

# AIA® Document A134® – 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 without a Guaranteed Maximum Price

**AGREEMENT** made as of the [ ] day of [ ] in the year 2025  
(In words, indicate day, month, and year.)

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

Board of Education of Prospect Heights School District 23  
700 N. Schoenbeck Rd.  
Prospect Heights, IL 60070  
(847) 870-3850  
[ ]

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

Nicholas & Associate, Inc.  
1001 Feehanville Dr.  
Mount Prospect, IL 60056  
(847) 394-6200  
[ ]  
[ ]

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

To be identified on Individual Project Authorization Exhibits as agreed to in writing by the Parties.  
[ ]  
[ ]

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

Erin M. Miller, LEED AP | Principal  
ARCON Associates, Inc.  
2050 S. Finley Rd., Suite 40  
Lombard, IL 60148  
[ ]  
[ ]  
[ ]

The Owner and Construction Manager agree as follows.

**ADDITIONS AND DELETIONS:**  
The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes 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 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.

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**EXHIBIT A INSURANCE AND BONDS** – All references to Exhibit A, Insurance and Bonds will refer to the insurance requirements set forth in the AIA A201-2017, as amended for this Project.

### 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.)*

**§ 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.)*

§ 1.1.3 The Owner’s budget for the Contract Sum, as defined in Section 2.4:  
(Provide total and, if known, a line item breakdown.)

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

.1 Design phase milestone dates, if any:

TBD on a project specific basis in accordance with the appropriate Project Authorization

.2 Construction commencement date:

TBD on a project specific basis in accordance with the appropriate Project Authorization

.3 Substantial Completion date or dates, if not established in this Agreement under Section 3.3.1.3:

TBD on a project specific basis in accordance with the appropriate Project Authorization

.4 Other milestone dates:

TBD on a project specific basis in accordance with the appropriate Project Authorization

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

TBD on a project specific basis in accordance with the appropriate Project Authorization

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

TBD on a project specific basis in accordance with the appropriate Project Authorization

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

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

TBD on a project specific basis in accordance with the appropriate Project Authorization

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

§ 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.)

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

.1 Geotechnical Engineer:

TBD on a project specific basis in accordance with the appropriate Project Authorization

.2 Civil Engineer:

TBD on a project specific basis in accordance with the appropriate Project Authorization

.3 Other, if any:

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

TBD on a project specific basis in accordance with the appropriate Project Authorization

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

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

Joe Papanicholas»  
«Nicholas & Associates, Inc.»  
«1001 Feehanville Drive»  
«Mount Prospect, IL 60056

§ 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.)

As set forth in the applicable Project Authorization

**§ 1.1.14** The Owner's requirements for subcontractor procurement for the performance of the Work:  
(List any Owner-specific requirements for subcontractor procurement.)

As set forth elsewhere in this Agreement and the applicable Project Authorization.

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

As set forth in the applicable Project Authorization.

**§ 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 Contract Sum and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

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

## **ARTICLE 2 GENERAL PROVISIONS**

### **§ 2.1 The Contract Documents**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions, as amended), 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 approval of the Control Estimate, the Contract Documents will also include the documents described in Section 3.2.2 and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.7. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

### **§ 2.2 Relationship of the Parties**

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. The terms Subcontractor and Trade Contractor shall be used interchangeably throughout this Agreement and the A201-2017 as amended.

**§ 2.2.1** The Construction Manager has been engaged to provide professional construction management services because of its character, expertise, experience, education, depth of experienced personnel, and qualifications in dealing with projects of similar scope, complexity, and magnitude. The Construction Manager shall exercise skill and care consistent with the expertise, experience, and qualifications of construction management professionals necessary for the successful performance in a timely manner of this project.

