

ASSIGNMENT AND ASSUMPTION OF SUBCONTRACT AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF SUBCONTRACT CONTRACT (the “Assignment”) is executed effective as of [MONTH] _____, 2022 (the “Effective Date”) by and among **POETTKER CONSTRUCTION COMPANY**, an Illinois corporation (as “Assignee”) and **BOARD OF EDUCATION, PANA COMMUNITY UNIT SCHOOL DISTRICT NO. 8** (as “Assignor”), and [_____, a(n) _____ corporation] (as “Subcontractor”).

INTRODUCTORY PROVISIONS

The following introductory provisions are the basis for and are incorporated into and made a part of this Assignment by this reference:

A. Assignor and Assignee have entered into that certain modified form of AIA Document A134-2009, dated [MONTH] _____, 2021, as amended from time to time (the “CM Agreement”) for certain construction management services in connection with the **New Elementary School** project as described in further detail therein.

B. Assignor, as required by the Illinois School Code, publically bid the Trade Contract (hereinafter referred to as the “Subcontract Agreement”) for the provision of the services, labor, equipment, tools, supplies and materials as further described in the Subcontract Agreement, a true and exact copy of which, along with any amendments and/or modifications, marked as Exhibit A, is attached hereto and incorporated herein by this reference.

C. The CM Agreement, bid documents/specifications, and Subcontract Agreement provide that the assignment of the Subcontract Agreement by the Assignor to the Assignee will occur contemporaneously with or after Assignor awards the Subcontract Agreement to Subcontractor.

D. Assignor, Assignee and Subcontractor desire to effectuate and memorialize the Assignment.

E. Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to such term in the Subcontract Agreement.

ASSIGNMENT AND ASSUMPTION

1. Assignor hereby transfers, pledges, and assigns all of its right, title, and interest in and to the Subcontract Agreement, and all rights, powers, interests, privileges, proceeds, income, profits, claims, warranties, and remedies under the Subcontract Agreement, to Assignee.

2. Assignee hereby accepts the assignment herein made and hereby assumes all obligations of Assignor as ‘Owner’ (other than Owner’s payment obligations to Construction Manager), and as the Construction Manager as set forth and referenced in in the Subcontract Agreement arising from and after the Effective Date.

3. Assignee hereby assumes all rights, duties and obligations imposed upon the “Owner” (other than Owner’s payment obligation to Construction Manager) and Construction Manager as set forth in the Subcontract Agreement, arising from and after the date of this Agreement and agrees to

perform and satisfy all of the rights, duties and obligations of Assignor thereunder arising from and after the date of this Agreement. Assignee assumes no obligation for any losses, claims, lawsuits or damages of any kind arising in connection with the Subcontract Agreement prior to the date of this Agreement or any violations of the Subcontract Agreement or obligations incurred or arising thereunder prior to the date of this Agreement. Assignee's assumption of obligations set forth herein is subject to all exculpatory or similar provisions, if any, contained in the Subcontract Agreement which limit the liability of the Assignor thereunder. Assignee, however, acknowledges that it is obligated to comply with the provisions of its CM Agreement with Assignor.

4. Assignor is a Board of Education, organized and existing under the laws of the State of Illinois, has the power to enter into this Agreement and to perform its obligations contained herein and, by proper action, has been duly authorized to execute and deliver this Agreement.

5. Assignor and Subcontractor acknowledge and agree that Assignee does not assume any of Assignor's obligations or duties under the Subcontract Agreement which have arisen or are attributable to the period prior to the Effective Date.

6. Assignor represents and warrants to Assignee that a true and correct copy of the Subcontract Agreement and all change orders related thereto, if any, as of the date of this Assignment, are attached hereto as **Exhibit "A"** and that, as of the Effective Date, Assignor's interest in the Subcontract Agreement is not subject to any claims, setoff, or encumbrance.

7. Assignor represents and warrants to Assignee that Assignor has not made any previous assignments of its rights under the Subcontract Agreement.

8. Assignor agrees to indemnify, defend, and hold Assignee harmless against and from any loss, damages, cost, liability, lien, expense, and disbursements (including, but not limited to, reasonable attorneys' fees) arising out of, relating to, or resulting from this Assignment, and/or Assignor's obligations under the Subcontract Agreement (the "**Claims**"); provided, however that such indemnity extends only to those Claims made under the Subcontract Agreement which are caused by Assignor or are otherwise attributable to Assignor, and which arise or are attributable to the period prior to the Effective Date.

9. This Assignment is binding upon and inures to the benefit of Assignee and Assignor and their respective successors, and assigns.

10. For work performed prior to the Effective Date, Assignor shall cause Subcontractor to provide: (i) such affidavit or certification to Assignee that all amounts due and owing as part of the Contract Sum under the Subcontract Agreement have been paid by or on behalf of Assignor to Subcontractor; and (ii) a mechanic's lien waiver to date for such amounts and scope of Subcontractor's Work performed under the Subcontract Agreement reasonably acceptable to Assignee.

11. For work performed prior to the Effective Date, Assignor shall provide such affidavit or certification to Assignee that all amounts due and owing as part of the Contract Sum under the Subcontract Agreement have been paid to or as otherwise directed by Subcontractor.

12. Assignor and Subcontractor acknowledge and agree that as of the Effective Date, Subcontractor has been paid the amount of [\$0] (which amount includes [\$0] retainage) under the Subcontract Agreement.

SUBCONTRACTOR'S CONSENT

As required to be awarded the Subcontract Agreement and as required by the Subcontract Agreement and the Contract Documents, Subcontractor represents and warrants to, consents to, and agrees as follows:

1. Attached to this Assignment as Exhibit "A" is a true and correct copy of the Subcontract Agreement, and all change orders and amendments thereto, if any. As of the Effective Date, the interest of Assignor in and under the Subcontract Agreement is not subject to any claim, setoff, or encumbrance. Subcontractor consents to Assignor's assignment of the Subcontract Agreement to Assignee. Upon and after the Effective Date of this Assignment, the Subcontractor binds itself to the Assignee for the performance of Subcontractor's Work in the same manner as the Assignee is bound to Assignor for such performance under the CM Agreement with the Assignor. The pertinent parts of the CM Agreement between Construction Manager and Owner will be made available to Subcontractor upon its request.
2. Subcontractor acknowledges that Assignee is beneficiary of the warranties set forth in the Subcontract Agreement, and Assignee has the right to enforce the warranties and to cause corrective work to be done by Subcontractor.
3. The indemnities in favor of the Assignor under the Subcontract Agreement are hereby expressly assigned to Assignee as an indemnitee to the extent not already named as an indemnitee.
4. To the extent not already performed, Subcontractor shall add Assignee as an additional insured under the insurance policies required by the Subcontract Agreement and Subcontractor shall provide copies of such policies to Assignee upon request.

MISCELLANEOUS

1. **No Waiver.** No failure on Assignor or Assignee's part, or any of their respective agents, to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by Assignor, Assignee or any of their respective agents of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy.
2. **Governing Law.** This Assignment and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Illinois, without giving effect to its principles of conflicts of law. Any litigation between two or all of the parties hereto arising out of the interpretation and/or enforcement of this Assignment shall be venued in the Circuit Court of Christian County, Illinois notwithstanding any principles of law to the contrary.

3. **Severability.** If any provision hereof held to be in invalid or unenforceable in any jurisdiction, then, to the fullest extent permitted by law: (i) the other provisions hereof shall remain in full force and effect in such jurisdiction in order to carry out the intentions of the parties hereto as nearly as may be possible, and (ii) the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

4. **Remedies Cumulative.** All rights and remedies set forth in this Assignment are cumulative, and Assignor and Assignor may recover judgment thereon, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security of any right or remedy afforded hereby. No such right or remedy set forth in this Assignment shall be deemed exclusive of any of the remedies or rights granted to Assignor or Assignee in the CM Agreement or Subcontract Agreement. Nothing contained in this Assignment shall be deemed to limit or restrict the rights and remedies of Assignee under the CM Agreement or Subcontract Agreement.

5. **Amendments.** This Assignment may not be amended, waived or discharged except by an instrument in writing duly executed by Assignor and Assignee.

6. **Notices.** All notices, requests and other communications provided for herein shall be given or made in writing via email or overnight hand-delivery to:

If to Assignor: Board of Education, Pana Community Unit School District
No. 1
14 W. Main St.
Pana, IL 62557

If to Assignee: Poettker Construction Company
400 S. Germantown Road
Breese, Illinois 62230

If to Subcontractor: _____

7. **Section Headings.** The section headings used in this Assignment are for convenience of reference only and do not constitute a part of this Assignment for any purpose.

8. **Counterparts.** This Assignment may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any party hereto may execute this Assignment by signing any such counterpart.

9. **Time of Essence.** Time is of the essence of this Assignment and of each and every term, covenant and condition herein.

10. **Effective Date.** For purposes of this Assignment, the “Effective Date” shall be the date upon which the last of the three parties hereto signs this Assignment.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

ASSIGNEE:

POETTKER CONSTRUCTION COMPANY,
an Illinois corporation.

By: _____
Full Name:
Title:
Date Signed: _____

ASSIGNOR:

**BOARD OF EDUCATION, RICHLAND COUNTY COMMUNITY UNIT SCHOOL
DISTRICT NO. 1**

By: _____
Full Name:
Title: President of the Board of Education
Date Signed: _____

Attest:

By: _____
Full Name:
Title: Secretary of the Board of Education
Date Signed: _____

SUBCONTRACTOR:

[SUBCONTRACTOR COMPANY NAME],
a(n) _____ corporation.

By: _____
Full Name: _____
Title: _____
Date Signed: _____

EXHIBIT "A"
Subcontract Agreement

(see attached)