

FOR DECISION

AGENDA ITEM:

September 8, 2015

SUBJECT: Construction Manager Contracts

MOTION: That the Board of Education of Oak Park District 97 approve the formal contract document between District 97 and Bulley & Andrews as attached.

INFORMATION UPDATE:

The Board of Education, at its May 5, 2015 meeting, formally approved the employment of Bulley & Andrews as its Construction Management as well as authorized its legal counsel to prepare the necessary contract document effectuating same. This resolution formalizes the actual contract agreement as prepared by Hodges, Loizzi, Eisenhammer, Roddick & Kohn.



AIA[®]

Document A134[™] – 2009

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

AGREEMENT made as of the 5th day of May in the year 2015
(In words, indicate day, month and year.)

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

Board of Education of Oak Park Elementary School District No. 97
970 W. Madison Street
Oak Park, IL 60302

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

Bulley & Andrews, LLC
1755 W. Armitage Ave.
Chicago, IL 60622

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

Construction of new Administrative Building at 260 West Madison Street, Oak Park, Illinois 60302

The Architect:
(Name, legal status and address)

STR Partners, LLC
350 West Ontario Street, Suite 200
Chicago, Illinois 60654

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

Therese M. O'Neill
Assistant Superintendent for Finance and Operations
Oak Park Elementary School District No. 97
970 W. Madison Street
Oak Park, Illinois 60302
708-524-3000 (phone)
708-524-3019 (fax)
toneill@op97.org

ADDITIONS AND DELETIONS:

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

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

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

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

Tim Puntillo and Bill Truty
Bulley and Andrews, LLC
1755 W. Armitage Avenue
Chicago, IL 60622

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

Jennifer Costanzo
STR Partners, LLC
350 West Ontario Street, Suite 200
Chicago, Illinois 60654

The Owner and Construction Manager agree as follows.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions) as amended by the Owner, Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's approval of the Control Estimate, the Contract Documents will also include the documents described in Section 2.2.4 and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.5. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. Notwithstanding the above, the Contract Documents also include any document referenced in Section 1.1.1 of the General Conditions, as amended by Owner.

§ 1.2 Relationship of the Parties

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

§ 1.2.1 The Construction Manager, or any of its affiliates, successors, joint ventures, partners, subsidiaries or any other related entity, shall not self-perform any Work on the Project. The Construction Manager shall attend Board of Education meetings on a monthly basis, until final payment is made, to update the Board on the status of the Project.

§ 1.2.2 The Construction Manager shall exercise reasonable care in accordance with Section 1.2, in the event it engages engineers, consultants, employees, and/or officers, to engage such persons and entities who possess the experience, skill, knowledge, and character necessary to qualify them individually for the particular duties they

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perform and who shall perform all work in conformity with the standards of reasonable care and skill with respect to professional services they are rendering. Said consultants shall carry professional liability insurance in commercially reasonable amounts. The Construction Manager assumes responsibility for the acts, errors and omissions of its consultants.

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™–2007, General Conditions of the Contract for Construction, as amended by Owner, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2007, as amended by Owner, which document is incorporated herein by reference. The term "Contractor" as used in A201–2007, as amended by Owner, shall mean the Construction Manager.

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

The Contract Sum is the actual Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee as defined in Section 5.1. The Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work as certified by the Architect in accordance with Section 9.8 of AIA Document A201–2007, as amended by Owner. The Contract Time shall be measured from the date of commencement of the Construction Phase as established pursuant to Section 2.3.1.2 of this Agreement. Changes in the Work shall be governed by Section 5.2 of this Agreement and not by Article 7 of A201–2007, as amended by Owner. If, however, the Contract Time has been established in accordance with Section 2.2.4.5, Article 7 of A201–2007, as amended by Owner, shall control adjustments to the Contract Time.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

