

**MEETING OF THE BOARD OF
DIRECTORS OF THE
ARLINGTON ECONOMIC DEVELOPMENT CORPORATION**

**AGENDA
NOVEMBER 13, 2024, AT 4:00 p.m.
CVB Board Room
1st FLOOR
1717 E. Randol Mill Road
ARLINGTON, TX 76011**

Members of the public who wish to speak on a listed agenda item for action will be asked for their comments at the appropriate time.

- I. Call to Order
- II. Consideration of Minutes
 - A. October 15th Meeting
- III. Standing Reports
 - A. Financial Reports
 - B. Real Estate Report
 - C. Industry Spotlight Report
- IV. Items for Action:
 - A. A resolution authorizing the Executive Director of the Arlington Economic Development Corporation (AEDC) to execute a Third Amendment to the Master Agreement with E-space, Inc. and the City of Arlington, relative to the establishment of a North American headquarters and manufacturing facility at the Arlington Municipal Airport.
 - B. A resolution authorizing the Executive Director of the Arlington Economic Development Corporation to execute a Construction Manager-at-Risk contract for the pre-construction services for the E-Space North America Headquarters and Manufacturing Facility with Moss & Associates, LLC, of Fort Lauderdale, Florida, in an amount not to exceed \$57,996.
- V. Executive Session

Discussion of matters permitted by the following sections of V.T.C.A, Government Code, Chapter 551:

 - A. Section 551.087, Deliberation Regarding Economic Development Negotiations
 - 1. Offers of Incentives to Business Prospects
 - B. Section 551.072, Deliberation Regarding Real Property
 - 1. Discussion regarding the possible purchase, exchange, lease, or value of real property for eligible projects of the Arlington Economic Development Corporation.

VI. Executive Director's Report

A. Staffing Update

B. Office Construction Update

C. Explanation of Monthly & Year End Financials

D. 2025 Marketing Plan

E. Upcoming Presentations

VII. Future Agenda Items

VIII. Adjourn

**MEETING OF THE BOARD
OF DIRECTORS OF THE
ARLINGTON ECONOMIC DEVELOPMENT CORPORATION**

**MINUTES OF THE
ARLINGTON ECONOMIC DEVELOPMENT CORPORATION
BOARD OF DIRECTORS**

October 15, 2024

The Board of Directors of the Arlington Economic Development Corporation of the City of Arlington, Texas, convened in Regular Session on October 15, 2024, at 4:00 p.m., in the Council Briefing Room of the City Hall Building, 101 West Abram Street, with the meeting being open to the public and notice of said meeting, giving the date, place and subject thereof, having been posted as prescribed by V.T.C.A., Government Code, Chapter 551, with the following members present, to-wit:

Board Members:

Michael Jacobson	§	President
Mojy Haddad	§	Vice President
Jollyn Mwisongo	§	Secretary
Gerald Alley	§	Board Member
Paul Corson	§	Board Member
Carmenza Moreno	§	Board Member

Absent:

John Whiteley	§	Treasurer
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And

Trey Yelverton	City Manager
Marty Wieder	Executive Director
Gus Garcia	Economic Development Director
Jonathan Moss	Senior Attorney
Raja Saravanan	Business Intelligence and Marketing Analyst
Erin Clark	Public Funds Administrator
Stephanie Dimas	Senior Public Finance Analyst
Marcus Young	Economic Development Specialist
Josh Mejia	Economic Development Specialist
Stephanie Hall	Operations and Events Administrator
Lyndsay Mitchell	Director of Office of Strategic Initiatives
Kevin McGlaun	Real Estate Consultant

I. Call to Order

President M. Jacobson called the meeting to order at 4:05 p.m.

II. Consideration of Minutes -September 24th Meeting

Board Member P. Corson made a motion to approve the minutes of the September 24, 2024, Board meeting. Seconded by Board Member J. Mwisongo. The motion carried with 6 ayes and 0 nays.

Approved

III. Standing Reports

A. Financials – No Discussion

B. Real Estate Report – S. Arlington sub-market marginally above greater Dallas .

C. Industry Spotlight Report – No Discussion

IV. Items for Action:

A. A resolution of the Board of Directors authorizing the Executive Director of the Arlington Economic Development Corporation to execute a Renewal and Modification Contract for the Professional Services Contract with M4 Realty Advisors, LLC for assistance with real estate matters.

Marty Wieder, Executive Director, presented the resolution for consideration.

Vice President M. Haddad made a motion to approve the resolution. Seconded by Board Member G. Alley. The motion carried with 6 ayes and 0 nays.

AEDC RESOLUTION NO. 24-023

B. A resolution authorizing the Executive Director of the Arlington Economic Development Corporation to execute an Amended and Restated Professional Services Contract for the design of the Arlington Economic Development Corporation offices with SBL Architects, Inc. in an amount not to exceed \$64,500.

Marty Wieder, Executive Director, presented the resolution for consideration.

Board Member G. Alley made a motion to approve the resolution. Seconded by Board Member J. Mwisongo. The motion carried with 6 ayes and 0 nays.

AEDC RESOLUTION NO. 24-021

C. A resolution of the board of Directors authorizing the Executive Director to execute Contract Modification No. 1 to the Construction Contract for the Arlington Economic Development Corporation office relocation with Cowboys Roofing, LLC, dba DSA Contractors, of Irving, Texas, in an amount not to exceed \$32,307.

Marty Wieder, Executive Director, presented the resolution for consideration.

Vice President M. Haddad made a motion to approve the resolution. Seconded by Board Member P. Corson. The motion carried with 6 ayes and 0 nays.

AEDC RESOLUTION NO. 24-022

D. A resolution superseding AEDC Resolution No. 24-019 authorizing the Executive Director of the Arlington Economic Development Corporation to execute a Performance Agreement with Salcomp Manufacturing USA Corporation relative to the establishment of their U.S. headquarters and expanded manufacturing facility in Arlington.

Marty Wieder, Executive Director, presented the resolution for consideration.

Board Member J. Mwisongo made a motion to approve the resolution. Seconded by Vice President M. Haddad. The motion carried with 6 ayes and 0 nays.

AEDC RESOLUTION NO. 24-024

President M. Jacobson announced that the Arlington Economic Development Corporation Board of Directors was going into closed session at 4:22 p.m. on October 15th, 2024, in accordance with the following sections of V.T.C.A. Government Codes, Chapter 551:

EXECUTIVE SESSION

- **Section 551.087, Deliberation Regarding Economic Development Negotiations**
- **Section 551.072, Deliberation Regarding Real Property**
 1. Discussion regarding the possible purchase, exchange, lease, or value of real property for eligible projects of the Arlington Economic Development Corporation.

President M. Jacobson announced it was 4:51 p.m. on October 15, 2024, and the closed meeting was ending. The Arlington Economic Development Corporation Board of Directors reconvened in open session at 4:51 p.m.

V. Executive Director's Reports

A. Staffing Update

Marty Wieder, Executive Director, presented. The Staffing Update included the hiring announcement of Kay Brown-Patrick to be the first of two Assistant Executive Director positions. She will also serve as Director of Small, Minority and Women Owned Enterprise Development. She will start October 21st. Interviews continue for Economic Development Coordinator and there are six finalists for the Project Manager positions (2) and interviews are being set up.

B. New Office Construction Update

Marty Wieder reported that the construction timeline remains on track for a mid-December finish out and late December EDC move.

C. Summary of Office Construction Costs

Marty Wieder reported \$725,689.34 is the estimated total cost of construction and to date, \$200,000 has been spent.

D. Possible Special November Board Meeting

Mr. Wieder announced the regular AEDC Board of Directors meetings for November and December would take place on Wednesday, 13, 2024, after discussion and Thursday, December 19, 2024.

E. FY25 Marketing Plans

Mr. Wieder discussed future marketing plans for FY25. The EDC will work on a plan detailing sponsored events and efforts being made for print and internet ad content such as the Book of Lists and Dallas Business Journal. There is a desire to make the EDC annual report a larger portion of our marketing efforts going forward.

VI. Future Agenda Items

No discussion.

VII. Adjourn

There being no further business, the meeting was adjourned at 5:12 p.m.

I, President M. Jacobson, of the Arlington Economic Development Corporation Board of Directors, do hereby certify that the foregoing certified agenda, as required by V.T.C.A.,

Government Code, Chapter 551, is a true and correct copy of the record of the Executive Session Meeting, held on October 15, 2024.

Arlington EDC Funds Flow Projection
11.08.2024

	Actual FY 2021	Actual FY 2022	Actual FY 2023	Projected FY 2024	Budgeted FY 2025	Projection FY 2026	Projection FY 2027	Projection FY 2028	Projection FY 2029	Projection FY 2030
Beginning Balance	\$ -	\$ 10,853,564	\$ 33,352,739	\$ 55,006,031	\$ 65,743,527	\$ 96,225,730	\$ 90,938,137	\$ 111,305,432	\$ 130,827,278	\$ 154,185,267
Sales Tax Revenue	11,164,714	24,115,528	23,849,011	24,554,923	26,219,454	27,006,038	27,816,219	28,650,705	29,510,226	30,395,533
Investment Income	-	137,745	912,453	2,097,927	2,629,741	3,849,029	3,637,525	4,452,217	5,233,091	6,167,411
Other Revenue*	-	(888,339)	273,566	(826,920)	-	-	-	-	-	-
Debt Proceeds	-	-	-	-	25,000,000	-	-	-	-	-
Available to Fund Ops and Projects	11,164,714	34,218,498	58,387,768	80,831,961	119,592,722	127,080,797	122,391,881	144,408,355	165,570,596	190,748,211
Operations	311,151	865,759	1,572,471	12,503,425	5,638,931	5,791,599	5,932,888	6,078,415	6,244,268	6,398,658
Available to Fund projects	10,853,564	33,352,739	56,815,297	68,328,536	113,953,792	121,289,198	116,458,994	138,329,940	159,326,328	184,349,553
Project Funding	-	-	7,631,350	2,585,009	-	-	-	-	-	-
Project Commitments	-	-	-	-	17,728,061	30,351,061	2,853,561	5,202,661	2,841,061	2,841,061
Debt Service	-	-	-	-	-	-	2,300,000	2,300,000	2,300,000	2,300,000
Total Funded and Committed	-	-	7,631,350	2,585,009	17,728,061	30,351,061	5,153,561	7,502,661	5,141,061	5,141,061
Value of Fixed Assets (land)	-	-	5,822,084	-	-	-	-	-	-	-
Ending balance / Available to fund new projects	\$ 10,853,564	\$ 33,352,739	\$ 55,006,031	\$ 65,743,527	\$ 96,225,730	\$ 90,938,137	\$ 111,305,432	\$ 130,827,278	\$ 154,185,267	\$ 179,208,492

Assumed Growth in Sales Tax Revenue 3%
Assume rate of return on Cash 4%
Assumed inflation of Operations 3%

*Other Revenue includes a Reserve for Increase/Decrease in the Fair Market Value of Investments, an entry made in service to the City of Arlington's Comprehensive Annual Financial Report.

