

AIA[®] Document A134[™] – 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price

AGREEMENT made as of the 29th day of January in the year 2019
(In words, indicate day, month and year.)

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

Board of Education of Gavin School District 37
25775 West Illinois Highway 134
Ingleside, Illinois 60041

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

Pepper Construction Company
411 Lake Zurich Road
Barrington, IL 60010

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

This Agreement is a Master Agreement and shall be the agreement for projects authorized by the Owner. Specific projects under this Master Agreement shall be authorized in writing by the Owner in a Project Authorization Exhibit.

The Architect:
(Name, legal status and address)

Wold Ruck Pate Architects
110 N. Brockway Street, Suite 220
Palatine, IL 60067

The Owner's Designated Representative:
(Name, address and other information)

Mr. Mark Lindem
Gavin School District 37
25775 West Illinois Highway 134
Ingleside, Illinois 60041

The Construction Manager's Designated Representative:
(Name, address and other information)

Lance Tritsch
Pepper Construction Company
411 Lake Zurich Road
Barrington, IL 60010

ADDITIONS AND DELETIONS:

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

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

AIA Document A201[™]-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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The Architect's Designated Representative:
(Name, address and other information)

Tim McGrath and Dan Krita
Wold Ruck Pate Architects
110 N. Brockway Street, Suite 220
Palatine, IL 60067

The Owner and Construction Manager agree as follows.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions) as amended by the Owner, Drawings, Specifications, Addenda issued prior to the 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 approval of the Control Estimate, the Contract Documents will also include the documents described in Section 2.2.4 and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.5. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. Notwithstanding the above, the Contract Documents also include any document referenced in Section 1.1.1 of the General Conditions, as amended by Owner.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's best skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, budgeting, 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.

§ 1.2.1 The Construction Manager shall perform its services consistent with the skill and care ordinarily provided by construction managers practicing in the same or similar locality under the same or similar circumstances. The Construction Manager shall perform its services as expeditiously as is consistent with such skill and care to ensure the Project remains on schedule and within budget.

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, as amended by Owner, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2017, as amended by Owner, which document is

incorporated herein by reference. The term "Contractor" as used in A201-2017, as amended by Owner, shall mean the Construction Manager.

§ 1.4 Contract Sum, Contract Time and Changes in the Work

The Contract Sum is the actual Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee as defined in Section 5.1. The Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work as certified by the Architect in accordance with Section 9.8 of AIA Document A201-2017, as amended by Owner. The Contract Time shall be measured from the date of commencement of the Construction Phase as established pursuant to Section 2.3.1.2 of this Agreement. Changes in the Work shall be governed by Section 5.2 of this Agreement and not by Article 7 of A201-2017, as amended by Owner. If, however, the Contract Time has been established in accordance with Section 2.2.4.5, Article 7 of A201-2017, as amended by Owner, shall control adjustments to the Contract Time.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. 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. The representative shall remain assigned to the Project for its duration and shall not be otherwise assigned without the consent of Owner, which it may be withheld in its sole discretion. Should the representative no longer be employed by the Construction Manager during the term of this Agreement, the Construction Manager shall promptly make a recommendation to the Owner as to the appropriate replacement representative for the Owner's consideration.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other. The Construction Manager shall attend community meetings, staff meetings, design phase team meetings, Planning and Zoning meetings, and School Board meetings as requested by the Owner. The Construction Manager shall assist in obtaining necessary local, state, and federal permits, inspections and certificates of occupancy. The Construction Manager shall prepare a site logistics and utilization plan for review by the Owner.

§ 2.1.2 Consultation

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. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; 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 conduct on-going value engineering to identify opportunities of enhancing the value of the Project. This effort will analyze the item and/or system in question relative to cost (to furnish and install) maintenance, utility costs, durability, and cost to replace.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update, in no event less than monthly, 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 be drafted to reflect team member contributions, construction activities, and critical occupancy dates. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Control Estimate; the components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner. The Construction Manager shall identify "long-lead" items and arrange for bids related thereto. The Construction Manager shall use a nationally recognized computerized scheduling program to develop the Project Schedule. The Project Schedule will

include all phases of the work including: program development, design, bidding, Board approval of the contracts and all construction activities through close out of the Project.