§ 2.01 The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. The representative shall remain assigned to the Project for its duration and shall not be otherwise assigned without the consent of Owner, which it may be withheld in its sole discretion. Should the representative no longer be employed by the Construction Manager during the term of this Agreement, the Construction Manager shall promptly make a recommendation to the Owner as to the appropriate replacement representative for the Owner's consideration. Additionally, the Construction Manager shall attend monthly Board of Education meetings and FAC meetings to provide updates on the status of the Project.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall coordinate and schedule an initial meeting among the Owner, the Architect and the Construction Manager to review the program furnished by the Owner and any evaluation of the Owner's program provided by the Architect, to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner and Architect. Further, the Construction Manager shall also develop a written measurable quality control plan ("Quality Control Plan") that covers both the pre-construction phase and the construction phase so as to minimize construction defects and injuries. The Quality Control Plan shall be implemented promptly by the Construction Manager upon commencement of services under this Agreement and provided to the Owner and Architect. The Quality Control Plan shall include, but not be limited to, quality reviews of component configuration, material specifications, functional performance and conformance with the Contract Documents by the Contractor.

§ 2.1.1.1 The Construction Manager shall provide a written preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other. Said evaluation shall contain among other things, the estimated date for commencement of construction, the duration of construction, Substantial Completion dates, the need to procure any long lead time items, a site logistics plan and such other items that may be reasonably required for a successful Project.

§ 2.1.1.2 The Construction Manager shall prepare, and deliver to the Owner, a written Construction Management Plan that includes, at a minimum, the following: (1) preliminary evaluations required in Section 2.1.2, (2) a Project schedule based on the critical path methodology or such other methodology as may be agreed to by Owner in writing, (3) cost estimates, (4) recommendations for Project delivery method, and (5) Contractors' scopes of Work,

if multiple Contractors or fast-track construction will be used. The Construction Manager shall update the Construction Management Plan monthly over the course of the Project and provide a copy thereof to the Owner. The Project schedule shall be updated as necessary so that it reflects the current status of the construction progress; however, in no event shall it be updated less than once every three weeks.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update, in accordance with Section 2.1.1.2, a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's written 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 could affect the Project's timely completion, including, but not limited to, critical and long lead time items. The updated Project schedule shall include the following: submission of the Control Estimate; the components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner. If an update indicates that the previously approved Project schedule may not be met, the Construction Manager shall recommend corrective action to the Owner and Architect, which shall include the reasons the Project is behind schedule, identify any Contractors responsible for such delay and provide recovery schedules to get the Project back to the approved schedule. Further, during the early phases of the Project, and as may be needed as construction progresses, the Construction Manager shall schedule and conduct MEP meetings to discuss issues unique to the MEP trades specifically including, but not limited to, coordination issues.

§ 2.1.3.1 The Construction Manager shall expeditiously review design documents during their development and advise the Owner and Architect on proposed site use and improvements, selection of materials, and building systems and equipment and methods of Project delivery. The Construction Manager shall also provide recommendations to the Owner and Architect on constructability, availability of materials and labor, sequencing for phased construction, time requirements for procurement, installation and construction, and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. Further, during the entirety of the Project, the Construction Manager shall provide constructability reviews of the Drawings and Specifications and provide value engineering reviews and provide comments to the Owner and the Architect relating thereto.

§ 2.1.3.2 As the Architect progresses with the preparation of the Construction Documents, the Construction Manager shall consult with the Owner and Architect and make written recommendations whenever the Construction Manager determines that design details adversely affect constructability, cost or schedules.