COA Expenditures by Cost Center

Budget Structure
Amount Type
Period
Cost Center Hierarchy
From Budget Date
To Budget Date

Non-Operating Budget
Activity
FY24 - Sep
Economic Development Corporation
10/1/2023
9/30/2024

Cost Center	Budget Appropriation	Current Monthly Expenditures	Expenditures to Date	Encumbrances	Actuals + Obligations	Unexpended Balance	%Exp
Cost Center	72,935,077	(9,028,079)	4,238,450	525,804	4,764,254	68,170,823	6.53%
CC973005 Economic Development Corporation Projects	69,016,963	(9,285,241)	2,585,009	17,100	2,602,109	66,414,854	3.77%
61000:Purchase/Contract	69,016,963	(9,285,241)	2,585,009	17,100	2,602,109	66,414,854	3.77%
CC973010 Economic Development Corporation Operations	3,918,114	257,162	1,648,628	508,704	2,195,688	1,722,426	56.04%
50000:Salaries and Wages	674,492	50,374.02	429,117.30	-	429,117.30	245,374.70	63.62%
55000:Benefits	174,572	10,799.84	103,124.17	-	103,124.17	71,447.83	59.07%
60000:Supplies	400,000	7,897	97,717	-	97,717	302,283	24.43%
61000:Purchase/Contract	700,000	142,800	572,630	6,500	579,130	120,870	82.73%
61500:Construction Services Expenses	-	(11,952)	11,952	-	11,952	(11,952)	-
62000:Utilities	20,000	-	-	-	-	20,000	0.00%
63000:Maintenance and Repair	1,000,000	38,355.60	74,998.80	502,204.00	615,558.40	384,441.60	61.56%
65000:Miscellaneous Expense	755,000	18,242	309,683	-	309,683	445,317	41.02%
66000:Travel and Training	188,050	1,022	47,376	-	47,376	140,674	25.19%
67000:Interdepartmental Expense	6,000	(376)	2,030	-	2,030	3,970	33.84%

* \$9,500,000 expenditure for the FBO Purchase was reversed and is now being shown at the Fund level as a transfer out to the new Aviation Enterprise Fund.

** corrected a prior month expenditure posted to the wrong spend category

SALES TAX REVENUES

TOTAL	24,554,924	Sales Month	Revenue Received
	2,121,335	October 2023	December 2023
	2,016,327	November 2023	January 2024
	2,254,491	December 2023	February 2024
	1,635,459	January 2024	March 2024
	1,732,787	February 2024	April 2024
	2,300,118	March 2024	May 2024
	2,012,647	April 2024	June 2024
	2,102,944	May 2024	July 2024
	2,168,741	June 2024	August 2024
	2,211,927	July 2024	September 2024
	1,921,911	August 2024	October 2024
	2,076,237	September 2024	November 2024

COA Expenditures by Cost Center

Budget Structure
Amount Type
Period
Cost Center Hierarchy
From Budget Date
To Budget Date

Non-Operating Budget
Activity
FY24 - Sep
Economic Development Corporation
10/1/2023
9/30/2024

Cost Center	Budget Appropriation	Current Monthly Expenditures	Expenditures to Date	Encumbrances	Actuals + Obligations	Unexpended Balance	%Exp
Cost Center	72,935,077	(9,028,079)	4,238,450	525,804	4,764,254	68,170,823	6.53%
CC973005 Economic Development Corporation Projects	69,016,963	(9,285,241)	2,585,009	17,100	2,602,109	66,414,854	3.77%
61000:Purchase/Contract	69,016,963	(9,285,241)	2,585,009	17,100	2,602,109	66,414,854	3.77%
SC0533 - Special Services*	-	(9,500,000)	2,255,000	-	2,255,000	(2,255,000)	0.00%
SC0574 - Professional Services	69,016,963	214,759	330,009	17,100	347,109	68,669,854	0.50%
CC973010 Economic Development Corporation Operations	3,918,114	257,162	1,648,628	508,704	2,195,688	1,722,426	56.04%
50000:Salaries and Wages	674,492	50,374.02	429,117.30	-	429,117.30	245,374.70	63.62%
SC50002 - Salaries: Operations	674,492	42,220.71	411,094.90	-	411,094.90	263,397.10	60.95%
SC50010 - Salaries: Terminal Pay	-	8,153.31	18,022.40	-	18,022.40	(18,022.40)	0.00%
55000:Benefits	174,572	10,799.84	103,124.17	-	103,124.17	71,447.83	59.07%
SC50004 - Benefits: Longevity/Stability	210	-	168.00	-	168.00	42.00	80.00%
SC55000 - Benefits : Worker's Comp	763	62.53	610.42	-	610.42	152.58	80.00%
SC55001 - Benefits : Employee Retirement	72,626	5,637.69	46,469.21	-	46,469.21	26,156.79	63.98%
SC55002 - Benefits : Disability Income Plan	1,484	71.37	889.45	-	889.45	594.55	59.94%
SC55003 - Benefits : Employee Insurance	64,022	2,048.91	28,839.96	-	28,839.96	35,182.04	45.05%
SC55005 - Benefits : Medicare	9,779	736.81	6,261.83	-	6,261.83	3,517.17	64.03%
SC55008 - Benefits : Thrift Plan	18,096	1,550.99	14,291.49	-	14,291.49	3,804.51	78.98%
SC55009 - Benefits : Car Allowance	5,200	620.00	4,991.43	-	4,991.43	208.57	95.99%
SC55010 - Benefits : Phone Allowance	2,392	71.54	602.38	-	602.38	1,789.62	25.18%
60000:Supplies	400,000	7,897	97,717	-	97,717	302,283	24.43%
SC0500 - Office Supplies less than \$5,000	10,000	199	1,896	-	1,896	8,104	18.96%
SC0514 - Other Supplies	3,000	-	-	-	-	3,000	0.00%
SC0516 - Supplies/Computer Hardware	22,000	-	6,901	-	6,901	15,099	31.37%
SC0517 - Office Furniture less than \$5,000	60,000	-	-	-	-	60,000	0.00%
SC0521 - Cost Of Food & Beverage	25,000	798	4,061	-	4,061	20,939	16.25%
SC0531 - Rental	30,000	-	-	-	-	30,000	0.00%
SC0675 - Supplies/Computer Software	250,000	6,900	84,859	-	84,859	165,141	33.94%
61000:Purchase/Contract	700,000	142,800	572,630	6,500	579,130	120,870	82.73%
SC0533 - Special Services	500,000	105,000	419,180	-	419,180	80,820	83.84%
SC0574 - Professional Services	200,000	37,800	153,450	6,500	159,950	40,050	79.98%
61500:Construction Services Expenses	-	(11,952)	11,952	-	11,952	(11,952)	-
SC0583 - Maintenance of Buildings**	-	(11,952)	11,952	-	11,952	(11,952)	-
62000:Utilities	20,000	-	-	-	-	20,000	0.00%
SC0578 - Electric Service	20,000	-	-	-	-	20,000	0.00%
63000:Maintenance and Repair	1,000,000	38,355.60	74,998.80	502,204.00	615,558.40	384,441.60	61.56%
SC0583 - Maintenance of Buildings	1,000,000	38,355.60	74,998.80	502,204.00	615,558.40	384,441.60	7.96%
65000:Miscellaneous Expense	755,000	18,242	309,683	-	309,683	445,317	41.02%
SC0658 - Advertising	750,000	17,818	308,711	-	308,711	441,289	41.16%
SC0735 - Employee Reimbursement - non travel/training	5,000	424	972	-	972	4,028	19.44%
66000:Travel and Training	188,050	1,022	47,376	-	47,376	140,674	25.19%
SC0668 - Membership	50,000	100	20,614	-	20,614	29,386	41.23%
SC0669 - Training	10,000	190	4,312	-	4,312	5,688	43.12%
SC0670 - Registration	78,050	200	4,653	-	4,653	73,397	5.96%
SC0671 - Travel	50,000	532	17,797	-	17,797	32,203	35.59%
67000:Interdepartmental Expense	6,000	(376)	2,030	-	2,030	3,970	33.84%
SC0500 - Office Supplies less than \$5,000**	-	(1)	(1)	-	-	-	0.00%
SC0633 - General Services Charges	6,000	244	2,030	-	2,030	3,970	33.84%
SC0658 - Advertising**	-	(619)	-	-	-	-	0.00%

* \$9,500,000 expenditure for the FBO Purchase was reversed and is now being shown at the Fund level as a transfer out to the new Aviation Enterprise Fund.