§ 2.1.4 Phased Construction

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

§ 2.1.5 Preliminary Cost Estimates

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

§ 2.1.5.2 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, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Construction Manager submits a Control Estimate for the Work, pursuant to Section 2.2. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make detailed written recommendations for corrective action, which shall include the reasons the estimate(s) exceed the approved Project budget.

§ 2.1.5.2 The Construction Manager shall provide estimates for all of the following:

- a. 100% Design Development Documents
- b. 50% Construction Documents
- c. 75% Construction Documents; and
- d. 100% Construction Documents.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project, subject to the requirements of Section 10-20.21 of the *School Code*, 105 ILCS 5/10-20.21. The Construction Manager acknowledges and understands that the Owner, as a public body, is subject to the bidding requirements of the Illinois *School Code* and that all trade contracts shall be publicly bid in accordance with such law and awarded by the Owner.

§ 2.1.6.1 The Construction Manager shall submit a list of prospective bidders (minimum of five) for the Architect's review and the Owner's approval subject to the requirements of Section 10-20.21 of the *School Code* (105 ILCS 5/10-20.21). The Construction Manager shall establish bidding schedules subject to the requirements of Section 10-20.21 of the *School Code* (105 ILCS 5/10-20.21). The Construction Manager, with the assistance of the Architect, shall issue bidding documents, including assisting in the preparation of the General Conditions of the Contract for Construction, to bidders. The Construction Manager shall conduct pre-bid and post-bid conferences with prospective bidders to ensure that all bids are complete and fully responsive. The Construction Manager shall issue the current Project schedule with each set of bidding documents. The Construction Manager shall assist the Architect with regard to questions from bidders and with the issuance of addenda.

§ 2.1.6.2 The Construction Manager shall prepare bid analyses and make recommendations to the Owner for the Owner's award of trade contracts or rejection of bids subject to the requirements of Section 10-20.21 of the *School Code* (105 ILCS 5/10-20.21). The Construction Manager shall review and confirm each trade contractor's bid against the Contract Documents to determine if the bid includes all necessary labor and materials. The Construction Manager shall also develop a detailed bid tabulation form for presentation and review by the Owner and Architect.

§ 2.1.6.3 The Construction Manager shall assist the Owner in preparing Construction Contracts, including the preparation of the General Conditions of the Contract for Construction, and advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Multiple Prime Contractors.

§ 2.1.6.4 Once the Owner has awarded a bid to a trade contractor, the Construction Manager shall accept the assignment of the prime trade contractor agreement from the Owner to the Construction Manager on the form attached hereto as Exhibit A.

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

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates, including the Control Estimate, except as provided in Section 2.2.4.5. Except as may be otherwise required by the Contract Documents, 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, in writing, 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. Notwithstanding the above or anything in any other Contract Document to the contrary, the Construction Manager shall be responsible for all direct costs, expenses and fees of any kind whatsoever incurred by the Owner to the extent caused by any negligent act or omission of the Construction Manager or breach of this Agreement, including, but not limited to Additional Services of the Architect due to inaccuracies or incompleteness in preparing cost estimates.

§ 2.1.9 Notices and 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 for inclusion in the Contract Documents.

§ 2.2 Control Estimate

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Control Estimate for the Owner's review and acceptance. The Control Estimate shall be the sum of the Construction Manager's estimate of the Cost of the Work and the Construction Manager's Fee and shall include those items set forth in Section 2.2.4 below. When the Control Estimate is acceptable to the Owner, the Owner shall acknowledge it in writing.

§ 2.2.2 The Construction Manager shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Construction Manager's first Application for Payment and shall be revised and submitted with each Application for Payment.

§ 2.2.3 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Control Estimate for 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 in a revised Control Estimate by mutual agreement of the parties.

§ 2.2.4 The Control Estimate shall include

- .1 a list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 a list of the clarifications and assumptions made by the Construction Manager in the preparation of the Control Estimate, including assumptions under Section 2.2.3, to supplement the information provided by the Owner and contained in the Drawings and Specifications;

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- .3 a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, and the Construction Manager's Fee;
- .4 the anticipated date of Substantial Completion upon which the Control Estimate is based, and a schedule for the issuance dates of the Construction Documents upon which the anticipated Substantial Completion date relies; and
- .5 a statement as to whether or not the duration from the stated date of commencement of the Construction Phase to the estimated date of Substantial Completion shall become the Contract Time and be subject to the provisions of Article 8 of A201-2017, as amended by Owner.

