require the exchange of information concerning witnesses to be called. The parties shall be entitled to discover all documents and information reasonably necessary for a full understanding of any legitimate issue raised in the arbitration and the parties may use all methods of discovery available under the Texas Rules of Civil Procedure and shall be governed thereby. There shall be a prehearing meeting between the parties at which the arbitrator shall make and set schedules for discovery and hearings consistent with their powers as set forth herein. The Texas Rules of Evidence shall be applied by the arbitrator but liberally construed to allow for the admission of admissible evidence that is helpful in resolving the controversy. Rulings on the admission of evidence made by the arbitrator at the hearing shall be final and not subject to any appeal. At the time of the award, the arbitrator shall prepare and provide to the parties findings of fact and conclusions of law supporting the award.

§ 7.4.2 Unless the parties mutually agree otherwise, the arbitration shall be administered in accordance with the following

- .1 Request for arbitration shall be in writing.
- .2 In the event the Owner and Program Manager are unable to agree to a date for the arbitration within thirty (30) days following the date of the request for arbitration, all conditions precedent in this article shall be deemed to have occurred.
- .3 At all times during the course of any dispute resolution process, the Program Manager shall continue diligently and without delay to perform the services and obligations of the Agreement.
- .4 In no event shall a claim or dispute be initiated after the date when institution of legal or equitable proceedings based on such claim or dispute would be barred by the applicable statute of limitations.
- .5 All demands and all answering statements thereto which include any monetary claim, counterclaim or cross-claim must state the monetary amount being sought. If the monetary amount is unliquidated or has not been fully determined, the demand or answering statement seeking such recovery shall state, in good faith, the minimum amount of such monetary claim, exclusive of interest and attorneys' fees.
- .5 In any arbitration of a dispute or claim, the arbitrator(s), as applicable, shall determine the prevailing party and award to such prevailing party, in addition to any other relief to which such party is entitled to recover, its reasonable attorneys' fees, expert witness fees, costs, and other reasonable expenses incurred in connection with the arbitration of such claim or dispute.
- .6 Notwithstanding any other provisions of this Agreement, the foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties shall be specifically enforceable under prevailing arbitration law in any court having jurisdiction thereof.
- .7 The foregoing agreement to arbitrate any dispute shall not constitute an agreement or consent to arbitration with any Person not named or described in this Agreement; provided that any arbitration proceeding initiated under the terms of this Agreement may, at the request of any party, be joined or consolidated with other arbitration proceedings involving additional parties if the claim or dispute, as applicable, and the subject of such other proceedings arise out of common or interrelated factual occurrences.
- .8 Any award of the arbitrator shall be final and binding upon the parties involved in the dispute and non-appealable judgment thereon may be entered by any court having jurisdiction.

ARTICLE 8 TERMINATION OR SUSPENSION

§ 8.1 If the Owner fails to make payments when due to the Program Manager for services and expenses, the Program Manager may, upon thirty days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Program Manager within thirty (30) days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of the services pursuant to this subparagraph, the Program Manager shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services.

§ 8.2 If the Owner suspends the Program, the Program Manager shall be compensated for services performed prior to notice of such suspension. When the Program is resumed, the Program Manager shall be compensated for expenses incurred in the interruption and resumption of the Program Manager's services.

§ 8.3 If the Owner suspends the Program for more than 90 consecutive days, the Program Manager may terminate this Agreement upon not less than thirty (30) days written notice. Should the Program Manager elect to so terminate this Agreement, the Program Manager shall be compensated for services actually performed and expenses actually incurred prior to notice of such termination and for profits only performed prior to termination.

§ 8.4 Program Manager may only terminate this Agreement for cause, and upon thirty (30) day's prior written notice.

§ 8.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Program Manager for the Owner's convenience and without cause.

§ 8.6 In the event of termination not the fault of the Program Manager, the Program Manager shall be compensated for services actually performed and expenses actually incurred prior to termination and for profits only in the work performed prior to termination.