** corrected a prior month expenditure posted to the wrong spend category

**FD8050 Arlington Economic Development Corporation
CC973005 Economic Development Corporation Projects
FY23 EDC Project Expenditures Detail by Month**

NOTE: There were no project related expenditures in October, November, December, March, and June

JANUARY

Amount	Transaction Date	Payee	Purpose
1,000,000.00	1/24/2024	Bell Textron, Inc.	Bell Textron AEDC Performance Agreement grant #2
1,500.00	1/26/2024	TERRY RUTLAND	Center Street Gateway Project: construction fence removal
1,001,500.00			

FEBRUARY

Amount	Transaction Date	Payee	Purpose
500,000.00	2/28/2024	Sportec	Startup costs reimbursement
250,000.00	2/28/2024	Sportec	Certificate of Occupancy
750,000.00			

APRIL

Amount	Transaction Date	Payee	Purpose
9,500,000.00	4/1/2024	GKY Realty LTD	EDC Contribution towards purchase of Airport FBO
9,500,000.00			

MAY

Amount	Transaction Date	Payee	Purpose
5,000.00	5/7/2024	MedHab	TMAC project
5,000.00			

JULY

Amount	Transaction Date	Payee	Purpose
500,000.00	7/1/2024	First Rate	FY24 Performance Grant
500,000.00			

AUGUST

Amount	Transaction Date	Payee	Purpose
113,750.00	8/9/2024	M. Arthur Gensler Assoc., Inc.	E-Space Architecture - Schematic Design
113,750.00			

SEPTEMBER

Amount	Transaction Date	Payee	Purpose
(9,500,000.00)	9/30/2024	Interfund Transfer	removed expenditure and now showing as an interfund transfer to aviation
81,731.44	9/17/2024	M. Arthur Gensler Assoc., Inc.	E-Space Architecture - Schematic Design
133,027.50	9/30/2024	M. Arthur Gensler Assoc., Inc.	E-Space Architecture - Schematic Design
(9,285,241.06)			

Summary by Project

1,000,000.00	Bell Textron	
1,500.00	Center Street Gateway Project	
750,000.00	Sportec	
-	GKY Realty LTD	(converted to transfer to new Aviation enterprise fund)
5,000.00	MedHab	TMAC project
500,000.00	First Rate	FY24 Performance Grant
328,508.94	Gensler	E-Space
2,585,008.94	Total	

Economic Development Corporation

Pro Forma

Report Date: 11/08/2024
FD8050 CC 973010 (Operations) and CC 973005 (Projects)

	ACTUALS			PROJECTIONS											
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	FY21	FY22	FY23	FY24*	FY25	FY26	FY27	FY28	FY29	FY30	FY31	FY32	FY33	FY34	FY35
Beginning Balance	-	10,853,564	33,352,739	55,006,031	65,743,527	96,225,730	90,938,137	111,305,432	130,827,278	154,185,267	179,208,492	207,318,823	238,828,287	277,389,591	308,105,778
Revenues - FD8050															
Sales Tax Revenue	11,164,714	24,115,528	23,849,011	24,554,923	26,279,454	27,006,038	27,816,219	28,650,705	29,510,226	30,395,533	31,307,399	32,246,821	33,214,020	34,210,440	35,236,754
Interest	-	131,745	912,453	2,097,927	2,629,741	3,849,029	3,637,525	4,452,217	5,231,091	6,167,411	7,168,340	8,292,753	9,552,811	10,895,220	12,324,231
Miscellaneous Revenue	-	-	-	4,133	-	-	-	-	-	-	-	-	-	-	-
Debt proceeds	-	2	24,750	-	-	-	-	-	-	-	-	-	-	-	-
Reserve for Inc/Decr in FAV of Investments	-	-	-	-	25,000,000	-	-	-	-	-	-	-	-	-	-
Reserve for Accrued Comp Absences	-	(877,675)	248,816	(831,054)	-	-	-	-	-	-	-	-	-	-	-
Total Revenues	11,164,714	23,364,934	25,035,029	25,825,930	51,849,195	30,855,067	31,453,744	33,102,923	34,743,318	36,562,944	38,475,739	40,539,374	42,766,831	45,105,661	47,560,985
Interfund Transfers															
Transfer to General Fund - Direct Support	-	(227,363)	(254,250)	(257,737)	(479,123)	(493,497)	(508,302)	(523,551)	(539,257)	(555,455)	(572,098)	(589,261)	(606,939)	(625,147)	(643,901)
Transfer to General Fund - Indirect Support	-	-	-	-	(516,474)	(531,968)	(531,968)	(531,968)	(547,927)	(547,927)	(547,927)	(564,365)	(564,365)	(584,365)	(581,296)
Transfer to Aviation Fund	-	-	-	(9,500,000)	-	-	-	-	-	-	-	-	-	-	-
Transfer to Water PayGo Fund for Water Capital Projects	-	-	-	(550,000)	(550,000)	(550,000)	(550,000)	(550,000)	(550,000)	(550,000)	(550,000)	(550,000)	(550,000)	(550,000)	(550,000)
Total Transfers	-	(227,363)	(254,250)	(10,307,737)	(1,545,597)	(1,575,465)	(1,590,270)	(1,605,519)	(1,637,184)	(1,653,362)	(1,670,025)	(1,701,626)	(1,721,394)	(1,739,312)	(1,775,197)
Expenditures															
EDC Operations - CC973010	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
YTD Actuals (see monthly budget report)	(311,151)	(638,396)	(1,318,221)	(2,195,688)	-	-	-	-	-	-	-	-	-	-	-
Remaining current year budget for EDC Operations	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Projected future budget	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Operations	(311,151)	(638,396)	(1,318,221)	(2,195,688)	-	-	-	-	-	-	-	-	-	-	-
Projects - Active Incentive Agreements - CC971005															
Bell Textron Inc.	-	-	(1,000,000)	(1,000,000)	(500,000)	-	-	-	-	-	-	-	-	-	-
Six Flags Southeast Project / Intercon Environmental	-	-	(286,316)	-	-	-	-	-	-	-	-	-	-	-	-
Center Street Gateway Project	-	-	(5,845,034)	(1,500)	-	-	-	-	-	-	-	-	-	-	-
First Rate	-	-	(500,000)	(500,000)	(500,000)	-	-	-	-	-	-	-	-	-	-
TMAC	-	-	(5,000)	(5,000)	(95,000)	-	-	-	-	-	-	-	-	-	-
Sportec (startup incentive)	-	-	(750,000)	(750,000)	(250,000)	-	-	-	-	-	-	-	-	-	-
Sportec (living grant)	-	-	-	-	(10,000)	(10,000)	(12,500)	-	-	-	-	-	-	-	-
Town North Redevelopment	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Go For Three / Sheraton redevelopment - Gap Parking Facility Contributions	-	-	-	-	-	-	-	(2,381,600)	-	-	-	-	-	-	-
Go For Three / Sheraton redevelopment - Sign Permit/Completion Guarantee	-	-	-	-	(2,333,333)	(2,333,333)	(2,333,333)	(2,333,333)	(2,333,333)	(2,333,333)	(1,000,000)	-	-	-	-
FBO property acquisition / airport development	-	-	-	-	(5,000,000)	-	-	-	-	-	-	-	-	-	-
E-space	-	-	-	-	(2,500,000)	-	-	-	-	-	-	-	-	-	-
E-space architecture schematic design	-	-	-	-	(2,500,000)	-	-	-	-	-	-	-	-	-	-
E-space building debt service	-	-	-	(328,509)	-	-	-	-	-	-	-	-	-	-	-
Eden Cooper Business Park	-	-	-	-	-	-	(2,300,000)	(2,300,000)	(2,300,000)	(2,300,000)	(2,300,000)	(2,300,000)	(2,300,000)	(2,300,000)	(2,300,000)
Project Orange VBI Group, Inc. dba Ikon Technologies	-	-	-	-	(3,407,000)	-	-	-	-	-	-	-	-	-	-
Moore (passed EDC Board 09/24/24; passed Council 10/08/2024)	-	-	-	-	(7,000,000)	-	-	-	-	-	-	-	-	-	-
Total Active Incentive Projects	-	-	(7,631,350)	(2,585,009)	(17,728,061)	(30,351,061)	(5,153,561)	(7,502,661)	(5,141,061)	(5,141,061)	(3,807,728)	(2,300,000)	(2,300,000)	(2,300,000)	(2,300,000)
TOTAL EXPENDITURES	(311,151)	(866,759)	(9,203,821)	(15,088,434)	(23,366,992)	(16,142,660)	(11,086,449)	(11,531,077)	(11,385,329)	(11,539,719)	(10,365,408)	(9,087,910)	(9,306,617)	(9,386,364)	(9,576,296)
Value of Fixed Assets (Land)	-	-	5,822,084	-	-	-	-	-	-	-	-	-	-	-	-
Ending Balance	10,853,564	33,352,739	55,006,031	65,743,527	96,225,730	90,938,137	111,305,432	130,827,278	154,185,267	179,208,492	207,318,823	238,828,287	277,389,591	308,105,778	346,090,467

dollar indicate projections

*** prior year funding available for new projects* is a placeholder to demonstrate that there are funds leftover from prior years that can be utilized during any year for any adopted project, these amounts will change periodically as this pro forma is updated

*FY24 information is not yet complete, this is unaudited data

REVENUE ASSUMPTIONS:

FY24 Sales Tax Revenue projections based on actuals to date plus assumption for remaining months of the year. FY25 is based on projected budget, all out years assume 3% growth
FY24 interest projections based on revenues to date plus assumptions about the remaining months, all out years are calculated based on the prior year ending balance multiplied by 4%

OPERATIONS EXPENDITURE ASSUMPTIONS:

FY24 operations expenditure projections based on actuals to date plus assumptions for the remaining months, which includes one-time expenditure of \$1m for tenant improvement expenses at Choctaw Stadium
FY25 is based on proposed budget, which includes \$1m for one-time construction costs at Choctaw Stadium, indirect costs for city services, and funding for all positions shown in the previously approved organization chart
FY26 and beyond operations expenditure projections assume 3% growth, with the exception of indirect costs, this amount is based on a citywide cost study which is performed once every three years

PROJECTS EXPENDITURE ASSUMPTIONS:

Bell Textron payment years based on project commencement/completion deadlines per the agreement.
Town North payment projected in FY28 based on 12/31/2027 project completion deadlines, timing subject to change.
Six Flags Southeast Project: actual expenditure includes purchase price and closing costs
Center Street Gateway Project: projection includes purchase price, attorneys fees and commissions, additional closing costs to be determined
First Rate will be paid \$500K per year for three years for a total of \$1.5m.
Partnership with Texas Manufacturing Assistance Center (TMAC) are estimated expenditures per year for a total of \$100K total. Any funds not spent in a fiscal year are budgeted in the following fiscal year until all funds expended.
Projected amounts for previously approved projects for any given fiscal year are shown based on anticipated timing of payouts.
In any given fiscal year, the anticipated project payouts for that year are budgeted, and all remaining unencumbered fund balance is shown as available for project funding.
In the event a project is approved during a fiscal year that will result in a payout that same fiscal year, the budget will be increased by that amount at the time of contract approval.