§ 2.2.5 The Owner shall authorize the Architect to incorporate the agreed-upon assumptions and clarifications contained in the Control Estimate. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect, in writing, of any inconsistencies between the Control Estimate and the revised Drawings and Specifications.

§ 2.2.6 The Construction Manager shall develop a project safety handbook, which must be incorporated into all bidding documents.

§ 2.2.7 The Construction Manager shall develop a written project specific quality control plan detailing the specific processes to be implemented the Project.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201-2017, as amended by Owner, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's approval of the Control Estimate or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.1.3 Prior to commencement of the Construction Phase, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work.

§ 2.3.2 Administration

§ 2.3.2.1 The Work shall be performed under contracts publicly bid by the Owner and subsequently assigned to the Construction Manager.

§ 2.3.2.2 Intentionally Deleted.

§ 2.3.2.3 Intentionally Deleted.

§ 2.3.2.4 The Construction Manager shall schedule and conduct weekly meetings with trade contractors to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect. The Construction Manager shall also hold and chair weekly progress meetings with the Architect and the Owner and produce and distribute meeting minutes.

§ 2.3.2.5 Upon the Owner's approval of the Control Estimate, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2017, as amended by Owner.

§ 2.3.2.6 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. The Construction Manager shall also 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. If the Project is behind schedule, the Construction Manager shall provide to the Owner, in writing, the reasons for the delays, including, but not limited to the responsible parties, and shall provide options on how to bring the Project back on to schedule.

§ 2.3.2.7 The Construction Manager, with the assistance of the Architect, shall prepare of a list of items that must be completed by the trade contractor(s) to achieve final completion ("Punch List"), which shall include an inspection of the Work by the Construction Manager to determine whether the Work is substantially complete. The Construction Manager shall provide the Owner, Architect and the trade contractor(s) with a copy of the final Punch List and shall establish a date by which all work in the Punch List must be completed. The Construction Manager shall coordinate with the Architect to incorporate completion of items on the Punch List into the final project completion schedule to ensure the Project remains on schedule. The Construction Manager shall administer completion of all items therein and shall expedite completion of the Punch List.

§ 2.3.2.8 The Construction Manager shall provide regular onsite administration to include project Superintendents at each school building and a sufficient number of other staff as needed to complete the Work, and to be present when Work is being performed. The exact level of on-site administration will be mutually agreed upon by the Board and the Construction Manager. The Construction Manager shall also coordinate on and off-site utility services and be responsible for monitoring access onto the construction site. The Construction Manager shall also coordinate construction activities with any existing Owner operations/facilities, and shall coordinate keying and other security requirements. The Construction Manager shall inspect all materials and installations to ensure that the plans and specifications of the Project are being met or exceeded. The Construction Manager shall maintain a quality control log to track quality issues as they are identified. Such log shall track dates that issues are identified and correct and which trade contractor is responsible for the issue.

§ 2.3.2.9 The Construction Manager shall administrate and manage all trade contracts including schedules and release of work spaces compliance with the Contract Documents, to ensure that cost, quality, safety, and all other goals of the Project are met or exceeded. The Construction Manager shall also manage shop drawing and submittal review process. The Construction Manager shall be responsible for reviewing requests for information, requests for changes and claims. The Construction Manager must maintain a computerized log to monitor costs, requests for information, change order status, submittals, and all other project information.

§ 2.3.2.10 The Construction Manager shall coordinate any hazardous material abatement. The Owner will engage the services of an environmental consultant for asbestos work, and all asbestos work will be directly contracted between the Owner and the asbestos contractor.

§ 2.3.2.11 The Construction Manager shall monitor trade contractor safety programs, substance abuse programs, and trade contractor compliance with the criminal background checks. The Construction Manager shall obtain proof of insurance from all trade contractors. Lien waivers for materials and services shall be obtained from each trade contractor with each application for payment. The Owner reserves the right to demand current lien waivers at any time.

§ 2.3.2.12 The Construction Manager shall attend Board meetings and other miscellaneous meetings as requested by the Owner. The Construction Manager shall provide monthly progress report addressing any cost or schedule changes, updating cash flow requirements and the overall Project budget, and updating the schedule, safety, quality and other pertinent project facts.

