

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 12th day of March in the year 2025
(In words, indicate day, month, and year.)

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

Dunlap Community School District No. 323
400 S. Fourth Street
Dunlap, IL 61525

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

P.J. Hoerr Inc.
107 Commerce Place
Peoria, IL 6160

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

New Replacement Grade School

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

To be determined by the Owner

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.)

To be determined by the Owner.

§ 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.)

To be determined by the Owner.

§ 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.)

To be determined by the Owner.

Init.

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

.1 Design phase milestone dates, if any:

To be determined by the Owner.

.2 Construction commencement date:

To be determined by the Owner.

.3 Substantial Completion date or dates:

To be determined by the Owner.

.4 Other milestone dates:

To be determined by the Owner.

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

(Identify any requirements for fast-track scheduling or phased construction.)

None at this time.

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project, if any:

(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

None at this time.

§ 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, if any:

(Identify special characteristics or needs of the Project not provided elsewhere.)

None at this time.

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:

(List name, address, and other contact information.)

Superintendent Scott Dearman

§ 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.)

None.

§ 1.1.10 The Owner shall retain the following consultants and contractors:

(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

Init.

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To be determined by the Owner.

.2 Civil Engineer:

To be determined by the Owner.

.3 Other, if any:

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

To be determined by the Owner.

§ 1.1.11 The Architect's representative:

(List name, address, and other contact information.)

To be determined by the Owner.

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:

(List name, address, and other contact information.)

Kirk Anderson

§ 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.)

To be determined by the Owner.

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

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

Competitive bidding in accordance with 105 ILCS 5/10-20.21.

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

None.

§ 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 The Construction Manager's representative shall not be changed without ten days' prior notice to the Owner.

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.

Notwithstanding the above, the Contract Documents also include any document referenced in Section 1.1.1 of the AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended by Owner.

§ 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 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.

§ 2.2.1 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.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended by the Owner, shall apply as follows: Article 1, General Provisions, Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Article 11, Insurance and Bonds; Section 13.1, Governing Law; Article 16, Non Discrimination; Article 17, Other Statutory Requirements; and Article 18, Additional Provisions. The term "Contractor" as used in A201–2017, as amended by the Owner, 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, as amended by the Owner, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017, as amended by the Owner, 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, as amended by the Owner, 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. 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.

§ 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, 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 costs, expenses and fees of any kind whatsoever incurred by the Owner that arise directly from 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.

§ 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 If requested, 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 (at least monthly) 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. In preparing the Project schedule, Construction Manager shall use the critical path method or such other method approved in writing by 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 detailed written recommendations for corrective action, which shall include the reasons that the estimate(s) exceed the approved Project budget.

§ 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.

§ 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, 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.

§ 3.1.11.3 Intentionally Deleted.

§ 3.1.11.4 The Construction Manager shall submit a list of prospective bidders 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 and conduct pre-bid conferences with prospective bidders. 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. Upon request, the Construction Manager shall assist the Owner in conducting the bid opening.

§ 3.1.11.5 The Construction Manager shall prepare bid analyses and make recommendations to the Owner for the Owner's award of Contracts or rejection of bids subject to the requirements of Section 10-20.21 of the *School Code* (105 ILCS 5/10-20.21).

§ 3.1.11.6 Once the Owner has awarded a bid to a trade contractor, the Construction Manager shall accept the assignment of the trade contractor agreement from the Owner to the Construction Manager on the form attached hereto as Exhibit C. The Construction Manager shall ensure the bidding documents require the Contractor to accept such assignment on the form attached hereto as Exhibit C.

§ 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 reasonably 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.

§ 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.)

To be determined by the Owner.

§ 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;
- .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.

§ 3.2.4.1 Construction Manager acknowledges that, although the Contingency is included in the Guaranteed Maximum Price, the unused Contingency shall be the sole property of Owner (except as otherwise provided in Section 6.1.7) and Construction Manager shall endeavor to protect and preserve Owner's interest in the Contingency; provided, however, the Owner acknowledges and agrees that the Contingency may be used by the Construction Manager only to cover the following additional costs of the Work:

- a. additional post-bid costs required to rectify scope of work gaps between the various trades;
- b. costs incurred to pay fines and/or violations or to repair defective or non-conforming work executed by the Construction Manager or any of its Subcontractors which are not otherwise reimbursable hereunder or recovered from a Subcontractor, but only to the extent not caused by the negligence or willful misconduct of the Construction Manager or its Subcontractors and provided the Construction Manager shall use its best efforts to replenish Contingency by obtaining reimbursement for such costs from the responsible Subcontractor(s);
- c. costs incurred due to the default or non-performance of a Subcontractor which are not successfully recovered from such Subcontractor (without resort to litigation), provided that Construction Manager shall replenish Contingency promptly upon recovery of amounts from Subcontractors;
- d. costs associated with expediting the construction schedule to timely complete the Project, provided that the delays necessitating the expediting of the construction schedule are not caused by Construction Manager or any Subcontractor or material supplier.
- e. General Conditions costs reimbursable as part of the Cost of the Work hereunder, but in no event greater than ten percent (10%) of the Contingency;

- f. casualty losses and related expenses not compensated by insurance or otherwise and sustained by Construction Manager in connection with the Work (but only to the extent not caused by the willful misconduct of the Construction Manager);
- g. costs not covered because of deductibles required under Owner's property insurance; contingency used to cover deductible costs shall be limited to \$10,000.00, any amount greater shall be paid by Change Order.
- h. other costs which may constitute a part of the Cost of the Work under this Agreement but not be reimbursable as an Owner-directed change in the Work; and
- i. Owner shall reasonably agree that the Contingency may be used for Work items reasonably inferable but not clearly identifiable in the Contract Documents and not identified by the Construction Manager prior to the establishment of the GMP, but only to the extent authorized in writing by the Owner. In the absence of such written authorization, such costs shall be absorbed by the Construction Manager.
- j. costs incurred as a direct result of design errors and omissions by Architect or Owner's other consultants, but in no event shall the total of these costs exceed 10% of the contingency. Costs beyond this amount shall be paid by change order.
- k. Except as set forth in subsection (j) and in Section 6.1.7, the Contingency is not available to the Owner for any reason, including, but not limited to, changes in scope or any other item which would enable the Construction Manager to increase the GMP under the contract documents.

§ 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, in writing, 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, as amended by the Owner, 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. In the event that the Parties do not execute a Guaranteed Maximum Price Amendment prior to the commencement of construction, then the Guaranteed Maximum Price shall be the sum of the Construction Manager's latest estimate of the Cost of the Work, as approved by the Owner.

§ 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, as amended by the Owner.

§ 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.

§ 3.3.2.6 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.

§ 3.3.2.7 The Construction Manager, with the assistance of the Architect, shall prepare of a list of items that must be completed by the 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 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.

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, to the extent reasonable, 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, unless the Construction Manager has reason to know of any inaccuracy in such information or defect in services, and 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. The Construction Manager shall assist the Owner in obtaining such tests, inspections and reports by soliciting proposals from qualified consultants and testing firms for the Owner's consideration. The Construction Manager shall also advise the Owner on what tests and inspections may be necessary and make recommendations to the Owner on which consultants and testing companies to retain.

§ 4.1.4.2 If 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 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 reasonably 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, as amended by the 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. As such, Construction Manager shall ensure that the Owner's representative has actual authority to bind the Owner on any given matter.

§ 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 B101™–2017, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services reasonably requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. Upon request, 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.)

None.

§ 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.)

Not applicable.

Individual or Position	Rate
------------------------	------

§ 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.

§ 5.1.3 Intentionally Deleted.

§ 5.2 Payments

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

§ 5.2.2

(Paragraphs deleted)
Intentionally Deleted.

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.)

2.4% of the Cost of the Work as defined in Article 7.

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

2.4% of the increase or decrease in the Cost of the Work.

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

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

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

§ 6.1.6 Liquidated damages, if any:

Init.

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User Notes:

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

None.

§ 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.)

None.

§ 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, provided, however, that the Construction Manager has fully complied with Article 7 of AIA Document A201-2017, as amended by Owner.

§ 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, as amended by the Owner.

§ 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, as amended by the Owner.

§ 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 amended by the Owner, 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, as amended by the Owner, 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 With the Owner's prior written consent, wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or at off-site workshops. 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.

§ 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 written approval, at the rates provided in Exhibit D hereto.

§ 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.)

As provided in Exhibit D hereto.

(Paragraphs deleted)

§ 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 or materials and equipment as outlined in Exhibit D hereto.

(Paragraphs deleted)

§ 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, as outlined in Exhibit D hereto.

(Paragraphs deleted)

§ 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. Notwithstanding the aforementioned sentence, the Construction Manager acknowledges that the Owner is a public body exempt from most sales and similar taxes. Thus, taxes paid by the Construction Manager for which the Owner is otherwise exempt shall not be part of the Cost of the Work.