City of Arlington Industrial Overview

November 2024 Report



ARLINGTON SUBMARKET

The Arlington submarket is a secondary distribution node between Fort Worth and Dallas. While industrial inventory is scattered throughout the submarket, there is a concentration of higher-quality stock built at the intersection of I-20 and State Highway 360. The Arlington industrial submarket is experiencing steady tenant demand, with vacancies remaining low despite limited new construction. The submarket has experienced consistent rent growth, with smaller properties commanding higher rental rates. Sales activity has been relatively low in recent months, with fewer transactions taking place.

12 Mo Deliveries in SF

1.1M

12 Mo Net Absorption in SF

474K

Vacancy Rate

6.7%

Market Asking Rent Growth

5.4%

AVAILABILITY	SUBMARKET	MARKET
Market Asking Rent/SF	\$9.64 ↓	\$9.70 ↓
Vacancy Rate	6.7% ↓	9.8% ↓
Vacant SF	2M ↓	117M ↓
Availability Rate	7.1% ↓	11.7% ↓
Available SF Direct	2.1M ↓	129M ↓
Available SF Sublet	30K ↓	14.5M ↓
Available SF Total	2.1M ↓	142M ↓
Months on Market	7.2	6.2

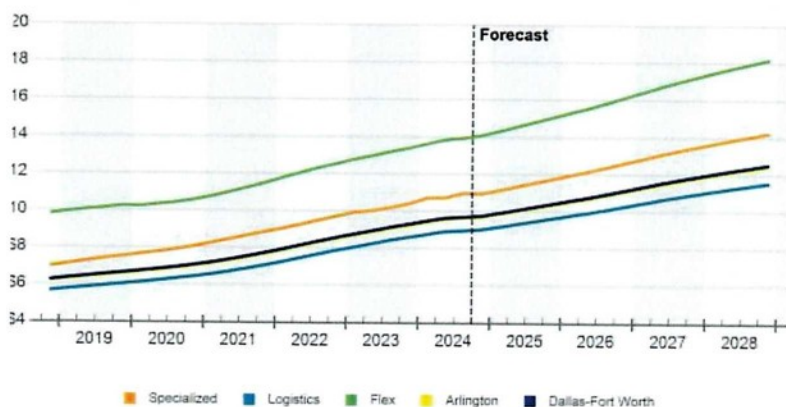
DEMAND	SUBMARKET	MARKET
12 Mo Net Absorption SF	474K ↓	20.9M ↓
12 Mo Leased SF	840K ↓	66M ↓
6 Mo Leasing Probability	40.5%	40.7%

INVENTORY	SUBMARKET	MARKET
Existing Buildings	723 ↓	24,798 ↓
Inventory SF	29.6M ↓	1.2B ↓
Average Building SF	41K ↓	48.2K ↓
Under Construction SF	17.9K ↓	20.4M ↓
12 Mo Delivered SF	1.1M ↓	49.2M ↓

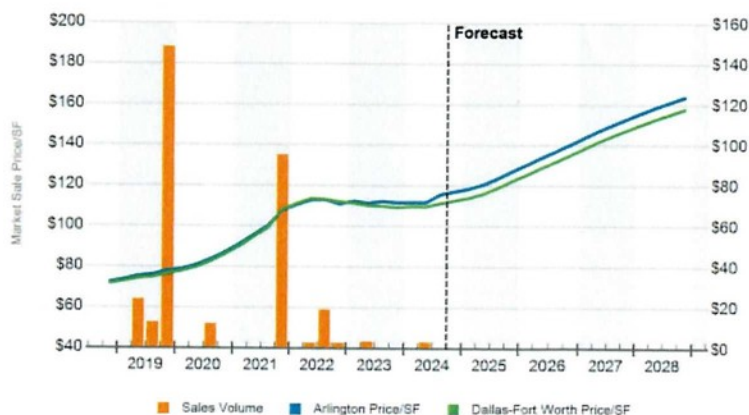
SALES	SUBMARKET	MARKET
12 Mo Transactions	19 ↓	1,190 ↓
Market Sale Price/SF	\$116 ↓	\$112 ↓
Average Market Sale Price	\$4.8M ↓	\$5.4M ↓
12 Mo Sales Volume	\$3.2M ↓	\$820M ↓
Market Cap Rate	6.9% ↓	6.9% ↓

NOTE: Arrows indicate an increase or decrease from the same metric for the previous 12-month period.

MARKET ASKING RENT PER SF



SALES VOLUME & PRICE PER SF



City of Arlington Industrial Overview

November 2024 Report

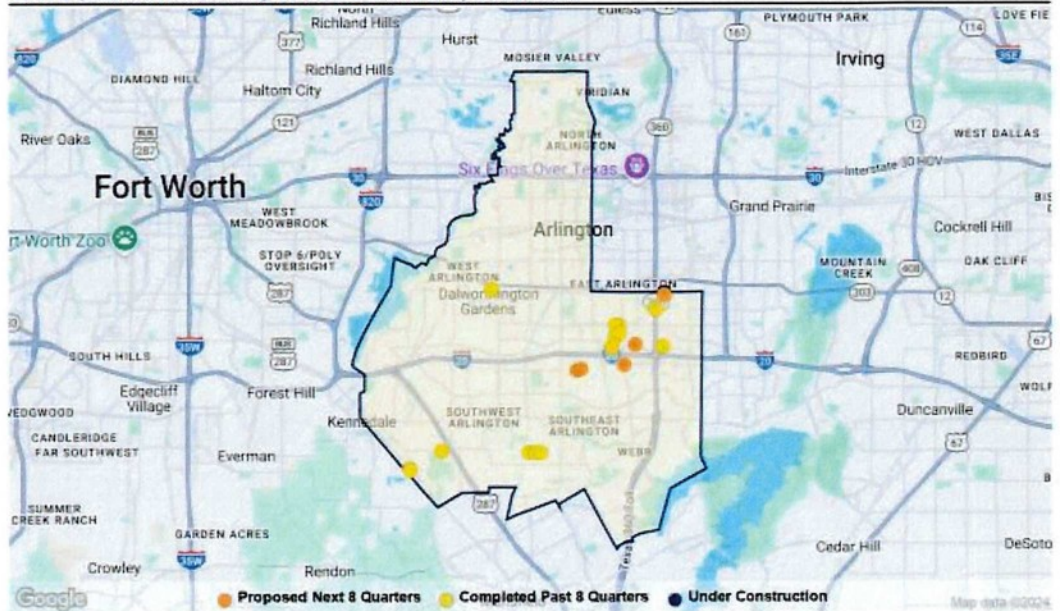


ARLINGTON SUBMARKET

PROPERTIES UNDER CONSTRUCTION

All-Time Annual Avg. Square Feet	Delivered Square Feet Past 8 Qtrs	Delivered Square Feet Next 8 Qtrs	Proposed Square Feet Next 8 Qtrs
640,548	2,110,189	17,936	827,845

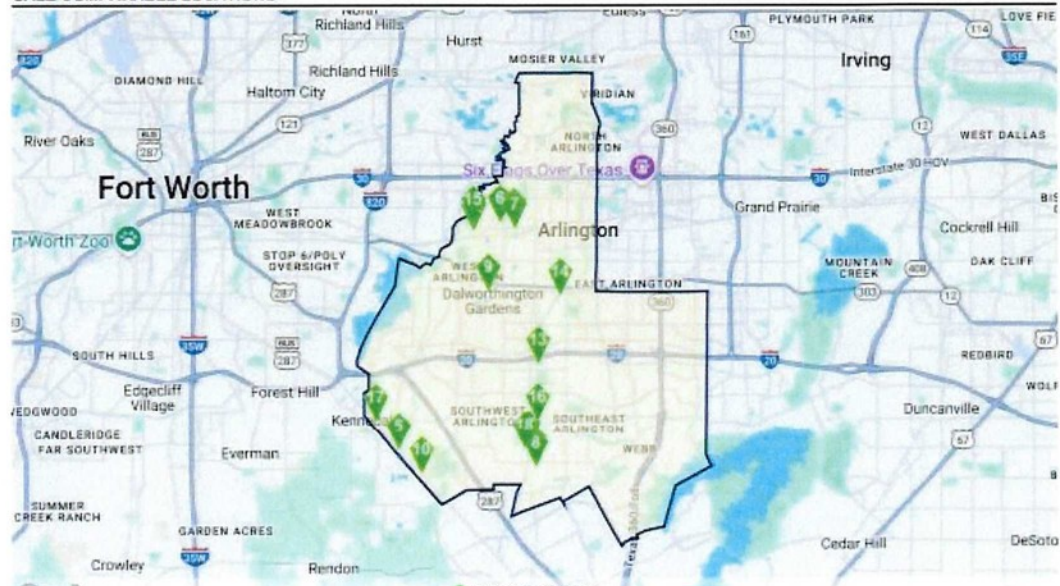
PAST 8 QUARTERS DELIVERIES, UNDER CONSTRUCTION, & PROPOSED



PAST 12 MONTHS SALE

Sale Comparables	Avg. Cap Rate	Avg. Price/SF	Avg. Vacancy At Sale
19	-	\$141	6.2%