§ 2.3.2.13 The Construction Manager shall maintain and turn over to the Owner at the completion of the Project an accurate set of as-built documents incorporating all aspects of the construction. The Construction Manager shall gather and provide to the Owner all closeout documents such as guarantees/warranties and operation and maintenance manuals for all equipment. The Construction Manager shall obtain appropriate guarantees and warranties from all applicable trade contractors and suppliers and provide copies of same to Owner. The Construction Manager shall also enforce provisions of warranties and guarantees with appropriate parties. The Construction Manager must provide a full labor and material warranty for one (1) year from the date of Substantial Completion.

§ 2.3.2.14 The Construction Manager shall assist in obtaining inspections of governing authorities having jurisdiction over the Project and act as the Owner's representative with local municipalities and the applicable fire prevention authority, and any other occupancy or testing requirements.

§ 2.3.2.15 The Construction Manager shall assist the Owner with occupancy and start-up. The Construction Manager shall coordinate equipment training for appropriate staff of the Owner to ensure smooth transition of building operation and shall administer start up and testing of all equipment by manufacturer's representatives.

§ 2.3.2.16 The Construction Manager will assist the Owner with post-construction resolution of construction issues and warranty issues, including coordinating and expediting the resolution of construction related problems, coordinating and expediting the repair/replacement of items covered under guarantees/warranties, conducting follow-up review of the complete facility to help ensure satisfactory performance of materials and systems, and coordinating and participating in a one (1) year post occupancy walk through of the completed project with the Owner and Architect.

§ 2.3.2.17 The Construction Manager shall monitor and enforce the safety plan and ensure compliance with all local, state, and federal safety laws, rules and regulations.

§ 2.3.2.18 The Construction Manager shall review requests for changes, assist in negotiating Contractors' proposals, submit recommendations to the Architect and Owner, and, if they are accepted, prepare Change Orders and Construction Change Directives that incorporate the Architect's modifications to the Contract Documents.

§ 2.4 Professional Services

Sections 3.12.10 and 3.12.10.1 of A201-2017, as amended by Owner, shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201-2017, as amended by Owner, shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a 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.

§ 3.1.2 Intentionally Deleted.

§ 3.1.3 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 Section 6.1.1, (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 budget for the Cost of the Work or in the Project's scope and quality.

§ 3.1.3.1 The contingencies established by the Owner shall be utilized to pay fees, costs and expenses not included in a trade contract. If the Construction Manager desires to utilize contingency funds, it shall request such in writing to the Owner and detail the reason for the need to utilize contingency funds. The Owner may withhold its approval of the use of contingency funds for fees, costs and expenses not included in a trade contract.

§ 3.1.4 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 reasonable information or reasonable 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, unless the Construction Manager, in accordance with the standard of care set forth in Section 1.2.1, knows of any inaccuracy in such information or defect in services and shall exercise proper precautions relating to the safe performance of the Work.

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

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

§ 3.1.4.3 The Owner, when such services are reasonably requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's 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, as amended by Owner, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. Notwithstanding the above, the Construction Manager acknowledges that the Owner, as a public body, may only be bound by representatives with actual authority.

§ 3.2.1 **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.

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B101™-2017, Standard Form of Agreement Between Owner and Architect as amended by Owner. Upon request, the Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

As provided in the applicable Project Authorization Exhibit.

§ 4.1.3 Intentionally Deleted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 4.2 Payments

§ 4.2.1 Payments for services shall be made by the Owner in accordance with the *Local Government Prompt Payment Act* (50 ILCS 505/1 et seq.).

§ 4.2.2 Intentionally Deleted.
(Insert rate of monthly or annual interest agreed upon.)

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ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

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

3.0% of the Cost of the Work

§ 5.1.1.1 The General Conditions costs shall be as set forth in the applicable Project Authorization Exhibit for each project.

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

Should the Cost of the Work increase, the Construction Manager's Fee will be applied to the increased Cost of the Work. Should the Cost of the Work decrease, the Construction Manager's Fee shall be based on the decreased Cost of the Work.

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

As provided in the A201-2017, as amended by Owner.

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed one hundred percent (100 %) of the standard rate paid at the place of the Project;.

§ 5.1.5 Unit prices, if any: Not applicable.
(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
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§ 5.2 Changes in the Work

§ 5.2.1 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 Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2017, General Conditions of the Contract for Construction, as amended by Owner. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work. The Construction Manager shall incorporate all changes in the Work and Contract Time as separate entries in the Control Estimate.

