

**VILLAGE OF VERNON HILLS
RESOLUTION 2023-035**

**A RESOLUTION WAIVING BIDDING AND APPROVING A CONTRACT WITH
HEZCORP CONSTRUCTION SERVICES, INC. FOR CONSTRUCTION
MANAGEMENT SERVICES FOR THE REMODEL OF THE POLICE STATION
HOLDING AREA**

WHEREAS, the Village of Vernon Hills ("*Village*") is a home rule municipality in accordance with Article VII, Section 6 of the Constitution of the State of Illinois of 1970; and

WHEREAS, the Police Station Holding Area ("*Holding Area*") is in need of remodeling ("*Project*"); and

WHEREAS, the Village desires to retain Hezcorp Construction Services, Inc. ("*Contractor*") to oversee construction the Project; and

WHEREAS, pursuant to Illinois Municipal Code Section 65 ILCS 5/8-9-1, the bidding requirements may be waived for contracts for labor, supplies, and services; and

WHEREAS, the Mayor and Board of Trustees have determined that waiving bidding and entering into a contract with Contractor will serve and be in the best interest of the Village and its residents.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE BOARD OF VERNON HILLS, LAKE AND COOK COUNTIES, ILLINOIS, as follows:

SECTION 1: RECITALS. The Village Board hereby adopts the foregoing recitals as its findings, as if fully set forth herein.

SECTION 2: WAIVER OF COMPETITIVE BIDDING. Pursuant to Section 8-9-1 of the Illinois Municipal Code and the Village's home rule authority, the Village Board waives the requirement of competitive bidding for the procurement of the Work.

SECTION 3: APPROVAL OF CONTRACT. The contract and addendum by and between the Village and Contractor are hereby approved in substantially the form attached to this Resolution as **Exhibit A** (collectively "*Contract*"), and in a final form and substance acceptable to the Village Manager and the Village Attorney.

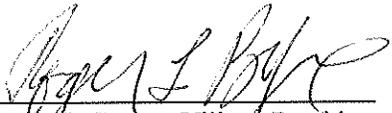
SECTION 4: AUTHORIZATION TO EXECUTE CONTRACT. The Mayor and the Village Clerk are hereby authorized and directed to execute and attest, on behalf of the Village, the final Contract upon receipt by the Village Clerk of at least one original copy of the final Contract executed by Contractor; provided, however, that if the executed copy of the final Contract is not received by the Village Clerk within 60 days after the effective date of this Resolution, then this authority to execute and attest will, at the option of the Mayor and Board of Trustees, be null and void.

SECTION 5: EFFECTIVE DATE. This Resolution shall be in full force and effect from and after its passage and approval by Board of Trustees.

AYES: 6 – Oppenheim, Marquardt, Forster, Schenk, Koch, Byrne

NAYS: 0 - None

ABSENT: 1 - Takaoka

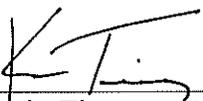


Roger L. Byrne, Village President

PASSED: 10/03/2023

APPROVED: 10/03/2023

ATTEST: 10/03/2023



Kevin Timony, Village Clerk



EXHIBIT A

AIA DOCUMENT A134-2019 AND ADDENDUM

ADDENDUM TO STANDARD FORM OF AGREEMENT BETWEEN
THE VILLAGE AND CONSTRUCTION MANAGER AS CONSTRUCTOR

This is an addendum ("*Addendum*") to the Standard Form of Agreement Between The Village and Construction Manager as Constructor ("*Agreement*") between the **VILLAGE OF VERNON HILLS**, an Illinois home rule municipality ("*Village*") and **HEZCORP CONSTRUCTION SERVICES, INC.** ("*Construction Manager*"). The Village and Construction Manager acknowledge and agree to the following:

1. Conflicts. This Addendum and the Agreement are deemed to be one agreement. To the extent that any of the terms and conditions in this Addendum conflict with any provisions in the Agreement or any documents referenced in the Agreement, the provisions of this Addendum control.
2. Completion and Warranty of Project.
 - A. The Construction Manager warrants that the Project and all of its components will be free from defects and flaws in workmanship, and materials; will be consistent with the highest standards of professional and construction practices and in full compliance with, and as required by or pursuant to, this Agreement, and with the greatest economy, efficiency, and expedition consistent therewith, with only new, undamaged and first quality equipment, materials, and supplies; must strictly conform to the requirements of the Agreement and any specifications and plans approved by the Village. The warranty herein expressed is in addition to any other warranties expressed in this Agreement, or expressed or implied by law, which are hereby reserved unto the Village.
 - B. In the event that any contractor or subcontractor retained by the Construction Manager to complete the Project, or any part thereof ("Subcontractor"), fails to complete their portion of the Project in a manner that is (i) timely; (ii) free from defects and flaws in workmanship, and materials; (ii) in a manner that strictly conforms to the requirements of the Agreement and any specifications and plans; or (iii) fit, sufficient, and suitable for the purposes expressed in, or reasonably inferred from, this Agreement; the Construction Manager shall be responsible to promptly and without charge, correcting any failure to fulfill the above warranty that may be discovered or develop at any time within one year after substantial completion for the Project or such longer period as may be prescribed in the Agreement or by law. The above warranty may be extended automatically to cover all repaired and replacement parts and labor provided or performed under such warranty and the Construction Manager's obligation to correct work may be extended for a period of one year from the date of such repair or replacement. The time period established herein relates only to the specific obligation of the Construction Manager to correct work and may not be construed to establish a period of limitation with respect to other obligations that the Construction Manager has under this Agreement.
3. Subcontractor Procurement. Section 1.1.14 shall be replaced in its entirety with the following:

"The Construction Manager shall seek and obtain bids from Subcontractors and suppliers, and shall share all bids with the Village upon request. All Subcontractors, suppliers, and subcontracts used for Project must be acceptable to, and approved in advance by, the Village. The Village's approval of any Subcontractor, supplier, and subcontract does not relieve the Construction Manager of full responsibility and liability for the provision, performance, and completion of the Project in full compliance with, and as required by or pursuant to, this Agreement. Every subcontract must include a provision binding the Subcontractor to all provisions of this Agreement. If any Subcontractor fails to perform the part of the Project undertaken by it in a manner that is satisfactory, the Construction Manager must immediately upon notice from the Village terminate such Subcontractor or supplier and complete or arrange for completion of the portion of the Project that was to be performed by the terminated Subcontractor. The Construction Manager shall have no excuse in the event that a Subcontractor fails to properly perform any portion of the Project. The Construction Manager will have no claim for damages, for compensation in excess of the compensation set forth in Article 5 of the Agreement, or for a delay or extension of the deadlines in the Agreement ("Contract Time") as a result of any such termination."

4. Reliance on Initial Information. Section 1.2 of the Agreement shall be replaced in its entirety with the following:

"The Construction Manager represents and warrants that it has had a sufficient opportunity to conduct a thorough investigation of the work site and the surrounding area and has completed such investigation to its satisfaction. When information pertaining to subsurface, concealed conditions, utility locations or conditions, condition of existing structures, and other investigations is or has been provided by the Village, or is or has been otherwise made available to the Construction Manager by the Village, such information is or has been provided or made available solely for the convenience of the Construction Manager and is not part of this Agreement. The Village assumes no responsibility whatever in respect to the sufficiency or accuracy of such information, and there is no guaranty or warranty, either expressed or implied, that the conditions indicated are representative of those existing throughout the Project or the work site, or that the conditions indicated are representative of those existing at any particular location, or that the conditions indicated may not change, or that unanticipated conditions may not be present."

5. Construction Manager Representative. Section 1.3 of the Agreement shall be replaced in its entirety with the following: "The Construction Manager's representative shall be Kurt Hezner, and the representative shall not be changed without the prior written approval of the Village."
6. Contract Sum, Contract Time and Changes in the Work. Section 2.4 of the Agreement is amended to delete "as certified by the Architect" from the second sentence.

7. Extent of Responsibility. Section 3.1.1 of the Agreement is amended and shall be replaced in its entirety with the following:

"The Construction Manager shall perform the Preconstruction Services using that degree of care, skill, and professionalism ordinarily exercised under similar circumstances by members of the same profession practicing or performing the substantially same or similar services."

8. Subcontractors and Suppliers. Section 3.1.11.1 is hereby amended to delete the following: "If the Village has provided requirements for subcontractor procurement in Section 1.1.14,"
9. Other Preconstruction Phase Services. Section 3.1.14 is hereby amended and replaced in its entirety with the following:

"The Construction Manager shall be responsible for entering into contracts with all suppliers, contractors, and subcontractors (collectively, "Subcontracts") required to complete the Project in accordance with this Agreement, the Architecture drawings, and specifications. Prior to entering into such Subcontracts, the Construction Manager shall provide copies of any proposed Subcontracts to the Village and the Village shall have the right of refuse approval of a Subcontractor and their proposal. All Subcontracts shall include a provision naming the Village as a third-party beneficiary to the Subcontract, and that the work to be performed under each Subcontract is subject to all applicable laws, including, without limitation, each as may be applicable, the Illinois Prevailing Wage Act, 820 ILCS 130/0.01 et seq.; any other applicable prevailing wage laws; the Fair Labor Standards Act; any statutes regarding qualification to do business; any statutes requiring preference to laborers of specified classes; the Illinois Steel Products Procurement Act, 30 ILCS 565/1 et seq.; any statutes prohibiting discrimination because of, or requiring affirmative action based on, race, creed, color, national origin, age, sex, or other prohibited classification, including, without limitation, the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq., the Illinois Human Rights Act, 775 ILCS 5/1 101 et seq., and the Public Works Discrimination Act, 775 ILCS 10/0.01 et seq.; the Employment of Illinois Workers on Public Works Act, 30 ILLS 570/0.01 et seq.; or and any statutes regarding safety or the performance of the Work, including the Illinois Underground Utility Facilities Damage Prevention Act, 220 ILCS 50/1 et seq., and the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651 et seq.

To the extent that the Construction Manager performs any portion of the construction services for the Project, the Construction Manager shall be subject to and comply with all of the above

applicable requirements, including, without limitation, the Illinois Prevailing Wage Act, 820 ILLS 130/0.01 et seq. and shall submit all required documentation, including certified payroll, to the Illinois Department of Labor."

10. Control Estimate. Section 3.2.3 of the Agreement shall be amended to add the following sentence:

"In the event that the Village does not approve the Control Estimate, the Village shall have the right to terminate the Project and shall have no liability to the Construction Manager for any compensation or reimbursements for costs incurred other than those set forth in Section 5.1.1 of this Agreement."

11. Completion. Section 3.3.1.3 shall be amended and replaced in its entirety with the following: "Subject to adjustments of the Contract Time approved by the Village by change order, which approval shall not be unreasonably withheld, the Construction Manager shall guarantee and achieve completion of the entire by a date agreed to by the Village and Construction Manager at the time the control estimate and schedule are approved ("Project Deadline"), provided that the Project Deadline may not be more than five months after the control estimate and schedule are approved."

12. Administration. Section 3.3.2.2 shall be amended to add the following: "Such construction schedule shall be approved by the Village and a change order shall be required if any of the dates on the construction schedule need to be changed, which approval shall not be unreasonably withheld."

13. The Village's Responsibilities. Article 4 of the Agreement is amended to delete Sections 4.1.3, 4.1.4.2, and 4.1.4.3.

14. Changes in the Work.

- A. Sections 6.2.1 is amended by adding at the end of the third sentence, ", as modified by the Addendum."
- B. Section 6.2.3 is amended by deleting "and Architect."
- C. Section 7.1.2 of AIA Document A201-2017, General Conditions of the Contract for Construction, is amended by deleting the third sentence.
- D. Sections 7.3.4 and 7.3.5 of AIA Document A201-2017, General Conditions of the Contract for Construction, are deleted in its entirety and shall not apply.
- E. Section 7.3.9 of AIA Document A201-2017, General Conditions of the Contract for Construction, is amended by deleting the second and third sentences.
- F. Section 7.3.10 shall be amended by deleting from the first sentence, "with a determination made by the Architect".
- G. Section 7.4 of AIA Document A201-2017, General Conditions of the Contract for Construction, is deleted in its entirety and shall not apply.

15. Cost of the Work for the Construction Phase. Article 7 of the Agreement is replaced in its entirety with the following:

"§ 7.1 Payment for the Construction Manager and All Subcontractors for the Construction Phase. For all work and services performed by the Construction Manager and all Subcontractors for the Project during the Construction Phase of the Project, the Village shall pay the Construction Manager 108 percent of the Control Estimate ("Construction Fee"). The Construction Fee includes the Construction Manager's costs to retain Subcontractors and the Construction Manager's and Subcontractors purchase of all supplies and equipment necessary to complete the Project.

§ 7.2 Taxes. The Village is exempt from and will not be responsible to pay or reimburse the Construction Manager or any of the Subcontractors for, any state or local sales, use, or excise taxes. The Construction Fee includes all other applicable federal, state, and local taxes of every kind and nature applicable to the Construction Phase of the Project as well as all taxes, contributions, and premiums for unemployment insurance, old age or retirement benefits, pensions, annuities, or other similar benefits. All claim or right to claim additional compensation by reason of the payment of any such tax, contribution, or premium is hereby waived and released by the Construction Manager.

§ 7.3 Payment in Installments.

A. The Contract Price must be paid in monthly installments. The Village must pay to the Construction Manager 90 percent of the Value of Work, determined in the manner set forth below, installed and complete in place up to the day before the Pay Request, less the aggregate of all previous Progress Payments. The total amount of Progress Payments made prior to Final Acceptance by The Village may not exceed 90 percent of the Control Cost Estimate. The Value of the work during the construction phase will be determined as follows:

The Construction Manager must, not later than 10 days after the acceptance by the Village of the Control Cost Estimate, and before submitting its first Pay Request, submit to the Village a schedule showing the value of each component part of the Project in form and with substantiating data acceptable to the Village ("Breakdown Schedule"). The sum of the items listed in the Breakdown Schedule must equal the amount or amounts set forth in the Control Cost Estimate. An unbalanced Breakdown Schedule providing for overpayment of the Construction Manager on component parts of the Work to be performed first will not be accepted. The Breakdown Schedule must be revised and resubmitted until acceptable to the Village. No payment may be made for any lump sum item until the Construction Manager has submitted, and the Village has approved, an acceptable Breakdown Schedule.

The Village may require that the approved Breakdown Schedule be revised based on developments occurring during the provision and performance of the Project. If the Construction Manager fails to submit a revised Breakdown Schedule that is acceptable to the Village, the Village will have the right either to suspend Progress and Final Payments or to make such Payments based on the Village's determination of the value of the work completed.

B. The Construction Manager must, as a condition precedent to its right to receive each Progress Payment, submit to the Village a pay request in the form provided by the Village ("Pay Request"). The first Pay Request must be submitted not sooner than 30 days following commencement of the construction phase of the Project. The Village may, by written notice to the Construction Manager, designate a specific day of each month on or before which Pay Requests must be submitted. Each Pay Request must include (a) the Construction Manager's certification of the value of, and partial or final waivers of lien covering, all work for which payment is then requested and (b) the Construction Manager's certification that all prior Progress Payments have been properly applied to the payment or reimbursement of the costs with respect to which they were paid.

C. Work Entire. This Agreement and the Project are entire and the Project as a whole is of the essence of this Agreement. Notwithstanding any other provision of this Agreement, each and every part of this Agreement and of the Project are interdependent and common to one another and to the Village's obligation to pay all or any part of the costs for the construction phase of the Project or any other consideration for the Project. Any and all Progress Payments made pursuant to this Article are provided merely for the convenience of the Construction Manager and for no other purpose.

§ 7.4 Final Acceptance and Final Payment.

A. Notice of Completion. When the construction phase of the Project has been completed and is ready in all respects for acceptance by the Village, the Construction Manager must notify the Village and request a final inspection and review of a prepared punch list by the Construction Manager ("Notice of Substantial Completion"). The Construction Manager's Notice of Substantial Completion must be given sufficiently in advance of the Substantial Completion Date to allow for scheduling of the final inspection and for completion or correction before the Completion Date of any items identified by such inspection as being defective, damaged, flawed, unsuitable, nonconforming, incomplete, or otherwise not in full compliance with, or as required by or pursuant to, this Agreement ("Punch List Work").

B. Punch List and Final Acceptance. The construction work may be finally accepted when, and only when, the whole and all parts thereof have been completed to the satisfaction of the Village in full compliance with, and as required by or pursuant to, this Agreement. Upon receipt of the Construction Manager's Notice of Completion, the Village must make a review of the work and notify the Construction Manager in writing of all remaining Punch List Work, if any, to be completed or corrected. Following Construction Manager's completion or correction by the Construction Manager or its subcontractors of all Punch List Work, the Village must make another review of the work and prepare and deliver to the Construction Manager either a written notice of additional Punch List Work to be completed or corrected or a written notice of final acceptance of the Work ("Final Acceptance").

C. Final Payment. The Construction Manager must submit to the Village a properly completed final Pay Request in the form provided by the Village ("Final Pay Request"). The Village must pay to the Construction Manager the balance of the Contract Price, after deducting therefrom all charges against the Construction Manager as provided for in this Agreement ("Final Payment"). Final Payment must be made not later than 30 days after the Village approves the Final Pay Request.

§ 7.5 Liens.

The Construction Manager must, from time to time at The Village's request and in any event prior to Final Payment, furnish to the Village such waiver of liens, to the reasonable satisfaction of the Village, that no lien against the work or the public funds held by the Village exists in favor of any person whatsoever for or by reason of any equipment, material, supplies, or other item furnished, labor performed, or other thing done in connection with the Project or this Agreement ("Lien") and that no right to file any Lien exists in favor of any person whatsoever.

§ 7.6 Deductions.

The Village's Right to Withhold. Notwithstanding any other provision of this Agreement and without prejudice to any of the Village's other rights or remedies, the Village will have the right at any time or times, whether before or after approval of any Pay Request, to deduct and withhold from any Progress or Final Payment that may be or become due under this Agreement such amount as may reasonably appear necessary to compensate the Village for any actual or prospective loss due to: (1) work that is defective, damaged, flawed, unsuitable, nonconforming, or incomplete; (2) damage for which the Construction Manager is liable under this Agreement; (3) state or local sales, use, or excise taxes from which the Village is exempt; (4) Liens or claims of Lien regardless of merit; (5) claims of subcontractors, suppliers, or other persons regardless of merit; (6) delay in the progress or completion of the Project; (7) inability of the Construction Manager or any of its subcontractors to complete the Project; (8) failure of the Construction Manager to properly complete or document any Pay Request; or (9) any other failure of the Construction Manager to perform any of its obligations under this Agreement.

16. Payments for Construction Phases Services. Section 11.1 through 11.1.6.2 and 11.1.8 through 11.2.4 of the Agreement is deleted in its entirety.

17. Dispute Resolution.

A. Section 12.1 of the Agreement is amended and replaced in its entirety with the following:

"§ 12.1 Dispute Resolution Procedure.

Notice of Disputes and Objections. If the Construction Manager disputes or objects to any requirement, direction, instruction, interpretation, determination, or decision of the Village, the Construction Manager may notify the Village in writing of its dispute or objection and of the amount of any equitable adjustment to the contract price or deadlines under this Agreement to which the Construction Manager claims it will be entitled as a result thereof; provided, however, that the Construction Manager must, nevertheless, proceed without delay to perform the work as required, directed, instructed, interpreted, determined, or decided by the Village, without regard to such dispute or objection."

B. Section 12.1.2 of the Agreement is deleted in its entirety and shall not apply.

18. Insurance. Section 14.3.1 is amended by adding the following: All insurance required by this Agreement must provide that no change, modification in, or cancellation of any insurance becomes effective until the expiration of 30 days after written notice thereof has have been given by the insurance company to the Village."

19. Indemnification. The Construction Manager hereby agrees to and will indemnify, save harmless, and defend the Village and all of it elected officials, officers, employees, and representatives against any and all lawsuits, claims, demands, damages, liabilities, losses, and expenses that may arise, or be alleged to have arisen, out of or in connection with the Construction Manager's or any of its Subcontractor's actions, whether or not due or claimed to be due in whole or in part to the active, passive, or concurrent negligence or fault of the Construction Manager, except to the extent caused solely by the negligence of the Village.

20. No Prohibited Interests. The Construction Manager hereby represents that the only persons, firms, or corporations interested in this Agreement as principals are those disclosed to Owner prior to the execution of this Agreement, and that this Agreement is made without collusion with any other person, firm, or corporation. If at any time it is found that the Project Manager has, in procuring this Agreement, colluded with any other person, firm, or corporation, then the Construction Manager will be liable to the Village for all loss or damage that the Village may suffer thereby, and this Agreement will, at the Village's option, be null and void.

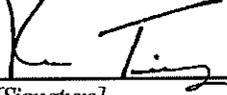
The Construction Manager hereby represents and warrants that neither the Construction Manager nor any person affiliated with the Construction Manager or that has an economic interest in the Construction Manager or that has or will have an interest in the Project or will participate, in any manner whatsoever, in the Project is acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by the United States Treasury Department as a Specially Designated National and Blocked Person, or for or on behalf of any person, group, entity or nation designated in Presidential Executive Order 13224 as a person who commits, threatens to commit, or supports terrorism, and neither the Construction Manager nor any person affiliated with the Construction Manager or that has an economic interest in the Construction Manager or that has or will have an interest in the Project or will participate, in any manner whatsoever, in the Project is, directly or indirectly, engaged in, or facilitating, the Project on behalf of any such person, group, entity or nation.

21. Time. The Contract Time is of the essence of this Agreement.

22. No Third Party Beneficiaries. No claim as a third party beneficiary under this Agreement by any person, firm, or corporation other than the Construction Manager may be made or be valid against the Village.

IN WITNESS WHEREOF, the Village and Construction Manager hereto have caused this Addendum to be executed as of this 9th day of October, 2023.

VILLAGE OF VERNON HILLS



[Signature]

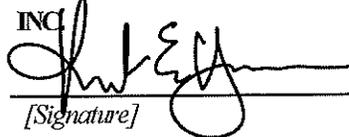
Kevin Timony

[Printed Name]

Village Manager

[Title]

**HEZCORP CONSTRUCTION SERVICES,
INC.**



[Signature]

Kurt E. Hezner

[Printed Name]

President

[Title]

AIA[®] Document A134[™] – 2019

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

AGREEMENT made as of the 9th day of October in the year 2023

(In words, indicate day, month, and year.)

BETWEEN the Owner:

(Name, legal status, address, and other information)

The Village of Vernon Hills

290 Evergreen Drive

Vernon Hills, IL 60061

Phone: 847-918-3544 - Christopher Venatta, P.E.,

Director of Public Works/Village Engineer

and the Construction Manager:

(Name, legal status, address, and other information)

Hezcorp Construction Services, Inc.

