

# 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      in the year Two Thousand  
(In words, indicate day, month, and year.)

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

Minooka Community High School District No. 111  
26655 W. Eames Street  
Channahon, IL 60410

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

Nicholas & Associates, Inc.  
1001 Feehanville Drive  
Mount Prospect, IL 60056

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

Master Agreement for various projects utilizing a Construction Manager.  
Individual projects and the terms for those projects will be attached to this Master Agreement as exhibits.

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

To be determined based on the project

The Owner and Construction Manager agree as follows.

### ADDITIONS AND DELETIONS:

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

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

AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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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.)

As set forth in the exhibit attached to this Master Agreement for the individual project.

§ 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.)

As set forth in the exhibit attached to this Master Agreement for the individual project.

§ 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.)

As set forth in the exhibit attached to this Master Agreement for the individual project.

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

- .1 Design phase milestone dates, if any:

See Attachment

- .2 Construction commencement date:

See Attachment

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

See Attachment

- .4 Other milestone dates:

See Attachment

§ 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.)

As set forth in the exhibit attached to this Master Agreement for the individual project.

§ 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.)

As set forth in the exhibit attached to this Master Agreement for the individual project.

§ 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 E234TM\_2Q19-2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234TtoL-2019-E234tm-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.)

As set forth in the exhibit attached to this Master Agreement for the individual project.

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

As set forth in the exhibit attached to this Master Agreement for the individual project.

§ 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.)

As set forth in the exhibit attached to this Master Agreement for the individual project

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

- .1 Geotechnical Engineer:

As set forth in the exhibit attached to this Master Agreement for the individual project.

.2 Civil Engineer:

As set forth in the exhibit attached to this Master Agreement for the individual project.

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

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

As set forth in the exhibit attached to this Master Agreement for the individual project.

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

As set forth in the exhibit attached to this Master Agreement for the individual project.

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for reconstruction 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 exhibit attached to this Master Agreement for the individual project.

§ 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 in the exhibit attached to this Master Agreement for the individual project.

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

As set forth in the exhibit attached to this Master Agreement for the individual project.

§ 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.

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## ARTICLE 2 GENERAL PROVISIONS

### § 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's 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 in writing 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. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

### § 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~~ requested 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 school site, familiarized him or herself with the local conditions under which the services required hereunder are to be performed and correlated his or her observations with all the requirements of the Contract Documents.

The Board of Education of the Owner ~~Illinois~~, by majority vote, has the power and authority to enter or amend this contract, to approve changes in the scope of the Work, to agree to an extension of the date of Substantial or Final Completion, or to terminate a contract.

### § 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, ~~as amended and attached hereto~~ 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.

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§ **2.3.2** For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2017, as amended and attached hereto 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 and 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 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.

§ **3.1.2** The Construction Manager shall review design documents during their development phases and provide Owner with a written preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ **3.1.2.2** Designer of record is responsible to prepare a complete set of plans and specifications ensuring that all design elements are compatible with one another and with the existing conditions. Construction Manager will perform its due diligence to identify potential errors, conflicts, etc. Upon identifying a conflict/error it is the Construction Manager's contractual obligation to bring to the attention of the owner and design team in a reasonable timeframe. If the CM is negligent in notifying the owner and design team in a reasonable time, then the CM shall bear some responsibility.

§ **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** The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data. All project schedules (including updates) shall be formatted using the Critical Path Method (CPM) or another Owner pre-approved scheduling method.

§ **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 its attorneys if designated by Owner, all instructions, terms, conditions, and information prepared for submission to bidders prior to release of the bid package.

§ **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 -- (Construction Manager's Control Estimate)

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§ 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 acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction as agreed to in writing by the Owner. If the Owner agrees to procure any items prior to the advertisement for bids, the Owner shall procure the items on terms and conditions in consultation 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.)*

§ 3.1.14.1 Owner is a school district bound by the public bidding requirements of 105 ILCS 5/10-20.21 and is required to procure the Work through public bidding and award the contracts for the Work to the lowest responsive and responsible bidder. When the lowest responsive and responsible multiple prime trade bidders (hereinafter referred to as "Subcontractors" or "Trade Contractors") are identified, 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 an 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.

§ **3.1.14.2** 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 to be provided by the Owner, and that no other provisions of the bid package conflict with them. Drawings and specifications shall be provided by the Architect. During 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.

§ **3.1.14.3** Prior to advertisement for bids, unless the Owner agrees otherwise, Construction Manager shall provide all contractor or subcontract agreements to the Owner for review and comment.

§ **3.1.14.4** Construction Manager shall conduct pre-bid meetings with interested bidders in accordance with publicly announced and scheduled meetings.

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

§ **3.1.14.6** The Subcontract documents prepared by Construction Manager shall require full compliance with all state and local laws.

§ **3.1.14.7** The Construction Manager shall assist the Owner in obtaining building permits and special permits necessary to carry out and complete 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 authorities having jurisdiction over the Project.

## § **3.2 Control Estimate**

§ **3.2.1** Upon 100% completion of the Construction Documents by the Architect, and before advertisement for bids, the Construction Manager shall prepare a Control Estimate for the Owner's review and acceptance. The Control Estimate shall be the sum of the Construction Manager's estimate of the Cost of the Work, Reimbursable Expenses, General Conditions, and the Construction Manager's Fee and shall include those items set forth in Section 3.2.4 below. When the Control Estimate is acceptable to the Owner, the Owner shall upon request by the Construction Manager, acknowledge it in writing.

§ **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. 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.

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§ 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 pre-approved in writing by the Owner.

§ 3.2.7 All trade Work shall be performed by Subcontractors which have been assigned by the Owner to the Construction Manager as provided in this Agreement. If the Construction Manager has a reasonable objection to any Subcontractor identified as the lowest responsive bidder, it shall be the burden of the Construction Manager to present demonstrative evidence to the Owner that the bidder is not responsive or responsible, and to present such evidence in a timely manner such that the Owner suffers no detriment in procuring another Subcontractor if necessary. The Construction Manager shall not perform any Work with its own forces except if Owner in its sole discretion pre-approves such Work in writing and consistent with all applicable public bidding requirements.

§ 3.2.8 The Control Estimate for each bid period shall be deemed to materially vary from the aggregate total of the lowest responsive and responsible bids for the Work of that bid period if the Control Estimate is at least 15% greater or less than the total aggregate of those bids. In the event such material variance, the Construction Manager shall:

- a) If the Owner chooses to accept the bids, compensate the Owner for additional design costs to modify scope of Work to cause the Control Estimate to immaterially vary from the aggregate bids; and
- b) Negotiate respective change orders with the respective Subcontractors to incorporate the aforesaid design changes at no additional charge to the Owner; or
- c) If the Owner chooses to reject all bids and re-bid, compensate the Owner for additional design costs to modify the scope of work for re-bidding; and
- d) Administrate the re-bid of the affected portions of Work at no additional cost to the Owner.

§ 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:

(Check one of the following boxes and complete the necessary information.)

- ☐ Not later than        ) calendar days from the date of commencement of the Work.
- ☒ By the following date: As set forth in the exhibit attached to this Master Agreement for the individual project.
- ☐ By the date to be established in the Control Estimate and approved by the Owner.

As set forth in the exhibit attached to this Master Agreement for the individual project.	As set forth in the exhibit attached to this Master Agreement for the individual project.
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§ **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. The Construction Manager shall prepare and regularly update no less than once per month a Construction Schedule utilizing a Critical Path Method (CPM), or another Owner pre-approved scheduling method, which incorporates the activities of the Subcontractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of shop drawings, Product Data and Samples and delivery of products requiring long lead time and procurement. Additionally, the schedule shall be in accordance with applicable Sections of A201-2017, as amended, including the Owner's occupancy requirements.

Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall develop a system of cost control for the Work including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect.

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.

submittal, review, and return, disposition, and description.

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**§ 3.4 Staffing.**

At all times during the Construction Phase, Construction Manager shall supervise the Work and coordinate the progress of the Subcontractors. Construction Manager shall not replace any staff without Owner's written approval which shall not be unreasonably withheld. If any such individual is no longer employed on the Project pursuant to this paragraph, Construction Manager shall propose to Owner the names of other individuals as substitutes. No person shall be employed on the Project if Owner has an objection. If Owner notifies Construction Manager that it has an objection to any such individual, Construction Manager shall remove such person from the Project and propose substitutes to Owner for Owner's approval.

**§ 3.5 Construction Schedule**

**§ 3.5.1** Time is of the essence of this Agreement. Construction Manager shall, with the Owner's approval, establish the Construction Schedule. Construction Manager shall schedule, sequence, and coordinate the performance of the Subcontractors on the Project so that completion shall be in accordance with the Construction Schedule.

**§ 3.5.2** The Construction Schedule shall commence with the notice to proceed and shall schedule the Subcontractors' Work using a Critical Path Method or other scheduling methodology approved by Owner. Construction Manager shall update the Project Construction Schedule monthly to show current and forecasted progress and completion. A copy of each schedule and schedule update shall be transmitted to the Owner, Architect and each Subcontractor. Additionally, Construction Manager shall develop a look-ahead schedule for discussion at each weekly construction coordination meeting. The weekly look-ahead shall, at a minimum, show the schedule for the past week and upcoming two weeks.

**§ 3.5.3** If a monthly Project Schedule update indicates that the previously-approved Project construction schedule may not be met, the Construction Manager shall recommend corrective action to the Owner.

**§ 3.6 Requests for Information**

**§ 3.7.1** The Construction Manager shall transmit to the Architect requests for interpretations, information, or clarification of the meaning and intent of the Drawings and Specifications and shall timely assist in the resolution of such requests.

**§ 3.6.2** The Construction Manager shall create and maintain a log of all requests for information from all Subcontractors showing, at a minimum, a description of the request, date of submission, a description of the response, and date of response.

**§ 3.7 Subcontractor Change Orders**

**§ 3.7.1** Without invalidating this Agreement or any Subcontract, and without notice to any respective surety, Owner may make changes to the Subcontractor contracts. The Construction Manager shall review requests for changes, assist in negotiating Subcontractors proposals, submit recommendations to the Architect and Owner, and if they are accepted, prepare Change Orders and Construction Change Directives, which incorporate the modifications to the Construction Documents. For each change anticipated to be paid by lump sum, Construction Manager shall prepare a detailed estimate for the respective Change Order or Construction Change Directive. Construction Manager shall compare the detailed value estimate with the submittal of the Subcontractor. Construction Manager shall require that each Subcontractor submit such invoices, purchase orders, labor and material records, and schedule analyses as is necessary to verify the accuracy of the Change Order or Construction Change Directive price and/or schedule adjustment. Construction Manager shall submit a detailed recommendation for the Owner's review and approval for each Change Order or Construction Change Directive. Construction Manager shall systematically maintain all documentation supporting each change and upon completion of the Project turn over such documentation to the Owner.

**§ 3.7.2** The Construction Manager shall create and maintain a log of all requests for changes showing, at a minimum, date of submission, description of request, requested change in contract price, requested change in contract time, and disposition of request.

**§ 3.7.3** 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.

**§ 3.7.4** Notwithstanding the foregoing, no change order with a cost more than \$10,000 shall be made except in compliance with the requirements set forth in 720 ILCS 5/33E-9.

**§ 3.8 Claims**

**§ 3.8.1** The Construction Manager shall assist the Owner and Architect in the review, evaluation, and documentation of Claims. The Construction Manager shall provide a written recommendation to the Owner suggesting the proper disposition of each Claim. The Construction Manager shall require that each Subcontractor submit such invoices, purchase orders, labor and material records, and schedule analyses as is necessary to verify the accuracy of the Claim's cost and schedule impact. Construction Manager shall submit a detailed recommendation that reasonably facilitates the Owner's review and consideration of each Claim.

**§ 3.8.2** The Construction Manager shall create and maintain a log of all Claims showing, at a minimum, date of submission, description of claim, demanded change in contract price, demanded change in contract time, and disposition.

**§ 3.9 Equitable Extension of Time and No Damages for Delay** To the extent that Construction Manager's services under this Agreement are delayed by the Owner or causes not under the control of Construction Manager, the Contract Time shall be equitably extended. For all delays, such extension of the Contract Time shall be Construction Manager's sole and exclusive remedy. Notwithstanding, the Owner and Construction Manager may mutually agree upon an equitable adjustment to the Construction Manager's compensation to account for increased costs resulting from delay events exceeding 15 working days in duration.

**§ 3.10 Site Safety.** At appropriate intervals, Construction Manager shall hold regular safety meetings with all Subcontractors then engaged in onsite Work. Construction Manager shall maintain all required safety record and logs. The Construction Manager shall review, evaluate, and make recommendations to the Subcontractors regarding the Safety Programs developed by each of the Subcontractors. Neither the Owner, nor the Architect are responsible for site safety. Construction Manager shall cause each individual Subcontracts to provide that the Subcontractor are solely responsible for the means and methods of prosecuting their respective Work. The foregoing shall not relieve Subcontractors of their responsibility for site safety for their Work and the Work performed by their personnel.

**§ 3.11 Quality Control**

**§ 3.11.1** Construction Manager shall review the Work of Subcontractors for compliance with the requirements of the Contract Documents. As appropriate, the Construction Manager shall have authority, upon written authorization from the Owner, to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether such Work is fabricated, installed, or completed. The Construction Manager, in consultation with the Architect and Owner, shall have the right and obligation to reject Work which does not conform to the requirements of the Contract Documents.

**§ 3.11.2** The Construction Manager shall obtain from the responsible Subcontractors correction of all portions of the Work which do not comply with the Contract Documents or do not meet good workmanlike standards. If the Subcontractors do no correct portions of the Work which do not comply with the Contract Documents or do not meet good workmanlike standards, then Construction Manager shall correct such Work at its sole cost and at no additional cost to Owner.

**§ 3.12 As-Built Documents** Construction Manager shall obtain data from Subcontractors and maintain a current set of accurate As Built Drawings and Specifications clearly marked to show reported and actual changes during construction. Construction Manager shall transmit a copy of all As Built Drawings and Specifications to Architect for the preparation of final As Built Drawings and Specifications to Architect for the preparation of final As Built Documents. Construction Manager shall periodically (not less than monthly) review Subcontractors' data to verify that they are recording information sufficient to allow preparation of the As Built Documents.

**§ 3.13 Submission Of Record Documents** Prior to final payment at the completion of the Project, the Construction Manager shall inventory and turn over to the Owner one copy of the following: Record/As Built Drawings and Specifications prepared by the Architect, the daily log, progress reports, project manual, field orders, change orders, requests for changes, certified payrolls, requests for information, claims, Subcontractor pay applications, communications, submittals, and all other Construction Documents.

**§ 3.14 Operations and Maintenance Training Manuals** Construction Manager shall arrange and schedule operating and maintenance training on mechanical, electrical and other systems for Owner personnel by authorized representatives commencing upon start-up and the commissions of each system prior to substantial completion. Prior to Final Completion, Construction Manager shall receive all operating and maintenance manuals from Subcontractors, and along with the Architect, shall review for completeness, clarity, and conformance with the respective Contract Documents.

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After all operations and maintenance manuals are received and approved and prior to Final Completion, Construction Manager shall transmit all approved operations and maintenance manuals to the Owner.

**§ 3.15 Construction Manager Obligations after Substantial Completion** For a period of one year after the Date of Substantial Completion, the Construction Manager shall, without additional compensation, act on behalf of the Owner to:

1. Coordinate and expedite the resolution of construction-related problems.
2. Coordinate and expedite the repair/ replacement of items covered under guarantees/warranties.
3. Conduct an 11th month follow-up review of the complete facility to verify satisfactory performance of materials and systems.

**§ 3.16 Other Construction Manager Services** The Construction Manager shall, without additional compensation, provide services reasonably necessary to (1) effect completion of all "punch list" work and to obtain final completion; (2) obtain warranties and guarantees to be provided under the Contract Documents; and (3) resolve start-up or initial operational difficulties.

**ARTICLE 4 OWNER'S RESPONSIBILITIES**

**§ 4.1 Information and Services Required of the Owner**

**§ 4.1.1** When requested by the Construction Manager, the Owner shall provide information with reasonable promptness, regarding requirements for and limitations on Project, provided that nothing in this paragraph shall require the Owner to independently perform architectural services or services required of the Construction Manager.

**§ 4.1.2**

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

**§ 4.1.4 Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, when requested by the Construction Manager, 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 relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. Such documents shall be provided for information 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. Notwithstanding the preceding sentences and the delivery of surveys or other documents and reports by Owner, Construction Manager shall perform all work in such a non-negligent manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the Property. Contractor shall be responsible for any damage done to such lines, cables, pipes and pipelines during 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 reasonably required by the scope of the Project and are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234TM\_2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2017, 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 as necessary to design and complete the Project. The Owner shall provide the Construction Manager with a copy of the agreement between the Owner and the Architect.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

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

As set forth in the exhibit attached to this Master Agreement for the individual project.

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

As set forth in the exhibit attached to this Master Agreement for the individual project.

Individual or Position	Rate
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§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within ( ) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's

*(Paragraphs deleted)*

invoice in accordance with the Local Government Prompt Payment Act (see Section 11.3).

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after approval of the Control Estimate. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

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

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

As set forth in the exhibit attached to this Master Agreement for the individual project.

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

As set forth in the exhibit attached to this Master Agreement for the individual project.

§ 6.1.5 DELETED.

§ 6.1.6 Unit prices, if any: As set forth in the exhibit attached to this Master Agreement for the individual project.  
(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.)

**Liquidated Damages, if any, shall be determined for each individual project and outlined in** the exhibit attached to this Master Agreement for the individual project.. It is specifically understood and agreed by and between Owner and Construction Manager that time is of the essence in the Substantial Completion and Final Completion of the Project and Owner shall sustain actual and direct damages as a result of Construction Manager's failure, neglect, or refusal to achieve said deadlines. Such actual and direct damages are, and will continue to be, impracticable and extremely difficult to determine. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not completed within the agreed time, or within the agreed extended time, if any, otherwise provided for in this Agreement. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for personnel, attorneys fees, architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult to exactly ascertain. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion, shall be construed as a breach of this Agreement.

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

§ 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.

**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 in writing 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.)*

As set forth in the exhibit attached to this Master Agreement for the individual project.

§ 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.

§ 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.

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§ **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.

§ **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, 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 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 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.

§ **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 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 Document, which discounts, rebates, and refunds shall accrue to the benefit of the Owner.

§ 8.2 For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager and Trade Contractors shall provide bonds for Work performed by each entity, respectively, as set forth in this Agreement pursuant to Article 11 of the AIA Document A201-2017, as amended. [THIS WILL BE PROVIDED IN THE COMMENTS TO THE AIA 201 2017, WITH THE INSURANCE CONSULTANT'S INPUT.]

**ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS**

§ 9.1 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded based on cost plus a fee.

**§ 9.2 DELETED**

**ARTICLE 10 ACCOUNTING RECORDS**

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

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1

§ 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 because the Contract Sum by checks payable directly to the Trade Contractors for the Work completed and to the Construction Manager for the Construction Fee, Reimbursable Expenses and any Work performed by the Construction Manager, as provided below, and elsewhere in the Contract Documents. The form of Application for Payment shall be a notarized AJA Document G702, Application and Certification for Payment, supported by AJA Document G703, Continuation Sheet.

§ 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 Upon receipt of a properly submitted Certificate for Payment shall be made as provided in the Local Government Prompt Payment Act.

§ 11.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate each item of Work comprising the entire Direct Cost of the Work and clearly setting forth the amount due under the Application for Payment to each Subcontractor, and the amount due to the Construction Manager for Construction Manager's Fee, and Reimbursable Expenses, all of which shall be shown as single and separate items. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule of values, unless objected to by the Architect, shall be used as a basis for receiving the Construction Manager's Applications for Payment. Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the percentage of that portion of the Work which has been completed.

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

- .I Take the Direct Cost of the Work completed during the period covering the Application for Payment as adjusted by Change Orders applicable to that period, if any, less retention of ten percent (10%) clearly setting forth the amount due to each Subcontractor for the applicable progress payment;

§ 11.1.6 The Owner and Construction Manager shall agree upon a mutually acceptable procedure for review and confirmation of Owner's payments to Trade Contractors. Construction Manager shall ensure that each Subcontract provides that retention often percent (10%) shall be withheld by the Owner from each Subcontractor Application for Payment and paid as a part of Final Payment.

(Paragraphs deleted)

§ 11.1.7

§ 11.1.7.1

(Paragraphs deleted)

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

(Paragraphs deleted)

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner directly to the Construction Manager for the Direct Cost of the Work for any Work performed by the Construction Manager and to the Trade Contractors for the remaining Direct Cost of Work, and to the Construction Manager for its Construction Fee and Reimbursable Expenses when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Warranty Work as provided in Article 12 of AJA Document A201-2017 as amended, and to satisfy other requirements.
- .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.

The Owner's final payment to the Construction Manager shall be made in accordance with the Local Government Prompt Payment Act, 50 ILCS 505/1, et seq.

*(Paragraphs deleted)*

**§ 11.3 Interest**

*(Paragraphs deleted)*

Interest on late payments shall accrue in accordance with the Local Government Prompt Payment Act, 50 ILCS 505/1, et seq.

**ARTICLE 12 DISPUTE RESOLUTION**

**§ 12.1 Initial Decision Maker**

§ 12.1.1 The method of binding dispute resolution shall be by litigation in a court of competent jurisdiction located in Cook County, Illinois or within the federal district courts of the Northern District of Illinois.

*(Paragraphs deleted)*

**ARTICLE 13 TERMINATION OR SUSPENSION**

**§ 13.1 Termination for Convenience**

§ 13.1.1 The Owner may terminate this Agreement upon not less than seven days' notice to the Construction Manager for the Owner's convenience and without cause at any time.

§ 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 performed prior to receipt of a notice of termination..

§ 13.1.3 In the event of termination of this Agreement pursuant to Section 13.1.1 after the commencement of the Construction Phase, the Owner shall pay to the Construction Manager under Section 13.1.2 and Trade Contractors for **Work** performed by each entity respectively, 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 Direct Cost of the Work incurred by the Construction Manager or Trade Contractor to the date of termination;
- .2 Add the Construction Manager Fee payable for the current period up to the date of termination, as prorated up to the date of termination, under Articles 4 and 5;
- .3 Add the Reimbursable Costs incurred by the Construction Manager up to the date of termination; and
- .4 Subtract the aggregate of previous payments made by the Owner.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 13.1.3.1. Owner may in its sole discretion, elect to require Construction Manager to assign all Subcontracts back to the Owner. 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 any of 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 by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

*(Paragraphs deleted)*

§ 13.2 Termination for Cause. The Owner may terminate this Agreement for cause in accordance with Article 14 of the A201 2017 as amended General Conditions.

*(Paragraphs deleted)*

§ 13.3 Suspension. Owner may suspend the Work as provided in A201TM-2017 General Conditions as amended. If such suspension exceeds fifteen (15) days, the Owner and Construction Manager may mutually agree upon an equitable

adjustment to Construction Manager's compensation to account for increased costs resulting from delay events exceeding 15 working days in duration.

§ 13.4 Force Majeure. Neither party shall be liable for failing to perform obligations arising under this Agreement to the extent such failure is caused by fire, flood, earthquake, hurricane or another natural disaster, an act of God, war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, government sanction, blockage, embargo, failure of electricity or telephone service, provided that the delayed party: (i) gives the other party prompt notice of such cause, and (ii) uses its reasonable commercial efforts to promptly correct such failure or delay in performance.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201-2017 as amended.

§ 14.2 Successors and Assigns

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party against either the Owner or the Construction Manager. Owner and construction Manger acknowledge and agree that the obligations of the Construction Manager are solely for the benefit of the Owner and not intended in any respect to benefit the Architect, Subcontractors, or any other third parties.

(Paragraphs deleted)

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than one million dollars (\$ 1,000,000.00 ) for each occurrence and two million dollars (\$ 2,000,000.00 ) 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 (\$ 1,000,000.00 ) 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 (\$ 1,000,000.00 ) each accident, ( \$ ) each employee, and ( \$ ) 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 ( \$ ) per claim and ( \$ ) in the aggregate.

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage

Limits

§ 14.3.1.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

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

§ 14.3.2 **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

(Paragraphs deleted)

The Construction Manager shall endeavor to keep the Project free from 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 attorney's fees. The Construction Manager shall ensure that a similar provision is incorporated into the Subcontracts.

§ 14.5 Construction Manager acknowledges that this is a public works project governed by the Illinois Prevailing Wage Act. Construction Manager shall pay its laborers, if any and ensure that all Subcontractors pay their laborers not less than the established prevailing rate or wages. 820 ILCS 130/1 et seq. The prevailing wage rates are revised by the Department of Labor periodically and are available on its website. Construction Manager shall comply with all reporting requirements of the Illinois Prevailing Wage Act. Similarly, the Construction Manager shall assure that all Subcontractors and sub-tier subcontractors comply with the reporting requirements of the Illinois Prevailing Wage Act. Owner shall not be required to make any payments without receipt of certified employee records required by 820 ILCS 130/5.

§ 14.6 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 commencement of Work on the Project. 775 ILCS 5/1-105.

§ 14.7 Construction Manager represents that it does not discriminate in its hiring practices based upon race, religion, color, ancestry age, sex, sexual orientation, pregnancy, order of protection status, physical or mental disability, handicap, marital status, national origin, military status, or unsatisfactory military discharge, nor otherwise commit an unfair labor practice. Construction Manager shall require that no Subcontractor discriminates as set forth in this Section.

§ 14.8 Construction Manager represents that it is in conformance with the Drug Free Workplace Act. 30 ILCS 580/1 et seq.

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

§ 14.10 Ownership and Use of Documents. Section 1.5 of A201-2017 General Conditions as amended shall apply to both the Preconstruction and Construction Phases.

§ 14.11 **Governing Law**

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Illinois without regard to conflict of law principles. Jurisdiction and venue for all disputes shall be the Circuit Court located in Cook County, Illinois, or the federal district court for the Northern District of Illinois.

§ 14.12 **Assignment**

Init.

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Except for the assignment of Subcontracts to the Construction Manager as provided herein, neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

#### § 14.13 Compliance with FOIA

As an independent contractor of Owner, records in the possession of the Construction Manager related to this Agreement may be subject to the Illinois Freedom of Information Act ("FOIA"), 5 ILCS 140/5-1 et seq.; 5 ILCS 140/7(2). The Construction Manager shall immediately provide Owner with any such records requested by the Owner to timely respond to any FOIA request received by the Owner. The Owner will review all such records to determine whether FOIA exemptions apply before disclosing the records, such that information properly exempt as proprietary or prohibited from release by other laws or exempt for other reasons will not be released. If the Construction Manager refuses to provide a record that is the subject of a FOIA request to the Owner and the Attorney General or a court of competent jurisdiction subsequently requires the release of the record or penalizes the Owner in any way, the Construction Manager shall reimburse the Owner for all costs, including attorneys' fees, incurred by the Owner related to the FOIA request and records at issue.

#### § 14.14 Taxes

The Owner is a tax-exempt organization. Federal excise tax does not apply to the Owner and State of Illinois Sales Tax does not apply. The amounts to be paid to the Construction Manager hereunder are inclusive of all other taxes that may be levied, including without limitation sales, use, nonresident, value-added, excise, and similar taxes levied or imposed upon the work. The Construction Manager shall be responsible for any taxes levied or imposed upon the income or business privileges of the Construction Manager.

#### § 14.15 Indemnification

To the extent permitted by law, the Construction Manager agrees to indemnify, hold harmless, and release the Owner and its Board members, officers, agents, employees, and designees (collectively, the "Indemnitees") from all losses, claims, liabilities, injuries, damages and expenses, including attorney's fees, that the Indemnitees may incur by reason of any injury or damage sustained to any person, including death, or property (including, but not limited to anyone or more of the Indemnitees) arising out of or occurring in connection with the errors, omissions or negligent acts of the Construction Manager, the Trade Contractors, Subcontractors, their employees, or agents or by the negligent breach of this Agreement, or with the wrongful acts committed intentionally by or at the direction of the Construction Manager, the Trade Contractors, Subcontractors, their employees, or agents, or any liability or penalty incurred by the Owner resulting from the Construction Manager's, the Trade Contractors, Subcontractors, their employees, or agents violation of any applicable federal, state or local law, statute, ordinance, code, rule or regulation.

Only to the extent necessary to prevent this provision from being void under the Construction Contract Indemnification for Negligence Act, 740 ILCS 35/0.01, et seq., and particularly Section 1 thereof entitled "Indemnification of person from person's own negligence", this indemnity agreement shall not require the Construction Manager to indemnify an Indemnitee against that party's own negligence.

#### § 14.16 Criminal Background

The Construction Manager understands that its work, in whole or in part, will be performed on public school property where there may be direct, daily contact with school students. The Construction Manager further understands and acknowledges that the State of Illinois requires that all employees of vendors, licensees, the Construction Managers or others having direct, daily contact with students are subject to a criminal background check and may not be listed on the State Sex Offender Registry. Prior to allowing any of its employees who will be performing the scope of work access to school property, the Construction Manager, at its expense, agrees to provide the Owner with the following:

1. Evidence that each employee, agent, contractor or other person performing work on school property under this Agreement was subjected to a criminal background check in conformity with 105 ILCS 5/10-21.9; that said persons are not listed on said Registry; and said persons have no criminal convictions for the offenses listed under 105 ILCS 5/10-21.9; and
2. The Construction Manager will provide the Owner, upon request, a copy of the criminal background check conducted on each such person.

The Construction Manager will require all Trade Contractors and Subcontractors to comply with this Section and provide all required information described above to the Construction Manager, who will make such information available to the Owner.

In the event the Construction Manager fails to comply with the provisions of this paragraph and 105 ILCS 5/10-21.9, and as a result a suit or claim is instituted by a student for harm caused by an employee of the Construction Manager, or caused by an employee of a subcontractor to the Construction Manager, then in that event, the Construction Manager agrees to fully defend and indemnify, including reimbursement of attorney's fees and costs, the Owner against any such claims.

§ 14.17 Time Limits

The Owner and Construction Manager shall commence all causes of action against the other arising out of or related to this Agreement within the time period specified by applicable law. The Owner and Construction Manager agree that the time periods specified by applicable laws shall not commence until the date on which the Owner signs the Certificate of Substantial Completion.

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 A134H'--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
- 2 AIA Document A134™-2019, Exhibit A, Insurance and Bonds
- 3 AIA Document A201™-2017, General Conditions of the Contract for Construction
- 4 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
(Insert the date of the E203-2013 incorporated into this Agreement.)

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
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.)		

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

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Printed name and title)*

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