The Construction Manager, to the best of its information, knowledge and belief, hereby represents and warrants to the Owner the following:

- (a) that Construction Manager is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the services required and perform its obligations hereunder;
- (b) that Construction Manager is able to furnish any of the plant, tools, materials, supplies, equipment and labor required to complete the services required hereunder and to perform all of its obligations hereunder and has sufficient experience and competence to do so;

- (c) that Construction Manager is authorized to do business in Illinois and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it to undertake the services required hereunder and the Project itself;
- (d) that Construction Manager's execution of this Agreement and the performance thereof are within its duly authorized powers; and
- (e) that Construction Manager's duly authorized representative has visited the Project site(s), familiarized itself with the local conditions under which the services required hereunder are to be performed, and correlated its observations with all the required Contract Documents.

## **§ 2.3 General Conditions**

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

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

## **§ 2.4 Contract Sum, Contract Time and Changes in the Work**

The Contract Sum is the actual Cost of the Work as defined in Section 7.1.1 plus the Construction Manager's Fee as defined in Section 6.1. The Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work as certified by the Architect in accordance with Section 9.8 of AIA Document A201–2017. The Contract Time shall be measured from the date of commencement of the Work. Changes in the Work shall be governed by Article 7 of A201–2017.

## **ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201–2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. The Construction Manager's identified representative shall have express authority to bind the Construction Manager with respect to all matters requiring the Construction Manager's approval or authorization. Construction Manager's representative shall have the authority to make representations and decisions on behalf of the Construction Manager concerning estimates, schedules, construction budgets, coordination of the Work, prosecution of the Work, changes in the Work, and all other matters related to this Agreement.

## **§ 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. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require. 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 review design documents during their development phases and 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 the Architect on proposed site use and improvements, selection of materials, and 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 by the Owner, the Construction Manager shall assist the Owner and Architect in establishing written protocols for the development, use, transmission, reliance, and exchange of digital data, including building information models for the Project.

**§ 3.1.3.4** The Construction Manager shall assist the Owner and Architect in preparing Construction Documents and advising the Owner on the acceptability of sub-tier subcontractors and material suppliers proposed by Subcontractors. The Construction Manager shall submit for review and approval to Owner, or Owner's attorney if directed by the Owner, all instructions, terms, conditions, and information prepared for submission to bidders prior to release of the bid packages.

### **§ 3.1.4 Project Schedule**

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

### **§ 3.1.5 Phased Construction**

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

### **§ 3.1.6 Cost Estimates**

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

**§ 3.1.6.2** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Construction Manager submits a Control Estimate for the Work, pursuant to Section 3.2. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

**§ 3.1.6.3** If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the

Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

**§ 3.1.6.4** In accordance with Section 3.1, above, the Construction Manager shall provide detailed cost estimates at the following intervals:

- Baseline Budget Assessment
- 100% Design Development/High Level Budget Assessment
- 50% Construction Documents Budget Assessment
- 75% Construction Documents Budget Assessment
- 100% Construction Documents Budget Assessment

**§ 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.

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

**§ 3.1.12 Procurement**

The Construction Manager shall prepare, for the Architect's review and the Owner's written 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 Owner's approval of the Control Estimate, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager as permitted by law. 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.

**§ 3.1.12.1** The Construction Manager shall make recommendations to the Owner and the Architect regarding the division of Work to facilitate the bidding and awarding of Subcontracts and the orderly progress of Work, allowing for an orderly construction sequence. Construction Manager shall make recommendations to the Owner and the Architect regarding the assignment of responsibilities for safety precautions and programs, temporary project facilities, equipment materials and services for the common use of subcontractors.

**§ 3.1.12.2** Construction Manager shall prepare all bid invitations, instructions to bidders, and general and supplementary conditions. Construction Manager shall ensure that the amended A201-2017 General Conditions are incorporated into the bid package in the form provided by the Owner, and that no other provisions of the bid packages conflict with them. Drawings and specifications shall be provided by the Architect. During the preparation of the Construction Documents by the Architect, the



Construction Manager shall review said Construction Documents to ensure consistency with the bid documents prepared by the Construction Manager.