§ 8.7 If the Agreement is terminated for any reason, Program Manager agrees to provide all data and deliverables immediately to Owner in an easily useable format.

§ 8.8 [Paragraph Deleted.]

ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.1 This Agreement shall be governed by the law of the place where the Program is located. Venue for any dispute shall be in Collin County, Texas. No provision of this Agreement shall waive any immunity or defense by the Owner. No provision of this Agreement is a consent to suit.

§ 9.2 The Owner and Program Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Program Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Program if the lender agrees to assume the Owner's rights and obligations under this Agreement, provided, however, Owner may freely assign the Agreement to the Master Association.

§ 9.3 If the Owner requests the Program Manager to execute certificates, the proposed language of such certificates shall be submitted to the Program Manager for review at least 14 days prior to the requested dates of execution. If the Owner requests the Program Manager to execute consents reasonably required to facilitate assignment to a lender, the Program Manager shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Program Manager for review at least 14 days prior to execution. The Program Manager shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 9.4 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Program Manager.

§ 9.5 Owner acknowledges that Program Manager is not an environmental expert or consultant in the field of Hazardous Materials (as hereinafter defined). Notwithstanding any provision hereof to the contrary, with respect to any Hazardous Materials that may be present below, on, about or otherwise affecting a Project or any property of Owner, Program Manager shall not be responsible for detecting, handling, removing, remediating or disposing of such Hazardous Materials, except to the extent of any Hazardous Materials brought onto the property by Program Manager ("Program Manager Hazardous Materials"). Program Manager shall not use Hazardous Materials except in the ordinary course of providing the Services and in compliance with applicable laws. "Hazardous Materials" shall mean any hazardous material or substance which is or becomes defined as a "hazardous waste," "hazardous substance," "hazardous material," pollutant, or contaminant under any applicable law. Program Manager shall not be responsible for detecting or remediating any pre-existing conditions at a Project site or other property of Owner that may adversely affect the operations, maintenance or use thereof or the health or safety of persons or property. Program Manager shall not be responsible for detecting or remediating any structural or latent defects or other defects in design or construction of a facility or manufacturing defects in equipment at a property, whether pre-existing or arising during the term hereof. Notwithstanding anything to the contrary contained herein, Owner shall indemnify, defend and hold Program Manager harmless from and against all claims asserted against or incurred by Program Manager to the extent arising out of any Hazardous Materials (other than Program Manager Hazardous Materials) or any condition or circumstance arising initially prior to the date of this Agreement (regardless of whether such condition or circumstance continues).

§ 9.6 [Paragraph Deleted.]

§ 9.7 If the Program Manager or Owner receives information specifically designated by the other party as “confidential” or “business proprietary,” the receiving party shall keep such information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 9.7.1.

§ 9.7.1 If the Program Manager or Owner receives information specifically designated by the other party as “confidential” or “business proprietary,” the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project or Program, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information or (4) as otherwise required by law, including the Texas Public Information Act.

§ 9.8 Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 9.9 The Owner agrees not to solicit or hire the Program Manager’s employees who are involved with the Program prior to one year after completion of the Program.

ARTICLE 10 COMPENSATION

§ 10.1 For the Program Manager’s Basic Services described under Article 3, the Owner shall compensate the Program Manager as follows:

(Insert amount of, or basis for, compensation, including stipulated sums, hourly or monthly billing rates, direct salary expense plus multiple, or monthly fee.)

«Program Manager shall be compensated for Program Manager’s Basic Services described under Article 3 and as designated as Basic Services in Article 4 as follows:

- a. a lump sum fee of \$2,074,400, which includes a part-time Program Executive & Director-level support at 30% on average, and one full-time Senior Project Manager solely dedicated to the Project at 100%. Supporting the Senior Project Manager in part-time roles are scheduling, QA/QC, communications, and closeout support staff at an average of 25% throughout the Project duration
- b. Project specific expenses and other direct costs will be paid for by the Owner or CMAR, including an onsite trailer or office
- c. Owner shall reimburse Project Manager for reimbursable expenses incurred by Project Manager at an amount not to Exceed \$1,000 per month. Examples include but may not be limited to mileage, cellular telephone, or other expenses due to Project Manager’s performance of duties on Project.