SALE COMPARABLE LOCATIONS



City of Arlington Industrial Overview

November 2024 Report



LOWER GREAT SOUTHWEST SUBMARKET

With 44 million SF, Lower Great Southwest is one of the largest industrial submarkets in DFW. Although the submarket has historically had high vacancy rates, and low asking rents, the dynamic has shifted over the past decade as demand for space with access to both sides of the market and DFW Airport has reduced vacancies to historic lows. The vacancy rate in Lower Great Southwest is at 7.2% compared to the Dallas-Fort Worth average of 9.8%. The submarket has delivered around 500K SF over the last 12 months, and there is currently 285K SF under construction. Asking rents in Lower Great Southwest are \$8.96/SF, among the lowest in the Dallas-Fort Worth market, but slightly higher than in Upper Great Southwest. There have been 22 sales in past 12 months with an average sale price of \$147/SF.

12 Mo Deliveries in SF

31.8K

12 Mo Net Absorption in SF

(915K)

Vacancy Rate

7.2%

Market Asking Rent Growth

5.5%

AVAILABILITY	SUBMARKET	MARKET
Market Asking Rent/SF	\$8.96 ↓	\$9.70 ↓
Vacancy Rate	7.2% ↓	9.8% ↓
Vacant SF	3.1M ↓	117M ↓
Availability Rate	8.9% ↓	11.7% ↓
Available SF Direct	3.4M ↓	129M ↓
Available SF Sublet	840K ↓	14.5M ↓
Available SF Total	3.9M ↓	142M ↓
Months on Market	8.4	6.2

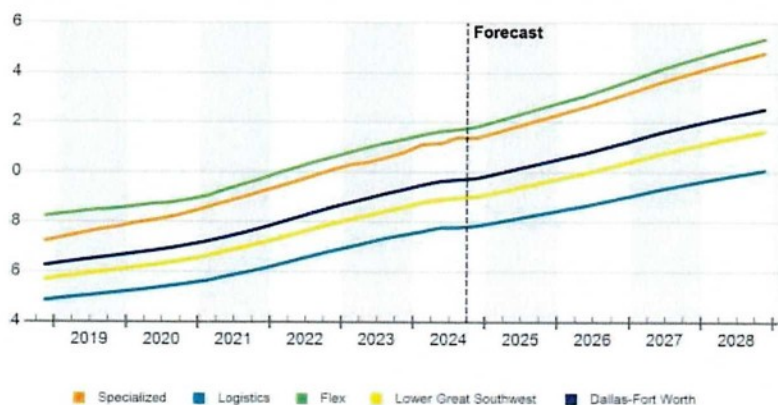
DEMAND	SUBMARKET	MARKET
12 Mo Net Absorption SF	(915K) ↓	20.9M ↓
12 Mo Leased SF	1.4M ↓	66M ↓
6 Mo Leasing Probability	39.8%	40.7%

INVENTORY	SUBMARKET	MARKET
Existing Buildings	631 ↓	24,798 ↓
Inventory SF	43.9M ↓	1.2B ↓
Average Building SF	69.6K ↓	48.2K ↓
Under Construction SF	285K ↓	20.4M ↓
12 Mo Delivered SF	31.8K ↓	49.2M ↓

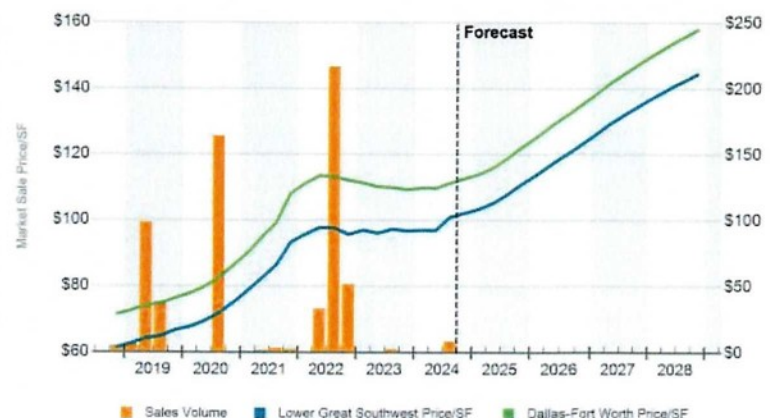
SALES	SUBMARKET	MARKET
12 Mo Transactions	22 ↓	1,190 ↓
Market Sale Price/SF	\$102 ↓	\$112 ↓
Average Market Sale Price	\$7.1M ↓	\$5.4M ↓
12 Mo Sales Volume	\$8.3M ↓	\$820M ↓
Market Cap Rate	6.6% ↓	6.9% ↓

NOTE: Arrows indicate an increase or decrease from the same metric for the previous 12-month period.

MARKET ASKING RENT PER SF



SALES VOLUME & PRICE PER SF



City of Arlington Industrial Overview

November 2024 Report

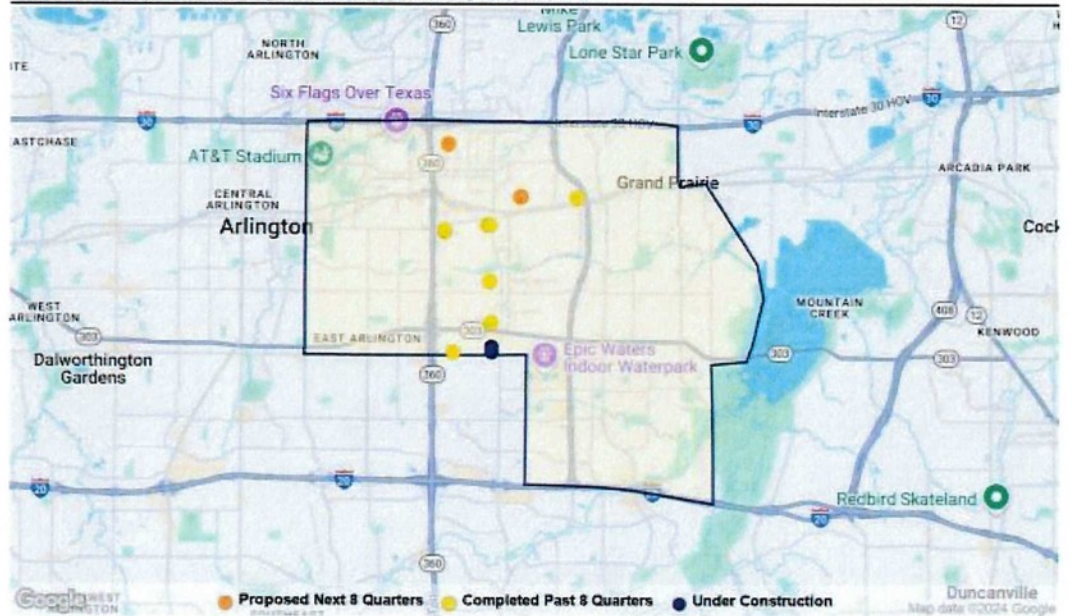


LOWER GREAT SOUTHWEST SUBMARKET

PROPERTIES UNDER CONSTRUCTION

All-Time Annual Avg. Square Feet	Delivered Square Feet Past 8 Qtrs	Delivered Square Feet Next 8 Qtrs	Proposed Square Feet Next 8 Qtrs
360,140	502,857	284,865	79,263

PAST 8 QUARTERS DELIVERIES, UNDER CONSTRUCTION, & PROPOSED



PAST 12 MONTHS SALE

Sale Comparables	Avg. Cap Rate	Avg. Price/SF	Avg. Vacancy At Sale
22	3.4%	\$147	9.2%

SALE COMPARABLE LOCATIONS





ARLINGTON
ECONOMIC DEVELOPMENT CORPORATION

AEDC Eligible Industries Snapshot

FY2024Q1 Eligible NAICS Codes Industry Summary for Arlington, Texas

November 13, 2024

INDUSTRY		CURRENT SNAPSHOT			5-YEAR HISTORY			1-YEAR FORECAST			
		EMPLOYEES	AVG. ANN. WAGES	LQ ¹	EMP. CHANGE	ANN. % CHANGE	TOTAL DEMAND	EXITS	EMP. GROWTH	ANN. % GROWTH	
CROPS, ANIMAL PRODUCTION, FORESTRY	NAICS 111-115	69	\$49,916	0.06	-19	-3.2%	9	3	0	0.8%	
MINING, OIL, & GAS EXTRACTION	NAICS 211-213	72	\$128,787	0.19	2	-1.1%	6	2	0	1.1%	
UTILITIES	NAICS 221	2,012	\$108,889	2.12	439	-1.9%	194	74	14	0.2%	
MANUFACTURING	NAICS 331-339	16,000	\$71,575	1.10	2,437	6.6%	1,764	624	134	0.7%	
WHOLESALE TRADE, TRANSPORTATION, & WAREHOUSING	NAICS 42, 48-49	14,249	\$77,572	0.86	2,254	1.4%	1,691	621	171	0.9%	
INFORMATION	NAICS 51	1,238	\$79,040	0.38	-297	-5.5%	122	40	16	1.2%	
SECURITIES, COMMODITY CONTRACTS, & FINANCIAL INVESTMENT ACTIVITIES	NAICS 523	637	\$110,413	0.75	252	10.4%	59	20	10	1.7%	
INSURANCE CARRIERS & RELATED ACTIVITIES	NAICS 524	2,732	\$88,073	0.66	162	-8.1%	276	103	40	1.4%	
FUNDS, TRUSTS, AND FINANCIAL VEHICLES	NAICS 525	23	\$63,536	1.08	5	6.4%	2	1	0	2.2%	
ARCHITECTURAL & ENGINEERING SERVICES	NAICS 5413	1,771	\$82,229	1.07	313	7.3%	160	57	22	1.2%	
COMPUTER SYSTEM DESIGN SERVICES	NAICS 5415	1,535	\$125,041	0.54	596	10.3%	146	40	38	2.5%	
MANAGEMENT, SCIENTIFIC, & TECHNICAL CONSULTING SERVICES	NAICS 5416	1,895	\$103,841	1.08	757	10.0%	195	64	33	1.8%	
SCIENTIFIC RESEARCH AND DEVELOPMENT	NAICS 5417	446	\$85,012	0.94	267	34.2%	42	13	6	1.4%	
OTHER PROFESSIONAL, SCIENTIFIC, & TECHNICAL SERVICES	NAICS 5419	1,250	\$63,208	1.07	16	-1.1%	152	51	24	1.6%	
MANAGEMENT OF COMPANIES & ENTERPRISES	NAICS 551	1,121	\$92,787	0.40	69	1.3%	116	39	20	1.8%	
TELEPHONE CALL CENTERS	NAICS 56142	560	\$91,987	1.27	-239	-6.9%	69	27	5	0.9%	

¹LQ = Location Quotient compares the concentration of the employment of an industry to the nation. An LQ of 1.00 indicates Arlington has the same concentration of an industry as the U.S., while a LQ of 2.00 means that Arlington has twice the expected employment compared to the nation.

Staff Report



Third Amendment to the espace Inc. Master Agreement

Arlington Economic Development Corporation
Meeting Date: 11-13-2024

Document Being Considered: Resolution

RECOMMENDATION

Approve a resolution authorizing the Executive Director of the Arlington Economic Development Corporation (AEDC) to execute a Third Amendment to Master Agreement with espace Inc. and the City of Arlington, relative to the establishment of a North American headquarters and manufacturing facility at the Arlington Municipal Airport.

PRIOR BOARD OR COUNCIL ACTION

On April 16, 2024, following a public hearing, the Arlington Economic Development Corporation Board of Directors approved Resolution No. 24-005 authorizing the execution of a Master Agreement with espace Inc. and the City of Arlington, relative to the establishment of a North American headquarters and manufacturing facility at the Arlington Municipal Airport.

On April 23, 2024, City Council approved Resolution No. 24-108 authorizing the execution of a Master Agreement with espace Inc. and the Arlington Economic Development Corporation, relative to the establishment of a North American headquarters and manufacturing facility at the Arlington Municipal Airport.

On June 18, 2024, the Arlington Economic Development Corporation approved Resolution No. 24-010 authorizing the execution of a First Amendment to the Master Agreement with espace Inc. and the Arlington Economic Development Corporation, relative to the establishment of a North American headquarters and manufacturing facility at the Arlington Municipal Airport.

On June 25, 2024, City Council approved Resolution No. 24-179 authorizing the execution of a First Amendment to the Master Agreement with espace Inc. and the Arlington Economic Development Corporation, relative to the establishment of a North American headquarters and manufacturing facility at the Arlington Municipal Airport.

On September 10, 2024, the Arlington Economic Development Corporation approved Resolution No. 24-016 authorizing the execution of a Second Amendment to the Master Agreement with espace Inc. and the Arlington Economic Development Corporation, relative to the establishment of a North American headquarters and manufacturing facility at the Arlington Municipal Airport.

On September 17, 2024, City Council approved Resolution No. 24-244 authorizing the execution of a Second Amendment to the Master Agreement with espace Inc. and the Arlington Economic Development Corporation, relative to the establishment of a North American headquarters and manufacturing facility at the Arlington Municipal Airport.

ANALYSIS

In April 2024, a Master Agreement with espace Inc. (E-Space) was executed to facilitate the development of a North American headquarters, manufacturing facility, hangar space, and other improvements at Arlington Municipal Airport.

At the time the Master Agreement was originally executed, a specific project delivery method had not been selected. For clarity, the third amendment seeks to specify that the AEDC may

elect to retain a construction manager at-risk (CMAR) for pre-construction services during development of design and construction drawings, and the costs associated with any CMAR services are included in the up to \$50,000,000 contribution by the AEDC should AEDC and E-Space move forward with construction of the facilities.

FINANCIAL IMPACT

None.

ADDITIONAL INFORMATION

Attached:

Resolution and Third Amendment to Master Agreement

Under separate cover:

None

Available in the City Secretary's office:

None

STAFF CONTACTS

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Lyndsay.Mitchell@arlingtontx.gov

Marty Wieder, AICP
Executive Director
AEDC
817-459-6432
Marty.Wieder@arlingtontx.gov

ARLINGTON ECONOMIC DEVELOPMENT CORPORATION
Resolution No. _____

A resolution of the Board of Directors authorizing the Executive Director to execute a Third Amendment to Master Agreement with espace Inc. and the City of Arlington, relative to the establishment of a North American headquarters and manufacturing facility at the Arlington Municipal Airport

WHEREAS, the Arlington Economic Development Corporation ("AEDC") is a Type B economic development corporation, created pursuant to Chapter 505 of the Texas Local Government Code, as amended; and

WHEREAS, espace Inc. ("Company"), AEDC, and the City of Arlington ("City") entered into that certain Master Agreement dated May 1, 2024, subsequently modified by that certain First Amendment to Master Agreement, dated July 24, 2024, and that certain Second Amendment to Master Agreement, dated October 8, 2024 (the Master Agreement, First Amendment to Master Agreement, and Second Amendment to Master Agreement collectively hereinafter referred to as "Agreement") pertaining to the establishment of a North American headquarters and manufacturing facility at the Arlington Municipal Airport; and

WHEREAS, Company, AEDC, and City desire to further amend the Agreement in certain respects; NOW THEREFORE

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE ARLINGTON ECONOMIC DEVELOPMENT CORPORATION:

I.

That all of the recitals contained in the preamble of this resolution are found to be true and are adopted as findings of fact by this body and as part of its official record.

II.

That the Board of Directors of the Arlington Economic Development Corporation hereby authorizes the Executive Director to execute a Third Amendment to Agreement with espace Inc. and the City of Arlington, relative to the establishment of a North American headquarters and manufacturing facility at the Arlington Municipal Airport.

III.

A substantial copy of the Third Amendment to Agreement is attached hereto and incorporated herein for all intents and purposes.

PRESENTED AND PASSED on this the _____ day of _____, 2024,
by a vote of _____ ayes and _____ nays at a regular meeting of the Board of Directors of
the Arlington Economic Development Corporation.

ATTEST:

Michael Jacobson, President

Alex Busken, Assistant Secretary

APPROVED AS TO FORM:
MOLLY SHORTALL, Counsel for
the Arlington Economic
Development Corporation

BY Molly Shortall

Third Amendment

THE STATE OF TEXAS §
 § **Third Amendment to Master Agreement**
COUNTY OF TARRANT §

THIS THIRD AMENDMENT TO MASTER AGREEMENT (hereinafter referred to as "Third Amendment") is entered into on _____, 2024 (hereinafter referred to as "Effective Date") by and among **espace Inc.**, a Delaware Corporation (hereinafter referred to as "**Company**"), the **ARLINGTON ECONOMIC DEVELOPMENT CORPORATION** (hereinafter referred to as "**AEDC**"), and the **CITY OF ARLINGTON, TEXAS**, a home-rule city and municipal corporation of Tarrant County, Texas, acting by and through its City Manager or his designee (hereinafter referred to as "**CITY**").

W I T N E S S E T H:

WHEREAS, Company, AEDC, and CITY entered into that certain Master Agreement dated May 1, 2024, subsequently modified by that certain First Amendment to Master Agreement, dated July 24, 2024, and that certain Second Amendment to Master Agreement, dated October 8, 2024 (the Master Agreement, First Amendment to Master Agreement, and Second Amendment to Master Agreement collectively hereinafter referred to as "Agreement") pertaining to the establishment of a North American headquarters and manufacturing facility at the Arlington Municipal Airport; and

WHEREAS, Company, AEDC, and CITY desire to further amend the Agreement in certain respects; NOW THEREFORE

Company, AEDC, and CITY, for and in consideration of the mutual promises contained herein, do hereby agree as follows:

1. Section II.F. shall be amended to read as follows:

F. Within thirty (30) days after the Effective Date, AEDC shall issue a request for qualifications to seek architectural services for the Project. AEDC shall collaborate with Company on the request for qualification as well as the evaluation and selection process. AEDC may also elect to retain a construction manager at-risk (the "**CMAR**") for pre-construction services during development of the design and construction drawings. AEDC shall contribute all funding for the development of the design and construction drawings for the Project, including any pre-construction services with a CMAR. The amount contributed by AEDC towards both architectural services and CMAR pre-construction services shall be the "**Initial Contribution Amount.**"

2. Section IV.A. shall be amended to read as follows:

A. AEDC agrees to contribute up to Fifty Million Dollars (\$50,000,000) (the "**Contribution**"), from available cash and/or proceeds from Sales Tax Revenue Bonds, towards the development and construction of the Project. For clarity, the Contribution

shall be decreased by the Initial Contribution Amount provided for in Section II.F. For the avoidance of doubt, in no case will the sum of the Contribution plus the Initial Contribution Amount exceed Fifty Million Dollars (\$50,000,000). The timeline and conditions precedent for AEDC's sale of any Sales Tax Revenue Bonds, as well as expenditure of any sums toward the Project, shall be set forth in a development agreement negotiated between AEDC and Company and approved by the Arlington Economic Development Corporation Board of Directors and the Arlington City Council (hereinafter "**Development Agreement**"). The AEDC's decision to retain a CMAR for pre-construction services shall not be considered evidence of any AEDC expenditure of sums towards construction of the Project or satisfaction of any condition(s) precedent by either AEDC or Company.