**§3.1.12.3** The Construction Manager will not perform work with its own forces unless it submitted a bid in accordance with 105 ILCS 5/10-20.21 which was accepted by the Owner, or the Owner otherwise approves of the use of Construction Manager's forces in writing. The Construction Manager will not bid on any work without the prior written consent of the Owner.

**§3.1.12.4** Prior to advertisement for bids, unless the Owner agrees otherwise, Construction Manager shall provide all contractor and subcontractor agreement forms to the Owner for review and comment.

**§ 3.1.12.5** Construction Manager shall conduct pre-bid meetings with interested bidders in accordance with publicly announced and schedule meetings. Construction Manager will assist the Owner in responding to inquiries from bidders during the bid process and issuing corrected bid documents, including issuance of addenda and other notifications.

**§ 3.1.12.6** The Owner shall receive, open, and read aloud all bids as required by applicable procurement laws. The Construction Manager shall record all bids, prepare bid analysis, and make recommendations to the Owner for the Owner's award of contracts and/or rejection of bids.

**§ 3.1.12.7** The Construction Manager shall assist the Owner in obtaining building permits any special permits necessary to carry out the Work. The Construction Manager shall verify that the Owner has paid all applicable fees. The Construction Manager shall assist the Owner and Architect regarding the Owner's responsibility for filing documents required for the approval of governmental entities having jurisdiction over the Project.

**§ 3.1.12.8** Owner is a public school district subject to the public bidding requirements of 105 ILCS 5/10-20.21 and is required to procure the Work through public bidding and award of contracts for the Work to the lowest, responsible, and responsive bidder. When the lowest, responsible, and responsive multiple prime trade bidders (hereafter referred to as "Subcontractors" or "Trade Contractors" are identified, the Owner shall assign those trade contracts (the "Subcontracts" to Construction Manager provided that notwithstanding any language in this Agreement or in A201-2017, as amended, the Construction Manager shall assume all contractual obligations and duties of the Trade Contracts and Trade Contractors.

The Construction manager shall cause the Subcontracts to incorporate substantially the following provisions: This Contract has been awarded by the Owner after advertisement for bids. Upon award of the Contract by the Owner, the Owner shall be deemed to have assigned its rights in this Agreement to the Owner's Construction Manager, which is identified herein as the Contractor and/or Construction manager. By submitting its bid, the bidder shall be deemed to have consented to the aforesaid assignment, and to have agreed to become the assigned Subcontractor to the Construction Manager. Upon assignment, the Subcontractor shall become a subcontractor of the Contractor pursuant to this Agreement, and except as identified within this Agreement and as provided by law, will no longer have any contractual rights against the Owner, and shall have contractual privity only with the Construction manager.

### **§ 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 Phase 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.)*

As set forth in the applicable Project Authorization.

## **§ 3.2 Control Estimate**

**§ 3.2.1** At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall

prepare a Control Estimate for the Owner's and Architect's review, and the Owner's written approval. 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. The Control Estimate shall be used to monitor actual costs and the timely performance of the Work. The Construction Manager shall update the Control Estimate with each Application for Payment as needed to reflect changes in the Work.

**§ 3.2.2** The Control Estimate shall include:

- .1 the documents enumerated in Article 15, including all Modifications thereto;
- .2 a list of the assumptions made by the Construction Manager in the preparation of the Control Estimate, including assumptions under Section 3.2.4, to supplement the information provided by the Owner and contained in the Contract Documents;
- .3 a statement of the estimated Cost of the Work organized by trade categories or systems, and the Construction Manager's Fee;
- .4 a project schedule upon which the Control Estimate is based, indicating proposed Subcontractors, activity sequence and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment, and the Owner's occupancy requirements;
- .5 a date of Substantial Completion, if not established in accordance with Section 3.3.1.3; and
- .6 reasonable contingencies for further development of design and construction, as required by Section 3.2.4.

**§ 3.2.3** The Construction Manager shall meet with the Owner and Architect to review the Control Estimate. In the event that the Owner or Architect discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Control Estimate. When the Control Estimate is approved by the Owner, the Owner shall acknowledge its approval in writing. The Owner's approval of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

**§ 3.2.4** To the extent that the Contract Documents are anticipated to require further development, the Control Estimate shall include 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 in a revised Control Estimate by mutual agreement of the parties.