§ 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, as amended by the Owner, 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, as amended by the Owner. 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 written approval.

§ 7.6.7 Intentionally Deleted.

§ 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 Intentionally Deleted.

§ 7.6.10 Intentionally Deleted.

§ 7.6.11 Intentionally Deleted.

§ 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, as amended by the Owner.

§ 7.7.3 With the Owner's prior written approval, 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, as amended by the 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 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; 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 Intentionally Deleted.

§ 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 Except as provided by applicable law and approved by the Owner, the Work shall be performed under contracts publicly bid by the Owner and subsequently assigned to the Construction Manager.

§ 9.1.1 Intentionally Deleted.

§ 9.2 Intentionally Deleted.

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, or as follows:

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 1st day of a month, the Owner shall endeavor to make payment of the amount certified to the Construction Manager not later than the 1st day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, the Owner shall endeavor to make payment of the amount certified 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, 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 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. The

Construction Manager shall ensure that each contractor, including the Construction Manager after the assignment of trade contracts to the Construction Manager, submit with its Request for Payment a sworn statement and lien waiver.

§ 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, as amended by the Owner, 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, as amended by the Owner;
- .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, as amended by the Owner;
- .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.)

Ten Percent (10%) of the progress payment certified by the Architect until the contract is fifty percent (50%) complete.
Five Percent (5%) of the progress payment certified by the Architect after the contract is fifty percent (50%) complete.

§ 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.)

None.

§ 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.)

As set forth in the A201-207, as amended by the 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 Owner may, but has no obligation to, reduce the retainage amount upon Substantial Completion.

(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 Intentionally Deleted.

§ 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 Intentionally Deleted.

§ 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, as amended by the Owner, 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, if requested by the Owner pursuant to Section 11.2.2;
- .3 the Construction Manager has submitted a final Application for Payment; and
- .4 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 11.2.2 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. 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.

§ 11.2.2.1 Intentionally Deleted.

§ 11.2.2.2 Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, within seven days after receipt of the written report described in Section 11.2.2, 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, as amended by the Owner. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017, as amended by the Owner. 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, as amended by the 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. 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 issuance of the Architect's final Certificate for Payment, or as follows:

§ 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.)

%

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, as amended by the 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 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, as amended by the 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.)*

§ 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)*

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, as amended by the Owner.

§ 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;
- .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 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.

§ 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, as amended by the Owner.

§ 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, as amended by the Owner, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017, as amended by the Owner, 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, as amended by the Owner.

§ 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. 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.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, as amended by the Owner, 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.)

None.

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017, as amended by the Owner; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, as amended by the Owner, 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, as amended by the Owner, 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, as amended by the 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 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.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than One Million Dollars (\$ 1,000,000) for each occurrence and Three Million Dollars (\$ 3,000,000) 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 covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than One Million Dollars (\$ 1,000,000) per claim and Two Million Dollars (\$ 2,000,000) in the aggregate.

§ 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

§ 14.3.1.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause all insurance required of the Construction Manager by the Contract Documents, with the exception of workers' compensation insurance and any professional liability insurance, to include the Additional Insureds as additional insureds. 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.

§ 14.3.1.9 The Construction Manager shall also comply with Sections A.4.3, A.4.5, A.4.6, A.4.7, A.4.9, and A.4.10 of the AIA Document A134™–2019 Exhibit B, as amended by the Owner.

§ 14.3.10 If mutually agreed by the Parties, the Construction Manager will purchase property insurance as required in Section § A.3.3.2.1 of AIA Document A133 – 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.

§ 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, as amended by the Owner, 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, as amended by the Owner, and elsewhere in the Contract Documents. The Construction Manager may, at its option, require subcontractors to obtain payment and performance bonds and will be responsible for ensuring that the bid packages for all subcontractors are revised to reflect the bonds to be required of such subcontractor. Notwithstanding anything in this Agreement to the contrary, the Construction Manager may not charge the Owner for any bonds obtained by subcontractors, unless otherwise agreed by the Owner.

§ 14.4 Intentionally Deleted.

(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:

§ 14.5.1 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, 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.

§ 14.5.2 Any additional or supplemental 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

§ 14.5.3 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.

§ 14.5.4 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.

§ 14.5.5 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.

§ 14.5.6 Any written notices provided for in this Agreement and copies of all correspondence shall be transmitted to the parties at the addresses on page one hereof.

§ 14.5.7 In accordance with state (105 ILCS 5/10-20.5b) and federal law and Board of Education Policy, smoking is prohibited on all school district property.