§ 5.2.2 Increased costs for the items set forth in Sections 6.1 through 6.7 that result from changes in the Work shall become part of the Cost of the Work, and the Construction Manager's Fee shall be adjusted as provided in Section 5.1.2.

§ 5.2.3 If the Construction Manager receives any Drawings, Specifications, interpretations or instructions from the Owner or Architect which are inconsistent with the Contract Documents, or encounters unanticipated conditions, any of which will result in a significant change in the Cost of the Work or estimated date of Substantial Completion in comparison with the Control Estimate, the Construction Manager shall promptly notify the Owner and Architect in writing and shall not proceed with the affected Work until the Construction Manager receives further written instructions from the Owner and Architect.

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§ 5.2.4 If no specific provision is made in Section 5.1.2 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 5.1.2 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.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval, in writing, prior to incurring the cost.

§ 6.2 Labor Costs

§ 6.2.1 With the Owner's prior written consent, wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or at off-site workshops. Together with prevailing union wage scale, including welfare pension and other fringe contributions, payroll taxes, Workers' Compensation Insurance charges and overhead are combined as a single rate for each classification of field labor and attached with the applicable Project Authorization Exhibit. Such rates shall be revised annually as of June 1. It is expressly agreed by the Construction Manager that the Construction Manager shall not self-perform any Work without the written consent of the Owner and compliance with any applicable bidding laws.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel at the rates identified in the applicable Project Authorization Exhibit. The Construction Manager shall provide the Owner with a proposed staffing plan, which shall detail all costs of the Construction Manager's supervisory and administrative personnel for the Project. Upon approval by the Owner, such costs shall be set forth in the applicable Project Authorization Exhibit.

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 6.2.3 Intentionally Deleted.

§ 6.2.4 Intentionally Deleted.

§ 6.2.5 Intentionally Deleted.

§ 6.3 Subcontract Costs

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

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

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

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 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.

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

§ 6.5.1 If provided in the applicable Project Authorization Exhibit, costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used

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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.

§ 6.5.2 If provided in the applicable Project Authorization Exhibit, 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, at the rental rates established in the applicable Project Authorization Exhibit, and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 6.5.3 If provided in the applicable Project Authorization Exhibit, costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Intentionally Deleted.

§ 6.5.5 Intentionally Deleted.

§ 6.5.6 If provided in the applicable Project Authorization Exhibit, costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior written approval.

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. General and excess liability insurance shall be charged at the rate not to exceed one and one-tenth percent (1.1%) of the Cost of the Work.

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

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

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.4.3 of AIA Document A201-2017, as amended by Owner, or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2017, as amended by Owner, or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

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

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

§ 6.6.8 Intentionally Deleted.

§ 6.6.9 Intentionally Deleted.

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§ 6.7 Other Costs and Emergencies

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

§ 6.7.2 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 Section 10.4 of AIA Document A201-2017, as amended by Owner.

§ 6.7.3 With prior written approval of the Owner, 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 negligence or failure to fulfill a specific responsibility of 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.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work notwithstanding any provision of AIA Document A201-2017, as amended by Owner, 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 6.8.

§ 6.8 Costs Not to Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 through 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 through 6.7; and
- .7 Costs for services incurred during the Preconstruction Phase.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Intentionally Deleted.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 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 Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, 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 Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial 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, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law. Wages, salaries and all associated taxes, costs and benefits that are combined as a comprehensive unit of pay, and rental rates as described in this Article 6 and the applicable Project Authorization Exhibit, above, constitute the primary data for accounting purposes.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 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.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the 15th day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the last day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, Owner shall endeavor to make payment 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.)

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, lien waivers for the materials and services covered by the immediately preceding Application for Payment, sworn statements, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements 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, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment. The Construction Manager shall ensure that each trade contractor, including the Construction Manager after the assignment of trade contracts to the Construction Manager, submits with its Request for Payment a sworn statement and lien waiver.

§ 7.1.5 Applications for Payment shall show the Cost of the Work actually incurred by the Construction Manager through the end of the period covered by the Application for Payment and for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment. Applications for Payment may be submitted on a monthly basis and must summarize all project billing in a format acceptable to the Owner.

