

**FIRST AMENDMENT TO  
CONSTRUCTION MANAGEMENT/GENERAL CONTRACTOR AGREEMENT**

THIS FIRST AMENDMENT TO CONSTRUCTION MANAGEMENT/GENERAL CONTRACTOR AGREEMENT (the "First Amendment") is made and entered into effective as of the **15th day of October, 2021**, and is attached to and forms a part of the Construction Management/General Contractor Agreement ("Agreement") by and between Douglas County School District RE-1 ("Owner") and **Himmelman Construction, Inc. ("CM/GC")** in connection with the Project (as defined in the Agreement).

**RECITALS**

WHEREAS, pursuant to a request for proposals, the Owner selected the CM/GC to serve as the Construction Manager/General Contractor for the Project and the parties executed the Agreement; and

WHEREAS, Section 6.1 of the Agreement provides that when the design, plans and specifications of the Project are sufficiently complete to make the final cost estimate and subcontractor bids have been received, the CM/GC will fix a Guaranteed Maximum Price, guaranteeing the cost to the Owner for the Cost of the Work and the CM/GC's Fees.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and provisions contained herein, the Parties agree as follows:

**ARTICLE 1  
GUARANTEED MAXIMUM PRICE**

1.1 In accordance with Section 6.1 of the Agreement, Owner and CM/GC hereby establish a Guaranteed Maximum Price ("GMP") for the Project, including the CM/GC's Fee as defined in Article 7.0 of the Agreement and the Cost of the Work as defined in Article 8.0 of the Agreement. The GMP for the Project is **Three Million Seven Hundred Ninety-Two Thousand One Hundred One Dollars (\$3,792,101.00)**. CM/GC guarantees the GMP subject only to modification for changes in the Work as provided in the General Contract Conditions (Article 27.00 Changes in the Work) and for additional costs arising from delays caused by the Owner or the Architect. The GMP is based upon the following documents, all of which documents are attached hereto or specifically listed in the attachments hereto, and are hereby made a part of and incorporated into this First Amendment and the Agreement:

- 1.1.1 A schedule of the list of drawing, specifications, and addenda as signed and dated by the Architect and CM/GC, including a schedule of Requests for Information asked and answered (**Exhibit A**);
- 1.1.2 A list of assumptions and clarifications made in preparing the GMP (**Exhibit B**);

- 1.1.3 An itemization of the GMP (**Exhibit C**) broken down by detail and accompanied by supporting documentation (including, for example, bids and estimating take off sheets) which includes but is not limited to the following:
  - 1.1.3.1 All prices received for every item bid before the establishment of the GMP and a total of such bids;
  - 1.1.3.2 The maximum cost of all work to be self-performed by the CM/GC;
  - 1.1.3.3 The CM/GC's Construction Phase Fee and Design Phase Fee;
  - 1.1.3.4 The General Condition Costs, itemized and with supporting documentation and information in accordance with Section 8.2.1 of the Agreement;
  - 1.1.3.5 The installation cost of items to be procured by Owner and assigned to CM/GC for installation;
  - 1.1.3.6 Cost of Work performed by subcontractors and a list of subcontractors with their respect license numbers;
  - 1.1.3.7 CM/GC GMP Contingency, in accordance with Section 8.2.4 of the Agreement and Article 3 of this First Amendment.
  - 1.1.3.8 The cost of any items included in previous Amendment(s), if applicable.
- 1.1.4 A revised Contract Time Schedule, pursuant to Section 5.3 of the Agreement, listing delivery schedule with summary milestone delivery items, itemized breakdown of Work scope, and submittal due dates with responsible party (**Exhibit D**).
- 1.1.5 CM/GC Insurance Certificates (**Exhibit E**)
- 1.1.6 CM/GC Performance Bond (**Exhibit F**)
- 1.1.7 CM/GC Labor and Materials Payment Bond (**Exhibit G**)
- 1.1.8 Alternate Prices (**Exhibit H**)
- 1.1.9 Unit Prices (**Exhibit I**)
- 1.1.10 Allowances (**Exhibit J**)
- 1.1.11 Loaded Hourly Labor Rate Schedule (**Exhibit K**)
- 1.1.12 Equipment Rental Rate Schedule (**Exhibit L**)
- 1.1.13 General Conditions of the Contract (**Exhibit M**)

1.1.13.1 The General Conditions of the Contract attached to this GMP Amendment supersede any previous version of such document and may include revised language.