**§ 3.2.5** 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.

**§ 3.2.6** 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, unless the Owner provides prior written authorization for such costs.

**§ 3.2.7** The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in the Control Estimate. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Control Estimate and the revised Contract Documents.

**§ 3.3 Construction Phase**

**§ 3.3.1 General**

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

**§ 3.3.1.2** The Construction Phase shall commence upon the Owner's approval of the Control Estimate or, prior to acceptance of the Control Estimate, 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 approval of the Control Estimate.

**§ 3.3.1.3 Substantial Completion**

**§ 3.3.1.3.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of the entire Work: as set forth in the applicable Project Authorization.  
(Check one of the following boxes and complete the necessary information.)

**§ 3.3.1.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Construction Manager shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
As set forth in the applicable Project Authorization.	

**§ 3.3.1.3.3** If the Construction Manager fails to achieve Substantial Completion as provided in this Section 3.3.1.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.7.

### **§ 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 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 a submittal schedule in accordance with Section 3.10 of A201-2017.

### **§ 3.3.2.3 Monthly Report**

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

### **§ 3.3.2.4 Daily Logs**

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

**§ 3.3.2.5** In collaboration with the Architect, the Construction Manager shall establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals. The Construction Manager shall review Shop Drawings, Product Data, Samples, and other submittals from Subcontractors for apparent compliance with Subcontract requirements. The Construction Manager shall transmit to the Architect those submittals which have been reviewed by the Construction Manager. The Construction Manager's actions will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Architect or Subcontractors. The Construction Manager shall receive all other submittals required by the Contract Documents, including certified payrolls, work plans, safety plans, periodic schedule updates, etc.

**§ 3.3.2.6** The Construction Manager shall create and maintain a log of all submittals showing, at a minimum, the dates of submittal, review, and return, disposition, and description.

**§ 3.3.2.7** The Construction Manager shall create and maintain a log of all approved change orders showing, at a minimum, dates of approval, description, reason for change, agreed price of change, and agreed change of contract time, if any.

**§ 3.3.2.8** The Construction Manager will provide executed copies of all subcontracts and sub-subcontracts for the Work to the Owner.

## **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.

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

**§ 4.1.4 Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and necessary for the proper completion of the Project 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. Such documents are provided for information purposes only and are not warranted or represented to show the conditions at the Project site accurately. Construction Manager may use the information at its own risk and shall use customary precautions relating to the performance of the Work.

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

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

**§ 4.1.4.3** The Owner, when such services are necessary for the Project's proper completion, 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 necessary for the Project's proper completion 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 as required by this Agreement and otherwise permitted by law, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

## **§ 4.3 Architect**

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–



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

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

§ 6.1.6 Unit prices, if any, as set forth in the applicable Project Authorization.:  
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
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§ 6.1.7 Liquidated damages, if any:  
(Insert terms and conditions for liquidated damages, if any.)

As set forth in the applicable Project Authorization.

§ 6.1.8 Other:  
(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

As set forth in the applicable Project Authorization.

## § 6.2 Changes in the Work

§ 6.2.1 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 Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work, as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction. The Construction Manager shall incorporate all changes in the Work and Contract Time as separate entries in the Control Estimate.

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

§ 6.2.2 Increased costs for the items set forth in Sections 7.1 through 7.7 that result from changes in the Work shall become part of the Cost of the Work, and the Construction Manager's Fee shall be adjusted as provided in Section 6.1.3.

§ 6.2.3 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 in comparison with the Control Estimate or the date of Substantial Completion, 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.

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

§ 6.2.5 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.

**§ 6.2.6** A change order or series of change orders increasing or decreasing the cost of the contract price by \$25,000 or more or the time of completion by a total of 180 day or more may only be approved in accordance with the requirements of 720 ILCS 5/33E-9.