§ 7.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take the Cost of the Work as described in Section 6.1.1;
- .2 Add the Construction Manager's Fee, less retainage of ten percent (10 %). The Construction Manager's Fee shall be computed upon the Cost of the Work described in the preceding Section 7.1.6.1 at the rate stated in Section 5.1.1; 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 bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract retainage of ten percent (10 %) from that portion of the Work that the Construction Manager self-performs;
- .4 Subtract the aggregate of previous payments made by the Owner;

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- .5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Subtract amounts, if any, for which the Architect has withheld or withdrawn a Certificate for Payment as provided in the Contract Documents.

§ 7.1.7 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 7.1.8 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 stored at the site.

§ 7.1.9 Intentionally Deleted.

§ 7.2 Final Payment

§ 7.2.1 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 Section 12.2.2 of AIA Document A201-2017, as amended by Owner, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 if requested by Owner, pursuant to section 7.2.2, the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment;
- .3 the Construction Manager has submitted a final Application for Payment; and
- .4 a final Certificate for Payment has been issued by the Architect.

§ 7.2.2 The Owner shall have the right to request a final accounting for the Cost of the Work prior to paying the final payment to the Construction Manager in accordance with Section 6.11. The Owner shall also have the right to audit the Construction Manager's final accounting for the Cost of the Work before making the final payment to the Construction Manager. In the event the Owner desires to audit the Construction Manager's final accounting, the Owner shall notify the Construction Manager of such audit and the Owner's auditors will review and report in writing on the Construction Manager's final accounting within 60 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2017, as amended by Owner. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2017, as amended by Owner. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2017, as amended by Owner. 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.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager 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.

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ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance as set forth in Article 11 of AIA Document A201-2017, as amended by the Owner and AIA Document A101 – 2017 Exhibit A, as amended by Owner. The Construction Manager shall not be required to obtain the bonds required in Section A.3.4 of AIA Document A101-2017 Exhibit A, as amended by Owner. The Construction Manager shall require trade contractors to obtain payment and performance bonds and will be responsible for ensuring that the bid packages for all trade contractors are revised to reflect the bonds to be required of such trade contractor. Notwithstanding anything in this Agreement to the contrary, the Construction Manager may not charge the Owner for any bonds obtained by subcontractors of the trade contractors.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

Type of Insurance or Bond

Limit of Liability or Bond Amount (\$0.00)

Unless otherwise provided in the applicable Project Authorization Exhibit, the Construction Manager shall be responsible for purchasing property insurance as required in Section § A.3.3.2.1 of AIA Document A101 – 2017 Exhibit A, as amended by Owner. The Owner shall reimburse the Construction Manager for such costs without markup. The Construction Manager shall ensure that the Bid Documents do not require trade contractors to obtain property insurance and that the Owner will not reimburse or compensate the Construction Manager or any trade contractors for the cost of property insurance obtained by trade contractors. Further, the Construction Manager shall assume all rights and obligations of the Owner under Sections 11.5.2 and 11.5.2 of the AIA Document A201 – 2017 General Conditions of the Contract for Construction, as amended by the Owner.

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2017, as amended by Owner. 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 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2017, the method of binding dispute resolution shall be as follows:

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

Arbitration pursuant to Section 15.4 of AIA Document A201-2017

Litigation in a court of competent jurisdiction

Other: *(Specify)*

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2017, as amended by Owner, 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.)

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Owner's Approval of the Control Estimate

§ 10.1.1 Prior to the Owner's approval of the Control Estimate, 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 Section 14.1.1 of A201-2017, as amended by Owner.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services 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 4.1.

§ 10.1.3 In the event of termination of this Agreement pursuant to Section 10.1.1, after the commencement of the Construction Phase but prior to the Owner's approval of the Control Estimate, the Owner shall pay to the Construction Manager under Section 10.1.2 an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

1. Take the Cost of the Work incurred by the Construction Manager to the date of termination;
2. Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 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.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse the Construction Manager for all costs incurred and 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 and if such expenses cannot be returned or cancelled. 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 reasonably incurred by the Construction Manager because of such termination.

§ 10.2 Termination Subsequent to the Owner's Approval of the Control Estimate

§ 10.2.1 Subsequent to the Owner's approval of the Control Estimate, the Contract may be terminated as provided in Sections 14.1.1, 14.1.2 and 14.2.1 of A201-2017, as amended by Owner. The provisions of Article 14 of A201-2017, as amended by Owner, do not otherwise apply to this Section 10.2.