In no event will the Program Manager’s fee for the Program exceed TWO MILLION SEVENTY-FOUR THOUSAND FOUR HUNDRED DOLLARS (\$2,074,400, with the fee, costs and expenses as set forth in this Agreement.

Compensation shall be paid only after submission of monthly invoices for each project clearly specifying the number of hours worked by each Program Manager representative and the percentage of each project that has been completed.

Project Manager agrees and acknowledges that the City, FCDC, and Fisd will each be allocated its portion of the Project Manager’s compensation as agreed in a supplement to this Agreement and in accordance with the percentages set forth in the CMAR Contract based on the GMP for the PAC and Parking Garage as applicable. It is anticipated that the PAC percentage of costs will be paid by the City based on a set percentage of the PAC costs and then Fisd will pay the remainder of the percentage of the PAC costs.

Subject to the other provisions in this Agreement, it is the intent of the Owner and the Program Manager for the Program Manager to provide services for the Program.»

Each Owner will be allocated its portion of the Project Manager’s compensation as agreed in a supplement to this Agreement and in accordance with the percentages set forth in the CMAR Contract based on the GMP for the PAC

and Parking Garage, as applicable. It is anticipated that the PAC percentage of cost will be paid by the City based on a set percentage of the PAC costs and then FISD will pay the remainder of the percentage of PAC costs.

§ 10.2 The hourly labor cost rates and billing rates for services of the Program Manager and the Program Manager’s consultants, if any, are set forth below.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

«_____»

Employee or Category	Rate

§ 10.3 For Additional Services designated in Section 4.1, the Owner shall compensate the Program Manager as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

«as agreed to in writing by the parties »

§ 10.4 For Additional Services that may arise during the course of the Program, including those under Section 4.3, the Owner shall compensate the Program Manager as follows:
(Insert amount of, or basis for, compensation.)

«as agreed to in writing by the parties »

§ 10.5 Compensation for Additional Services of the Program Manager’s consultants when not included in Sections 10.3 and 10.4 shall be the amount invoiced to the Program Manager:

«as agreed to in writing by the parties »

§ 10.6 Compensation for Reimbursable Expenses

§ 10.6.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Program Manager and the Program Manager’s consultants directly related to the Program, as follows:

- .1 [Subsection Deleted.];
- .2 [Subsection Deleted.];
- .3 Fees paid for securing approval of authorities having jurisdiction over the projects;
- .4 Fees paid for testing, surveys or other data obtained at the request of the Owner;
- .5 Printing, reproductions, plots, standard form documents;
- .6 [Subsection Deleted.];
- .7 [Subsection Deleted.];
- .8 [Subsection Deleted.];
- .9 [Subsection Deleted.];
- .10 [Subsection Deleted.];
- .11 [Subsection Deleted.];
- .12 [Subsection Deleted.]; and
- .13 [Subsection Deleted.]

§ 10.6.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Program Manager and the Program Manager’s consultants, to be capped at \$1,000 per month.

§ 10.6.3 Each Reimbursable Expense submitted shall only be considered by the Owner if accompanied by a receipt.

§ 10.7 Use of Program Manager’s Proprietary Software and Program Management Information System

If the Owner terminates the Program Manager for its convenience under Section 8.5, or the Program Manager terminates this Agreement under Section 8.3, or upon completion of the Program Manager’s services under this Agreement, the Owner shall retain use of the Program Manager’s Proprietary Software and Program Management

Information System and data developed and contained therein for at least one calendar year after final completion of the final Project made a part of the Program. At the end of the calendar year, or at any point before, at the sole discretion of the Owner, Program Manager shall provide the Owner's data to Owner in hard copy and in CSV or a similar/comparable, readily-convertible program

§ 10.8 Payments to the Program Manager

§ 10.8.1 An initial payment of « _____ DOLLARS » (\$« _____ ») shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice. This Section 10.8.1 will be supplemented by the parties within 30 days of the date of this Agreement

§ 10.8.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed and as set out in § 10.1. Payments are due and payable upon presentation of the Program Manager's invoice. Amounts unpaid «Forty-five » («45 ») days after the invoice date shall bear interest in accordance with the Texas Prompt Payment Act, Texas Government Code Chapter 2251.