## **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 paid at the place of the Project, except with prior approval of the Owner.

### **§ 7.2 Labor Costs**

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

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

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

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

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

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

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

### **§ 7.3 Subcontract Costs**

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

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

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

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



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

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

**§ 7.5.2** Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item. There shall be no mark-up passed on to the Owner for such costs.

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

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

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

## **§ 7.6 Miscellaneous Costs**

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

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

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

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

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

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

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

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

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



**§ 7.6.7** Costs of document reproductions and delivery charges, requested by the Owner.

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

**§ 7.6.9** Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, between the Construction Manager and any Subcontractor, material or equipment supplier, or related to any internal business operations of the Construction manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

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

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

### **§ 7.7 Other Costs and Emergencies**

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

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

**§ 7.7.4** The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017, as amended 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; and (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 through 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 through 7.7; and
  - .8 Costs for services incurred during the Preconstruction Phase.

## **ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS**

**§ 8.1** The Construction Manager shall take advantage of all available discounts, rebates, and refunds for supplies, materials, and equipment connected with the Work and which conform to the Contract Documents, which discounts, rebates, and refunds shall accrue to the benefit of the Owner. Trade discounts, rebates, refunds, and savings, including but not limited to amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

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

## **ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS**

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

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

## **ARTICLE 10 ACCOUNTING RECORDS**

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

## ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

### § 11.1 Progress Payments

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

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

§ 11.1.3 The Owner will make all payments after receipt of the Application for Payment and Certificates for Payment in accordance with the requirements of the Illinois Local Government Prompt Payment Act. However, provided that an Application for Payment is received by the Architect not later than the [ ] day of a month, the Owner will endeavor to make payment of the amount certified to the Construction Manager not later than the [ ] day of the [ ] month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than [ ] ( [ ] ) 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 the cost control information required in Section 3.2.5, along with payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, subcontractor and material supplier lien waivers, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 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.

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

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

- .1 The Cost of the Work as described in Article 7;
- .2 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .3 The Construction Manager's Fee computed upon the Cost of the Work described in the preceding Section 11.1.6.1.1 at the rate stated in Section 6.1.2; or if the Construction Manager's Fee is stated as a fixed sum in Section 6.1.2, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work included in Section 11.1.6.1.1 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.7.

### § 11.1.7 Retainage

§ 11.1.7.1 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%)

§ 11.1.7.1.1 The following items are not subject to retainage:

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

Construction Manager Professional Fee.

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

*(If the retainage established in Section 11.1.7.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)*

Retainage will be reduced to Five Percent (5%) in accordance with the Illinois Public Construction Bond Act.

§ 11.1.7.3 Except as may be set forth in this Section 11.1.7.3, 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 11.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

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

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

§ 11.1.9 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.

§ 11.1.10 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.

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

### § 11.2 Final Payment

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

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

- Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

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

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

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

**§ 11.2.3** The Owner's final payment to the Construction Manager shall be made in accordance with the Illinois Local Government Prompt Payment Act 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.

### **§ 11.3 Interest**

Payments due and unpaid under the Contract shall bear in accordance with the Illinois Local Government Prompt Payment Act.

*(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. 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 binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

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

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

### **§ 12.2 Binding Dispute Resolution**

For any Claim the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

[ ☒ ] Litigation in a court of competent jurisdiction located in Cook County, Illinois

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 Owner's Approval of the Control Estimate**

**§ 13.1.1** 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 Article 14 of A201-2017.

**§ 13.1.2** In the event of termination of this Agreement pursuant to Section 13.1.1, 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.

**§ 13.1.3** In the event of termination of this Agreement pursuant to Section 13.1.1 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 an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.2:

- .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 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.

**§ 13.1.4** 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 13.1.3.1. 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 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.