3. Except as modified by this Third Amendment, the Agreement shall remain in full force and effect and this Third Amendment shall be binding upon Company, AEDC, and CITY and their respective successors and assigns. If any inconsistency exists or arises between the terms of this Third Amendment and the Agreement, the terms of this Third Amendment shall prevail. This Third Amendment shall be governed by the laws of the State of Texas.
4. This Third Amendment, together with the Agreement, embodies the entire agreement and understanding between Company, AEDC, and CITY regarding the subject matters therein. Any and all prior or contemporaneous oral or written representations, agreements, understandings, or statements other than those set forth in the Agreement or this Third Amendment are of no force and effect.
5. If any term or provision of this Third Amendment is found to be invalid, illegal, or unenforceable, the remaining terms and provisions of this Third Amendment cannot be affected thereby, and each term and provision of this Third Amendment will be valid and enforceable to the fullest extent permitted by law.
6. Company, AEDC, and CITY hereby ratify and confirm the Agreement, as amended by this Third Amendment.
7. This Third Amendment may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

(Remainder of page intentionally left blank. Signature page follows)

IN WITNESS WHEREOF, each party has caused this Third Amendment to be executed on the date indicated above.

espace, Inc.

BY _____

Name _____

Title _____

WITNESS:

CITY OF ARLINGTON, TEXAS

BY _____

TREY YELVERTON

City Manager

ATTEST:

ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:
MOLLY SHORTALL, City Attorney

BY _____

**ARLINGTON ECONOMIC
DEVELOPMENT CORPORATION**

BY _____
MARTY WIDER
Executive Director

ATTEST:

_____, AEDC Secretary

APPROVED AS TO FORM:
MOLLY SHORTALL, Counsel for the
Arlington Economic Development
Corporation

BY _____

Staff Report



Arlington Economic Development Corporation –Construction Manager-at-Risk (CMAR) Contract for Pre-Construction Services for E-Space Manufacturing Facility, Project 25-0015	
Arlington Economic Development Corporation Meeting Date: 11-13-2024	Document Being Considered: Resolution

RECOMMENDATION

Approve a resolution authorizing the Executive Director of the Arlington Economic Development Corporation to execute a Construction Manager-at-Risk contract for pre-construction services for the E-Space North America Headquarters and Manufacturing Facility with Moss & Associates, LLC, of Fort Lauderdale, Florida, in an amount not to exceed \$57,996.

PRIOR BOARD OR COUNCIL ACTION

On April 16, 2024, following a public hearing, the Arlington Economic Development Corporation Board of Directors approved Resolution No. 24-005 authorizing the execution of a Master Agreement with espace Inc. and the City of Arlington, relative to the establishment of a North American headquarters and manufacturing facility at the Arlington Municipal Airport.

On April 23, 2024, City Council approved Resolution No. 24-108 authorizing the execution of a Master Agreement with espace Inc. and the Arlington Economic Development Corporation, relative to the establishment of a North American headquarters and manufacturing facility at the Arlington Municipal Airport.

On June 5, 2024, the Arlington Economic Development Corporation Board of Directors approved Resolution No. 24-007 authorizing the execution of a professional services contract for the E-Space project manager with Hill Building Group, LLC, of Arlington, Texas, in an amount not to exceed \$226,800.

On June 11, 2024, City Council approved Resolution No. 24-143 accepting and approving the Arlington Economic Development Corporation Resolution No. 24-007 authorizing the negotiation and execution of a professional services contract for espace Inc., ("E-space") project manager with Hill Building Group, LLC, of Arlington, Texas, in an amount not to exceed \$226,800.

On July 30, 2024, the Arlington Economic Development Corporation Board of Directors approved Resolution No. 24-012 authorizing the use of the Construction Manager-at-Risk procurement method of construction for E-Space manufacturing facility.

On July 30, 2024, the Arlington Economic Development Corporation Board of Directors approved Resolution No. 24-011 authorizing the execution of a professional services contract for the E-Space architect and engineering team with M. Arthur Gensler Jr. & Associates, Inc., dba Gensler, of San Francisco, California, in an amount not to exceed \$691,170.

On August 6, 2024, City Council approved Resolution No. 24-202 accepting and approving the

Arlington Economic Development Corporation Resolution No. No. 24-011 authorizing the execution of a professional services contract for the E-Space Inc. architect and engineering team with M. Arthur Gensler Jr. & Associates, Inc., of San Francisco, California, in an amount not to exceed \$691,170.

ANALYSIS

This Construction Manager-at-Risk ("CMAR") contract is for pre-construction services for the E-Space North American Headquarters and Manufacturing Facility. The construction manager-at-risk will work with the design professionals to determine best methods for carrying out the work and to provide value engineering and constructability reviews of the design documents prior to providing a guaranteed maximum price, thus reducing the likelihood of design errors and costly change orders during construction. The CMAR will also be responsible for providing construction services for the planned E-Space North American headquarters, and manufacturing facility,, if approved by the AEDC.

The Phase I facilities covered under the proposed design contract are on the west side of the Airport and include an approximately 250,000 square foot manufacturing and office facility, an approximately 40,000 square foot hangar, an airport access road, and an aircraft parking apron. Once design of Phase I is complete and cost estimates have been developed, the AEDC and E-Space will make a determination on whether to move into the construction phase.

An evaluation team comprised of Office of Strategic Initiatives, AEDC, espace project management firm, and Office of Business Diversity personnel evaluated the submittals based on weighted criteria which included team organization, service execution, qualifications of staff, response time, and project experience. The evaluation team evaluated the following firms.

Vendor	Classification
Moss & Associates, LLC Fort Lauderdale, Florida	None
Structure Tone Southwest, LLC Dallas, Texas	None
Swinerton Builders Dallas, Texas	None
JE Dunn Construction Dallas, Texas	None
Hensel Phelps Construction Co. Austin, Texas	None
GMA Construction Group of Texas (Griggs Mitchell & Alma of IL LLC)	AI
Guardian Engineering Enterprises, LLC Cypress, Texas	BL

Evans General Contractors Dallas, Texas	None
The Beck Group Dallas, Texas	None

After the initial round of scoring, the City invited the top five vendors (Moss & Associates, LLC, Hensel Phelps Construction Co., JE Dunn Construction, Swinerton Builders, and Structure Tone Southwest, LLC) for interviews and presentations to the evaluation committee. Upon interview completion and scoring finalization, the evaluation committee determined that Moss & Associates, LLC, had the best overall quality, proposed schedule, project experience, and qualifications.

RFQ closed:	September 12, 2024 at 2:00 p.m.
Vendors notified through IonWave:	2333
MWBE Vendors notified through IonWave:	694
Vendors responding to RFP request:	9
MWBE vendors responding to RFP request:	2
MWBE:	No
Procurement Method:	Request for Qualifications

Name of Prime Vendor (1)	Moss & Associates, LLC
Total Contract Value	\$57,996
Prime Vendor's MWBE Status	None
Percentage Amount of Prime Vendor's Self-Performance	70%
Name of Subcontractor (1)	C1S Group, Inc.
Subcontractors MWBE Status & Trade	WO / Preconstruction Services
Percentage Amount of Subcontractor's Performance	30%
Total Anticipated MWBE Participation	30%

Moss & Associates, LLC, anticipates utilizing 30% of the total contract value for MWBE participation.

FINANCIAL IMPACT

The projected financial impact for this contract is as follows:

<u>FY 2024</u>	<u>FY 2025</u>	<u>FY 2026</u>
\$57,996	\$0	\$0

Funding is available in the AEDC Professional Service Account No. CC973005-SC0574.

ADDITIONAL INFORMATION

Attached:	Resolution and Agreement
Under separate cover:	None
Available in the Purchasing Division:	Contract File
Form 1295:	Requested
MWBE:	None

STAFF CONTACT(S)

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817-459-6653
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Director of Finance
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April.Nixon@arlingtontx.gov

ARLINGTON ECONOMIC DEVELOPMENT CORPORATION

Resolution No. _____

A resolution of the Board of Directors authorizing the Executive Director to execute a Construction Manager-at-Risk Contract for pre-construction services for the planned E-Space North American headquarters and manufacturing facility at Arlington Municipal Airport with Moss & Associates, LLC of Fort Lauderdale, Florida

WHEREAS, the Arlington Economic Development Corporation ("AEDC") is a Type B economic development corporation, created pursuant to Chapter 505 of the Texas Local Government Code, as amended; and

WHEREAS, espace Inc., AEDC, and the City of Arlington ("City") entered into a certain Master Agreement dated May 1, 2024, pertaining to the establishment of a North American headquarters and manufacturing facility at the Arlington Municipal Airport; and

WHEREAS, Chapter 2269 of the Texas Government Code authorizes governmental entities to use certain alternative project delivery methods, including Construction Manager-at-Risk ("CMAR"), when entering into a contract for the construction of a facility; and

WHEREAS, on July 30, 2024, the Arlington Economic Development Corporation Board of Directors approved Resolution No. 24-012 authorizing the use of the Construction Manager-at-Risk procurement method of construction for E-Space manufacturing facility at Arlington Municipal Airport.

WHEREAS, Moss & Associates, LLC (the "Contractor") is a construction management company qualified to provide such services and the AEDC and the Contractor desire to enter into a CMAR contract for pre-construction services for the E-space North American headquarters and manufacturing facility in an amount not to exceed \$57,996; NOW THEREFORE

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE ARLINGTON ECONOMIC DEVELOPMENT CORPORATION:

I.