1.1.14 Schedule of Values (**Exhibit N**)

1.1.15 List of all salaried staff to be charged to the Cost of the Work as established in the Agreement (**Exhibit O**)

## **ARTICLE 2 SUBSTANTIAL AND FINAL COMPLETION**

2.1 Pursuant to Section 5.02 of the Agreement, the date of Substantial Completion of the Work, including issuance of the Temporary Certificate of Occupancy, shall be **August 5, 2022**, and the date of Final Completion shall be **September 2, 2022**.

2.2 Time is of the essence for full completion of the Project.

## **ARTICLE 3 CM/GC CONTINGENCY**

3.1 The GMP includes a contingency for the CM/GC's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order ("CM/GC Contingency"). Cost overruns in excess of the amount of the CM/GC Contingency will be borne by the CM/GC, unless the GMP is adjusted pursuant to the terms of the Agreement.

3.2 CM/GC shall not reallocate CM/GC Contingency to an item within the Cost of Work without Owner's prior approval, which shall not be unreasonably withheld. The CM/GC shall fully document an approved change within a published log that will become part of the record documents.

3.3 The CM/GC shall maintain a complete CM/GC Contingency log detailing the expenditure of funds from the CM/GC Contingency. Upon final acceptance of Project by Owner, any amounts remaining in the CM/GC Contingency shall be deducted from final payment to, or any monies due, CM/GC and accrue to the Owner.

## **ARTICLE 4 NOT USED**

## **ARTICLE 5 MISCELLANEOUS**

5.1 Except as amended or modified by this First Amendment, the Agreement is hereby ratified and confirmed and all other terms of the Agreement shall remain in full force and effect, unaltered and unchanged by this First Amendment.

5.2 This First Amendment may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes of executing this First Amendment, facsimile or scanned signatures shall be as valid as the original.

#### **ARTICLE 6 LIQUIDATED DAMAGES**

CM/GC understands and agrees that the completion of the Work within the time provided is an essential feature of this Agreement and that the Owner will sustain substantial damages, the amount of which is not possible to accurately determine at this time, if the Work is not so completed. The Contractor, therefore, agrees to proceed with due diligence, taking all precautions and making all necessary arrangements to ensure the completion of the work within the prescribed time for each Phase. The Contractor further agrees that its failure to finally and fully complete each Phase of the Work within the time allowed shall be considered as a breach of the Agreement and entitle the Owner to collect liquidated damages for the delay in completion of the Work per the terms of Section 5.05 of the original Agreement.

#### **ARTICLE 7 ALLOWANCES**

If applicable, allowances might be carried in the GMP to cover costs considered reimbursable as the Cost of the Work. The CM/GC shall advise the Architect and the Owner in writing prior to applying a part of the Allowance to an item within the Cost of Work. Owner shall issue written approval to CM/GC for application of the amount from the Allowance. The CM/GC shall maintain a complete Allowance Log detailing the expenditure of funds. Upon final acceptance of the project by Owner, any amounts remaining in the Allowance shall be deducted from final payment to, or any monies due, CM/GC.

[Signature page follows on next page]

WHEREFORE, the parties have executed this First Amendment effective as of the date first set forth above.

OWNER:

DOUGLAS COUNTY SCHOOL DISTRICT

By: \_\_\_\_\_

**Richard Cosgrove, Chief Operations Officer**

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

CONSTRUCTION MANAGER/GENERAL CONTRACTOR:

**HIMMELMAN CONSTRUCTION, INC.**

By:  \_\_\_\_\_

Name: Barry Himmelman

Title: President

ATTEST:  \_\_\_\_\_  
Dana Himmelman/Secretary

Address: 12560 W. Cedar Dr.

Lakewood, Co 80228

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EXHIBIT LIST

- Exhibit A: Drawings, specifications and documents used to prepare GMP
- Exhibit B: Assumptions and clarifications made in preparing GMP
- Exhibit C: Itemization of GMP
- Exhibit D: Contract Time Schedule
- Exhibit E: Insurance Certificates
- Exhibit F: Performance Bond
- Exhibit G: Labor and Materials Payment Bond
- Exhibit H: Alternate Prices
- Exhibit I: Unit Prices
- Exhibit J: Allowances
- Exhibit K: Loaded Hourly Labor Rate Schedule
- Exhibit L: Equipment Rental Rate Schedule
- Exhibit M: General Conditions of the Contract
- Exhibit N: Schedule of Values
- Exhibit O: List of all salaried staff to be charged to the Cost of the Work as established in the Agreement