§ 10.8.3 The Owner shall not withhold amounts from the Program Manager's compensation to impose a penalty or liquidated damages on the Program Manager, or to offset sums requested by or paid to contractors or other consultants for the cost of changes to projects in the Program, unless the Program Manager agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 10.8.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 11 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

«§ 11.1 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction, as modified by Owner, except that for purposes of this Agreement, the term "Work" shall include the work of all Contractors under the administration of the Program Manager.

§ 11.2 The term of this Agreement will be for the entirety of the Program as defined herein. If the Program takes more time to complete than proposed, Project Manager will continue to provide services in accordance with this Agreement until the last phase of construction achieves final completion. Further, Program Manager shall provide its services through warranty inspections, which will occur twelve months after final completion for each project made a part of the Program. These warranty inspections shall be at no additional cost to the Owner, regardless of the Completion of Construction Date. The Owner reserves the right to terminate the contract at any time without penalty upon seven (7) days advance written notice to the Project Manager.

§ 11.3 Deleted.

§ 11.4 Owner shall be afforded unrestricted access to and permitted to inspect and copy all the Program Manager's records, which shall include but not be limited to accounting records (hard copy as well as computer readable data), correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Contract. The Program Manager shall preserve all such records for a period of twelve (12) years, or for such longer period as may be required by law, after final payment under this Contract. If this Contract is funded from contract/grant funds provided by the US Government or the State of Texas, the Contract, books, and records shall be available for review and audit by the Comptroller General of the US and/or the Inspector General of the federal sponsoring agency, or the State of Texas and its duly authorized representatives.

§ 11.5 CRIMINAL HISTORY RECORDS CHECKS

§ 11.5.1 For purposes of this Section 11.5 (and all subsections), the following definitions shall be applicable:

- .1 "Continuing Duties" shall mean work duties that are performed pursuant to a contract on a regular, repeated basis rather than infrequently or one-time only.
- .2 "Covered Employees", shall mean, all employees of Program Manager, as well as employees of Program Manager's subcontractors, consultants or independent contractors (of every tier), who will have Continuing Duties related to the services contracted for herein and the opportunity for direct contact with students in connection with the subject employee's Continuing Duties.

§ 11.5.2 Unless otherwise exempt from providing such information by any provision in Texas Education Code, Section 22.08341 (the “Statute”), the Program Manager agrees, that prior to commencement of work under this Agreement, using the form promulgated by the Frisco Independent School District or such other form approved by the District, Program Manager will arrange with the District to obtain any national criminal history record information (“CHRI”) required pursuant to the Statute on all of Program Manager’s employees, independent contractors, agents, or Subcontractors, Program Manager’s Subcontractors of every tier (“Subcontractors”), Subcontractors’ employees, independent contractors, agents, or sub-subcontractors, if any of these persons is a “Covered Employee” as defined in Section § 11.5.1, and shall reimburse the District for the costs and expenses associated with obtaining the required CHRI.

§ 11.5.3 For purposes of this Section 11.5 a person does **not** have the opportunity for direct contact with students if:

- .1 the public work does not involve the construction, alteration, or repair of an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required by the Texas Education Code (“Instructional Facility”);
- .2 for a public work that involves construction of a new Instructional Facility, the person's duties related to the contracted services will be completed not later than the seventh (7th) day before the first date the facility will be used for instructional purposes; or
- .3 for a public work that involves an existing Instructional Facility:
 - (a) the public work area contains sanitary facilities and is separated from all areas used by students by a secure barrier fence that is not less than six feet in height; and
 - (b) the Program Manager adopts a policy prohibiting employees, including subcontractor entity employees, from interacting with students or entering areas used by students, informs employees of the policy, and enforces the policy at the public work area.

§ 11.5.4 Any Covered Employee that has during the preceding thirty (30) years, been convicted of one of the following offenses, if at the time of the offense the victim was under eighteen (18) or enrolled in a public school: (a) a felony offense under Title 5, Texas Penal Code; (b) an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an equivalent offense to (a) or (b) under federal law or the laws of another state (“Disqualifying Criminal History Offense”) shall be disqualified and prohibited from performing any contract duties or services and neither the Program Manager nor its Subcontractor may permit such person to provide services at an instructional facility. If a Covered Employee is determined by the District’s review of the CHRI to have a Disqualifying Criminal History, Program Manager will exclude that person from assignment to the Project. Program Manager understands that it will not have access to the results of such criminal history records check, based on statewide regulations beyond the control of the District, and agrees to rely solely on the judgment of the District as to whether the Covered Employee must be excluded from the Project.

§ 11.5.5 Prior to commencement of its work on the Project the Program Manager will provide written certification to the District that either: (1) Program Manager and its Subcontractors of every tier, do not have any Covered Employees, as defined; (2) are otherwise exempt from compliance with the Statute; or (3) has complied with the statutory and contractual requirements stated in Section 11.5 of this Agreement (including all subparts), as of that date, and that it:

- .1 has requested a Criminal History Records Check through the Frisco Independent School District on all Covered Employees, if any, of every tier, has provided the required information to the District to do so and reimbursed the District for same;
- .2 has obtained written certification from its independent contractors, and Subcontractors (of any tier) that they have provided the required information to the Program Manager necessary to secure the information from the District and reimbursed the District for same; and
- .3 have excluded any Covered Employee reported by the District to have a Disqualifying Criminal History from assignment to the Project.

Further, Program Manager agrees that if it receives information that a Covered Employee is arrested or convicted for any of the Disqualifying Criminal History offenses, during the performance of the Work, Program Manager will immediately remove the Covered Employee from District’s property or other location where students are regularly present, and notify the District of said removal within three (3) days of doing so. Program Manager understands that any failure to comply with the requirements of this section may be grounds for termination of this Agreement, in accordance with Article 7, Termination.

§ 11.6 Program Manager represents and warrants that it will perform its services under the Agreement in accordance with the professional care and skill ordinarily provided by architects and engineers practicing under the same or similar circumstances and professional license. Program Manager shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Program.

§ 11.7 Program Manager certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Program Manager's business. Program Manager acknowledges that such a vaccine or recovery requirement would make Program Manager ineligible for a state-funded contract.

§ 11.8 Pursuant to Government Code Section 2274.0102, Program Manager certifies that neither it nor its parent company, nor any affiliate of Program Manager or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Government Code Section 2274.0103, or (2) headquartered in any of those countries.

§ 11.9 Pursuant to Texas Government Code Chapters 2274 and 809, if this contract is valued at \$100,000 or more and if Program Manager has at least ten (10) full-time employees, then Program Manager represents and warrants to the Owner that the Program Manager does not boycott energy companies and will not boycott energy companies during the term of this Agreement.

§ 11.10 Pursuant to Texas Government Code Chapter 2274, if this contract is valued at \$100,000 or more and if Program Manager has at least ten (10) full-time employees, then Program Manager represents and warrants to the Owner that the Program Manager does not discriminate against firearm entities or firearm trade associations and will not discriminate against firearm entities or firearm trade associations during the term of this Agreement.

§ 11.11 Pursuant to Texas Education Code Section 44.034, Program Manager must give advance written notice to the Owner if the Program Manager or an owner or operator of the Program Manager has been convicted of a felony. The Owner may terminate this Agreement if the Owner determines that the Program Manager failed to give such notice or misrepresented the conduct resulting in the conviction. This paragraph requiring advance notice does not apply to a publicly-held corporation.

§ 11.12 By signing this Agreement, the undersigned certifies as follows: Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

§ 11.13 By executing this Agreement, Program Manager verifies that Program Manager does not boycott Israel or any Israeli-controlled territory, and will not boycott Israel or any Israeli-controlled territory during the term of this Agreement. Pursuant to Texas Government Code, Chapter 2271, as amended, if Program Manager is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit which has ten (10) or more full-time employees and the value of the contract with Owner is \$100,000 or more, the Program Manager represents and warrants to the Owner that the Program Manager does not boycott Israel and will not boycott Israel during the term of this Agreement.

§ 11.14 Program Manager verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Program Manager misrepresents its inclusion on the list, then such omission or misrepresentation shall void this Agreement.

§ 11.15 The Program Manager verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers.

§ 11.16 By entering into this Contract, pursuant to Texas Government Code 552, Subchapter J, the Program Manager agrees to be bound by the following terms if the Contract has a stated expenditure of at least \$1,000,000 for the purchase of goods or services by the Owner or if the Contract results in the expenditure of at least \$1,000,000 in public funds for the purchase of goods or services by the Owner in a fiscal year of the Owner. If the Owner receives a written request for public information related to this Contract that is in the possession or custody of the Program

Manager and not in the possession or custody of the Owner, the Owner shall send, not later than the third business day after the date the Owner receives the written request, a written request to the Program Manager that Program Manager provide that information to the Owner.

The Program Manager must:

- .1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the Owner for the duration of the Contract;
- .2 Promptly, within four business days, provide to the Owner any requested contracting information that is in the custody or possession of the Program Manager upon request of the Owner; and,

On completion of the Contract, either:

- .1 Provide to the Owner at no cost all contracting information related to the Contract that is in the custody or possession of the Program Manager; or
- .2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the Owner.
- .3 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Program Manager agrees that the contract can be terminated if the Program Manager knowingly or intentionally fails to comply with the requirements of that subchapter.

Further, under Texas Government Code Chapter 552.372(c), the Owner may not accept a bid for or awarding of a contract to an entity that the Owner has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the Owner determines and documents that the entity has taken adequate steps to ensure future compliance.

If Program Manager fails to provide to the Owner the requested information, Texas Government Code Chapter 552.373 requires the Owner to notify the Program Manager in writing of the failure and allow 10 business days to cure the violation. Owner may terminate the Contract if Program Manager fails to remedy the failure, Owner determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

§ 11.17 Program Manager shall take all actions and shall comply with all federal, state, and local legal requirements, and shall also comply with all recommendations of the Centers for Disease Control.»

§ 11.18 Program Manager acknowledges that the Project is part of the Development as outlined herein. Each Condominium Owner will have its respective undivided ownership interest in the Master Common Elements. The laws of the state of Texas and the Condominium Documents confer rights upon the Condominium Owners and the Master Association with regard to claims for defective construction and design.

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Program 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 the Owner and Program Manager.

§ 12.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document C171™–2013, Standard Form Agreement Between Owner and Program Manager, as modified by Owner.
- .2 [Subsection Deleted.]
- .3 Other documents:
(List other documents, if any, including additional scopes of service forming part of the Agreement.)

« _____ »

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

FRISCO INDEPENDENT SCHOOL DISTRICT

CBRE HEERY, INC.

DocuSigned by:

675FC89DFE31480
OWNER (Signature)

DocuSigned by:

3683DCA5D74E430
PROGRAM MANAGER (Signature)

«Kimberly Smith, Chief Financial Officer»« »
(Printed name and title)

«Glenn Jardine, Executive Managing Director »
(Printed name and title)

CITY OF FRISCO, TEXAS,
a home rule municipality

FRISCO COMMUNITY DEVELOPMENT CORPORATION, a Texas non-profit corporation

By: _____
George Purefoy, City Manager

By: _____
George Purefoy, Operations Manager