§ 14.5.8 Remedies for which the Construction Manager has been found liable by litigation shall include attorneys' fees.

§ 14.5.9 The Construction Manager shall notify Owner, in writing, of any actual or possible claim for personal injury or property damage relating to the work, or of any occurrence which might give rise to such a claim, promptly upon obtaining first knowledge of same.

§ 14.5.10 The Construction Manager shall provide professional construction management services on this Project. Such professional services include substantial discretion and authority to plan, schedule, estimate, approve, coordinate, manage and direct phases of the Project, within the parameters of the Contract Documents. Owner hereby finds and Construction Manager hereby represents and concurs that professional construction management services require a high degree of professional skill and experience in the construction management industry, and that Construction Manager possesses such requisite skill and experience to manage a school construction project of this size and type. The Construction Manager acknowledges that it will act as agent of Owner, in Owner's best interests, and will have fiduciary duties to Owner with respect to this Project. The Construction Manager represents that it is knowledgeable in school construction and shall exercise reasonable care and skill to comply with and to see that all Contractors comply with all applicable federal and state laws as well as rules, regulations and specifications adopted by the Illinois State Board of Education and any other agency with authority over the construction or rehabilitation of school facilities.

§ 14.5.11 To the fullest extent permitted by applicable law, the Construction Manager and its agents, partners, employees, and consultants (collectively "Indemnitors") shall and do agree to indemnify, protect, defend and hold harmless the Owner, and its respective board members, officers, directors, employees and agents (collectively "Indemnitees") from and against all liabilities, claims, damages, losses, causes of actions, suits, judgments and expenses, including attorneys' fees of any nature, kind or description (collectively "Liabilities") of any person or entity whatsoever arising out of, related to, connected with or caused by any breach of this Agreement or the performance of the services under this agreement or work on the Project, or any part thereof; provided that, with regard to the performance of the services, such Liabilities (1) are attributable to bodily injury, personal injuries, sickness, disease or death of any person or to the injury to or destruction of casual personal property, and (2) to the extent caused by any negligent act or omission of the Construction Manager, anyone directly or indirectly employed by it or anyone for whose acts it may be liable under contract or statutory or common law.

§ 14.5.12 **PREVAILING WAGES.** All laborers, workers and mechanics performing Work under the Contract shall not be paid less than the prevailing wage as found by the Illinois Department of Labor, and that the Construction Manager and all Subcontractors shall in all other respects comply with the Prevailing Wage Act in carrying out Work under the Contract. If, during the course of Work under this Contract, the Department of Labor revises the prevailing rate of hourly wages to be paid under this contract, Construction Manager shall have the sole responsibility and duty to ensure that the revised prevailing rate of hourly wages is paid by the Construction Manager and all Subcontractors to each worker to whom a revised rate is applicable. The prevailing rate of wages are revised by the Department of Labor and are available on the Department's official website. Revisions to the prevailing wage as set forth above shall not result in an increase in the Contract Sum. To the extent required by law, Construction Manager and each Subcontractor shall submit, on a monthly basis, a certified payroll to the Owner, evidencing the Construction Manager's and Subcontractor's compliance with the Prevailing Wage Act. Further, all bonds required of the Construction Manager shall contain a provision as will guarantee the faithful performance of this prevailing wage clause.

§ 14.5.13 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, the Contractor's Representative (if any), and its board members, agents, consultants and employees from and against all liabilities, claims, damages, losses, causes of action, suits, judgments and expenses (including but not limited to personal

injury, property damage (real and personal), including but not limited to attorneys' fees and the costs of litigation (including, but not limited to, filing fees, expert witness fees and court reporter fees) arising out of, relating to, resulting from or in connection with (1) any negligent act or omission of Separate Contractors, including any assigned contractors under the General Conditions, in the Performance of the Work, or that of any, anyone directly or indirectly employed any of by them, or anyone for whose acts any of them may be liable, except to the extent caused in part by a party indemnified hereunder or any third party, or (2) any grossly negligent act or omission of Owner. Such obligations shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity or contribution that would otherwise exist as to any party or person described in the Contract Documents, to negate, abridge, or otherwise reduce any immunities provided by applicable law.

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, as amended by the Owner
- .4 AIA Document A201™-2017, General Conditions of the Contract for Construction, as amended by the Owner
- .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.)

☐ Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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- .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.)

Exhibit C – Assignment of Contractor Agreement
Exhibit D – Service Fee Structure

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

OWNER *(Signature)*

(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

(Printed name and title)



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