That all of the recitals contained in the preamble of this resolution are found to be true and are adopted as findings of fact by this body and as part of its official record.

II.

That the Board of Directors of the Arlington Economic Development Corporation authorizes the Executive Director to execute a Construction Manager-at-Risk Contract for pre-construction services for the planned E-Space North American headquarters and manufacturing facility at Arlington Municipal Airport with Moss & Associates, LLC of Fort Lauderdale, Florida in an amount not to exceed \$57,996.

III.

A substantial copy of the Construction Manager-at-Risk Contract is attached hereto and incorporated herein for all intents and purposes.

PRESENTED AND PASSED on this the ____ day of _____, 2024, by a vote of ____ ayes and ____ nays at a regular meeting of the Board of Directors of the Arlington Economic Development Corporation.

Michael Jacobson, President

ATTEST:

Alex Busken, Assistant Secretary

APPROVED AS TO FORM:
MOLLY SHORTALL, Counsel for the
Arlington Economic Development
Corporation

BY Beth Miller Atkinson

Construction Manager-at-Risk Contract

AIA® Document A133™ – 2019

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

AGREEMENT made as of the Thirteenth day of November in the year Two Thousand Twenty-Four
(In words, indicate day, month, and year.)

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

Arlington Economic Development Corporation
101 W. Abram St.
Arlington, Texas 76004

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

Moss & Associates, LLC
6050 TPC Drive, Suite 650
McKinney, Texas 75070

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

E-Space Facilities
at the Arlington Municipal Airport

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

Gensler Architects
5005 Greenville Ave.
Dallas, Tx. 75206

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

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

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

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	GENERAL PROVISIONS
3	CONSTRUCTION MANAGER'S RESPONSIBILITIES
4	OWNER'S RESPONSIBILITIES
5	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
6	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
7	COST OF THE WORK FOR CONSTRUCTION PHASE
8	DISCOUNTS, REBATES, AND REFUNDS
9	SUBCONTRACTS AND OTHER AGREEMENTS
10	ACCOUNTING RECORDS
11	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
12	DISPUTE RESOLUTION
13	TERMINATION OR SUSPENSION
14	MISCELLANEOUS PROVISIONS
15	SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

The project program will be developed during the pre-construction services phase of the project.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

The project will consist of a customized 250,000 square foot manufacturing facility; an approximately 40,000 square foot hangar; an access road; an aircraft apron and employee parking at the Arlington Municipal Airport.

§1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

(Provide total and, if known, a line item breakdown.)

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

- .1 Design phase milestone dates, if any:
- .2 Construction commencement date:
Second quarter of 2025
- .3 Substantial Completion date or dates:
Fourth quarter of 2026
- .4 Other milestone dates:

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234-2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234-2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

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

Jack Hill, Jr.
Jack Hill, Sr.
Hill Building Group
1901 Stadium Oaks Ct.
Arlington, TX 76011
Phone: 817-881-5072
Email: jack.hill@hillbuildinggroup.com
jack@hillsportsandentertainment.com

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:
(List name, address and other contact information.)

Init.

§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

.2 Civil Engineer:

.3 Other, if any:

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

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

Rick Ferrara
Gensler Architects
5005 Greenville Ave.
Dallas, Tx. 75206

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

Jim Cuddihee
Moss & Associates, LLC
6050 TPC Drive, Suite 650
McKinney, Tx. 75070
469.625.9032
jcuddihee@mosscom.com

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:

(List any Owner-specific requirements to be included in the staffing plan.)

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:

(List any Owner-specific requirements for subcontractor procurement.)

§ 1.1.15 Other Initial Information on which this Agreement is based:

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

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

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2017, which document is incorporated herein by reference. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

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

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

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

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

Init.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

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

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

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

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities. Compliance shall be as a Contractor and not as a design professional.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

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

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

Init.

- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

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

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

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201-2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration

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

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

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

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

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

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

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

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

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 **Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™-2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

Refer to Exhibit "A", CMAR Pre-Construction Services Proposal.

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Refer to Exhibit "A", CMAR Pre-Construction Services Proposal.

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

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§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within **Twelve (12)** months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

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

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid **Thirty (30)** days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

Interest on any late payment will be paid in accordance with the Texas Prompt Payment Act.

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

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

Refer to Exhibit "A", Guaranteed Maximum Price Amendment.

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

Refer to Exhibit "A", Guaranteed Maximum Price Amendment.

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

Refer to Exhibit "A", Guaranteed Maximum Price Amendment.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed **Eight** percent (**8 %**) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

The Owner may retain the sum of Five Hundred Dollars (\$500.00) for each calendar day after the agreed Date of Substantial Completion that the Work remains not substantially complete, which sum is agreed upon as the proper measure of liquidated damages which the Owner will sustain per diem by the failure of the Undersigned to complete the work at the time stipulated in the Contract. This sum is not to be construed in any sense a penalty.

§ 6.1.7 Other:

(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

Refer to Exhibit "A", Guaranteed Maximum Price Amendment.

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

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

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

Refer to Exhibit "A", CMAR Staff Rate Exhibit.

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

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§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

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

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

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

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

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

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

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

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

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

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

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

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

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

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

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

§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager;

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or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

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§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

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

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the 25th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than Thirty (30) days after the Architect receives the Application for Payment.

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

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

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

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

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Five (5) %

§ 11.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

Pre-Construction Services.

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

Upon request from Contractor and approval from Owner.

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

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

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA

Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager’s final accounting.

§ 11.2.2.3 If the Owner’s auditors’ report concludes that the Cost of the Work, as substantiated by the Construction Manager’s final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager’s receipt of a copy of the Architect’s final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner’s auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect’s final Certificate for Payment.

§ 11.2.3 The Owner’s final payment to the Construction Manager shall be made no later than 30 days after the Owner receives properly completed Close-Out documents including but not limited to:

Punch List

Certificate of Substantial Completion, AIA Document G704

Final Change Order, AIA Document G701

Certificate of Occupancy

Final Application and Certification for Payment, AIA Document G702, G703

Contractor’s Affidavit of Payment of Debts and Claims, AIA Document G706

Contractor’s Affidavit of Release of Liens, AIA Document G706A

Consent of Surety Company to Final Payment, AIA Document G707

Contractor’s Affidavit of Target Arlington Compliance

Lien Releases: Subcontractors/Suppliers

Record Drawings

Maintenance Bonds

Operation/Maintenance Instructions and Parts List

Submittal Log and Submittal Data

HVAC Test/Adjust/Balance Report with Statement of Consultant review/Acceptance

Subcontractor List

Warranty Letters

Asbestos-Containing Materials Affidavit

TDLR/TAS Accessibility – Final Inspection and Letter

§ 11.2.4 If, subsequent to final payment, and at the Owner’s request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager’s Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

Interest on any late payment will be paid in accordance with the Texas Prompt Payment Act.

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction

Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201-2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

- ☐ Arbitration pursuant to Article 15 of AIA Document A201-2017
- ☐ Litigation in a court of competent jurisdiction
- ☐ Other: *(Specify)* **MEDIATION**

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201-2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

Init.

- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

Owner will compensate Construction Manager for work performed prior to receipt of the termination notice at the rates included in this Contract.

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201-2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201-2017. Where reference is made in this Agreement to a provision of AIA Document A201-2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201-2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than **One Million Dollars (\$ 1,000,000)** for each occurrence and **Two Million Dollars (\$ 2,000,000)** in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than **One Million Dollars (\$ 1,000,000)** per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than **One Million Dollars (\$ 1,000,000)** each accident, **One Million Dollars (\$ 1,000,000)** each employee, and **One Million Dollars (\$ 1,000,000)** policy limit.

§ 14.3.1.5 Professional Liability – Not Required.

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage

Limits

Init.

§ 14.3.1.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 **Construction Phase**

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™-2019 Exhibit B, and elsewhere in the Contract Documents.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203-2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 14.5 Other provisions:

Pursuant to Chapter 2270 of the Texas Government Code, the Construction Manager verifies by signing this Agreement that the Construction Manager does not boycott Israel and will not boycott Israel during the term of this Agreement.

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™-2019, Exhibit B Insurance and Bonds
- .4 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .5 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203-2013 incorporated into this Agreement.)

- .6 Other Exhibits:
(Check all boxes that apply.)

[] AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:

(Insert the date of the E234-2019 incorporated into this Agreement.)

[X] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
AIA Document A201-2017			

.7 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

- a. Form 1295.
- b. CMAR Pre-Construction Services Proposal
- c. AIA Document A133 Exhibit "A" Guaranteed Maximum Price Amendment (To be added with the GMP)
- d. AIA Document A133 Exhibit "B" Insurance and Bonds (Bonds to be added with GMP)
- e. CMAR GMP Proposal, Refer to Exhibit "C"
- f. The Specifications, Refer to Exhibit "D" (To be added with the GMP)
- g. The Drawings, Refer to Exhibit "E" (To be added with the GMP)
- h. The Addenda, Refer to Exhibit "F" (To be added with the GMP)
- i. And the following documents listed below
 - 1) Section 00 2020 Performance Bond (To be added with the GMP)
 - 2) Section 00 2030 Payment Bond (To be added with the GMP)
 - 3) Section 00 2040 Maintenance Bond (To be added with the GMP)
 - 4) Section 00 3010 Contractor's Status Information Form
 - 5) Section 00 3020 Affidavit Against Prohibited Acts
 - 6) Section 00 3030 Contractor Residency Statement
 - 7) Section 00 3040 Wage Rate Affidavit and Prevailing Wage Rates
 - 8) Verification Against Boycotting Energy Companies
 - 9) Verification Regarding the Prohibition on Discriminating Against Firearm and Ammunition Industries

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

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

(Printed name and title)

(Printed name and title)

Init.

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