§ 2.1.4 Phased Construction

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

§ 2.1.5 Preliminary Cost Estimates

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

§ 2.1.5.2 As the Architect progresses with the preparation of the Construction Documents, the Construction Manager shall prepare and update Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Construction Manager submits a Control Estimate for the Work, pursuant to Section 2.2. Such estimates shall be provided for the Architect's review and the Owner's approval and shall occur no less than at the 50% and 90% completion points during the Construction Document Phase. The Construction Manager shall immediately inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make detailed written recommendations for corrective action, which shall include the reasons the estimate(s) exceed the approved Project budget. All estimates of the Cost of the Work, regardless of the phase of construction shall include estimated quantities and unit prices, as applicable. Moreover, regardless of the phase of design, if the estimate of the Cost of the Work exceeds the Owner's budget, the Construction Manager shall review any revised Drawings and Specifications and provide Owner with an updated Cost of the Work. Moreover, regardless of the phase of design, if the estimate of the Cost of the Work exceeds the Owner's budget, the Construction Manager shall review any revised Drawings and Specifications and provide Owner with an updated Cost of the Work.

§ 2.1.6 Subcontractors and Suppliers

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

§ 2.1.6.1 The Construction Manager shall 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.

§ 2.1.6.2 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).

§ 2.1.6.3 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 A.

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

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates, including the Control Estimate, except as provided in this Agreement. Except as may be otherwise required by the Contract Documents, the Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report, in writing, to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require. Notwithstanding the above or anything in any other Contract Document to the contrary, the Construction Manager shall be responsible for all costs, expenses and fees of any kind whatsoever incurred by the Owner that arise 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.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

§ 2.2 Control Estimate

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

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

§ 2.2.3 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Control Estimate for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated in a revised Control Estimate by mutual agreement of the parties.

§ 2.2.4 The Control Estimate shall include

- .1 a list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 a list of the clarifications and assumptions made by the Construction Manager in the preparation of the Control Estimate, including assumptions under Section 2.2.3, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, and the Construction Manager's Fee;
- .4 the anticipated date of Substantial Completion upon which the Control Estimate is based, and a schedule for the issuance dates of the Construction Documents upon which the anticipated Substantial Completion date relies; and
- .5 a statement as to whether or not the duration from the stated date of commencement of the Construction Phase to the estimated date of Substantial Completion shall become the Contract Time and be subject to the provisions of Article 8 of A201-2007, as amended by Owner.

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

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201-2007, as amended by Owner, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

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

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

§ 2.3.1.4 The Construction Manager shall ensure that each Contractor has an adequate safety program in place while such Contractor is performing Work.

§ 2.3.2 Administration

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

§ 2.3.2.2 Intentionally Deleted.

§ 2.3.2.3 Intentionally Deleted.

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

§ 2.3.2.5 Upon the Owner's approval of the Control Estimate, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2007, as amended by Owner.

§ 2.3.2.6 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the Work, accidents, injuries, and other information required by the Owner. If the Project is behind schedule, the Construction Manager shall provide to the Owner, in writing, the reasons for the delays, including, but not limited to the responsible parties, and shall provide options on how to bring the Project back on to schedule.

§ 2.3.2.7 The Construction Manager, with the assistance of the Architect, shall prepare of a list of items that must be completed by the 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, with the assistance of the Architect, ensure the completion of items on the Punch List so the Project remains on schedule. The Construction Manager shall report to the Owner, Architect, and the responsible Contractor, any defects, malfunctions or other findings during such final testing and start-up.

§ 2.3.2.8 The Construction Manager shall provide a staffing plan to include a sufficient number of its staff who shall be in attendance at the Project site whenever the Work is being performed to coordinate the Work and ensure it is being completed in accordance with the Contract Documents. Without limiting the above, the following staff shall be assigned to the Project for its duration at the staffing levels noted, unless otherwise required to complete the Project on time and on budget: (i) Tim Puntillo, Project Executive on Part-Time basis; (ii) Bill Truty, Senior project Manager on Part-Time basis; (iii) Aneta Kowalkowski, BIM/MEP coordinator as needed for successful project; and (iv) Debora Rieck, Superintendent, Full-Time. In connection with the above requirement, the aforementioned staff shall be subject to the same staff requirement restrictions set forth in Section 2.01.