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

### **§ 13.2 Termination or Suspension Following the Owner's Approval of the Control Estimate**

#### **§ 13.2.1 Termination**

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



### **§ 13.2.2 Termination by the Owner for Cause**

**§ 13.2.2.1** If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the 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 6.1 or, if the Construction Manager’ Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

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

### **§ 13.2.3 Termination by the Owner for Convenience**

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

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

### **§ 13.2.4 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017. In such case, the Contract Sum and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term “profit” shall be understood to mean the Construction Manager’s Fee as described in Sections 6.1 and 6.2.5 of this Agreement.

## **ARTICLE 14 MISCELLANEOUS PROVISIONS**

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

### **§ 14.2 Successors and Assigns**

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

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

## § 14.3 Insurance and Bonds

### § 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following minimum 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 Millions 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 Two Million Dollars (\$ 2,000,000 ) 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 Millions 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
Umbrella Liability Coverage	\$ _____

§ 14.3.1.7 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager and its subcontractors shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner and Architect, as well as their respective board members, employees, and consultants, as an additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. for bodily injury, sickness, disease or death or damage to property caused by the acts or omissions of the Contractor, any Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable arising out of the Contractor's operations. Also, such insurance shall state that: "The coverage afforded the Additional Insureds shall be primary insurance for the Additional Insureds with respect to claims arising out of operations performed by or on behalf of the Contractor and its subcontractors. If the Additional Insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the company's liability under this insurance policy shall not be reduced by the existence of such other insurance." The additional insured coverage shall be primary and non-contributory to any of the Owner's and Architect's insurance policies and shall apply to both ongoing and completed operations.

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

### § 14.3.2 Construction Phase

After the Owner approves the Control Estimate, the Owner and Construction Manager shall purchase and maintain insurance as set forth in AIA Document A134-2019, 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 without a Guaranteed Maximum Price, Exhibit A,



Insurance and Bonds, and elsewhere in the Contract Documents.

**§ 14.3.2.1** The Construction Manager shall provide bonds as set forth in AIA Document A134™–2019 Exhibit A, and elsewhere in the Contract Documents.

**§ 14.4 Notice**

*(If other than in accordance with a building information modeling exhibit, 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 shall endeavor to keep the Project free of mechanic's liens. If the Owner is required to withhold money pursuant to a notice of lien or lien against public funds, the Construction Manager shall indemnify, defend, and hold harmless the owner for all costs incurred regarding such lien and any resulting litigation, including reasonable attorneys' fees and costs. The Construction Manager shall include a similar provision in all Subcontracts for the protection of the Owner.

§ 14.5.2 The Construction Manager acknowledges that this is a public works project subject to the requirements of the Illinois Prevailing Wage Act. The Construction Manager shall pay its laborers, if any, and ensure that all Subcontractors pay their laborers not less than the established prevailing rates or wages as published or revised by the Department of Labor and available on its website. The Construction Manager and all of its Subcontractors will comply in all respects with the Illinois Prevailing Wage Act, including all notice, filing, and recordkeeping requirements.

§ 14.5.3 Construction Manager represents that it has in place a Sexual Harassment Policy in accordance with the Illinois Human Rights Act and shall ensure that all Subcontractors have in place a Sexual Harassment Policy prior to the commencement of Work on the Project as required by 775 ILCS 5/1-105.

§ 14.5.4 Construction Manager represents that it does not discriminate in its hiring practices based upon race, religion, color, ancestry, age, sex, sexual orientation, gender identity, pregnancy, order of protection status, physical or mental disability, handicap, marital status, national origin, military status, or dishonorable military discharge, or other protected category in violation of state or federal law. Construction Manager will require Subcontracts to include a similar representation and requirement of non-discrimination.

§ 14.5.5 Construction Manager will comply with the Illinois Drug Free Workplace Act (30 ILCS 580/1, et seq.)

§ 14.5.6 Construction Manager certifies that it is not barred from contracting because of bid rigging or bid rotation in violation of 720 ILCS 5/33E-11.