§ 10.2.2 In the event of such termination by the Owner, the amount payable to the Construction Manager shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.2 and 10.1.3 of this Agreement, less any compensation that may be awarded to the Owner pursuant to Article 9.

§ 10.2.3 In the event of such termination by the Construction Manager, the amount payable to the Construction Manager shall be in accordance with Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.4 In addition to the Owner's right to terminate this Agreement for cause as provided in Section 14.2.1 of A201-2017, as amended by Owner, the Owner may terminate this Agreement for convenience as provided in Section 14.4; however, the Owner shall then only pay the Construction Manager an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 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.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2017, as amended by Owner. In such case, the Control Estimate and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-2017, as amended by Owner, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.2.4 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201-2017, as amended by Owner.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201-2017, as amended by Owner, shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201-2017, as amended by Owner, shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201-2017, as amended by Owner, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

§ 11.5.1 The Construction Manager agrees to fully comply with the requirements of the *Illinois Human Rights Act*, 775 ILCS 5/1-101 *et seq.*, including, but not limited to, the provision of sexual harassment policies and procedures pursuant to Section 2-105 of the Act. The Construction Manager further agrees to comply with all federal Equal Employment Opportunity Laws, including, but not limited to, the *Americans With Disabilities Act*, 42 U.S.C. Section 12101 *et seq.*, and rules and regulations promulgated thereunder.

The following provisions are included herein pursuant to the requirement of the regulations of the Illinois Department of Human Rights, Title 44, Part 750, of the Illinois Administrative Code, and Construction Manager shall be required to comply with these provisions only if and to the extent they are applicable under the law.

As required by Illinois law, in the event of the Construction Manager's non-compliance with the provisions of this Equal Employment Opportunity Clause, the *Illinois Human Rights Act* or the Rules and Regulations of the Illinois Department of Human Rights ("Department"), the Construction Manager may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be canceled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this contract, the Construction Manager agrees as follows:

1. That it will not discriminate against any employee or applicant for employment because of race, color, religion, sexual orientation, marital status, national origin or ancestry, age, citizenship status, physical or mental handicap unrelated to ability, military status, or an unfavorable discharge from military service,

and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.

2. That, if it hires additional employees in order to perform this contract or any portion thereof, it will determine the availability (in accordance with the Department's Rules) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
3. That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, citizenship status, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, sexual orientation, or an unfavorable discharge from military service.
4. That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Contractor's obligation under the *Illinois Human Rights Act* and the Department's Rules. If any such labor organization or representative fails or refuses to cooperate with the Contractor in its efforts to comply with such Act and Rules, the Contractor will promptly so notify the Department and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations thereunder.
5. That it will submit reports as required by the Department's Rules, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respects comply with the *Illinois Human Rights Act* and the Department's Rules.
6. That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Department for purposes of investigation to ascertain compliance with the *Illinois Human Rights Act* and the Department's Rules.
7. That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of the contract obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as with other provisions of this contract, the Contractor will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the contracting agency and the Department in the event any subcontractor fails to refuse to comply therewith. In addition, the Contractor will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contractors or subcontractors with the State of Illinois or any of its political subdivisions or municipal corporations.

§ 11.5.2 Any additional service for which the Owner is to compensate the Construction Manager must be authorized in writing by the Owner before the Work is commenced, and an estimate of the cost or a method of determining the cost must be submitted by the Construction Manager prior to the authority being granted for the said service by the Owner

§ 11.5.3 Any authorization to be made by the Owner as referred to herein must be in writing by duly authorized representatives of the Owner in order to be binding upon the Owner.

§ 11.5.4 The Construction Manager certifies that the Construction Manager is not barred from bidding on the contract as a result of a conviction for either bid-rigging or bid rotation under Article 33E of the *Criminal Code of 1961*, 720 ILCS 5/33E.

§ 11.5.5 No failure of either the Construction Manager or the Owner to exercise any power given in this Agreement or to insist upon strict compliance by the other party with any obligation hereunder and no custom or practice of the Owner or the Construction Manager at variance with the terms hereof shall constitute a waiver of the right of either party to demand exact compliance with the terms of this Agreement.

§ 11.5.6 Any written notices provided for in this Agreement and copies of all correspondence shall be transmitted to the following addresses: