

DRAFT AIA[®] Document A134[™] – 2009

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

AGREEMENT made as of the «13th» day of «February» in the year «2020 »
(In words, indicate day, month and year.)

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

«Village of Romeoville»
«1050 West Romeo Road »
«Romeoville, IL 60446»

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

«Harbour Contractors, Inc.»
«23830 West Main Street»
«Plainfield, IL 60544»

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

«Romeoville Athletic and Event Center Expansion »
«55 Phelps Avenue »
«Romeoville, IL 60446»

The Architect:
(Name, legal status and address)

« Dewberry»
« 25 South Grove Avenue, Suite 500 »
« Elgin, IL 60120»

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

« Steve Gulden »
«10540 West Romeo Road »
« Romeoville, IL 60446»
«(815) 886-7200»

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

«Patrick S. Harbour»
« President - Harbour Contractors »
« 23830 West Main Street »
« Plainfield, IL 60544»
« (815) 254-5500»

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.

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

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

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

« Daniel Atilano »
« Dewberry »
« 25 South Grove Avenue, Suite 500 »
« Elgin, IL 60120 »

The Owner and Construction Manager agree as follows.



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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), 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. 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.

§ 1.2 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.

§ 1.2.1 The Construction Manager has been engaged to provide professional construction management services because of its character, expertise, experience, education, depth of experienced personnel, and qualifications in dealing with projects of similar scope, complexity, and magnitude.

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended and attached hereto, 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 A201–2017, which document is attached hereto and incorporated herein by reference. The term “Contractor” as used in A201–2017 shall mean the Construction Manager. Any reference in this Agreement to the AIA Document A201™–2017, General Conditions of the Contract for Construction, shall mean the A201-2017, General Conditions of the Contract for Construction, shall mean the A201-2017 in the amended form attached hereto and incorporated herein.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

§ 2.0.1 The Construction Manager shall perform the services described in this Agreement. The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. EXISTING AGREEMENT The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager's representative identified above is authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.0.1.1 This Agreement applies to all services furnished by Construction Manager in connection with the Project, including those services furnished before and after the execution of this Agreement.

§ 2.0.2 The Construction Manager's authorized representative identified above has express authority to bind the Construction Manager with respect to all matters requiring the Construction Manager's approval or authorization. Construction Manager's representative shall have the authority to make representations and decisions on behalf of the Construction Manager concerning estimates and schedules, construction budgets, coordination of the Work, prosecution of the Work, changes in the Work, and all other matters related to this Agreement.

§ 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: the components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner. All project schedules (including updates) shall be formatted using Critical Path Method (CPM).

§ 2.1.3.1 The Construction Manager shall assist the Owner and Architect in preparing Construction Contracts and advising the Owner on the acceptability of sub-tier subcontractors and material suppliers proposed by Subcontractors. The Construction Manager shall submit for review and approval to Owner, or its attorneys if designated by Owner, all instructions, terms, conditions, and information prepared for submission to bidders prior to release of the bid package.

§ 2.1.4 Phased Construction

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

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare 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 Construction Manager submits a Control Estimate for the Work, pursuant to Section 2.2. Such estimates shall be provided for the Architect's review and the Owner's approval. 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.

§ 2.1.6.1 Owner is a public entity required to procure the Work through public bidding and award the contract(s) for the Work to the lowest responsive and responsible bidder. When the lowest responsive and responsible multiple prime trade bidders (hereinafter referred to as "Subcontractors") are identified, Owner shall assign those trade contracts (the "Subcontracts") to Construction Manager.

The Construction Manager shall cause the Subcontracts to incorporate substantially the following provisions:

"This Contract has been awarded by the Owner after advertisement for bids. Upon award of the Contract by the Owner, the Owner shall be deemed to have assigned its rights in this Agreement to the Owner's Construction Manager, Harbour Contractors, which is identified herein as the Contractor.

By submitting its bid, the bidder shall be deemed to have consented to the aforesaid assignment, and to have agreed to become an assigned Subcontractor to the Contractor.

Upon assignment, the Subcontractor shall become a subcontractor of the Contractor pursuant to this Agreement, and, except as identified within this Agreement and as provided by law, will no longer have any contractual rights against the Owner, and shall have contractual privity only with the Contractor. Subcontractors to submit invoices and payment applications to Construction Manager. Construction Manager to review and approved subcontractor invoices and payment applications, Owner to Pay subcontractors directly."

In the event that Contractor ceases to operate as a going concern, discontinues business operations or dissolves as an entity, all Subcontractors shall thereafter be deemed to be assigned to the Owner.

§ 2.1.6.2 Construction Manager shall prepare all bid invitations, instructions to bidders, and general and supplementary conditions for Subcontractors Drawings and specifications shall be provided by the Architect. During preparation of the Construction Documents by the Architect, the Construction Manager shall review said Construction Documents to ensure consistency with the bid documents prepared by the Construction Manager. All bid packages are to be distributed to subcontractors in electronic format.

§ 2.1.6.3 Prior to advertisement for bids, Construction Manager shall provide all contractor or subcontract agreements to the Owner's attorneys for review and comment.

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

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

§ 2.1.6.6 The Subcontract documents prepared by Construction Manager shall require full compliance with all state and local laws. Without otherwise limiting the generality of the foregoing, the Construction Manager shall include provisions in each subcontract that obligate subcontractors to comply with the legal standards and requirements set forth in Section 11.5 through and including Section 11.9.

§ 2.1.6.7 Unless otherwise approved by Owner, each subcontract shall require the Subcontractor to maintain insurance with such coverages and limits as are set forth in Exhibit C-1 to this Agreement. The Owner, Architect and the Construction Manager shall, pursuant to each subcontract, be named as additional insureds under such coverage by written endorsement.

§ 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 advertisement for bids, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules, including the Control Estimate and the estimated date of Substantial Completion, except as provided in Section 2.2.4.5. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.9 Notices and Compliance with Laws

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

§ 2.1.10 Permits

The Construction Manager shall assist the Owner in obtaining building permits and special permits necessary to carry out and complete the Work, except for permits required to be obtained directly by the various Subcontractors. The Construction Manager shall verify that the Owner has paid all applicable fees. The Construction Manager shall assist the Owner and Architect in connection with the Owner's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the Project.

§ 2.2 Control Estimate

§ 2.2.1 Upon the completion of the Construction Documents by the Architect, the Construction Manager shall prepare a Control Estimate for the Owner's review and acceptance. The Control Estimate shall be the sum of the Construction Manager's estimate of the Cost of the Work and the Construction Manager's Fee and shall include those items set forth in Section 2.2.4 below.

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

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

§ 2.2.4 The Control Estimate shall include

- .1 a list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 a list of the clarifications and assumptions made by the Construction Manager in the preparation of the Control Estimate, including assumptions under Section 2.2.3, to supplement the information provided by the Owner and contained in the Drawings and Specifications;

- .3 a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, and the Construction Manager's Fee;
- .4 the anticipated date of Substantial Completion upon which the Control Estimate is based, and a schedule for the issuance dates of the Construction Documents upon which the anticipated Substantial Completion date relies; and
- .5 a statement as to whether or not the duration from the stated date of commencement of the Construction Phase to the estimated date of Substantial Completion shall become the Contract Time and be subject to the provisions of Article 8 of A201–2017. If the Project is let for bidding in multiple bid releases, statements issued pursuant to this Section 2.2.4.5 shall be made on the basis of each such bid release.

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

§ 2.2.6 The Project may be let for public bidding in multiple bid releases. Based on the bid results for any such bid release, the Owner may reasonably reject one or more of the bids and require rebidding of that portion of the Work, in which case Construction Manager shall administrate re-bid of the affected portions of Work at no additional cost to the Owner as may reasonably be required. Owner shall be responsible for advertising for publishing public notice to prospective bidders on the Project. Construction Manager shall otherwise be responsible for the administration of the bidding process. Without otherwise limiting the generality of the foregoing, the Construction Manager shall assemble, prepare, and distribute all bidding documents, shall receive and respond to requests for information, and shall maintain a log of the distribution of bidding documents and bids received, and shall prepare a tabulation of all bids received on a subcontract by subcontract basis.

§ 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.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's issuance of a Notice to Proceed.

§ 2.3.2 Administration

§ 2.3.2.1 All trade Work shall be performed by Subcontractors which have been assigned by the Owner to the Construction Manager as provided in this Agreement. If the Construction Manager has a reasonable objection to any Subcontractor identified as the lowest responsive bidder, it shall be the burden of the Construction Manager to present demonstrative evidence to the Owner that the bidder is not responsible, and to present such evidence in a timely manner and before bid award such that Owner suffers no detriment in procuring another Subcontractor if necessary. The Construction Manager shall not perform any Work with its own forces.

§ 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.

§ 2.3.2.4 If the Construction Manager identifies or recommends a specific bidder that is a "related party" under Section 6.10, the Construction Manager shall promptly notify the Owner as provided in Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall prepare and regularly update no less than once per month a Construction Schedule utilizing a Critical Path Method (CPM), or another Owner pre-approved scheduling method, which incorporates the activities of the Subcontractors on the Project, including activity sequences and durations, processing of shop drawings, Product Data and Samples and delivery of products requiring long lead time and procurement. Additionally, the schedule shall be in accordance with applicable Sections of A201™–2017, as amended, including the Owner's occupancy requirements.

§ 2.3.2.6 The Construction Manager shall develop a system of cost control for the Work, including a 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 2.3.2.10.

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

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

§ 2.3.2.10 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.

§ 2.4 Professional Services

Section 3.12.10 of A201–2017 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2017 shall apply to both the Preconstruction and Construction Phases. Construction Manager shall provide immediate written notice to the Owner and Architect if the Construction Manager discovers the existence of any and all hazardous material, including, but not limited to any lead or lead based material and asbestos, asbestos-related products including the extent and location of same. Construction Manager shall not be responsible for the removal, encapsulation, transportation or disposal of any hazardous material.

§ 2.6 Staffing

Construction Manager shall adequately staff the Project. At all times during the Construction Phase, Construction Manager shall maintain one competent, full-time superintendent at the Project site to supervise the Work and coordinate the progress of the Subcontractors. If any such individual is no longer employed on the Project pursuant to this paragraph, Construction Manager shall propose to Owner the names of other individuals as substitutes. No person shall be employed on the Project if Owner has a reasonable objection. If Owner notifies Construction Manager that it has reasonable objection to any such individual, Construction Manager shall remove such person from the Project and propose substitutes to Owner for Owner's approval.

§ 2.7 Subcontractors' Insurance and Bonds

Construction Manager shall procure Certificates of Insurance and bonds from each of the Subcontractors immediately upon award of each such contract and verify conformance of same with the Contract Documents prior to allowing the Subcontractors onto the Site. Insurance of Subcontractors shall name Owner, Construction Manager, and Architect as "Additional Insureds". Copies of same shall be transmitted to the Owner and Architect before Subcontractors may commence Work on the Project. The certificates of insurance shall evidence not less than the coverages and limits set forth in Exhibit C-1 to this Agreement. The bonds furnished by each subcontractor shall comply with the requirements of Section 8.1 of this Agreement.

§ 2.8 Schedule

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

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

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

§ 2.84 Construction Manager shall coordinate such other meetings as Owner may request from time to time concerning the schedule, progress, status or other aspects of the Work.

§ 2.9 **Cost Records** Construction Manager shall verify and maintain in accordance with generally accepted accounting principles detailed cost accounting records for Work performed on the basis of unit costs, and on the basis of actual costs for labor and materials and other bases showing all costs, and shall maintain and transmit to Owner all receipts, invoices, purchase orders, canceled checks, bills of lading and other documents and evidence of payment or indebtedness to support such records as Owner may request. Construction Manager shall audit, verify and recommend approval or rejection or modification of all Change Orders submitted by Subcontractors. Construction Manager shall afford the Owner access to these records and preserve them for a period of three (3) years after final payment, or for such time as Owner would be required to maintain such records under applicable law.

§2.10 Requests for Information

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

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

§ 2.11 Subcontractor Change Orders

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

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

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

§2.12 Claims

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

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

§2.13 Extension of Time and Delay Damages. To the extent that Construction Manager's services under this Agreement are delayed by the Owner or unforeseeable causes not under control of Construction Manager, the Contract Time shall be equitably extended. To the extent that Construction Manager's services under this Agreement are delayed by the Owner or unforeseeable causes not under control of Construction Manager, the Construction Manager's compensation shall be equitably adjusted. Such extension and adjustment, if any, shall be Construction Manager's sole and exclusive remedy for such delay.

§2.14 Site Safety

§2.14.1 Construction Manager shall hold regular safety meetings at the site at least weekly with all Subcontractors. Construction Manager shall maintain all required safety records and logs. The Construction Manager shall review, approve and coordinate the safety programs developed by each of the Subcontractors. Neither the Owner, Construction Manager, nor the Architect, are responsible for site safety. The individual Subcontracts shall provide that the Subcontractors are solely responsible for the means and methods of prosecuting their respective Work. The foregoing shall not relieve Subcontractors of their responsibility for site safety for their Work and the Work performed by their personnel.

§2.15 Quality Control

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

§2.15.2 The Construction Manager cause the responsible Subcontractor correction of all portions of the Work which do not comply with the Contract Documents or do not meet good workmanlike standards.

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

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 When requested by the Construction Manager, The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project.

§ 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 budget for the Cost of the Work or in the Project's scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other 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. Construction Manager shall schedule and coordinate all access to the site, the Project and the Work

necessary to such tests, inspections and reports. Costs for such tests, inspections and reports shall be billed directly to Owner.

§ 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.

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

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project, to the extent allowed by law and by Owner's Board Policies. 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 shall retain an Architect to provide services as necessary to design and complete the Project.

§ 3.4 Communication with Subcontractors

The Owner shall only communicate with Subcontractors through the Construction Manager.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION AND CONSTRUCTION PHASE SERVICES

§ 4.1.1 The Construction Manager will be compensated in the following amounts:

- (a) The Owner and Construction Manager have entered into a separate agreement for pre-construction services that include all pre-construction costs from a period of September 1, 2019 to February 28, 2020. All costs associated with the separate contract will be invoiced and paid outside of this agreement. This contract includes additional pre-construction services associated with publically bidding the trade contractors for the project. The Construction Manager's Pre-Construction Fee included in this agreement is in the lump sum amount of Thirty Five Thousand and 00/100 Dollars (\$35,000.00) (the "Pre-Construction Fee");

The Construction Manager's Construction Fee (the "Construction Fee"); shall be Three point Two Five (3.25%) of the Direct Cost of Work.

- (b) General Conditions in the lump sum amount of Seven Hundred Sixty Six Thousand and 00/100 Dollars (\$766,000.00) ("General Conditions");
- (c) Reimbursable Expenses in an amount of the actual costs incurred by Construction Manager, not to exceed One Hundred Forty Three Thousand Six Hundred Fifteen and 00/100 Dollars (\$143,615.00), as itemized below ("Reimbursable Expenses");

- (d) The Direct Cost of the Work, as Defined in Section 6.1.1;
- (e) A fee to cover Construction Manager's cost of procuring and maintaining general liability insurance pursuant to Article 11 of the modified A201 General Conditions which are incorporated into this Agreement by this reference the amount of Zero point Nine One (0.91%) of the sum of the Preconstruction Fee, the Construction Fee, the General Conditions, the Reimbursable Expenses, the Direct Cost of Work,.

Subject to Section 7.1.6, Payments shall be computed as follows:

During the Preconstruction Phase, the Pre-Construction Fee shall be invoiced as follows:

March 2020 \$10,000.00

April 2020 \$10,000.00

May 2020 \$15,000.00

1. During the Construction Phase, the Construction Managers shall on a monthly basis submit invoices to the Owner for the following: Construction Fee, General Conditions, Reimbursable Expenses, Direct Cost of the Work, , which shall be payable as follows:
 - A. The Construction Fee shall become payable in proportion to the value of Work completed, as reflected on Certificates for payment certified by the Architect.
 - B. General Conditions shall become payable in the proportion to the value of Work completed, as reflected on Certificates for payment certified by the Architect. Reimbursable Expenses incurred in the immediately preceding month, with supporting documentation, and without markup. The Owner shall pay Reimbursable Expenses, as they are incurred, in an amount not to exceed \$143,615.00. "Reimbursable Expenses" means the actual cost to the Construction Manager of all goods and services procured from third parties in connection with the project, including and not limited to the following categories of expenses: telephone and internet setup, office trailer complex including setup and removal; telephone system charges; utilities including water, sewer, and electric for trailer complex; cell phones; miscellaneous office equipment; messenger services; trailer complex janitorial services; progress photographs; trailer complex maintenance and repair; safety equipment; computer network server and wiring; temporary toilets for Construction Manager's staff only; office furniture and supplies; construction signage; MIS (proprietary systems and software); document storage/ records retention; legal costs related solely to project administration and not to dispute resolution; fire extinguishers for site trailer; postage; shipping and express mail; mailing machine and postage scale; computers; printers and the licensing of Project-related software; television monitors; copy machines; projector and screen; data lines; tablet PCs; connection costs for tablets and cell phones; owner/subcontractor work station in trailer; bottles water; license for Procore Project Management software; license for P-6 scheduling software; first aid supplies; printing costs; small tools and supplies; stationary and related supplies; field staff travel expenses; staff relocation expenses related to the project; regional staff travel expenses; staff temporary living expenses related to the project; employee parking expenses; existing/preconditions survey cost; building envelope design review; project partnering sessions; and safety recognition events and incentives. Reimbursable Expenses do not include the Preconstruction Fee, the Construction Fee, the General Conditions, the Direct Cost of the Work, , or any items of labor or materials that are the responsibility of a subcontractor. Reimbursable Expenses do not include any capital improvements or any construction access, fences, or gates, and such items shall be included in the bid packages as a part of the work.
 - C. The Direct Cost of the Work, which, subject to the A201 General Conditions, shall be payable in proportion to the value of the Work completed, as reflected in certificates for payment certified by the Architect.
 - D. The General Liability Insurance Cost shall be invoiced and processed for payment in full thirty (30) days prior to the start on site work

- E. Payment by the Owner to the Construction Manager, as provided in this Agreement, shall be made by wire transfer to the Construction Manager's bank account. The Construction Manager shall provide to the Owner the appropriate bank routing and account information necessary to accomplish wire transfers.
- F. The compensation provided in this Article 4 is based upon a 15 month construction duration. In the event this duration is exceeded because of actions by the Owner or because of unforeseeable causes not under control of the Construction Manager, the compensation provided in this Article 4 shall be equitably adjusted.

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within «Three» («3») 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.

§ 4.2 Payments

§ 4.2.2 Payments are due and payable in accordance with the Illinois Prompt Payment Act.

§ 5.2 Changes in the Work

§ 5.2.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2017, 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.

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

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term "Cost of the Work" and "Direct Cost of the Work" mean the aggregate dollar value of all bids by all subcontractors who were awarded contracts by the Owner which were then assigned to the Construction Manager.

§ 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, which approval shall not be unreasonably withheld.

§ 6.6 Reimbursable Expenses

"Reimbursable Expenses" include but are not limited to all of the items enumerated and defined in Sections 4.1.1(2)(C) and 6.7.

§ 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.

§ 6.9 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.

§ 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 General Conditions, Reimbursable Expenses or Direct Costs of the Work 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, the transaction may proceed. Otherwise, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party. I

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to Reimbursable Expenses and the Direct cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner’s auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager’s records and accounts, including complete documentation supporting accounting entries, books, 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, 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.

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

§ 7.1.3 Upon receipt of a properly submitted Application for Payment, payment shall be made by Owner to Construction Manager as provided in the Local Government Prompt Payment Act.

§ 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. The schedule of values shall allocate each item of Work comprising the entire Direct Cost of the Work, except that the Construction Manager’s Construction Fee, General Conditions, Reimbursable Expenses, t, , General Liability Insurance Cost, and Builder’s Risk Cost, which are payable separately to the Construction Manager as provided in Article 4, shall be shown as single separate items. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule of values, unless objected to by the Architect, shall be used as a basis for reviewing the Applications for payment submitted by Construction Manager on behalf of Subcontractors. Applications for payments shall show the percentage of completion of each portion of the Work as of the end of the

period covered by the Application of each payment. The percentage of completion shall be the percentage of that portion of the Work which has actually been completed.

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

- .1 Take the Cost of the Work as described in Section 6.1.1, less ten percent (10%) retention;
- .2 Add the Construction Manager's, Construction Fee, , less retainage of « Fifteen » percent (« 15 » %)
- .3 Add the Construction Manager's Pre-Construction Fee, General Liability Insurance, General Conditions and Reimbursable Expenses then due and payable;
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Subtract amounts, if any, for which the Architect has withheld or withdrawn a Certificate for Payment as provided in the Contract Documents.

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

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

§ 7.1.9 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 ; 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.

§ 7.2 Final Payment

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

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2017, 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.
- .4 Retention on Construction Managers fee shall be released Six (6) months after Substantial Completion.

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

§ 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.

ARTICLE 8 INSURANCE

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance in accordance with Article 11 of AIA Document A201-2017. The Construction Manager's insurance shall also comply

with the limits and coverages identified in Exhibit C, and shall name Owner as additional insured by written endorsement.

§ 8.1 The Subcontractor shall be required by the Construction Manager to furnish bonds covering the faithful performance of the Subcontract and the payment of all obligations arising thereunder as stipulated in the subcontract award and requirements or specifically required by the Subcontract documents not later than three (3) days following the date of the execution of the Subcontract. The Construction Manager is required to ensure that the Subcontractor, for all subcontracts **Fifty** thousand dollars (\$50,000) or more, furnish performance security to the Construction Manager for any and all work covered by the subcontract. All subcontracts exceeding **Fifty** thousand dollars (\$50,000) shall require a Performance and Labor and Material Bond written in a form acceptable to Construction Manager and Owner covering the faithful performance by the Subcontractor of the work set forth in the plans and specifications and contract documents of the subcontract work or project of the Subcontractor and in accordance with timelines, terms and conditions of the subcontract project or work, and also that the Subcontractor shall properly pay all debts incurred by him in the prosecution of the project or work, including those for labor and materials furnished. The cost of this bond shall be included in the subcontract sum for the project or work. The amount of this subcontract bond shall be equal to one hundred percent (100%) of the subcontract sum. The Subcontractor shall include in the bonds provisions, as well, that guarantee faithful performance of the prevailing wage provisions of the project or work. Bonds shall be written by a surety approved by the Construction Manager with a minimum rating of **A** in A.M. Best's Insurance Guide, current edition. The surety must also be licensed in the State of Illinois. Bonds shall be issued by a surety satisfactory to the Construction Manager and shall name the Construction Manager as a primary co-obligee. The Village of Romeoville shall be named additional obligee on all bonds. All bonds shall comply with the Public Construction Bond Act, 30 ILCS 550/1 et. Seq.

The Construction manager shall not provide a payment or performance bond.

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved 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.)

☒ Litigation in a court of competent Jurisdiction.

§ 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.

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination For Convenience

§ 10.1.1 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 A201-2017, as amended.

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

§ 10.1.3 In the event of termination of this Agreement pursuant to Section 10.1.1, after the commencement of the Construction Phase, the Owner shall pay to the Construction Manager and subcontractor 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 Construction Fee, General Conditions, General Liability Insurance Cost payable up to the date of termination;
- .3 Add the Reimbursable Expense actually incurred by the Construction Manager up to the date of termination; and
- .4 Subtract the aggregate of previous payments made by the Owner for Construction Phase Services, including all payments for the Direct Cost of Work, the Construction Fee, the General Conditions, Reimbursable Fee, General Liability Insurance Cost.

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. Owner may in its sole discretion, elect to require Construction Manager to assign all Subcontractors back to Owner. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving 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.

§ 10.2 Termination

§ 10.2.1 The Owner may terminate this Agreement at any time, for convenience or for cause, in accordance with Article 14 of the A201 General Conditions.

§ 10.3 Suspension

The Work may be suspended by the Owner for a period of thirty (30) days as provided in A201-2017, without any equitable adjustment to the Construction Manager's Fee. If such suspension exceeds thirty (30) days, the Construction Manager's Construction Fee, General Conditions, and Reimbursable Expenses, shall be equitably adjusted.

ARTICLE 11 MISCELLANEOUS PROVISIONS

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

§ 11.1.1 It is expressly understood that the Owner shall be directly retaining the services of an Architect/Engineer.

§ 11.1.2 Notwithstanding anything contained herein, it is expressly understood that the Construction Manager's Project Control Systems including without limitation estimating, scheduling, purchasing, cost reporting and project engineering systems, and all modifications, additions or alterations thereto, are and shall remain the sole property of the Construction Manager.

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

§ 11.2.1.1 ENVIRONMENTAL LIMITATION OF LIABILITY

The Construction Manager shall not be liable for environmental matters on, under or about the premises which constitute the Project, including without limitation, those relating to fines, orders, injunctions, penalties, damages, contribution cost recovery compensation, losses or injuries resulting from the release or threatened release of hazardous materials, special wastes or other contaminants into the environment, the development or growth of mold within or on an structures, air quality levels, and to the generation, use, storage, transportation or illegal disposal of solid wastes, hazardous materials, special wastes or other contaminants. This disclaimer of liability shall apply to all

such claims against the Construction Manager, whether direct or indirect, including without limitation, third party claims for which the Owner is seeking indemnification from the Construction Manager. As between the Owner and Construction Manager, this disclaimer of liability shall apply to liability that results from the acts or omissions of each Subcontractor, but this Section 11.2.1.1 shall not limit the liability of Subcontractors or otherwise limit the Owner's right to pursue such claims directly against one or more Subcontractors.

§ 11.2.1.2 The limitation of liability contained in Section 11.2.1.1 shall not apply if and to the extent such liability results from Construction Manager's negligent act or omission, or from Construction Manager's breach of any provision of this agreement.

§ 11.3 In case of conflict between this Agreement and any other document incorporated or referenced herein, this Agreement shall prevail, followed by the A201 General Conditions as amended, Owner's request for qualifications or proposal, and the drawings and specifications.

§ 11.4 The Construction Manager shall endeavor to keep the Project free from mechanic's liens. If the Owner is required to withhold money pursuant to a notice of lien against public funds, and provided the Owner is not in default on its payment obligations under this Agreement, the Construction Manager shall indemnify, defend and hold harmless the Owner for all costs incurred in connection with such lien and any resulting litigation, including attorneys' fees. The Construction Manager shall ensure that a similar provision is incorporated into the Subcontracts.

§ 11.5 The Construction Manager acknowledges that this is a public works project governed by the Illinois Prevailing Wage Act. Construction Manager shall pay its laborers, if any, and ensure that all subcontractors pay their laborers not less than the established prevailing rate of wages. 820 ILCS 130/1 *et seq.* Construction Manager shall comply with all reporting requirements of the Illinois Prevailing Wage Act. Similarly, the Construction Manager shall assure that all Subcontractors and sub-tier Subcontractors comply with the reporting requirements of the Illinois Prevailing Wage Act.

§ 11.6 Construction Manager represents that it has in place a Sexual Harassment Policy in accordance with the Illinois Human Rights Act and shall ensure that all Subcontractors have in place a Sexual Harassment Policy prior to commencement of Work on the Project.

§ 11.7 Construction Manager represents that it does not discriminate in its hiring practices based upon race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from any military service. Construction Manager shall ensure that no Subcontractor discriminates as set forth in the Section.

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

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

§ 11.10 OWNERSHIP AND USE OF DOCUMENTS

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

§ 11.11 GOVERNING LAW

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

§11.12 ASSIGNMENT

The Owner and Construction manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Except for the assignment of Subcontractors to the Construction Manager as provided herein, or the assignment of the same back to the Owner as contemplated by Section 2.1.6.1 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.

§ 11.13 Other provisions: None.

ARTICLE 12 SCOPE OF THE AGREEMENT

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

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A134–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price, as amended;
- .2 AIA Document A201–2017, General Conditions of the Contract for Construction, as amended and attached as Exhibit A.
- .3 Scope of Project 12-02-19 Exhibit B
- .4 Harbour Certificate of Insurance Exhibit C
- .5 Subcontractor Insurance Requirements Exhibit C-1

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

OWNER *(Signature)*

«Steven Gulden »«Village Manager »
(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

«Patrick S. Harbour »«President »
(Printed name and title)