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Prepared by:

Klein Thorpe and Jenkins, Ltd.
20 North Wacker Drive
Suite 1660
Chicago, IL 60606 -2903
(#2881.189)

Prepared on behalf of
the Village of Mount Prospect

Record against:

PINs:

08-12-122-015-0000
08-12-122-016-0000
08-12-122-019-0000
08-12-122-034-0000
08-12-122-036-1007
08-12-122-036-1008
08-12-122-036-1009



Doc# 2003017066 Fee \$88.00

EDWARD H. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 01/30/2020 02:28 PM PG: 1 OF 125

[Above space for Recorder's Office]

COOK COUNTY, ILLINOIS RECORDING COVER SHEET FOR

ORDINANCE No. 6484 - AN ORDINANCE AUTHORIZING AN AMENDMENT TO THE REDEVELOPMENT AGREEMENT FOR THE MAPLE STREET LOFTS DEVELOPMENT AND APPROVING AIA DOCUMENT A133-2009, STANDARD FORM AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER AS CONSTRUCTOR, AIA DOCUMENT A133-2009 EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT AND AIA DOCUMENT A201-2017 GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

RECORDING FEE 88.00
DATE 1/30/20 COPIES 6x
GK BY D.B.

APPROVED NOVEMBER 6, 2019

After recording return to:
KLEIN, THORPE AND JENKINS, LTD.
20 N. WACKER DRIVE, SUITE 1660
CHICAGO, ILLINOIS 60606

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Legal Description of the Village Property

Lot A in Corporate Subdivision No. 10-A, being a resubdivision of both lot A in Boesche's Resub and lot A in Corporate Sub. No. 10 in the east half of the northwest ¼ of section 12, township 41 north, range 11 east of the third principal meridian, in Cook County, Illinois

P.O.N.: 08-12-122-034-0000;

Common Address: 301 S. Maple Street, Mount Prospect, Illinois 60056.

Property of Cook County Clerk's Office

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ORDINANCE NO. 6484

AN ORDINANCE AUTHORIZING AN AMENDMENT TO THE REDEVELOPMENT AGREEMENT FOR THE MAPLE STREET LOFTS DEVELOPMENT AND APPROVING AIA DOCUMENT A133-2009, STANDARD FORM AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER AS CONSTRUCTOR, AIA DOCUMENT A133-2009 EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT AND AIA DOCUMENT A201-2017 GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Board of Trustees of the Village of Mount Prospect, Cook County, Illinois, as follows:

SECTION 1: The Mayor and Board of Trustees of the Village find as follows:

- A. The Village of Mount Prospect ("Village") is a home rule municipality pursuant to Section 7 of Article VII of the Constitution of the State of Illinois.
- B. The State of Illinois has adopted tax increment financing pursuant to the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, *et seq.*, as amended from time to time ("TIF Act").
- C. Pursuant to its powers and in accordance with the TIF Act, and pursuant to Ordinance Nos. 6293, 6294 and 6295, adopted January 17, 2017, the Prospect and Main Tax Increment Financing District ("TIF District") was formed as a TIF district, for a twenty-three (23) year period.
- D. In furtherance of the objectives of the abovementioned Ordinances, the Village entered into a "Redevelopment Agreement for the Maple Street Lofts Development Comprising a part of the Prospect and Main TIF District of the Village of Mount Prospect, Illinois," between the Developer and the Village, dated June 9, 2019, which sets forth the terms and conditions pursuant to which the Developer will proceed with, redevelop, and operate the Project on the Property ("Redevelopment Agreement"), which terms and conditions include the construction of a public parking garage to be owned by the Village with approximately two hundred sixty-eight (268) spaces.
- E. The Parties desire to amend the Redevelopment Agreement as it pertains to construction of the public parking garage.
- F. The Village further desires to approve an AIA Document A133-2009, Standard Form Agreement between Owner and Construction Manager as Constructor, AIA Document A133-2009 Exhibit A Guaranteed Maximum Price Amendment and AIA A201-2017 General Conditions of Contract for Construction, all with respect to the construction of the public parking garage.

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SECTION 2: Based upon the foregoing, the Village Mayor, Village Clerk and Village Manager, or their designees, be and are hereby authorized and directed to execute the attached Amendment to the Redevelopment Agreement and perform the Village's obligations thereunder.

SECTION 3: Based upon the foregoing, Mayor and Board of Trustees hereby waive competitive bidding and approve the AIA Document A133-2009, Standard Form Agreement between Owner and Construction Manager as Constructor, AIA Document A133-2009 Exhibit A Guaranteed Maximum Price Amendment and AIA A201-2017 General Conditions of Contract for Construction, all with respect to the construction of the public parking garage and the Village Mayor, Village Clerk and Village Manager, or their designees, be and are hereby authorized and directed to execute the attached AIA Document A133-2009, Standard Form Agreement between Owner and Construction Manager as Constructor, AIA Document A133-2009 Exhibit A Guaranteed Maximum Price Amendment and perform the Village's obligations thereunder.

SECTION 4: This Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

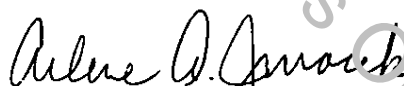
ADOPTED this 5th day of November, 2019, pursuant to a roll call vote as follows:

AYES: Grossi, Hatzis, Hoefert, Rogers, Saccotelli, Zadel

NAYS: None

ABSENT: None

APPROVED this 5th day of November, 2019, by the Village Mayor of the Village of Mount Prospect, and attested by the Village Clerk, on the same day.



Village Mayor

APPROVED and FILED in my office this 6th day of November, 2019 and published in pamphlet form in the Village of Mount Prospect, Cook County, Illinois.

ATTEST:



Village Clerk

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FIRST AMENDMENT TO REDEVELOPMENT AGREEMENT FOR THE MAPLE STREET LOFTS DEVELOPMENT COMPRISING A PART OF THE PROSPECT AND MAIN TIF DISTRICT OF THE VILLAGE OF MOUNT PROSPECT, ILLINOIS

This First Amendment dated this 5 day of November, 2019, amends that certain Redevelopment Agreement for the Maple Street Lofts Development Comprising a Part of the Prospect and Main TIF District of the Village of Mount Prospect, Illinois, dated June 9, 2019, between the Village of Mount Prospect, Illinois, an Illinois home rule municipal corporation (Village") and Maple Street Lofts, LLC, an Illinois limited liability company (Developer).

WITNESSETH:

In consideration of the mutual covenants herein contained, and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Village and the Developer agree as follows:

1. The aforesaid Redevelopment Agreement, Section VI., Development of the Property, Subsection E., Parking Garage Project is hereby amended as follows:

E. **Parking Garage Project.** The Village and Developer agree that the Developer, through its agent, Nicholas & Associates, Inc., shall construct the Parking Garage Project.

1. Developer, through its agent, Nicholas & Associates, Inc., shall construct the Parking Garage Project in accordance with the plans, schedule and parameters set forth in a separate written agreement between the Village and Nicholas & Associates, Inc. for the construction of the Parking Garage Project.
2. The Funding Cap, as defined in Section VI.C.1. above, shall be increased by an additional not to exceed amount of Six million eight hundred seventy-nine thousand, five hundred sixty nine (\$6,879,569.00) dollars to pay for the costs of the Parking Garage Project.
3. Developer's agent, Nicholas & Associates, Inc., shall be entitled to be reimbursed for its costs of construction of the Parking Garage Project from the Village in the not to exceed amount of Six million eight hundred seventy-nine thousand, five hundred sixty nine (\$6,879,569.00) dollars (Garage Funding Cap), in accordance with the terms and conditions of the written agreement between the Village and Nicolas & Associates, Inc.
4. Developer's agent, Nicholas & Associates, Inc. shall be paid for its costs of the Parking garage for work completed and approved by the Village, as defined and set forth in the separate written agreement referred to in Section VI.E.1. above. Further, Nicholas & Associates, Inc. shall be paid the costs of construction of the Parking Garage from funds available to the Village from any source, not limited to Incremental Property Taxes per the terms of the separate written agreement.

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2. Those provisions of the Redevelopment Agreement not modified by this Amendment shall remain in full force and effect.

VILLAGE OF MOUNT PROSPECT

MAPLE STREET LOFTS, LLO

By: 

By: 

Name: MICHAEL J. CASSANO

Name: NICK PAPANICHOLOS, JR

Name: _____

Authorized Officer

Village Manager

Date: 12/3/19, 2019

Date: 12/3/19, 2019

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Legal Description of the Developer Property

Lots 10 and 17 in J.A. Weber's addition to Mt. Prospect, a subdivision of the east ½ of the northwest ¼ of Section 12, Township 41 north, Range 11 east of the Third Principal Meridian, in Cook County Illinois; and

Lots 16 and 11 in J.A. Weber's addition to Mt. Prospect, a subdivision of part of the east ½ of the northwest ¼ of Section 12, Township 41 north, Range 11 east of the Third Principal Meridian, in Cook County Illinois.

P.I.N.s: 08-12-122-015-0000
08-12-122-016-0000
08-12-122-019-0000
08-12-122-036-1007
08-12-122-036-1008
08-12-122-036-1009

Common Addresses:

215 E. Prospect Ave., Mount Prospect, Illinois 60056.
225-235 E. Prospect Ave., Mount Prospect, Illinois 60056.
232-240 E. Lincoln Street, Mount Prospect, Illinois 60056.

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Legal Description of the Developer Conveyed Property

THAT PART OF LOT 17 IN J.A. WEBER'S ADDITION TO MT. PROSPECT (RECORDED OCTOBER 15, 1954 AS DOCUMENT NO. 16044478), A SUBDIVISION OF THE EAST ½ OF THE NORTHWEST ¼ OF SECTION 12, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF LOT "A" IN CORPORATE SUBDIVISION NO. 10-A (RECORDED JANUARY 21, 1981 AS DOCUMENT NO. 25755385); THENCE SOUTH 00 DEGREES 42 MINUTES 22 SECONDS EAST ALONG THE WEST LINE OF SAID LOT "A", 321.14 FEET; THENCE NORTH 89 DEGREES 17 MINUTES 38 SECONDS EAST 124.68 FEET TO THE EAST LINE OF SAID LOT "A", BEING ALSO THE WEST LINE OF SAID LOT 17 AND THE POINT OF BEGINNING; THENCE CONTINUING NORTH 89 DEGREES 17 MINUTES 38 SECONDS EAST 129.30 FEET; THENCE SOUTH 00 DEGREES 42 MINUTES 22 SECONDS EAST 126.83 FEET, THENCE SOUTH 89 DEGREES 17 MINUTES 38 SECONDS WEST 129.61 FEET TO THE WEST LINE OF SAID LOT 17; THENCE NORTH 00 DEGREES 43 MINUTES 32 SECONDS WEST, ALONG SAID LOT 17 WEST LINE, 126.83 FEET THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

A portion of:

P.I.N.: 08-12-122-015-0000

Common Address:

215 E. Prospect Ave., Mount Prospect, Illinois 60056.

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Exhibit 1 to Real Estate Sale Contract

Legal Description of Property

Lot A in Corporate Subdivision No. 10-A, part of the east half of the northwest $\frac{1}{4}$ of section 12, township 41 north, range 11 east of the third principal meridian, according to the plat thereof recorded January 21, 1981 as document number 25755385, except that part described as follows: commencing at the northwest corner of said lot; thence south 00 degrees 42 minutes 22 seconds east along the west line of said lot, 321.14 feet; thence north 89 degrees 17 minutes 38 seconds east 124.68 feet; thence south 89 degrees 17 minutes 38 seconds west 124.72 feet to the west line of said lot, 126.83 feet; thence north 89 degrees 17 minutes 38 seconds east 124.68 feet to the point of beginning in Cook County, Illinois

A portion of:

P.I.N.: 08-12-122-034-0000;

Common Address: 301 S. Maple Street, Mount Prospect, Illinois 60056;

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AIA[®] Document A133[™] – 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the 5th day of November in the year 2019
(In words, indicate day, month and year.)

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

Village of Mount Prospect
50 South Emerson Street
Mount Prospect, IL 60056

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

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

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

Village of Mount Prospect Maple Street Municipal Parking Deck

The Architect:
(Name, legal status and address)

Walker Consultants
2895 Greenspoint Parkway, #600
Hoffman Estates, IL 60010

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

Michael Cassady
Village Manager
Village of Mount Prospect
10 South Emerson Street
Mount Prospect, IL 60056
847 818-5300

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

Nick Papanicholas, Jr.
Nicholas & Associates, Inc.
1001 Feehanville Drive

ADDITIONS AND DELETIONS:

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

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

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

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Mount Prospect, IL 60056
847 394-6200

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

Thomas L. Hanula
Walker Consultants
2895 Greenspoint Parkway, #600
Hoffman Estates, IL. 60010
847 697-2640

COOK COUNTY
RECORDER OF DEEDS

The Owner and Construction Manager agree as follows.

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COOK COUNTY
RECORDER OF DEEDS

COOK COUNTY
RECORDER OF DEEDS

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TABLE OF ARTICLES

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3	OWNER'S RESPONSIBILITIES
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5	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
6	COST OF THE WORK FOR CONSTRUCTION PHASE
7	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
8	INSURANCE AND BONDS
9	DISPUTE RESOLUTION
10	TERMINATION OR SUSPENSION
11	MISCELLANEOUS PROVISIONS
12	SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, General Conditions of the Contract, Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. References to "General Conditions" or "General Conditions of the Contract" or "A201-2017" in this document such reference shall mean the AIA A201-2017 General Conditions of Contract for Construction as revised for this Project. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.1.1 The Contract Documents shall not be construed to create a contractual relationship between the Owner and any subcontractor or any third party, or between any persons or entities other than the Owner and Construction Manager. The Owner shall, however, be considered an intended beneficiary of the performance of any contractor's, subcontractor's, consultant's or other third party hired by the Construction Manager for this Project.

§ 1.2 Relationship of the Parties

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

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services with the standard of care for Construction Managers at Risk experienced in the construction management of similar projects in size and scope. Construction Manager shall be responsible for services provided hereunder whether such services are provided directly by Construction Manager or by persons or entities hired by Construction Manager. The Construction Manager will perform duties and services and make decisions called for hereunder promptly and without unreasonable delay and will give the Project such priority as is necessary to cause the Construction Manager services hereunder to be properly performed in a timely manner and consistent with sound professional practices. The Construction Manager represents and warrants that its employees have the requisite skill and expertise to perform the services required by this Contract.

§ 1.3 General Conditions

For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017 for this Project, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager. The term "Contract Sum" shall mean the agreed upon Guaranteed Maximum Price ("GMP").

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

(Paragraphs deleted)

§ 2.1.3 When Project requirements in Section 3.1.1 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 could affect the Project's timely completion. The updated Project schedule shall include the following: the Guaranteed Maximum Price Amendment attached hereto; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

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

(Paragraphs deleted)

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction.

§ 2.1.8 Extent of Responsibility

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, unless the Construction Manager recognizes or (within construction industry standards) reasonably should have recognized any such variance. 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.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents. The Construction Manager shall cause this provision to be inserted into all subcontracts, so that such provision is binding upon every subcontractor.

(Paragraphs deleted)

§ 2.1.10 Taxes

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Owner is a tax exempt entity under the laws of the State of Illinois. Owner shall, as part of its undertakings under this Agreement, provide to the Construction Manager all certificates of exemptions and tax exempt numbers needed to entitle Construction Manager to purchase materials and other items to be used on the work or incorporated into the work on a tax exempt basis, said exemption specifically to include but not to be limited to the "Illinois Retailer Occupation Tax" (Sales Tax).

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 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. Contract Time shall be measured from the date of commencement.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. This Contract shall be subject to the provisions of the Illinois Prevailing Wage Act, 820 ILCS 30/01 et seq. Contractor and all Subcontractor shall comply with the provisions of the Illinois Prevailing Wage Act, 820 ILCS 30/01 et seq.

(Paragraph deleted)

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect not later than one week after the meeting, for review and approval of the Owner and Architect.

§ 2.3.2.6 A construction schedule for the Work shall be provided with the Guaranteed Maximum Price Addendum.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

(Paragraphs deleted)

§ 2.3.2.9 The Construction Manager shall provide administrative, management and related services as required to coordinate the Work of Subcontractors with each other and with the activities and responsibilities of Owner, Architect, and Consultants, where applicable, and to complete the Project in accordance with the Contract Documents. The Construction Manager shall supervise and coordinate with the Village all aspects of the Project with all authorities, governmental agencies and utility companies who may be involved in the Project. The

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Construction Manager shall provide sufficient organization, personnel and management to carry out the requirements of this Agreement. The Construction Manager shall take all reasonable steps necessary to enforce agreements with Subcontractors for the benefit of Owner.

§ 2.3.2.10 Construction Manager shall maintain exclusively for the Project a competent full time staff at the Project Site to coordinate and direct the Work and the progress of all subcontractors. The Owner shall have the right to direct the Construction Manager to remove or replace any on-site personnel whose performance becomes unsatisfactory to the Owner. In such event, the Construction Manager shall promptly replace such personnel, without consideration of any additional compensation for the replacement. Construction Manager shall establish on-site organization and lines of authority in order to carry out the overall plans of construction. The Construction Manager shall identify an on-site member

§ 2.3.2.11 The Construction Manager shall prepare a construction staging plan setting forth construction scheduling, lay down areas and storage, trailer areas, trailer locations, priorities as to site use, ingress/egress and other similar site logistic matters for the Project. The Construction Manager shall consult with the Owner and Architect and provide assistance determining the cost effectiveness of staging construction in one or two stages, including cost estimates for construction in one or two stages.

§ 2.3.2.12 Construction Manager shall be fully responsible for and shall obtain satisfactory performance from each of the Subcontractors against the Project schedule, and the each of its Subcontractor's timely performance and compliance with the Drawings and Specifications. Construction Manager shall consult with Owner regarding available courses of action when material requirements of a Subcontract are not being fulfilled and the nonperforming party will not take satisfactory corrective action that is satisfactory to the Construction Manager.

§ 2.3.2.13 Construction Manager shall submit to Owner a form of Anticipated Cost Report for use on the Project for Owner's review, comment and acceptance. Upon acceptance by Owner, the form of Cost vs. Budget Report shall establish the standard for detail required for the remainder of the Project.

§ 2.3.2.14 The Anticipated Cost Report will show actual costs for completed activities and estimates for uncompleted tasks and will identify variances between actual and budgeted or estimated costs. Construction Manager shall advise Owner and Architect whenever projected costs exceed budgets or estimates and provide cost-saving measures to negate budget deficits.

§ 2.3.2.15 Construction Manager shall be responsible for all construction operations performed by its subcontractors and those employed by subcontractors. Construction Manager shall supervise the Work of all subcontractors, providing instructions to each when its Work does not conform to the requirements of the plans and specifications and manage each subcontractor to ensure that corrections are made in a timely manner so as not to affect the progress of the Work. Construction Manager shall coordinate the safety programs for the Project. Except as to means, methods and processes directed by the Owner, Construction Manager shall be solely responsible to Owner for the adequacy of all construction means, methods, techniques and procedures employed by Construction Manager or its Subcontractors in the performance of the Work, and for coordinating all portions of the Work to be performed.

§ 2.3.2.16 Construction Manager shall provide information so that the Owner may apply for and obtain a necessary and required building permits and special permits for permanent improvements, excluding permits required to be obtained directly by the various Subcontractors. Owner shall timely provide all record drawings, specifications and other information required to obtain such permits. With respect to permits that Subcontractors are required to obtain, Construction Manager shall require all such Subcontractors to obtain those permits before they commence their work. Construction Manager shall verify that applicable fees and assessments for all permits have been paid. Construction Manager shall obtain, with Owner's assistance, approval from authorities having jurisdiction over the Project, including but not limited to a Certificate of Occupancy after having achieved Substantial Completion.

§ 2.3.2.17 Construction Manager shall develop and establish, for Owner's benefit, a quality assurance control system in order that the standards of construction called for, specified, or drawn are met. Construction Manager shall confirm that mechanical, electrical, plumbing and fire protection systems are adequately tested and balanced prior to their acceptance. Construction Manager shall coordinate all testing provided by others as required by the technical sections of the Specifications and/or required by governing bodies charged with inspecting the Work for compliance with applicable building codes, and/or as required by applicable building codes and shall warrant that all such Work

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shall comply with the Drawings and Specifications for the Project. Construction Manager shall keep an accurate record of all tests, inspections conducted, findings, and test reports, and shall make them available to the Owner and Architect for review and copying.

§2.3.2.19 Construction Manager shall perform the Work in accordance with the requirements of the Contract Documents and shall assure that the Work of each Subcontractor is being performed in accordance with the requirements of the Contract Documents. Construction Manager shall endeavor to protect Owner against defects and deficiencies in the Work, shall warrant the Work is free from all defects and deficiencies and shall correct at its expense all defects and deficiencies. As appropriate, Construction Manager shall require special inspection or testing, and make recommendations to Architect regarding special inspection or testing of Work.

§ 2.3.2.20 Construction Manager shall receive from each Subcontractor, review for conformance with the Contract Documents, approve or reject for re-review and submit to Architect all Shop Drawings, Product Data, Samples, As-Built Drawings and other submittals. Without assuming any of Architect's responsibility for Shop Drawing review, Construction Manager shall stamp all Shop Drawings, Product Data, Samples, As-Built Drawings and other submittals, in order to verify Construction Manager's review thereof, which stamp shall constitute a representation by Construction Manager to Owner that the submitted item conforms with the Contract Documents and is coordinated with other shop drawings. Construction Manager shall transmit all submittals to Architect for Architect's approval, and where applicable to Consultants for their approval. In collaboration with Architect, and where applicable with Consultants, Construction Manager shall establish and implement procedures for expediting the processing of Shop Drawings, Product Data, Samples, As-Built Drawings and other submittals, and shall assure that the approved Project Construction Schedule shall include acceptable dates for the preparation, submission, processing and review of Shop Drawings and other required submittals. Architect's review of submittals, or where applicable review by Consultants, by Construction Manager or by any Subcontractor shall be limited to review of an initial submittal and two (2) re-submittals for conformance with the design concepts expressed in the Contract Documents. Construction Manager shall pay (without reimbursement from Owner) for any costs and expenses incurred in connection with additional re-submittals, including, without limitation, compensating Architect and where applicable Consultants for additional services rendered in connection with reviewing such "extra" re-submittals, and agrees Owner may deduct such payment from the next monthly payment(s), when the re-submittals in excess of the allotted two reviews is caused by the Construction Manager, Subcontractor, and/or Sub-Subcontractor's error.

§ 2.3.2.21 Construction Manager shall maintain at the Project Site, on a current basis: A record copy of all Drawings, Specifications and Addenda in good order and marked to record all changes made during construction; Change Order Logs and other Modifications; Shop Drawing Logs; Shop Drawings; Product Data; Samples; As-Built Drawings; submittals; applicable handbooks; maintenance and operating manuals and instructions; and other related documents and revisions which arise out of the Work. Construction Manager shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer. In coordination with the Architect, the Construction Manager shall establish and implement procedures for the tracking and expediting the processing of shop drawings and samples, as required by the Modified General Conditions of the Contract. The As-Built Drawings shall be prepared by using electronic documentation as agreed to by Owner, Architect and Construction Manager.

§ 2.3.2.22 Construction Manager shall arrange for delivery and storage, protection and security for Subcontractor furnished/installed and Owner-furnished/contractor-installed materials, systems and equipment which are a part of the Project until such items are satisfactorily incorporated into the Project.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

(Paragraphs deleted)

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

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§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

§ 3.3 Architect

The Owner has retained an Architect to provide such services, duties and responsibilities as are necessary for the Project. Upon request, the Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

(Paragraphs deleted)

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee

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

2.85% of the Total Construction Costs, which fee shall be included within the Guaranteed Maximum Price.

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

No Change in CM Fee for Changes in Work

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

CM O&P = 0%; Subcontractor OH&P = 10%

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed Zero percent (0 %) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
Not Applicable	Not Applicable	Not Applicable

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

No shared savings has been identified for this Project

§ 5.2.2 The Guaranteed Maximum Price shall not be subject to additions and deductions by Change Order. The Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

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§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2017, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2017 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2017 shall have the meanings assigned to them in AIA Document A201–2017 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2017 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

(Paragraph deleted)

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

(Paragraph deleted)

§ 6.2 Labor Costs

§ 6.2.1 Wages 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.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, 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.

§ 6.2.4 Costs paid or incurred by the Construction Manager for insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such 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 6.2.1 through 6.2.3.

§ 6.2.5 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, with the Owner's prior approval.

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§ 6.3 Subcontract Costs

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

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

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 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.

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

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling 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.

§ 6.5.2 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 costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

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

(Paragraphs deleted)

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

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

(Paragraph deleted)

§ 6.6.3 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.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

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

(Paragraph deleted)

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

(Paragraphs deleted)

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§ 6.7 Other Costs and Emergencies

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

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2017.

§ 6.7.3 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 negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 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 6.8.

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 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 6.2;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of 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 to fulfill a specific responsibility of the Contract, including, but not limited to defective or nonconforming work, disposal of materials and equipment wrongfully supplied, or making good on any damaged product;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Legal costs, mediation costs, or costs associated with FOIA request compliance however incurred.
- .9 Amounts the Contract Documents specifically require the Construction Manager to pay, include deductible amounts payable by the Construction Manager under any policy of insurance.
10. Costs resulting from theft or vandalism of items that are not part of the Work.
11. Drug testing for employees, incentive or bonus programs (including safety) accounting and EEO and targeted business compliance staff, safety training or seminars.
12. Equipment repair, maintenance or re-calibration costs.
13. Off site file storage.
14. Management of warranty work.
16. Except as provided in Section 6.1.1, any cost not specifically and expressly described in Section 6.1.
17. Costs which this Agreement provides that the Construction Manager shall pay or incur or for which this Agreement expressly provides the Construction Manager shall be responsible.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

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§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 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, 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 Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, 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 Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. Such records shall be kept on the basis of generally accepted accounting principles and in accordance with the Contract Documents. 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, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, 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 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect and reviewed and approved by the Owner, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents. The Construction Manager, in cooperation with the Architect, shall provide with each Application for Payment, a properly completed Affidavit setting forth, under oath, the name and address and amount due to each subcontractor, materialman, or other appropriate party included in that payment. For every party listed to be paid, the Construction Manager shall provide a full or partial waiver of lien, as appropriate. The Construction Manager shall also provide a partial or full waiver of lien for his services. Payment Certificates will be issued in accordance with Section 9.4.3 of AIA Document A201-2017, General Conditions of the Contract.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the *(Paragraphs deleted)* month.

§ 7.1.3 Payments shall be made pursuant to the Illinois Local Government Prompt Payment Act after receipt by the Owner of the Construction Manager's invoice for the construction draw based upon the percentage of completion applied against the Construction Price, properly prepared and approved by the Architect and Owner. The Owner shall pay to the Construction Manager the amount approved, less retainage when applicable, unless there is a dispute about the amount of the compensation due the Construction Manager, in which case the Owner shall pay the undisputed amount. The date on which payment is made shall be known as the "Payment Date".
(Federal, state or local laws may require payment within a certain period of time.)

§ 7.1.4 With each Application for Payment the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those

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payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents and shall be in a format approved by the Owner, Architect and Construction Manager. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. 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, unless objected to by the Architect or Owner, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.2 of AIA Document A201-2017;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of Zero percent (0 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of Zero percent (0 %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2017.

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

§ 7.1.8.1 Notwithstanding anything contained within the Contract Documents to the contrary, the Construction Manager shall not be entitled to any progress payment for any Work performed unless the Owner shall have received, and approved the following (i) insurance certificates; (ii) Payment and Performance Bonds for the Work to be performed; and (iii) appropriate affidavits and lien waivers from the Construction Manager, subcontractors and suppliers.

§ 7.1.9 Except with the Owner's prior 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.

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§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.1.12 Construction Manager's Application for Payment shall be submitted in the form of AIA Documents G702 and G703 or such other form as the Architect and Owner jointly approve.

§ 7.1.13 The signature of the Construction Manager on any Application for Payment constitutes the Construction Manager's certification to the Owner that (i) the Construction Manager's services listed in the Application for Payment have progressed to the level indicated and have been performed as required by this Agreement and the Contract Documents; (ii) the Construction Manager has paid its subcontractors, subconsultants and suppliers their proportional share of all previous payments received from the Owner and (iii) the amount requested is currently and properly due and owing.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager, in accordance with the Illinois Local Government Prompt Payment Act, when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect and approved by the Owner; and

(Paragraph deleted)

- .4 the Construction Manager has satisfied all of the conditions of final payment, including without limitation, fulfillment of all requirements of Section 9.10 of A201-2017

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2017. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be

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recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

§7.3 OWNERS RIGHT OF NON-PAYMENT

§7.3.1 Any provision hereof to the contrary notwithstanding, Owner shall not be obligated to make any full payment to Construction Manager if any one or more of the following conditions exists:

- .1 Construction Manager or subcontractors is/are in default of any of its/their obligations under this Agreement or otherwise is/are in default under any of the Contract Documents.
- .2 Any part of such payment is attributable to services or Work that is defective or is not performed in accordance with the Contract Documents; provided, however, such payment shall be made as to the part thereof attributable to services or Work that is rendered or performed in accordance with the Contract Documents and is not defective.
- .3 Construction Manager has failed to make timely payments due and owing to subcontractors or for material or labor used in the rendering of services or performance of Work for which Owner has made payment to Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2017.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2017.) The Construction Manager shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements set forth herein and in Article 11 of AIA Document A201-2017. Limits of such insurance shall be as follows.

§8.1 COMMERCIAL GENERAL LIABILITY

Commercial General Liability Insurance or equivalent with limits of not less than \$2,000,000 per occurrence for bodily injury, personal injury and property damage liability and a minimum general aggregate of \$2,000,000. Coverages must include the following: All premises and operations, products/completed operations separation of insured, defense, and contractual liability (with no limitation endorsement.) The Owner and the Architect, and their respective officers, agents, consultants and employees shall be named as additional insureds on a primary, non-contributory basis for any liability arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or injury to or destruction of tangible property, other than the Project itself.

§8.2 AUTOMOBILE LIABILITY

When any motor vehicles (owned, non-owned and hired) are used in connection with Work to be performed, the Construction Manager must provide Automobile Liability Insurance with limits of not less than \$1,000,000.00 combined single limit and aggregate for bodily injury and property damage. The Owner shall be named as an additional insured on a primary, non-contributory basis.

§8.3 WORKERS COMPENSATION

Workers Compensation at statutory limits and Employers Liability with a policy limit of not less than five hundred thousand (\$500,000) per accident.

§8.4 PROFESSIONAL LIABILITY

When any architects, engineers, or other professional consultants perform work in connection with the Agreement, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than \$2,000,000. Coverage must include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or proceed, start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

§8.5 OWNERS AND CONTRACTORS PROTECTIVE LIABILITY

An Owner's and Contractor's Protective Liability policy designating the Owner must be provided with limits not less than \$1 million combined single limit per occurrence, for losses arising out of bodily injuries to or death of all persons and for damage to or destruction of property.

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§8.6 PROPERTY INSURANCE

Property Insurance written on a builder's risk "all risk" policy shall be purchased and maintained as provided by the Construction Manager as part of the Reimbursable General Conditions. .

§8.7 EVIDENCE OF INSURANCE

§8.7.1 The Construction Manager must furnish the Owner with original Certificates of Insurance to be in force before work begins, the Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. The Construction Manager must submit evidence of insurance to the Owner before work begins. The receipt of any certificate does not constitute agreement by the Owner that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the Owner to obtain certificates or other insurance evidence from Construction Manager is not a waiver by the Owner of any requirements for the Construction Manager to obtain and maintain the specified coverages. The Construction Manager must advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve Construction Manager of the obligation to provide insurance as specified herein. Non-fulfillment of the insurance conditions may constitute a violation of the Agreement, and the Owner retains the right to stop work until proper evidence of insurance is provided, or the Agreement may be terminated.

§8.7.2 Certificates of Insurance will show the Owner and Architect, and their respective, officers, agents, employees and consultants as additional insureds on the Comprehensive Liability Policy

§8.7.3 Property and Owner's Liability Insurance shall be obtained by the Owner after Owner's occupancy of the garage commences.

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2017. § 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2017, the method of binding dispute resolution shall be as follows: *(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

Arbitration pursuant to Section 15.4 of AIA Document A201-2017

Litigation in a court of competent jurisdiction

Other: *(Specify)*

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

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

None

ARTICLE 10 TERMINATION OR SUSPENSION

(Paragraphs deleted)

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§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

The Contract may be terminated as provided in Article 14 of AIA Document A201–2017.

(Paragraphs deleted)

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2017.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2017 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201–2017 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 **Compliance with laws** Construction Manager shall comply with all applicable federal, state, county and local laws and regulations including, but not limited to, such laws and regulations relating to minimum wages to be paid to employees, limitations upon the employment of minors, minimum fair wage standards for minors, payment of wages due employees, and health and safety of employees. Both parties agree to comply, and assist one another in complying with all applicable Federal, State and local laws and regulations in carrying out their respective obligations under this Agreement.

§11.6 Government Certifications.

The Construction Manager agrees, represents and certifies:

- a. Is not barred from contracting with any unit of state or local government as a result of violating Section 33E-3 or 33E-4 of the Illinois Criminal Code (720 ILCS 5/33E-3 and 33E-4).
- b. Shall comply with the Illinois Drug Free Work Place Act (30 ILCS 580/1 *et seq.*).
- c. Shall comply with the Equal Opportunity Clause of the Illinois Human Rights Act (775 ILCS 5/1-101 *et seq.*) and the Rules and Regulations of the Illinois Department of Human Rights.
- d. Shall comply with the Americans with Disabilities Act and Article 2 of the Illinois Human Rights Act (775 ILCS 5/2-101 *et seq.*).
- e. Has a written sexual harassment policy in place in full compliance with 775 ILCS 5/2-105 (A) (4).
- f. Is not delinquent in the payment of any tax administered by the Illinois Department of Revenue nor is delinquent in the payment of any money owed to the Village.

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:


1. AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

Init.

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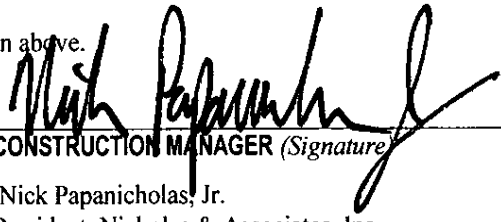
- .2 Guaranteed Maximum Price Addendum and schedule for Work.
- .3 AIA Document A201-2017, General Conditions of the Contract for Construction as modified for this Project
- .4 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:
None
- .5 AIA Document E202™-2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
None
- .6 Other documents:
(List other documents, if any, forming part of the Agreement.)
None

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



 OWNER (Signature)
 Marcel S. Essard
 Village of Mount Prospect
 Village Manager

 (Printed name and title)



 CONSTRUCTION MANAGER (Signature)
 Nick Papanicholas, Jr.
 President, Nicholas & Associates, Inc.

 (Printed name and title)

11/8/19

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Additions and Deletions Report for AIA® Document A133™ – 2009

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:49:29 ET on 11/07/2019.

PAGE 1

AGREEMENT made as of the 5th day of November in the year 2019

...

Village of Mount Prospect
50 South Emerson Street
Mount Prospect, IL 60056

...

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

...

Village of Mount Prospect Maple Street Municipal Parking Deck

...

Walker Consultants
2895 Greenspoint Parkway, #600
Hoffman Estates, IL 60010

...

Michael Cassady
Village Manager
Village of Mount Prospect
10 South Emerson Street
Mount Prospect, IL. 60056
847 818-5300

...

Nick Papanicholas, Jr.
Nicholas & Associates, Inc.
1001 Fechanville Drive
Mount Prospect, IL 60056
847 394-6200

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Thomas L. Hanula
Walker Consultants
2895 Greenspoint Parkway, #600
Hoffman Estates, IL. 60010
847 697-2640

PAGE 3

The Contract Documents consist of this Agreement, General Conditions of the Contract (~~General, Supplementary and other Conditions~~), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. References to "General Conditions" or "General Conditions of the Contract" or "A201-2017" in this document such reference shall mean the AIA A201-2017 General Conditions of Contract for Construction as revised for this Project. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.1.1 The Contract Documents shall not be construed to create a contractual relationship between the Owner and any subcontractor or any third party, or between any persons or entities other than the Owner and Construction Manager. The Owner shall, however, be considered an intended beneficiary of the performance of any contractor's, subcontractor's, consultant's or other third party hired by the Construction Manager for this Project.

...

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. The Construction Manager shall perform its services with the standard of care for Construction Managers at Risk experienced in the construction management of similar projects in size and scope. Construction Manager shall be responsible for services provided hereunder whether such services are provided directly by Construction Manager or by persons or entities hired by Construction Manager. The Construction Manager will perform duties and services and make decisions called for hereunder promptly and without unreasonable delay and will give the Project such priority as is necessary to cause the Construction Manager services hereunder to be properly performed in a timely manner and consistent with sound professional practices. The Construction Manager represents and warrants that its employees have the requisite skill and expertise to perform the services required by this Contract.

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For the Preconstruction Phase, AIA Document A201™ 2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, A201-2017 for this Project, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager. A201-2017 shall mean the Construction Manager. The term "Contract Sum" shall mean the agreed upon Guaranteed Maximum Price ("GMP").

...

The Construction Manager's Preconstruction-Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction-Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of

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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.

§ 2.1 Preconstruction Phase

~~§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.~~

§ 2.1.2 Consultation

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

~~§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update 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 could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; Amendment attached hereto; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.~~

...

§ 2.1.5 Preliminary Cost Estimates

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

~~§ 2.1.5.2 As the Architect progresses with the preparation of the 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, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.~~

§ 2.1.6 Subcontractors and Suppliers

~~The Construction Manager shall develop bidders' interest in the Project.~~

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

...

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The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the unless the Construction Manager recognizes or (within construction industry standards) reasonably should have recognized any such variance. 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.

...

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents. The Construction Manager shall cause this provision to be inserted into all subcontracts, so that such provision is binding upon every subcontractor.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

1. A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
2. A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
3. A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
4. The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
5. A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The

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Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 2.1.10 Taxes

Owner is a tax exempt entity under the laws of the State of Illinois. Owner shall, as part of its undertakings under this Agreement, provide to the Construction Manager all certificates of exemptions and tax exempt numbers needed to entitle Construction Manager to purchase materials and other items to be used on the work or incorporated into the work on a tax exempt basis, said exemption specifically to include but not to be limited to the "Illinois Retailer Occupation Tax" (Sales Tax).

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§ 2.3.1.1 For purposes of Section 8.1.2 of A201-2007-A201-2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase. Contract Time shall be measured from the date of commencement.

...

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. ~~The Owner may designate specific person from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.~~

This Contract shall be subject to the provisions of the Illinois Prevailing Wage Act, 820 ILCS 30/01 et seq. Contractor and all Subcontractor shall comply with the provisions of the Illinois Prevailing Wage Act, 820 ILCS 30/01 et seq.

§ 2.3.2.2 ~~if the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.~~

...

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect not later than one week after the meeting, for review and approval of the Owner and Architect.

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§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3-10 of A201-2007. A construction schedule for the Work shall be provided with the Guaranteed Maximum Price Addendum.

...

§ 2.4 Professional Services

Section 3-12-10 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.3.2.9 The Construction Manager shall provide administrative, management and related services as required to coordinate the Work of Subcontractors with each other and with the activities and responsibilities of Owner, Architect, and Consultants, where applicable, and to complete the Project in accordance with the Contract Documents. The Construction Manager shall supervise and coordinate with the Village all aspects of the Project with all authorities, governmental agencies and utility companies who may be involved in the Project. The Construction Manager shall provide sufficient organization, personnel and management to carry out the requirements of this Agreement. The Construction Manager shall take all reasonable steps necessary to enforce agreements with Subcontractors for the benefit of Owner.

§ 2.3.2.10 Construction Manager shall maintain exclusively for the Project a competent full time staff at the Project Site to coordinate and direct the Work and the progress of all subcontractors. The Owner shall have the right to direct the Construction Manager to remove or replace any on-site personnel whose performance becomes unsatisfactory to the Owner. In such event, the Construction Manager shall promptly replace such personnel, without consideration of any additional compensation or the replacement. Construction Manager shall establish on-site organization and lines of authority in order to carry out the overall plans of construction. The Construction Manager shall identify an on-site member

§ 2.3.2.11 The Construction Manager shall prepare a construction staging plan setting forth construction scheduling, lay down areas and storage, trailer areas, trailer locations, priorities as to site use, ingress/egress and other similar site logistic matters for the Project. The Construction Manager shall consult with the Owner and Architect and provide assistance determining the cost effectiveness of staging construction in one or two stages, including cost estimates for construction in one or two stages.

§ 2.3.2.12 Construction Manager shall be fully responsible for and shall obtain satisfactory performance from each of the Subcontractors against the Project schedule, and the each of its Subcontractor's timely performance and compliance with the Drawings and Specifications. Construction Manager shall consult with Owner regarding available courses of action when material requirements of a Subcontract are not being fulfilled and the nonperforming party will not take satisfactory corrective action that is satisfactory to the Construction Manager.

§ 2.3.2.13 Construction Manager shall submit to Owner a form of Anticipated Cost Report for use on the Project for Owner's review, comment and acceptance. Upon acceptance by Owner, the form of Cost vs. Budget Report shall establish the standard for detail required for the remainder of the Project.

§ 2.3.2.14 The Anticipated Cost Report will show actual costs for completed activities and estimates for uncompleted tasks and will identify variances between actual and budgeted or estimated costs. Construction Manager shall advise Owner and Architect whenever projected costs exceed budgets or estimates and provide cost saving measures to negate budget deficits.

§ 2.3.2.15 Construction Manager shall be responsible for all construction operations performed by its subcontractors and those employed by subcontractors. Construction Manager shall supervise the Work of all subcontractors, providing instructions to each when its Work does not conform to the requirements of the plans and specifications and manage each subcontractor to ensure that corrections are made in a timely manner so as not to affect the progress of the Work. Construction Manager shall coordinate the safety programs for the Project. Except as to means, methods

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and processes directed by the Owner, Construction Manager shall be solely responsible to Owner for the adequacy of all construction means, methods, techniques and procedures employed by Construction Manager or its Subcontractors in the performance of the Work, and for coordinating all portions of the Work to be performed.

§ 2.3.2.16 Construction Manager shall provide information so that the Owner may apply for and obtain all necessary and required building permits and special permits for permanent improvements, excluding permits required to be obtained directly by the various Subcontractors. Owner shall timely provide all record drawings, specifications and other information required to obtain such permits. With respect to permits that Subcontractors are required to obtain, Construction Manager shall require all such Subcontractors to obtain those permits before they commence their work. Construction Manager shall verify that applicable fees and assessments for all permits have been paid. Construction Manager shall obtain, with Owner's assistance, approval from authorities having jurisdiction over the Project, including but not limited to a Certificate of Occupancy after having achieved Substantial Completion.

§ 2.3.2.17 Construction Manager shall develop and establish, for Owner's benefit, a quality assurance control system in order that the standards of construction called for, specified, or drawn are met. Construction Manager shall confirm that mechanical, electrical, plumbing and fire protection systems are adequately tested and balanced prior to their acceptance. Construction Manager shall coordinate all testing provided by others as required by the technical sections of the Specifications and/or required by governing bodies charged with inspecting the Work for compliance with applicable building codes, and/or as required by applicable building codes and shall warrant that all such Work shall comply with the Drawings and Specifications for the Project. Construction Manager shall keep an accurate record of all tests, inspections conducted, findings, and test reports, and shall make them available to the Owner and Architect for review and copying.

§ 2.3.2.19 Construction Manager shall perform the Work in accordance with the requirements of the Contract Documents and shall assure that the Work of each Subcontractor is being performed in accordance with the requirements of the Contract Documents. Construction Manager shall endeavor to protect Owner against defects and deficiencies in the Work, shall warrant the Work is free from all defects and deficiencies and shall correct at its expense all defects and deficiencies. As appropriate, Construction Manager shall require special inspection or testing, and make recommendations to Architect regarding special inspection or testing of Work.

§ 2.3.2.20 Construction Manager shall receive from each Subcontractor, review for conformance with the Contract Documents, approve or reject for re-review and submit to Architect all Shop Drawings, Product Data, Samples, As-Built Drawings and other submittals. Without assuming any of Architect's responsibility for Shop Drawing review, Construction Manager shall stamp all Shop Drawings, Product Data, Samples, As-Built Drawings and other submittals, in order to verify Construction Manager's review thereof, which stamp shall constitute a representation by Construction Manager to Owner that the submitted item conforms with the Contract Documents and is coordinated with other shop drawings. Construction Manager shall transmit all submittals to Architect for Architect's approval, and where applicable to Consultants for their approval. In collaboration with Architect, and where applicable with Consultants, Construction Manager shall establish and implement procedures for expediting the processing of Shop Drawings, Product Data, Samples, As-Built Drawings and other submittals, and shall assure that the approved Project Construction Schedule shall include acceptable dates for the preparation, submission, processing and review of Shop Drawings and other required submittals. Architect's review of submittals, or where applicable review by Consultants, by Construction Manager or by any Subcontractor shall be limited to review of an initial submittal and two (2) re-submittals for conformance with the design concepts expressed in the Contract Documents. Construction Manager shall pay (without reimbursement from Owner) for any costs and expenses incurred in connection with additional re-submittals, including, without limitation, compensating Architect and where applicable Consultants for additional services rendered in connection with reviewing such "extra" re-submittals, and agrees Owner may deduct such payment from the next monthly payment(s), when the re-submittals in excess of the allotted two reviews is caused by the Construction Manager, Subcontractor, and/or Sub-Subcontractor's error.

§ 2.3.2.21 Construction Manager shall maintain at the Project Site, on a current basis: A record copy of all Drawings, Specifications and Addenda in good order and marked to record all changes made during construction; Change Order Logs and other Modifications; Shop Drawing Logs; Shop Drawings; Product Data; Samples; As-Built Drawings; submittals; applicable handbooks; maintenance and operating manuals and instructions; and other related documents and revisions which arise out of the Work. Construction Manager shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer. In coordination with the Architect, the Construction manager shall establish and implement procedures for the tracking and expediting the processing of shop drawings and samples, as required by the

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Modified General Conditions of the Contract. The As-Built Drawings shall be prepared by using electronic documentation as agreed to by Owner, Architect and Construction Manager.

§ 2.3.2.22 Construction Manager shall arrange for delivery and storage, protection and security for Subcontractor furnished/installed and Owner-furnished/contractor-installed materials, systems and equipment which are a part of the Project until such items are satisfactorily incorporated into the Project.

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§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

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

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

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

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

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

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The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, A201-2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

...

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™ 2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition. The has retained an Architect to provide such services, duties and responsibilities as are necessary for the Project. Upon request, the Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 - COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2: *(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

§ 4.1.3 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.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 4.2 Payments

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

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid () days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager. *(Insert rate of monthly or annual interest agreed upon.)*

—%

...

2.85% of the Total Construction Costs, which fee shall be included within the Guaranteed Maximum Price.

...

No Chagee in CM Fee for Changes in Work

...

CM O&P = 0%; Subcontractor OH&P = 10%

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§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed Zero percent (0 %) of the standard rate paid at the place of the Project.

...

Not Applicable

Not Applicable

Not Applicable

...

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. ~~Amendment~~. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

...

No shared savings has been identified for this Project

§ 5.2.2 The Guaranteed Maximum Price ~~is shall not be~~ subject to additions and deductions by Change Order ~~as provided in the Contract Documents and the Order~~. The Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

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§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, A201-2017, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-2007, A201-2017, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fcc" as used in Section 7.3.3.3 of AIA Document A201-2007-A201-2017 and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007-A201-2017 shall have the meanings assigned to them in AIA Document A201-2007-A201-2017 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-2007-A201-2017 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fcc" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 ~~If no specific provision is made in Section 5.1.2 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 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.~~

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~~§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.~~

...

~~§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such 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 6.2.1 through 6.2.3.~~

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~~§ 6.5.4 Costs of document reproductions, facsimile transmissions and long distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.~~

~~§ 6.5.5 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.~~

...

~~§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.~~

~~§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 A201-2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.~~

~~§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and 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. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.~~

Documents.:

~~§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.~~

~~§ 6.6.8 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.~~

~~§ 6.6.9 Subject to the Owner's prior approval, 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.~~

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§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document ~~A201-2007~~A201-2017.

...

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document ~~A201-2007~~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 6.8.

...

.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 6.2, ~~or as may be provided in Article 11.6.2;~~

...

.5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of 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 to fulfill a specific responsibility of the ~~Contract; Contract, including, but not limited to defective or nonconforming work, disposal of materials and equipment wrongfully supplied, or making good on any damaged product;~~

...

.8 ~~Costs for services incurred during the Preconstruction Phase. Legal costs, mediation costs, or costs associated with FOIA request compliance how ever incurred.~~

.90 ~~Amounts the Contract Documents specifically require the Construction Manager to pay, include deductible amounts payable by the Construction Manager under any policy of insurance.~~

10. ~~Costs resulting from theft or vandalism of items that are not part of the Work.~~

11. ~~Drug testing for employees, incentive or bonus programs (including safety) accounting and EEO and targeted business compliance staff, safety training or seminars.~~

12. ~~Equipment repair, maintenance or re-calibration costs.~~

13. ~~Off site file storage.~~

14. ~~Management of warranty work.~~

16. ~~Except as provided in Section 6.1.1, any cost not specifically and expressly described in Section 6.1.~~

17. ~~Costs which this Agreement provides that the Construction Manager shall pay or incur or for which this Agreement expressly provides the Construction Manager shall be responsible.~~

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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. Such records shall be kept on the basis of generally accepted accounting principles and in accordance with the Contract Documents. 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, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, 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.

...

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

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the Contract Documents. The Construction Manager, in cooperation with the Architect, shall provide with each Application for Payment, a properly completed Affidavit setting forth, under oath, the name and address and amount due to each subcontractor, materialman, or other appropriate party included in that payment. For every party listed to be paid, the Construction Manager shall provide a full or partial waiver of lien, as appropriate. The Construction Manager shall also provide a partial or full waiver of lien for his services. Payment Certificates will be issued in accordance with Section 9.4.3 of AIA Document A201-2017, General Conditions of the Contract.

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

month.

§ 7.1.3 ~~Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than () days after the Architect receives the Application for Payment. Payments shall be made pursuant to the Illinois Local Government Prompt Payment Act after receipt by the Owner of the Construction Manager's invoice for the construction draw based upon the percentage of completion applied against the Construction Price, properly prepared and approved by the Architect and Owner. The Owner shall pay to the Construction Manager the amount approved, less retainage when applicable, unless there is a dispute about the amount of the compensation due the Construction Manager, in which case the Owner shall pay the undisputed amount. The date on which payment is made shall be known as the "Payment Date".~~

...

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

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. ~~Documents and shall be in a format approved by the Owner, Architect and Construction Manager.~~ The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. 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, unless objected to by the Architect, ~~Architect or Owner,~~ shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

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- 1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007; A201-2017;

...

- 3 Add the Construction Manager's Fee, less retainage of Zero percent (0 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- 4 Subtract retainage of Zero percent (0 %) from that portion of the Work that the Construction Manager self-performs;

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...

- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document ~~A201-2007~~-A201-2017.

...

§ 7.1.8.1 Notwithstanding anything contained within the Contract Documents to the contrary, the Construction Manager shall not be entitled to any progress payment for any Work performed unless the Owner shall have received, and approved the following (i) insurance certificates; (ii) Payment and Performance Bonds for the Work to be performed; and (iii) appropriate affidavits and lien waivers from the Construction Manager, subcontractors and suppliers.

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§7.1.12 Construction Manager's Application for Payment shall be submitted in the form of AIA Documents G702 and G703 or such other form as the Architect and Owner jointly approve.

§7.1.13 The signature of the Construction Manager on any Application for Payment constitutes the Construction Manager's certification to the Owner that (i) the Construction Manager's services listed in the Application for Payment have progressed to the level indicated and have been performed as required by this Agreement and the Contract Documents; (ii) the Construction Manager has paid its subcontractors, subconsultants and suppliers their proportional share of all previous payments received from the Owner and (iii) the amount requested is currently and properly due and owing.

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager in accordance with the Illinois Local Government Prompt Payment Act, when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document ~~A201-2007~~, A201-2017, and to satisfy other requirements, if any, which extend beyond final payment;

...

- .3 a final Certificate for Payment has been issued by the Architect, ~~by the Architect and approved by the Owner;~~ and

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

- .4 the Construction Manager has satisfied all of the conditions of final payment, including without limitation, fulfillment of all requirements of Section 9.10 of A201-2017

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon the Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document ~~A201-2007~~-A201-2017. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document ~~A201-2007~~-A201-2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of ~~A201-2007~~-A201-2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this

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30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

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§7.3 OWNERS RIGHT OF NON-PAYMENT

§7.3.1 Any provision hereof to the contrary notwithstanding, Owner shall not be obligated to make any full payment to Construction Manager if any one or more of the following conditions exists:

- .1 Construction Manager or subcontractors is/are in default of any of its/their obligations under this Agreement or otherwise is/are in default under any of the Contract Documents.
- .2 Any part of such payment is attributable to services or Work that is defective or is not performed in accordance with the Contract Documents; provided, however, such payment shall be made as to the part thereof attributable to services or Work that is rendered or performed in accordance with the Contract Documents and is not defective.
- .3 Construction Manager has failed to make timely payments due and owing to subcontractors or for material or labor used in the rendering of services or performance of Work for which Owner has made payment to Construction Manager.

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007. A201-2017. (State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.) in Article 11 of AIA Document

A201-2017.) The Construction Manager shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements set forth herein and in Article 11 of AIA Document A201-2017. Limits of such insurance shall be as follows.

§8.1 COMMERCIAL GENERAL LIABILITY

Commercial General Liability Insurance or equivalent with limits of not less than \$2,000,000 per occurrence for bodily injury, personal injury and property damage liability and a minimum general aggregate of \$2,000,000/. Coverages must include the following: All premises and operations, products/completed operations separation of insured, defense, and contractual liability (with no limitation endorsement.) The Owner and the Architect, and their respective officers, agents, consultants and employees shall be named as additional insureds on a primary, non-contributory basis for any liability arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or injury to or destruction of tangible property, other than the Project itself.

§8.2 AUTOMOBILE LIABILITY

When any motor vehicles (owned, non-owned and hired) are used in connection with Work to be performed, the Construction Manager must provide Automobile Liability Insurance with limits of not less than \$1,000,000.00 combined single limit and aggregate for bodily injury and property damage. The Owner shall be named as an additional insured on a primary, non-contributory basis.

§8.3 WORKERS COMPENSATION

Workers Compensation at statutory limits and Employers Liability with a policy limit of not less than five hundred thousand (\$500,000) per accident.

§8.4 PROFESSIONAL LIABILITY

When any architects, engineers, or other professional consultants perform work in connection with the Agreement, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than \$2,000,000. Coverage must include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or proceed, start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

§8.5 OWNERS AND CONTRACTORS PROTECTIVE LIABILITY

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An Owner's and Contractor's Protective Liability policy designating the Owner must be provided with limits not less than \$1 million combined single limit per occurrence, for losses arising out of bodily injuries to or death of all persons and for damage to or destruction of property.

§8.6 PROPERTY INSURANCE

Property Insurance written on a builder's risk "all risk" policy shall be purchased and maintained as provided by the Construction Manager as part of the Reimbursable General Conditions.

§8.7 EVIDENCE OF INSURANCE

§8.7.1 The Construction Manager must furnish the Owner with original Certificates of Insurance to be in force before work begins, the Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. The Construction Manager must submit evidence of insurance to the Owner before work begins. The receipt of any certificate does not constitute agreement by the Owner that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the Owner to obtain certificates or other insurance evidence from Construction Manager is not a waiver by the Owner of any requirements for the Construction Manager to obtain and maintain the specified coverages. The Construction Manager must advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve Construction Manager of the obligation to provide insurance as specified herein. Non-fulfillment of the insurance conditions may constitute a violation of the Agreement, and the Owner retains the right to stop work until proper evidence of insurance is provided, or the Agreement may be terminated.

§8.7.2 Certificates of Insurance will show the Owner and Architect, and their respective, officers, agents, employees and consultants as additional insureds on the Comprehensive Liability Policy

§8.7.3 Property and Owner's Liability Insurance shall be obtained by the Owner after Owner's occupancy of the garage commences.

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
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§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

A201-2017. § 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2007, A201-2017, the method of binding dispute resolution shall be as follows.

...

Arbitration pursuant to Section 15.4 of AIA Document ~~A201-2007~~A201-2017

Litigation in a court of competent jurisdiction

...

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007 A201-2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

...

None

...

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§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201-2007.

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

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

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

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

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

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201-2007/A201-2017.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

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The Work may be suspended by the Owner as provided in Article 14 of AIA Document ~~A201-2007~~, A201-2017. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document ~~A201-2007~~, A201-2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

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§ 11.1 Terms in this Agreement shall have the same meaning as those in ~~A201-2007~~, A201-2017.

...

Section 1.5 of ~~A201-2007~~, A201-2017 shall apply to both the Preconstruction and Construction Phases.

...

Section 13.1 of ~~A201-2007~~, A201-2017 shall apply to both the Preconstruction and Construction Phases.

...

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of ~~A201-2007~~, A201-2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions: Compliance with laws Construction Manager shall comply with all applicable federal, state, county and local laws and regulations including, but not limited to, such laws and regulations relating to minimum wages to be paid to employees, limitations upon the employment of minors, minimum fair wage standards for minors, payment of wages due employees, and health and safety of employees. Both parties agree to comply, and assist one another in complying with all applicable Federal, State and local laws and regulations in carrying out their respective obligations under this Agreement.

§11.6 Government Certifications.

The Construction Manager agrees, represents and certifies:

- a. Is not barred from contracting with any unit of state or local government as a result of violating Section 33E-3 or 33E-4 of the Illinois Criminal Code (720 ILCS 5/33E-3 and 33E-4).
- b. Shall comply with the Illinois Drug Free Work Place Act (30 ILCS 580 et seq.).
- c. Shall comply with the Equal Opportunity Clause of the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.) and the Rules and Regulations of the Illinois Department of Human Rights.
- d. Shall comply with the Americans with Disabilities Act and Article 2 of the Illinois Human Rights Act (775 ILCS 5/2-101 et seq.).
- e. Has a written sexual harassment policy in place in full compliance with 775 ILCS 5/2- 05 (A) (4).
- f. Is not delinquent in the payment of any tax administered by the Illinois Department of Revenue nor is delinquent in the payment of any money owed to the Village.

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.2 AIA Document A201-2007,

.2 Guaranteed Maximum Price Addendum and schedule for Work.

.3 AIA Document A201-2017, General Conditions of the Contract for Construction as modified for this Project

.3

.4 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:

None

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~~4~~ 5 AIA Document E202™-2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

None

~~5~~ 6 Other documents:

...

None

...

Village of Mount Prospect
Village Manager

Nick Papanicholas, Jr.
President, Nicholas & Associates, Inc.

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Village of Mount Prospect, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:49:29 ET on 11/07/2019 under Order No. 7021810420 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

MP
(Signed)

Village Manager
(Title)

11/26/2019
(Dated)

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AIA® Document A133™ – 2009 Exhibit A

Guaranteed Maximum Price Amendment

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

Village of Mount Prospect Maple Street Municipal Parking Deck

THE OWNER:
(Name, legal status and address)

Village of Mount Prospect
50 South Emerson Street
Mount Prospect, IL 60056

THE CONSTRUCTION MANAGER:
(Name, legal status and address)

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

ARTICLE A.1

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 2.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of this Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed Six million, eight hundred seventy-nine thousand, five hundred and sixty-nine dollars (\$ 6,879,569.00), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Construction Manager's Fee, and other items that comprise the Guaranteed Maximum Price.

(Provide below or reference an attachment.)

See Exhibit B Attached

§ A.1.1.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the Contract Documents permit the Owner to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

None

ADDITIONS AND DELETIONS:

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

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

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

Int.

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§ A.1.1.4 Allowances included in the Guaranteed Maximum Price, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price (\$0.00)
None	

§ A.1.1.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

No additional assumptions

§ A.1.1.6 The Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract: None

Document	Title	Date	Pages
----------	-------	------	-------

§ A.1.1.7 The Guaranteed Maximum Price is based upon the following Specifications:
(Either list the Specifications here, or refer to an exhibit attached to this Agreement.)
See §A.1.1.8 below.

Section	Title	Date	Pages
---------	-------	------	-------

§ A.1.1.8 The Guaranteed Maximum Price is based upon the following Drawings:
(Either list the Drawings here, or refer to an exhibit attached to this Agreement.) **DECEMBER 23, 2019**
Village of Mount Prospect Maple Street Parking Deck Final Plans, dated ~~November 22, 2019~~ and prepared by Walker Consultants, 2895 Greenspoint Parkway, Suite 600, Hoffman Estates, IL 60169

Number	Title	Date
--------	-------	------


§ A.1.1.9 The Guaranteed Maximum Price is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Agreement.)

No additional documents


ARTICLE A.2

§ A.2.1 The anticipated date of Substantial Completion established by this Amendment

July 30, 2020



 OWNER (Signature)
 Michael Cassady
 Village Manager, Village of Mount Prospect
 (Printed name and title)



 CONSTRUCTION MANAGER (Signature)
 Nick Papanicholas, Jr.
 President, Nicholas & Associates, Inc.
 (Printed name and title)

Int.

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Additions and Deletions Report for AIA® Document A133™ – 2009 Exhibit A

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 17:03:37 ET on 12/30/2019.

PAGE 1

Village of Mount Prospect Maple Street Municipal Parking Deck

...

Village of Mount Prospect
50 South Emerson Street
Mount Prospect, IL 60056

...

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

...

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed Six million, eight hundred seventy-nine thousand, five hundred and sixty-nine dollars (\$ 6,879,569.00), subject to additions and deductions by Change Order as provided in the Contract Documents.

...

See Exhibit B Attached.

...

None
PAGE 2

None

...

No additional assumptions.

§ A.1.1.8 The Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract: None

...

See §A1.1.8 below.

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...

Village of Mount Prospect Maple Street Parking Deck Final Plans, dated November 22, 2019 and prepared by Walker Consultants, 2895 Greenspoint Parkway, Suite 600, Hoffman Estates, IL 60169

...

No additional documents

...

July 30, 2020

...

Michael Cassidy
Village Manager, Village of Mount Prospect

Nick Papanicholas, Jr.
President, Nicholas & Associates, Inc.

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 17:03:37 ET on 12/30/2019 under Order No. 7021810420 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009 Exhibit A, Guaranteed Maximum Price Amendment , as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

Kim M. Age
(Signed)

Village Clerk, Village of Mount Prospect
(Title)

1/28/2020
(Dated)

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AIA Document A201™ – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Village of Mount Prospect Maple Street Municipal Parking Deck

THE OWNER:

(Name, legal status and address)

Village of Mount Prospect
50 South Emerson Street
Mount Prospect, IL 60056

THE ARCHITECT:

(Name, legal status and address)

Walker Consultants
2895 Greenspoint Parkway, #600
Hoffman Estates, IL 60010

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- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

COOK COUNTY
RECORDER OF DEEDS

Property of Cook County

COOK COUNTY
RECORDER OF DEEDS

COOK COUNTY
RECORDER OF DEEDS

COOK COUNTY
RECORDER OF DEEDS

COOK COUNTY
RECORDER OF DEEDS

Init.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams. Figured dimensions shall be followed in preference to measurements by scale. All dimensions shall be checked against field measurements of existing conditions to be taken by the Contractor.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.1.9 Construction Manager at Risk

The term Contractor as used herein shall refer to the Construction Manager at Risk.

§ 1.1.10 Product

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The term "product" as used in the Contract Documents includes materials, systems and equipment.

§ 1.1.11 Provide

Where the word "provide" appears, it shall be taken and interpreted to mean "The Contractor shall furnish all labor, material, equipment and accessory appurtenances or materials necessary to install and complete the construction of the Project.

§ 1.1.12 Site

Site refers to that portion of the property on which the Work is to be performed or which has been otherwise set aside for use by the Contractor.

§ 1.1.13 Punchlist

Punch List means, collectively, unfinished items of the construction of the Project, which unfinished items of construction are minor or insubstantial details of construction, mechanical adjustment or decoration remaining to be performed, the non-completion of which would not materially affect the use of the Project, and which are capable of being completed within thirty (30) days of Substantial Completion, subject to the availability of special order parts and materials.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.1.2 Where conflicts exist within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes and ordinances, the Contractor shall seek a clarification in writing from the Architect. In the event that the Architect does not respond within fourteen (14) days, the more stringent or higher quality or greater quantity requirements shall apply. If the Contractor fails to make such a request, it is presumed that the more stringent or higher quality or greater quantity requirements shall apply. The Contractor shall perform the Work at no additional cost to the Owner in accordance with the Architect's determination.

§ 1.2.1.3 Large-scale drawings take precedence over small-scale drawings, figured dimensions over scaled dimensions and noted materials over graphic representations. Words in singular shall include a plural whenever applicable, or the context so indicates.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.3.1 In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities: 1) The Agreement AIA A133, 2) Any addenda, with those of later date having precedence over those of earlier date, 3) These General Conditions of the Contract for Construction, 4) Drawings and Specifications.

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§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The descriptive headings of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any provisions following them.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use 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.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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(Paragraphs deleted)

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 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 Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are, subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15. The rights stated in Article 2 shall be in addition to and not in limitation of any other rights of the Owner granted in the Contract Documents or at law or equity.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express

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authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, has reviewed the Contract Documents and correlated personal observations and inspections with requirements of the Contract Documents and has notified the Architect of and obtained clarification of any discrepancies which have become apparent through review of the Contract Documents and personal observations.

§ 3.2.1.1 The Contractor shall verify all dimensions given on the Drawings, and to report any error or inconsistency to the Architect before commencing Work. By starting the Work the Contractor shall indicate the Contractor agreement with all details, construction procedures, and materials so shown and/or specified and shall indicate the Contractor's willingness to construct the Project in strict accordance with the Contract Documents.

§ 3.2.1.2 If Work is required in a manner that makes it impossible to produce the quality required by the Contract Documents, or should discrepancies appear among the Contract Documents, the Contractor shall request in writing an interpretation from the Architect before proceeding with the Work. The Contractor shall perform the Work at no additional cost to the Owner in accordance with the Architect's determination.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. The Contractor shall promptly report to the Architect any errors, omissions, or inconsistencies in the Contract Documents. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor shall verify the accuracy of all grades, elevations, existing conditions, dimensions and locations and shall promptly report to the Owner and the Architect any errors, omissions, or inconsistencies. In all cases of interconnection of the Contractor's Work with existing or other work, the Contractor shall verify at the Site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, existing conditions, locations or dimensions shall be promptly rectified by him without extra cost to the Owner. Neither the Owner nor the Architect guarantee the exactness of grades, elevations, dimensions, existing conditions or locations given on any drawings issued by the Architect or work installed by other contractors.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, unless the Contractor recognized or should have recognized the error, inconsistency, omission, or difference and failed to report it.

§ 3.2.5 If the Contractor performs any Work involving an apparent error, inconsistency, ambiguity, construction impracticality, omission or code violation in the Contract Documents of which the Contractor is aware, or which could reasonably have been discovered by the review required by Section 3.2, without prompt written notice to the Owner

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and the Architect and request for correction, clarification or additional information, as appropriate, the Contractor does so at its own risk and expense and all claims relating thereafter are specifically waived.

§ 3.2.6 In no event shall the Architect or Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with this Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures. The Contractor shall review any construction or installation procedure (including those recommended by any product manufacturer). The Contractor shall provide written notice to the Architect:

- (a) If a specified product deviates from good construction practices.
- (b) If following the Specifications will affect any warranties.
- (c) Any objections which the Contractor may have to the Specifications.

The responsibilities imposed on the Contractor by this Section shall be in addition to, and not be limited by, any and all other provisions of these Contract Documents.

§ 3.3.2 The Contractor shall engage workmen who are skilled in performing the Work and all Work shall be performed with care and skill and in a good workmanlike manner under the full-time supervision of the approved superintendent described in Section 3.9.3. The Contractor shall be liable for all property damage including repairs or replacement of the Work and economic losses which proximately result from the breach of this duty. The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall be responsible for any damages to property or injuries to persons, or to any other harm, caused by the Contractor's employees.

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§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new, unless otherwise required or permitted by the Contract Documents and that the Work will be free from faults and defects and in conformance with the Contract Documents. The warranty will not be affected by the specification of any product or procedure unless the Contractor objects promptly to such product or procedure and advises the Architect of possible substitute products or procedures which will not affect the warranty. This warranty shall not be restricted by the limitations of any manufacturer's warranty. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective in the Owner's sole discretion. Inability or refusal of the Subcontractor or supplier responsible for the defective work to correct such work shall not excuse the Contractor from performing under the warranty. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor's warranties are not limited by the Contractor's obligations to specifically correct defective or nonconforming Work as provided in Article 12, or are they limited by any other remedies provided in the Contract Documents. The Contractor shall also be liable for any damage to property or persons (including death) including consequential and direct damages relating to any breach of the Contractor's warranty.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Owner is exempted by Section 3 of the Illinois Use Tax Act (Section 3, House Bill 1610, approved July 31, 1961, Illinois Revised Statutes 1967, Chapter 120, Section 439.3) from paying any of the taxes imposed by the Act and sales to Owner are exempt by Section 2, House Bill 1609, approved July 31, 1961, Illinois Revised statutes 1967, Chapter 120, Section 441) from any of the taxes imposed by the Act. The Department of Revenue of the State of Illinois under Rule No. 15, issued August 9, 1961, has declared that sales of materials to construction contractors for conversion into real estate for schools, governmental bodies, agencies and instrumentalities are not taxable retail sales. The Contractor shall be responsible for any sales, consumer, use and similar taxes for the Work.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections of government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs damages, losses and expenses attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately

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suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Guaranteed Maximum Price all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Guaranteed Maximum Price.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect. The Owner's or Architect's failure to object to a submitted schedule that exceeds time limits current under the Contract Documents shall not relieve the Contractor of its obligations to meet those limits, nor shall it make the Owner or Architect liable for any of the Contractor's damages incurred as a result of increased construction time or not meeting those time limits. Similarly, the Architect's or Owner's failure to object to a

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Contractor's schedule showing performance in advance of such time limits shall not create or infer any rights in favor of the Contractor for performance in advance of such time limits.

§ 3.10.4 At the time of each Application for Payment, the Contractor shall provide to the Owner and the Architect an update on the Project schedule and a written status report, which includes a description of the progress of the Work and if progress is behind schedule, the Contractor's plan to recover the Work to meet the approved Construction Schedule. The report shall also include a summary of the Contractor's meetings with subcontractors.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.11.1 The Contractor shall maintain at the Site one set of record drawings for the Owner and Architect of the as built plans and specifications for concealed work, particularly concealed piping and conduit. Any deviations from conditions shown on the Contract Drawings shall be shown and dimensioned on these record drawings. The Contractor shall develop layout drawings for concealed work that is schematically indicated on Contract Drawings in order to have dimensioned layouts of such concealed work. This requirement does not authorize any deviations without approval of the Architect.

§ 3.11.1.1 The field information in the record drawings to be so marked shall include at a minimum:

- (1) Significant deviations of any nature made during construction;
- (2) Location of underground mechanical and electrical services, utilities, and appurtenances, referenced to permanent surface improvements; and the
- (3) Location of mechanical and electrical services, utilities, and appurtenances that are concealed in the building, referenced to accessible features of the building.

§ 3.11.2 The Contractor shall maintain and shall require its subcontractors to maintain at the Site(s) an accurate record of deviations and changes in the Work from the Contract Documents; shall indicate all such deviations and changes on reproducible transparencies of the Contract Documents, and shall turn over to the Architect upon completion of the Work all such record drawings, documents and information, such as final shop drawings and sketches, marked prints and similar data indicating the as-built conditions. Plumbing, HVAC and Electrical Contractors/Subcontractors shall be required to record all changes or deviations in the work from the Contract Documents. The cost of recording and transferring the changes or deviations to the transparencies shall be included in the Guaranteed Maximum Price for the Work. The as-built transparencies shall be delivered by the Contractor to the Architect prior to the final acceptance of the Project and issuance of final payment.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not

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expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect. The Contractor must correct at its cost, and without any adjustment in Contract Time, any Work the correction of which is required due to the Contractor's failure to obtain approval of a submittal required to have been obtained prior to proceeding with the Work, including, but not limited to, correction of any conflicts in the Work resulting from such failure.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 When professional certification or performance criteria of materials, systems or equipment is required by the Contract Documents, the Contractor shall provide the person or party providing the certification with full information of the relevant performance requirements and on the conditions under which the materials, systems, or equipment will be expected to operate at the Project Site. The certification shall be based on performance under the operating conditions at the Project Site. The Architect shall be entitled to rely on the accuracy and completeness of such certifications.

§ 3.12.10.2 When the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

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§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.15.3 All exterior and interior Work shall be cleaned by the Contractor using specific materials as recommended for surfaces to be cleaned. Damage to any surfaces due to improper cleaning methods of materials shall be repaired to the satisfaction of the Architect and Owner, by the Contractor, at no cost to the Owner.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, including, but not limited to, attorney's fees, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent, intentional or reckless acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 The Contractor agrees to indemnify, defend, save and hold harmless the following indemnitees: The Architect and the Owner, their respective board members, officers, directors, officials, consultants, agents, and employees, individually and collectively, from all claims, demands, actions and the like, of every nature and description, made or instituted, by third parties, arising or alleged to arise out of the work under this Agreement, as a result of any act or omission of either the Contractor or any Subcontractor, or any of their employees or agents. The Contractor and its Subcontractor shall name the Owner, the Architect and their respective board members, officers, officials, directors, agents and employees, individually and collectively, as additional insureds on their commercial

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general liability for claims arising from the operations of the Contractor/Subcontractor, automobile liability and excess/umbrella coverage which insurance shall be primary coverage as respects the additional insureds. The Contractor and Subcontractor/s shall furnish Owner with copies of such policies prior to beginning any Work.

§ 3.18.3 "Claims, damages, loses and expenses" as these words are used herein shall be construed to include, but not be limited to (1) injury or damage consequent upon the failure of or use or misuse by Contractor, its Subcontractors, agents, servants or employees, of any hoist, rigging, blocking, scaffolding, or any and all other kinds of items of equipment, whether or not the same be owned, furnished or loaned by Owner; (2) all attorneys' fees and costs incurred in defense of the claim or in bringing an action to enforce the provision of this Indemnity or any other indemnity contained in the Contract Documents; and (3) all costs, expenses, lost time, opportunity costs and other similar indirect or incident damages incurred by the party being indemnified or its employees, agents or consultants.

§ 3.18.4 In the event that the Contractor or its Subcontractors are requested but refuse to honor the indemnity obligations hereunder or to provide a defense, then the party indemnifying shall, in addition to all other obligations, pay the cost of bringing any such action, including attorneys' fees, time expended by the party being indemnified and their employees in the defense of any litigation covered by this indemnity provision at their usual rates, including costs and expenses, to the party requesting indemnity.

§ 3.18.5 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts. The Contractor hereby knowingly and intentionally waives the right to assert, under the case of Kotecki v. Cyclops Welding Corp., 146 Ill.2d 155 (1991) that Contractor's liability may be limited to the amount of its statutory liability under the Workers' Compensation Act, and agrees that Contractor's liability to indemnify and defend the Owner and Architect is not limited by the so called "Kotecki Cap". The Contractor shall include this provision in each of its Subcontract agreements and shall require its Subcontractors to be so bound.

§ 3.18.6 The Contractor shall include in each and every Subcontract with any and all subcontractors and/or material suppliers performing Work and require each and every Subcontractor and/or material supplier performing Work to agree to be bound by all of the provisions 3.18.1 through 3.18.9 under the Contract Documents.

§ 3.18.7 The Contractor's indemnity obligations hereunder shall specifically include all claims and judgments which may be made against the indemnitees under federal or state law or the law of the other governmental bodies having jurisdiction, and further, against claims and judgments arising from violation of public ordinances and requirements of governing authorities due to Contractor's or Contractor's employees method of execution of the Work.

§ 3.18.8 Only to the extent prohibited by the Construction Contract Indemnification for Negligence Act, 740 ILCS 35/0.01 et seq., the indemnification obligations of the Contractor as set forth herein shall not extend to the liability of the Owner, any Owner's Representative, the Architect, or their agents, consultants, board members, officers, officials, or employees.

§ 3.18.9 The Contractor shall indemnify and hold harmless the Owner in the event of labor or trade union conflicts or disputes between the Contractor and Subcontractors and their respective employees. The Contractor shall endeavor to adjust and resolve such conflicts and disputes which affect the timely completion of the Work. Such conflicts or disputes shall not be a basis or excuse for the violation of the Contract Documents by the Contractor or its Subcontractors, and shall not provide the Contractor with relief from complying with dates for Substantial Completion or Final Completion. Labor or trade union disputes that affect production or delivery of materials or equipment, or the installation, shall be at no cost to the Owner. The Contractor shall notify the Architect and the Owner in writing as soon as possible as to any labor or trade disputes which may affect the Work and its timely completion. In such event, the Contractor shall provide a written proposal to the Architect and the Owner which includes any comparable substitution(s) necessary to complete the Work.

§ 3.18.10 None of the foregoing provisions shall deprive the Owner or the Architect of any action, right or remedy otherwise available to them or either of them at law.

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§ 3.19 If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Architect or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils which regulate or distinguish what activities shall not be included in the Work of any particular trade. In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of the conflict involving any such agreement or regulation, the Architect may require that other material or equipment of equal kind and quality be provided at no additional cost to the Owner.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts. The Contractor shall provide to the Architect (1) mechanics lien waivers for itself and each of its Subcontractors for any monies sought for payment, (2) certified payroll statements and documentation as per the Illinois Prevailing Wage Act and (3) sworn statements listing subcontractors and materialmen before issuing Payment Certificates, and if such sworn statement or waivers are not provided, the Architect's Certificates shall be conditioned upon and subject to the receipt of such waivers.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Any Work rejected by the Architect shall be reported promptly to the Owner in writing. Whenever the Architect considers it

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necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. The Contractor shall make submittals to the Architect in a manner to allow for the Architect's reasonable prompt review and to allow for timely ordering of components of the Work to affect no delay in the Work.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents if reasonably inferable from the Contract Documents as being necessary to produce the intended results.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number.

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and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection. All subcontracts between the Contractor and subcontractors shall be made in writing, shall be assignable to the Owner, and shall contain the following sentence, 'The Owner is an intended third-party beneficiary of this Subcontract.'

§ 5.2.3 If the Owner or Architect has objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no objection.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes objection to such substitution.

§ 5.2.5 The Contractor further acknowledges and agrees that after award of the Project to the Contractor, any savings on changes to subcontract or substitute subcontractors will be for the benefit of the Owner and will not be used for the benefit of the Contractor or to increase the Contractor's profit on the Project. The foregoing benefit to the Owner shall include any adjustment in the amount of the price of a subcontract to less than the quoted price of the subcontractor upon which the Contractor's fixed bid price or Contract Sum was based. Further, if a manufacturer or supplier of any machinery or equipment, including, but not limited to, heating and air conditioning units or systems, changes specifications or offers incentives, discounts or lower prices after award of the Contract to the Contractor, those savings will inure to the benefit of the Owner and not the Contractor, subcontractor, manufacturer or supplier.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.1 The Contractor shall be responsible for its Subcontractors and shall carry insurance which covers the Contractor for liability arising from its Subcontractors and shall ensure that its Subcontractors are carrying insurance to protect the Subcontractors as well as the Owner, Architect and Architect's consultants.

§ 5.3.2 The Owner and Architect assume no responsibility for overlapping, gaps or omission of parts of the Work by various Contractor in awarding subcontracts.

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§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

(Paragraph deleted)

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation, without altering the Agreement with the Contractor.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

(Paragraph deleted)

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

(Paragraph deleted)

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§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect in consultation with the Owner.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- 1 The change in the Work;
- 2 The amount of the adjustment, if any, in the Contract Sum; and
- 3 The extent of the adjustment, if any, in the Contract Time.

Notwithstanding anything to the contrary contained within this Document, the Contractor agrees that there shall be no additional charge for Change Orders, Construction Change Directives or minor changes in the Work and that all such changes shall be completed within the Guaranteed Maximum Price provided by the Contractor.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- 1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- 2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- 3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- 4 As provided in Section 7.3.4.

(Paragraphs deleted)

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Time.

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§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect.

(Paragraph deleted)

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. The Contractor shall bear all additional costs incurred to meet the Contract Time, which may require adding additional workers or working overtime, without additional compensation.

§ 8.2.4 The Contractor must conform to the most recently approved Construction Schedule. The Contractor must complete the indicated Work or achieve the required percentage of completion, as applicable, within any interim completion dates established in the most recently approved Construction Schedule.

§ 8.2.5 The Contractor must maintain at the Site, available to the Owner and the Architect for their reference during the progress of the Work, a copy of the approved Construction Schedule and any approved revisions thereto. The Contractor must keep current records of and mark on a copy of the approved Construction Schedule the actual commencement date, progress, and completion date of each scheduled activity indicated on the Construction Schedule.

§ 8.2.6 The Contractor represents that its guaranteed maximum price includes all costs, overhead and profit which may be incurred throughout the Contract Time and the period between Substantial and final Completion. Accordingly, the Contractor may not make any claim for delay damages based in whole or in part on the premise that the Contractor would have completed the Work prior to the expiration of the Contract Time but for any claimed delay.

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§ 8.2.7 If the Contractor's progress is not maintained in accordance with the approved Construction Schedule, or the Owner determines that the Contractor is not diligently proceeding with the Work or has evidence reasonably indicating that the Contractor will not be able to conform to the most recently approved Construction Schedule, the Contractor must, promptly and at no additional cost to the Owner, take all measures necessary to accelerate its progress to overcome the delay and ensure that there will be no further delay in the progress of the Work and notify the Owner.

§ 8.2.8 The Contractor shall reimburse the Owner for all fees or expenses, including without limitation, the Architect, engineers and legal expenses, for additional services necessitated by Contractor's failure to obtain Substantial Completion within the time established in the agreement, for more than two (2) inspections for Substantial Completion, or for more than one (1) final inspection.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 The Contractor shall not be entitled to any increase in the Contract Sum as a result of any delays in the progress of the Work. The Contractor's sole remedy for delay shall be an extension of time.

§ 8.3.4 Notwithstanding other provisions in this Contract, Contractor shall not be entitled to any recovery of damages arising out of any event or delay caused within Contractor's control and/or for "Acts of God", including without limitation adverse weather conditions (which shall include typical rain events that can be reasonably predicted through historical data) which prevents such early completion of the Work.

§ 8.3.5 Where a delay occurs that is beyond the Contractor's control and when the delay is not reasonably unacceptable, the Contractor has an affirmative duty to mitigate the effect of that delay on the progress of the Work. An extension of the Substantial Completion date will not be granted to the extent that the Contractor breaches said duty to mitigate.

§ 8.3.6 The stated dates for Substantial Completion and Final Completion of the Work are material inducements to the Owner in entering into the Contract Documents and all time limits stated in the Contract Documents are of the essence of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Guaranteed Maximum Price as stated in the Agreement is the maximum total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

(Paragraph deleted)

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

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§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. The form of Application for Payment shall be a notarized AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 The Contractor shall submit all payment requests to the Architect for all Work completed during the previous time period. Requests submitted late will not be processed until the following month. The Contractor shall include the Contractor's waiver of lien for the full amount and partial subcontractor waivers of lien in the amounts of the previous payment request.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.3.4 A Sworn "Contractor's Affidavit" shall be submitted with each payment request in sufficient form for the Owner to determine Contractor's right to payment and compliance with the Illinois Mechanic's Lien law. Each payment request shall include executed waivers of lien in conformity with information set forth on a properly completed Contractor's Affidavit. The Contractor shall submit waivers on a current basis with each Application for Payment, and the Subcontractors and suppliers shall submit partial waivers of lien for the amount paid to them from the prior month's pay application.

§ 9.3.5 The Contractor's request for final payment shall include: (1) the Contractor's Final Lien Waiver in the full amount of the contract; and (2) final lien waivers in the full amount of their contracts from all subcontractors and suppliers for which final lien waivers have not previously been submitted.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

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§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.4.3 The first payment application shall be accompanied by the Contractor's Partial Waiver of Lien only for the full amount of the payment. Each subsequent monthly payment application shall be accompanied by the Contractor's Partial Waiver, and by the Partial Waivers of Subcontractors and Suppliers who were included in the immediately preceding payment application to the extent of that payment. Application for Final Payment shall be accompanied by Final Waivers of Lien from the Contractor, Subcontractors, and Suppliers who have not previously furnished such Final Waivers. Final Waivers shall be for the full amount of the Contract. All applications for payment shall be accompanied by affidavits, in triplicate, from the Contractor and Subcontractors containing such information and in such form as to comply with the Illinois Mechanic's Lien Act and showing in detail the sources of all labor and materials used and contracted to be used on the job, including names and addresses of subcontractors and material suppliers; amounts paid and remaining due to each; together with all other documents as shall, in the Owner's and Architect's judgment, be necessary to waive all claims of liens to date and comply with all applicable state and local laws. Notwithstanding any other provision in the Contract Documents, the Owner shall not, in any manner, be deemed or intended to have waived any claim by making a final payment or a progress payment of any amount.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

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§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.5.5 The Owner shall not be required to make payment unless in its own independent judgment it accepts the Architect's Certificate.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

(Paragraph deleted)

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

(Paragraphs deleted)

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The Work will not be considered suitable for Substantial Completion review until all Project systems included in the Work are operational as designed and scheduled, all designated or required governmental inspections and certifications have been made and posted (other than for the failure of Contractor), designated instruction of the Owner's personnel in the operation of systems has been completed and documents, and all final finishes within the Project are in place. In general, the only remaining Work shall be minor in nature, so that the Owner could occupy the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's normal business operations and/or use and enjoyment of the Project. As a further condition of Substantial Completion acceptance, the Contractor shall certify that all remaining Work will be completed within thirty calendar days or within the time stated elsewhere in the Contract Documents following the Date of Substantial Completion. Upon the Owner's written consent, the Date of Substantial Completion of landscaping portions of the Work or other designated portions of the Work may be as mutually acceptable to the Owner and the Contractor. The Contractor shall

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secure and deliver to the Owner written warranties and guarantees from its Subcontractors, Sub-Subcontractors and suppliers bearing the date of Substantial Completion or some other date as may be agreed to by the Owner and stating the period of warranty as required by the Contract Documents.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 All Work identified on Contractor's Punch List and thereafter identified in Architect's inspection shall be completed within thirty (30) days of issuance of the Certificate of Substantial Completion. Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The

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Architect will promptly notify the Contractor if the Owner or the Architect do not concur that the Work is finally complete. In such case, the Contractor must bear the cost of any additional services of the Owner or the Architect until the Work is determined to be finally complete.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 Neither final payment nor any remaining retained percentage will become due until the Contractor submits the following documents to the Architect:

- .1 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner), have been paid or otherwise satisfied, submitted on such other form as may be prescribed by the Owner;
- .2 a release or waiver of liens on behalf of the Contractor and a similar release or waiver on behalf of each Subcontractor and supplier, accompanied by an Affidavit of Release of Liens (latest edition) or such other form as may be prescribed by the Owner;
- .3 a certificate evidencing that the Contractor's liability insurance and Performance Bond remain in effect for one-year following Substantial Completion;
- .4 a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents.;

§ 9.10.4

(Paragraphs deleted)

If the Contractor is unable to secure from any Subcontractor or supplier a release or waiver required under the Contract, the Contractor must furnish a bond satisfactory to the Owner to indemnify the Owner and any co-obligees under the bond against any lien or claim from such Subcontractor or supplier. The Contractor must also indemnify the Owner for all costs incurred by the Owner in removing, discharging or otherwise settling all Subcontractor or supplier liens or claims, including all personnel and consultant costs and reasonable attorneys' fees.

§ 9.10.5 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.6 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. Neither the Owner nor the Architect shall be responsible for any safety precautions or programs in connection with the Work.

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§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected by the Work or the operations of the Contract;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall, at its sole cost and expense, promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

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§ 10.3.1.1 The Contractor shall not cause or permit any "Hazardous Materials" (as defined herein) to be brought upon, kept or used in or about the Project Site(s) except to the extent such Hazardous Materials: (1) are necessary for the prosecution of the Work; and (2) have been approved in writing by the Owner. Any Hazardous Materials allowed to be used on the Project Site(s) shall be used, stored, and disposed of in writing as directed in writing by the Owner. Any Hazardous Materials allowed to be used in the Project Site(s) shall be used, stored, and disposed of in compliance with all applicable laws relating to such Hazardous Materials. Any unused or surplus hazardous Materials, as well as, any other Hazardous Materials that have been placed, released, or discharged on the Project Site(s) by the Contractor or any of its employees, agents, suppliers, or subcontractors, shall be removed from the Project Site(s) at the earlier of (1) completion of the Work requiring the use of such Hazardous Materials; (2) the completion of the Work as a whole; or (3) within twenty-four (24) hours following the Owner's demand for such removal. Such removal shall be undertaken by the Contractor at its sole cost and expense and shall be performed in accordance with all applicable laws. The Contractor shall immediately notify the Owner of any release or discharge of any Hazardous Materials on the Project Site(s). The Contractor shall provide the Owner with copies of all warning labels on products that the Contractor or any of its subcontractors will be using in connection with the Work, and the Contractor shall be responsible for making any and all disclosures required under applicable "Community Right to Know" or similar laws. The Contractor shall not clean or service any tools, equipment, vehicles, materials, or other items in such a manner as to cause a violation of any laws or regulations relating to Hazardous Materials. All residue and waste materials resulting from any such cleaning or servicing shall be collected and removed from the Project Site(s) in accordance with all applicable laws and regulations. The Contractor shall immediately notify the Owner of any citations, orders, or warnings issued to or received by the Contractor, or of which the Contractor otherwise becomes aware, that relate to any Hazardous Materials on the Project Site(s). Without limiting any other indemnification provisions pursuant to law or specified in this Agreement, the Contractor shall indemnify, defend (at the Contractor's sole cost, and with legal counsel approved by the Owner), and hold the Owner and Architect harmless from any and all claims, demands, losses, damages, disbursements, liabilities, obligations, fines, penalties, costs, and expenses for removing and remedying the effect of any Hazardous Materials on, under, from, or about the Project Site(s), arising out of or relating to, directly or indirectly, the Contractor's or its subcontractor's failures to comply with any of the requirements herein. As used herein, the term "Hazardous Materials" means any hazardous or toxic substances, materials, and wastes listed in the United States Department of Transportation Materials Table, or listed by the Environmental Protection Agency as hazardous substances, and all substances, materials, or wastes that are or become regulated under federal, state, or local law.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended.

(Paragraph deleted)

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

(Paragraph deleted)

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

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ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents in a company or companies lawfully authorized to do business in the State of Illinois and that has at least an "A-VII" rating as defined in Best's Key Rating such insurance as required in the Contract Documents. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.1.5 Liability of Contractor and Subcontractor is not limited by purchase of insurance. Nothing contained in the insurance requirements of the Contract Documents is to be construed as limiting the liability of the Contractor, the liability of any Subcontractor of any tier, or either of their respective insurance carriers. Owner does not, in any way, represent that the coverages or limits of insurance specified is sufficient or adequate to protect the Owner, Contractor, Architect, or any Subcontractor's interest or liability, but are merely minimums. The obligation of the Contractor and every Subcontractor of any tier to purchase insurance shall not, in any way, limit their obligations to the Owner in the event that the Owner should suffer an injury or loss in excess of the amount recoverable through insurance, or any loss or portion of the loss which is not covered by either Contractor's or any Subcontractor's insurance.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

(Paragraphs deleted)

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§ 11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

(Paragraph deleted)

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ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

(Paragraph deleted)

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall, at Contractor's sole cost and expense, correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The one year period for correction of the Work shall not waive any warranty rights of the Owner. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

(Paragraph deleted)

§ 12.2.2.3 The one-year period for correction of Work shall be extended by corrective Work performed by the Contractor for that Work.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents and pay all attorney's fees and expenses related thereto immediately upon demand.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. Any action brought with respect to the Contract shall be brought only in the Circuit Court of Cook County, Illinois

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§ 13.2 Successors and Assigns

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

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

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, shall be at the Contractor's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense. Notwithstanding any other term or provision in this Article 13 to the contrary, in the event that any testing or inspection of the Work or any part thereof reveals defects in materials or workmanship, then the Contractor shall remedy such defects and shall bear all costs and expenses associated with such testing which is related to determining whether such defects have been properly remedied.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

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§ 13.5 Interest

Any references in this Agreement to interest being assessed against the Owner are hereby deleted.

§ 13.6 PREGULATIONS

§ 13.6.1.1 Whenever required or upon the request of the Architect or Owner, the Contractor or Subcontractor shall furnish the Architect and the Owner with satisfactory proof of compliance with said Federal, State and local laws, statutes, ordinances, rules, regulations, orders, and decrees.

§ 13.6.2 The Contractor shall comply with the non-discrimination federal, state and local laws, including without limitation:

§ 13.6.2.1 Equal Employment Opportunities Act, American with Disabilities Act and Human Rights Act. The Contractor acknowledges that this Contract is subject to and governed by the rules and regulations of the Illinois Human Rights Act (the "Human Rights Act"), including the mandatory provisions that each contractor have in place written sexual harassment policies that shall include, at minimum, the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment under state law; (iii) a description of sexual harassment, utilizing examples; (iv) the vendor's internal complaint process including penalties; (v) the legal recourse, investigation and complaint process available through the Department and the Commission; and (vi) protection against retaliation as provided by Section 6-101 of said Act and that it has a written sexual harassment policy in place in full compliance with Section 105(A)(4) of the Human Rights Act, 775 LICs 5/2-105(A)(4). The Contractor agrees to fully comply with the requirements of the Illinois Human Rights Act, 775 LICs 5/1-101 et seq., including but not limited to, the provision of sexual harassment policies and procedures pursuant to Section 2-105 of the Act. The Contractor further agrees to comply with all federal Equal Employment Opportunity Laws, including, but not limited to, the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq., and rules and regulations promulgated thereunder. The provisions of Section 14.2 are included in this Amendment pursuant to the requirements of the regulations of the Illinois Department of Human Rights, Title 44, Part 750, of the Illinois Administrative Code, and Contractor shall be required to comply with these provisions only if and to the extent they are applicable under the law.

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

§ 13.6.2.2.1 That it will not discriminate against any employee or applicant for employment because of race, color, religion, creed, sex, marital status, national origin or ancestry, age, citizenship, physical or mental handicap or disability, military status, unfavorable discharge from military service or arrest record status, and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.

§ 13.6.2.2.2 That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.

§ 13.6.2.2.3 That it will submit reports as required by the Department's Rules, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respect comply with the Illinois Human Rights Act and the Department's Rules.

§ 13.6.2.2.4 That it will permit access to all relevant books, records, accounts and work Sites by personnel of the contracting agency and the Department for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules.

§ 13.6.2.2.5 That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of the Contract obligations are undertaken or assumed, so that such provisions will be binding

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upon such subcontractor. In the same manner as with other provisions of this Contract, the Contractor will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the contracting agency and the Department in the event any subcontractor fails or refuses to comply therewith. In addition, the Contractor will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for Contractors or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporation.

§ 13.6.3 Illinois Department of Labor Requirements and Prevailing Wage Act.

§ 13.6.3.1 The Contractor agrees to comply with and that this Agreement is subject to and governed by the Illinois Prevailing Wage Act (820 ILCS 130/0.01 et seq.). The Contractor shall ensure that any Subcontractors shall comply with the Illinois Prevailing Wage Act. Contractor and Subcontractors shall include in Bids the cost for the current prevailing wage. As changes are made in these prevailing wages, the Contractor and Subcontractors performing work on the project will be responsible for conforming to the changes and shall have the responsibility for determining when changes are made. No additional costs are to be incurred by the Owner as a result of changes in the prevailing wage. All record keeping requirements are the obligation of the Contractor and Subcontractors.

§ 13.6.3.2 To the extent that there are any violations of the Prevailing Wage Act and any demands are made upon the Owner, Contractor or Architect by the Illinois Department of Labor or by any employee of the Contractor or a Subcontractor performing work on the project, the Contractor or the particular Subcontractor and Contractor shall be responsible for indemnifying and holding the Owner, Contractor and Architect free and harmless from all costs incurred, directly or indirectly, by the Owner, Contractor or Architect in responding to and complying with demands made by the Department of Labor, or an aggrieved employee and such amounts may be withheld from the payments to be made on the project. It is the intention that the Owner, Contractor and Architect shall suffer no time loss or other additional expenses in complying with any inquiry made with regard to this Act.

§ 13.6.3.3 It shall be mandatory upon the Contractor and upon any Subcontractors thereof to pay all laborers, workman, and mechanics employed by them not less than the prevailing wages in the locality for each craft or type of workman or mechanic needed to perform such work and the general prevailing rate for legal holidays and overtime work as ascertained by the Illinois Department of Labor and pursuant to Illinois law and statutes in such case made and provided.

§ 13.6.3.4 The Contractor and each Subcontractor shall (1) make and keep for a period not less than 3 years, records of all laborers, mechanics, and other workers employed by them on the Project, the records shall include each worker's name, address, telephone number when available, social security number, classification or classifications, the hourly wages paid in each pay period, the number of hours worked each day, and the starting and ending times of work each day; and (2) submit monthly, in person, by mail, or electronically a certified payroll to the Owner in charge of the project. The certified payroll shall consist of a complete copy of the records identified in the Prevailing Wage Act. The certified payroll shall be accompanied by a statement signed by the Contractor and/or Subcontractor which avers that: (i) such records are true and accurate; (ii) the hourly rate paid to each worker is not less than the general prevailing rate of hourly wages required by the Prevailing Wage Act; and (iii) the Contractor and/or Subcontractor is aware that filing a certified payroll that he or she knows to be false is a Class B misdemeanor. The Contractor is not prohibited from relying on the certification of a lower tier Subcontractor, provided the Contractor does not knowingly rely upon a Subcontractor's false certification. Any Contractor and/or Subcontractor subject to the Prevailing Wage Act who fails to submit a certified payroll or knowingly files a false certified payroll is in violation of the Prevailing Wage Act and guilty of a Class B misdemeanor. The records submitted in accordance with the Prevailing Wage Act herein shall be considered public records, except an employee's address, telephone number, and social security number, and made available in accordance with the Freedom of Information Act.

§ 13.6.3.5 Upon 2 business days' notice, the Contractor and each Subcontractor shall make available for inspection the records identified in the Prevailing Wage Act to the Owner in charge of the project, its officers and agents, and to the Director of Labor and his deputies and agents. Upon 2 business days' notice, the Contractor and each Subcontractor shall make such records available at all reasonable hours at a location within this State.

§ 13.6.4 Public Contract Fraud Act. Contractor agrees to comply with and that this Agreement is subject to and governed by the Illinois Public Contract Fraud Act (30 ILCS 545/0.01).

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§ 13.6.5 Public Construction Contract Act. Contractor agrees to comply with and that this Agreement is subject to and governed by the Illinois Construction Contract Act (30 ILCS 557/1).

§ 13.6.6 Public Construction Bond Act. Contractor agrees to comply with and that this agreement is subject to and governed by the Illinois Public Construction Bond Act (30 ILCS 550/0.01). If the Contractor furnishes material or labor on the project, or assume any Contracts for material or labor awarded or entered into by the Owner, Contractor first shall supply and deliver to Owner a bond conditioned upon the completion of the Contract, and the payment of such material and labor, as required by the Illinois Public Construction Bond Act. 30 ILCS 550/1 et seq.

§ 13.6.7 Public Works Preference Act. Contractor agrees to comply with and that this agreement is subject to and governed by the Illinois Public Works Preference Act (30 ILCS 560/0.01).

§ 13.6.8 Employment of Illinois Workers on Public Works Act. Contractor agrees to comply with and that that his Agreement is subject to and governed by the Illinois Employment of Illinois Workers on Public Works Act (30 ILCS 570/0.01).

§ 13.6.9 Public Works Contract Change Order Act. Contractor agrees to comply with and that this Agreement is subject to and governed by the Illinois Public Works Contract Change Order Act (50 ILCS 525/1).

§ 13.6.11 Veterans Preference Act. The Contractor agrees to comply with and that this Agreement is subject to and governed by the Illinois Veterans Preference Act (30 ILCS 55/0.01) that, in the employment and appointment to fill positions in the construction, addition to, or alteration of all public works undertaken or contracted for by the State, or by any political subdivision thereof, preference shall be given to persons who have been members of the armed forces of the United States or who, while citizens of the United States, were members of the armed forces of allies of the United States in time of hostilities with a foreign country, and have served under one or more of the following conditions: (1) the veteran served a total of at least 6 months, or (2) the veteran served for the duration of hostilities regardless of the length of engagement, or (3) the veteran served in the theater of operations but was discharged on the basis of a hardship, (4) the veteran was released from active duty basis of a hardship, or because of a service connected disability and was honorably discharged. But such preference shall be given only to those persons who are found to possess the business capacity necessary for the proper discharge of the duties of such employment. No political subdivision or person contracting for such public works is required to give preference to veterans, not residents of such district, over residents thereof, who are not veterans.

§ 13.6.12 As used in this Section: "Time of hostilities with a foreign country" means any period of time in the past, present, or future during which a declaration of war by the United States Congress has been or is in effect or during which an emergency condition has been or is in effect that is recognized by the issuance of a Presidential proclamation or a Presidential executive order and in which the armed forces expeditionary medal or other campaign service medals are awarded according to Presidential executive order.

§ 13.6.12.1 "Armed forces of the United States" means the United States Army, Navy, Air Force, Marine Corps, Coast Guard. Service in the Merchant Marine that constitutes active duty under Section 401 of federal Public Law 95 202 shall also be considered service in the Armed Forces of the United States for purposes of this Section.

§ 13.6.13 Drug Free Workplace. The Contractor certifies by the execution of this Contract that the Contractor will provide a drug free workplace in compliance with the Illinois Drug Free Workplace Act (30 ILCS 580/1 et seq.), including provision of providing notifications, imposing sanctions, providing assistance with counseling, and complying with all other requirements of said Act.

§ 13.6.14 Bid Rigging and Rotating. The Contractor certifies that the Contractor is in compliance with Illinois law and not barred from bidding on the Contract as a result of a conviction for either bid-rigging or bid rotating under Article 33E of the Criminal Code of 1961(720 ILCS 5/33E).

§ 13.6.15 The Substance Abuse Prevention on Public Works Projects Act, 820 ILCS 265/1 et seq., ("Act") prohibits any employee of the Contractor or any Subcontractor on a public works project to use, possess or be under the influence of a drug or alcohol, as those terms are defined in the Act, while performing work on the project. The Contractor/Subcontractor will comply with certification and other requirements regarding same.

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§ 13.6.16 The Contractor must not be barred from entering into this contract because of any delinquency in the payment of any tax administered by the Illinois Department of Revenue, unless it is being contested. Contractor understands that making a false statement regarding delinquency in taxes is a Class A misdemeanor and, in addition, voids the contract and allows the Owner to recover in a civil action all amounts paid to the Contractor.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

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§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.2.5 The Owner may, upon seven (7) days written notice to the Contractor, terminate the Agreement between the Owner and Contractor without cause. Upon written request and submittal of the appropriate documentation as required by the Owner, the Owner shall pay the Contractor for all work performed by the Contractor to the date of termination that has been approved by the Owner. The Owner may, upon the Contractor executing such confirmatory assignments as the Owner shall request, accept and assume all of the Contractor's obligations under all subcontracts executed in accordance with the terms of the Contract Documents that may accrue after the date of such termination and that the Contractor has incurred in good faith in connection with the Work. Upon receipt of notice of termination, the Contractor shall cease all operations on the date specified by the Owner, terminate subcontracts not assumed by the Owner, make no further orders of materials or equipment, complete work not terminated (if any), and provide such reports as may be requested by the Owner and the Architect as to the status of the Work and the Work remaining to be completed. The Owner's right to terminate the Contract under this Section shall be in addition to, and not in limitation of, its rights to stop the Work without terminating the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Time shall be adjusted for increases in the time caused by suspension, delay, or interruption under Section 14.3.1. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties to the Contract seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

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§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.6.3 Delay caused by any Subcontractor shall be the responsibility of the Contractor. The Contractor shall, therefore, ensure that all Subcontractors at all time provide sufficient personnel, equipment and materials to substantially complete the Work in the time specified herein.

§ 15.1.6.4 Where a delay occurs which is beyond the Contractor's control, the Contractor has an affirmative duty to mitigate the effect of that delay on the progress of the Work but without any obligation to bear any cost. An extension of the Substantial Completion date will not be granted to the extent that the Contractor breaches said duty to mitigate.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor waives Claims against the Owner other for consequential damages arising out of or relating to this Contract. This waiver includes

- .1
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

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This waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall not be final and binding and subject to litigation filed by either of the Parties.

(Paragraphs deleted)

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

(Paragraphs deleted)

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Additions and Deletions Report for

AIA® Document A201™ – 2017

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PAGE 1

Village of Mount Prospect Maple Street Municipal Parking Deck

...

Village of Mount Prospect
50 South Emerson Street
Mount Prospect, IL 60056

...

Walker Consultants
2895 Greenspoint Parkway, #600
Hoffman Estates, IL 60010

PAGE 10

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams. Figured dimensions shall be followed in preference to measurements by scale. All dimensions shall be checked against field measurements of existing conditions to be taken by the Contractor.

...

§ 1.1.9 Construction Manager at Risk

The term Contractor as used herein shall refer to the Construction Manager at Risk.

§ 1.1.10 Product

The term "product" as used in the Contract Documents includes materials, systems and equipment.

§ 1.1.11 Provide

Where the word "provide" appears, it shall be taken and interpreted to mean "The Contractor shall furnish all labor, material, equipment and accessory appurtenances or materials necessary to install and complete the construction of the Project.

§ 1.1.12 Site

Site refers to that portion of the property on which the Work is to be performed or which has been otherwise set aside for use by the Contractor.

§ 1.1.13 Punchlist

Punch List means, collectively, unfinished items of the construction of the Project, which unfinished items of construction are minor or insubstantial details of construction, mechanical adjustment or decoration remaining to be performed, the non-completion of which would not materially affect the use of the Project, and which are capable of

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being completed within thirty (30) days of Substantial Completion, subject to the availability of special order parts and materials.

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§ 1.2.1.2 Where conflicts exist within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes and ordinances, the Contractor shall seek a clarification in writing from the Architect. In the event that the Architect does not respond within fourteen (14) days, the more stringent or higher quality or greater quantity requirements shall apply. If the Contractor fails to make such a request, it is presumed that the more stringent or higher quality or greater quantity requirements shall apply. The Contractor shall perform the Work at no additional cost to the Owner in accordance with the Architect's determination.

§ 1.2.1.3 Large-scale drawings take precedence over small-scale drawings, figured dimensions over scaled dimensions and noted materials over graphic representations. Words in singular shall include a plural whenever applicable, or the context so indicates.

...

§ 1.2.3.1 In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities: 1) The Agreement AIA A133, 2) Any addenda, with those of later date having precedence over those of earlier date, 3) These General Conditions of the Contract for Construction, 4) Drawings and Specifications.

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In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The descriptive headings of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any provisions following them.

PAGE 13

~~§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.~~

~~§ 2.2 Evidence of the Owner's Financial Arrangements~~

~~§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.~~

~~§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the~~

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Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

...

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15. The rights stated in Article 2 shall be in addition to and not in limitation of any other rights of the Owner granted in the Contract Documents or at law or equity.

PAGE 14

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, ~~and correlated personal observations with requirements of the Contract Documents~~ has reviewed the Contract Documents and correlated personal observations and inspections with requirements of the Contract Documents; and has notified the Architect of and obtained clarification of any discrepancies which have become apparent through review of the Contract Documents and personal observations.

§ 3.2.1.1 The Contractor shall verify all dimensions given on the Drawings, and to report any error or inconsistency to the Architect before commencing Work. By starting the Work by the Contractor shall indicate the Contractor agreement with all details, construction procedures, and materials so shown and/or specified and shall indicate the Contractor's willingness to construct the Project in strict accordance with the Contract Documents.

§ 3.2.1.2 If Work is required in a manner that makes it impossible to produce the quality required by the Contract Documents, or should discrepancies appear among the Contract Documents, the Contractor shall request in writing an interpretation from the Architect before proceeding with the Work. The Contractor shall perform the Work at no additional cost to the Owner in accordance with the Architect's determination.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. ~~These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor-The Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It omissions, or~~