§ 14.5.7 Construction Manager will conduct criminal background checks as required by and in accordance with 105 ILCS 5/10-21.9, including checks of the Illinois Statewide Sex Offender Database and Statewide Murderer and Violent Offender Against Youth Database, for all personnel assigned to the Project site. Construction Manager will include a similar requirement in all subcontracts for the protection of the Owner. The Construction Manager will not assign an employee and will not permit an employee of a Subcontractor to be assigned to the Project Construction site for whom a criminal background check discloses a prohibited offense or status as a sex offender or offender against youth. The Construction Manager will provide copies of criminal records reports upon the request of the Owner. The Owner may request the removal of any employee of the Construction Manager or Subcontractor from the Project site.

§ 14.5.8 This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Illinois without regard to conflict or choice of law principals.

§ 14.5.9 To the fullest extent permitted by law, the Construction Manager waives any right of contribution against and shall indemnify, defend, and hold harmless the Owner, Owner's Representative, the Architect, and each of their board members, agents, consultants, and employees from and against all claims, damages, economic damages, losses and expenses (including but not limited to personal injury, property damage (real and personal) and loss of property), including but not limited to

attorneys' fees, court costs and expert witness fees arising out of, relating to, resulting from or in connection with (1) any act or omission of the Construction Manager, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder, or (2) any breach of the Contract Documents. Such obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity or contribution which would otherwise exist as to any party or person described in the Contract Documents.

§14.5.9.1 In any and all claims by an employee of the Construction Manager, and Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification and defense obligation in the Contract Documents shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Construction Manager or Subcontractor under workers' or workmen's compensation acts, disability benefits acts or other employee benefit acts. Construction Manager and every Subcontractor agree to assume the entire liability for all personal injury claims suffered by their own employees allegedly injured on the Project and waive any limitation of liability defense based on workers' compensation acts or interpretations thereof, against claims by Owner for indemnification or contribution, and further agree to indemnify and defend Owner and its board members, agents, employees, and consultants (Indemnitees) from and against all such claims, damages, losses and expenses, 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 Indemnitee's own negligence, and further agree to pay any contribution appropriate for Construction Manager's or Subcontractor's own negligence. Construction Manager shall ensure that this provision is inserted in every Subcontract. If such provision is not contained within a Subcontract, or if a Subcontractor's insurance does not cover or is insufficient to pay such claims, Construction Manager shall assume all Subcontractor liability for such indemnification and defense of or contribution to Owner.

§14.5.9.2 "Claims, damages, losses and expenses" as these words are used in the Contract Documents shall be construed to include, but not be limited to (1) injury or damage consequent upon the failure of or misuse by Construction Manager or Subcontractor, or their agents, servants, employees, of any hoist, rigging, blocking, scaffolding, or any and all other kinds of items of equipment, either or not the same be owned, furnished, or loaned by the Owner; (2) all attorneys' fees, court costs, expert witness fees and costs incurred in defense of the claim of in bringing an action to enforce the provision of this Indemnity or any other indemnity contained in the Contract Documents; and (3) all costs, expenses, lost time, opportunity cost, etc. incurred by the party being indemnified or its employees, agents or consultants.

§14.5.9.3 The Indemnity obligations shall, but not by way of limitation, specifically include all claims and judgments which may be made against the Indemnitees under federal or state law or the law of other governmental bodies having jurisdiction, and further, against claims and judgments arising from violation of public ordinances and requirements of governing authorities due to Construction Manager's or Subcontractor's employees' methods of execution of the Work.

§14.5.9.4 To the extent prohibited by the Construction Contract Indemnification for Negligence Act, 740 ILCS 35/0.1, et seq.), the indemnification obligations of Construction Manager or Subcontractors under the Contract Documents shall not extend to liability of the Owner or any Owner's Representative, or the Architect, or their agents, consultants, or employees, arising out of their own negligence.

## 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 A134™–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 without a Guaranteed Maximum Price, as amended
- .2 AIA Document A134™–2019, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended. Throughout this Agreement references to the AIA Document A201-2017 will mean such document as amended by the Parties.
- .4 Building Information Modeling Exhibit, if completed:

**.5 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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**.6 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.)

Project Authorization

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)