§ 2.3.2.9 The Construction Manager shall provide supervisory, administrative, management and related services to coordinate scheduled activities and responsibilities of the Contractors with each other and with those of the Construction Manager, the Owner and the Architect. Further, the Construction Manager shall manage the Project in accordance with the latest approved estimate of Construction Cost, the Project schedule and the Contract Documents to ensure milestone and substantial and final completion dates are met.

§ 2.3.2.10 The Construction Manager shall observe the Contractors and inspect their Work to ascertain if it complies with their contract with the Owner. The Construction Manager shall recommend, in writing, courses of action to the Owner when requirements of a Contract are not being fulfilled. In performing its observations and

inspections, the Construction Manager shall maintain a log of all quality issues it discovers during the course of construction ("Quality Control Log"). The Quality Control Log shall contain, at a minimum, the dates of inspection, the Work inspected, the responsible Contractor and the date of correction. The Quality Control Log shall be made available to the Owner for review during construction and tendered to Owner with the Construction Manager's final request for payment.

§ 2.3.2.11 The Construction Manager shall maintain a computerized log of all requests for interpretation, and requests for information of the Drawings and Specifications that shall contain, among other things, the date of the request, the requesting party and the status of the request. The Owner shall be entitled to a copy of the log and programs upon request.

§ 2.4 Professional Services

Section 3.12.10 of A201–2007, as amended by Owner, shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007, as amended by Owner, shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 In conjunction with the Construction Manager's services provided in Section 2.1, the Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and site requirements.

§ 3.1.2 Intentionally Deleted.

§ 3.1.3 With the assistance of the Construction Manager, the Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

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

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

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

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

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

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007 as amended by Owner, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. Notwithstanding the above, the Construction Manager acknowledges that the Owner, as a public body, may only be bound by representatives with actual authority. As such, Construction Manager shall ensure that the Owner's representative has actual authority to bind the Owner on any given matter.

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

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B101™-2007, Standard Form of Agreement Between Owner and Architect as amended by Owner. Upon request, the Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 Compensation for the Construction Manager's Preconstruction Phase services are included in the fee in 5.1.1:

§ 4.1.2 Intentionally Deleted

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

§ 4.1.3 Intentionally Deleted.

(Paragraph deleted)

§ 4.1.4 Intentionally Deleted.

§ 4.2 Payments

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

§ 4.2.2 Intentionally Deleted.

(Insert rate of monthly or annual interest agreed upon.)

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ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the

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Contract. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 and includes the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

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

A fixed fee of \$575,000

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

The Construction Manager shall only be entitled to additional fees if there is a cardinal change to the Instruments of Service. In such an event, the Construction Manager shall be entitled to a fee of ten percent (10%) of the additional Cost of the Work directly attributable to the cardinal change.

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

As provided in the A201-2007, as amended by Owner.

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

§ 5.1.5 Unit prices, if any: None

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
N/A		

§ 5.2 Changes in the Work

§ 5.2.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction, as amended by Owner. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work. The Construction Manager shall incorporate all changes in the Work and Contract Time as separate entries in the Control Estimate.

§ 5.2.2 Intentionally Deleted.

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

§ 5.2.4 Intentionally Deleted.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The Cost of the Work for the Project is the Site Development and Building Construction ("SDBC"), which shall be the total amount of the trade contracts awarded by the Owner (in no event shall this amount exceed \$7,022,090).

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

Init

§ 6.1.3. The Owner shall maintain an Owner & Design Contingency, which shall be five percent (5%) of the SDBC and a Construction Contingency, which shall be 2.5% of the SDBC. The Construction Manager shall not utilize any of the Construction Contingency without prior written approval of the Owner, which shall not be unreasonably withheld. The Owner & Design Contingency shall not be utilized by the Construction Manager without the prior written approval of the Owner, which it may withhold in its sole discretion. Any unused contingency, regardless of category, shall be retained by the Owner.

The Owner shall also provide an allowance for utility hook-ups, which shall not exceed \$50,000, and an allowance for bonds and insurance, which shall not exceed \$39,519, provided that the Construction Manager shall not utilize any of the allowances without the prior written approval of the Owner, which shall not be unreasonably withheld.

§ 6.2 Labor Costs

§ 6.2.1 Intentionally Deleted.

(Paragraphs deleted)

§ 6.2.2 Intentionally Deleted.

§ 6.2.3 Intentionally Deleted.

§ 6.2.4 Intentionally Deleted..

§ 6.2.5 Intentionally Deleted.

§ 6.3 Subcontract Costs

Intentionally Deleted.

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

§ 6.4.1 Intentionally Deleted.

§ 6.4.2 Intentionally Deleted.

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

§ 6.5.1 Intentionally Deleted.

§ 6.5.2 Intentionally Deleted.

§ 6.5.3 Intentionally Deleted.

§ 6.5.4 Intentionally Deleted.

§ 6.5.5 Intentionally Deleted.

§ 6.5.6 Intentionally Deleted.

§ 6.6 Miscellaneous Costs

§ 6.6.1 Intentionally Deleted.

§ 6.6.2 Intentionally Deleted.

§ 6.6.3 Intentionally Deleted.

§ 6.6.4 Intentionally Deleted.

§ 6.6.5 Intentionally Deleted.

§ 6.6.6 Intentionally Deleted

| § 6.6.7 Intentionally Deleted.

| § 6.6.8 Intentionally Deleted.

| § 6.6.9 Intentionally Deleted.

§ 6.7 Other Costs and Emergencies

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

| § 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201-2007, as amended by Owner.

| § 6.7.3 With prior written approval of the Owner, costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

| § 6.7.4 Intentionally Deleted.

| § 6.7.5 Intentionally Deleted.

§ 6.8 Costs Not to Be Reimbursed

§ 6.8.1

(Paragraphs deleted)

Intentionally Deleted.

§ 6.9 Discounts, Rebates and Refunds

| § 6.9.1 Intentionally Deleted.

| § 6.9.2 Intentionally Deleted.

§ 6.10 Related Party Transactions

| § 6.10.1 Intentionally Deleted.

| § 6.10.2 Intentionally Deleted.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner, The Village of Oak Park, and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda, waivers of lien, invoices, sworn statements 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 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

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

Init

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

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

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

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

§ 7.1.5 Applications for Payment shall show the Cost of the Work actually incurred by the Construction Manager through the end of the period covered by the Application for Payment and for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment.

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

- .1 Take the Cost of the Work as described in Section 6.1.1;
- .2 Add the Construction Manager's Fee, less retainage of ten percent (10 %). The Construction Manager's Fee shall be computed upon the Cost of the Work described in the preceding Section 7.1.6.1 at the rate stated in Section 5.1.1; or if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract retainage of ten percent (10 %) from that portion of the Work that the Construction Manager self-performs;
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Subtract amounts, if any, for which the Architect has withheld or withdrawn a Certificate for Payment as provided in the Contract Documents.

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

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

§ 7.1.9 Intentionally Deleted.

§ 7.2 Final Payment

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

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, as amended by Owner, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 if requested by Owner, pursuant to section 7.2.2, the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment;
- .3 the Construction Manager has submitted a final Application for Payment; and
- .4 a final Certificate for Payment has been issued by the Architect.

§ 7.2.2 The Owner shall have the right to request a final accounting for the Cost of the Work prior to paying the final payment to the Construction Manager. The Owner shall also have the right to audit the Construction Manager's final accounting for the Cost of the Work before making the final payment to the Construction Manager. In the event the Owner desires to audit the Construction Manager's final accounting, the Owner shall notify the Construction Manager of such audit and the Owner's auditors will review and report in writing on the Construction Manager's final accounting within 60 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007, as amended by Owner. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007, as amended by Owner. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007, as amended by Owner. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007, as amended by Owner.

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

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
See Article 11 of AIA Document A201-2007, as amended by Owner.	

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007, as amended by Owner. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

- Arbitration pursuant to Section 15.4 of AIA Document A201–2007
- Litigation in a court of competent jurisdiction
- Other: (Specify)

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007, as amended by Owner, for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

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

ARTICLE 10 TERMINATION OR SUSPENSION

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

§ 10.1.1 Prior to the Owner’s approval of the Control Estimate, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager for the Owner’s convenience and without cause and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007, as amended by Owner.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 4.1.

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

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager’s Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

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

Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs reasonably incurred by the Construction Manager because of such termination.

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

§ 10.2.1 Subsequent to the Owner's approval of the Control Estimate, the Contract may be terminated as provided in Sections 14.1.1, 14.1.2 and 14.2.1 of A201–2007, as amended by Owner. The provisions of Article 14 of A201–2007, as amended by Owner, do not otherwise apply to this Section 10.2.

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

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

§ 10.2.4 In addition to the Owner's right to terminate this Agreement for cause as provided in Section 14.2.1 of A201–2007, as amended by Owner, the Owner may terminate this Agreement for convenience as provided in Section 14.4; however, the Owner shall then only pay the Construction Manager an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007, as amended by Owner. In such case, the Control Estimate and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, as amended by Owner, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.2.4 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007, as amended by Owner.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007, as amended by Owner, shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201–2007, as amended by Owner, shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, as amended by Owner, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

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

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

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

1. That it will not discriminate against any employee or applicant for employment because of race, color, religion, creed, sex, marital status, national origin or ancestry, age, citizenship, physical or mental handicap or disability, military status, unfavorable discharge from military service or arrest record status or sexual orientation; 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.

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

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

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

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

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

Construction Manager:

Bulley & Andrews, LLC
1755 W. Armitage Ave.
Chicago, IL 60622

Owner:

Board of Education of Oak Park Elementary School District No. 97
970 W. Madison Street
Oak Park, IL 60302
Attn: Therese O'Neill

§ 11.5.6 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.

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

§ 11.5.8 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.

§ 11.5.9 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.

(Insert the specific dollar amounts for the appropriate insurance limits of liability.)

§ 11.5.10 The Construction Manager shall maintain the following insurance for the duration of this Agreement.

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

§ 11.5.10.2 Automobile Liability covering owned and rented vehicles operated by the Construction Manager with policy limits of not less than One Million Dollars (\$ 1,000,000) combined single limit and aggregate for bodily injury and property damage.

§ 11.5.10.3 The Construction Manager shall maintain umbrella insurance, on an occurrence basis, with policy limits of not less than Twenty Million Dollars (\$20,000,000) per occurrence and in the aggregate.

§ 11.5.10.4 Workers' Compensation at statutory limits and Employers Liability with a policy limit of not less than One Million Dollars (\$ 1,000,000).

§ 11.5.10.5 Professional Liability covering the Construction Manager's negligent acts, errors and omissions in its performance of services with policy limits of not less than Five Million Dollars (\$ 5,000,000) per claim and in the aggregate.

§ 11.5.10.6 The Construction Manager shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 11.5.10. The certificates will show Indemnitees defined in Section 11.5.12 as additional insureds on the Comprehensive General Liability, Automobile Liability and umbrella or excess policies. The certificate of insurance must provide the Owner and the Village of Oak Park with at least 30 days advance written notice of any termination or material modification of coverage, whether for non-payment, expiration or otherwise.

§ 11.5.10.7 All insurance required of the Construction Manager, with the exception of the umbrella policy, shall be the primary insurance on a non-contributory basis. If the additional insureds have other insurance which is applicable to the loss, it shall be on an excess or contingent basis. The umbrella liability insurance shall follow the primary policies in all respects, including the non-contributory obligation.

§ 11.5.10.8 With the exception of professional liability and workers' compensation insurance, all insurance required of the Construction Manager shall provide that the insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

§ 11.5.10.9 Under no circumstances shall the Owner be deemed to have waived any of the insurance requirements hereunder. The Construction Manager agrees that the obligation to provide the insurance is solely its responsibility and that this is a requirement which cannot be waived by any conduct, action, inaction or omission by the Owner.

§ 11.5.10.10 Notwithstanding any other provision contained herein or in any Contract Document, the Owner, at its own option, may satisfy its obligation to purchase any insurance required of the Owner hereunder through its membership in a self-insurance risk pool.

§ 11.5.11 To the fullest extent permitted by the Construction Manager's insurance policies, the Construction Manager shall waive on its and its insurers' liability any and all rights of subrogation they each may have against any Indemnitee. Notwithstanding any other provision herein or in any Contract Document, the Owner shall not, in any manner, be deemed or intended to have waived any right of subrogation which it, any insurer or any self-insured

risk pool of which it is a member may have against the Construction Manager or any of its agents, consultants or subcontractors.

§11.5.12 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, the Village of Oak Park, and their respective board members, officers, directors, employees, officials, volunteers, and agents (collectively "Indemnitees") from and against all claims, damages, losses, causes of actions, suits, injuries, deaths, liabilities, liens, including mechanic's liens, judgments, costs 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, including the loss of use and consequential damages resulting therefrom and (2) are caused in whole or in part 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. Construction Manager agrees to assume the entire liability for all personal injury claims suffered by its own employees allegedly injured on the Project; waives any limitation of liability defense based upon the *Worker's Compensation Act*, court interpretations of said Act or otherwise; and agrees to indemnify, contribute to claims against, and defend Indemnitees from and against all such loss, expense, damage or injury, including reasonable attorneys' fees, that the Indemnitees may sustain as a result of such claims, except to the extent that Illinois law prohibits indemnity for the indemnitees' own negligence. These provisions shall be interpreted in accordance with the *Construction Contract Indemnification Negligence Act*, 740 ILCS 35.

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 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.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A134-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price
- .2 AIA Document A201-2007, General Conditions of the Contract for Construction, as amended by Owner
- .3 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:
- .4 AIA Document E202™-2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
- .5 Other documents:
(List other documents, if any, forming part of the Agreement.)

Exhibit A- Assignment of Contractor Agreement

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

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

(Printed name and title)

(Printed name and title)

Init

EXHIBIT A

**OAK PARK ELEMENTARY SCHOOL DISTRICT NO. 97
ASSIGNMENT OF CONTRACTOR AGREEMENT**

Contractor: _____

Trade Package: _____

Dollar Amount of Agreement: \$ _____

The Board of Education of Oak Park Elementary School District No. 97 ("School District"), for good and sufficient consideration, receipt of which is hereby acknowledged, hereby assigns to Bulley & Andrews, LLC ("Construction Manager"), and Construction Manager hereby accepts, all the School District's rights, obligations and responsibilities to the Contractor (as defined below) as Owner under that certain Contract Agreement between Owner and Contractor, dated ____ for [insert trade package information]. This assignment is a total assignment of rights from the School District to Construction Manager. Contractor releases all claims, rights and remedies it has or may have against the School District pertaining to the Contract. Each signatory hereto represents and warrants that he/she has the necessary corporate authority to bind his/her respective entity to this Assignment. Notwithstanding the above, however, the School District retains the right to reassume all rights and obligations of the Owner under the aforementioned Agreement upon written notification to the Contractor and Construction Manager, in the event Construction Manager ceases to provide services to the School District.

This assignment shall be effective as of _____, 20__.

BULLEY & ANDREWS, LLC

**BOARD OF EDUCATION OF
OAK PARK ELEMENTARY SCHOOL
DISTRICT NO. 97**

By: _____
Its: Authorized Officer

By: _____
Its: _____

ATTEST:

By: _____
Its: Secretary

**ASSIGNMENT AGREED AND
ACCEPTED BY [NAME OF CONTRACTOR]**

By: _____
Its: Authorized Officer