678 Broadway Street, Suite 100

Libertyville, IL 60048

Phone: 847-918-3800 x110 - Kurt Hezner

for the following Project:

(Name, location, and detailed description)

The Construction of Improvements for the Village of Vernon Hills Police Department Booking Area,
754 Lakeview Parkway, Vernon Hills, IL 60061.

The Architect:

(Name, legal status, address, and other information)

The Hezner Corporation

678 Broadway Street, Suite 100

Libertyville, IL 60048

847-918-3800

The Owner and Construction Manager agree as follows.

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.

Int.

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EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.") The Agreement is based on the selected concept outlined in the Schematic Planning Option A2.2b, and the Revised Base Opinion of Probable Project Costs and most current bid drawing set all dated 8/15/2023.

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

The Owner's program is based on the selected concept outlined in the Schematic Planning Option A2.2b and the Revised Base Opinion of Probable Project Costs and most current bid drawing set all dated 8/15/2023.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

The project consists of 600 s.f. Remodeling of an Existing Booking Area within the existing Village of Vernon Hills Police Department Detention Area.

Init.

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

Construction Costs - \$187,679.00

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

- .1 Design phase milestone dates, if any:
Completion of Construction Documents - 10/10/2023
Completion of Public Bid - 11/15/2023
- .2 Construction commencement date: 2/10/2024
- .3 Substantial Completion date or dates, if not established in this Agreement under Section 3.3.1.3:
3/7/2024
- .4 Other milestone dates:
Maximum of thirty (30) working days for holding area to be out of service.

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

None

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

None

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

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

None

Init.

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

Christopher Venatta, P.E.
Director of Public Works/Village Engineer
490 Greenleaf Drive
Vernon Hills, IL 60061-1039

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:
(List name, address and other contact information.)

Scott Hezner - Architect
The Hezner Corporation, Inc.
678 Broadway Street, Suite 100
Libertyville, IL 60048
847-918-3800 x111

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

.1 Communications Consultants
None

.2 Civil Engineer:
None Required

.3 Other, if any:
(List any other consultants retained by the Owner, such as a Project or Program Manager.)
None

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

Scott Hezner
The Hezner Corporation
678 Broadway Street, Suite 100
Libertyville, IL 60048
847-918-3800 x111

Init.

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

Kurt Hezner
Hezcorp Construction Services, Inc.
678 Broadway Street, Suite 100
Libertyville, IL 60048
847-918-3800 x110

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

None

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

All subcontractors for the project will be procured by competitive Public Bid per the State of Illinois Public Procurement Standards.

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

None

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Contract Sum and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's approval of the Control Estimate, the Contract Documents will also include the documents described in Section 3.2.2 and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.7. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and

supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, shall apply as follows: Governing Law. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

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

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

The Contract Sum is the actual Cost of the Work as defined in Section 7.1.1 plus the Construction Manager's Fee as defined in Section 6.1. The Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work as certified by the Architect. The Contract Time shall be measured from the date of commencement of the Work.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

~~The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.~~

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

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

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§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project.

§ 3.1.4 Project Schedule

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

§ 3.1.5 Phased Construction

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

§ 3.1.6 Cost Estimates

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

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

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 None

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 ~~If the Owner has provided requirements for subcontractor procurement in section 1.1.14,~~ the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

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

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

§ 3.1.12 Procurement

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

§ 3.1.13 Compliance with Laws

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

§ 3.1.14 Other Preconstruction Phase Services

insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document.

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

- Organize and conduct Public Bid
- Establish site conferences prior to commencement of construction
- Establish project schedule
- Preliminary value engineering reviews
- Prepare final bid review and analysis to establish control estimate for final approval by The Village of Vernon Hills, IL.

§ 3.2 Control Estimate

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Control Estimate for the Owner's and Architect's review, and the Owner's approval. The Control Estimate shall be the sum of the Construction Manager's estimate of the Cost of the Work and the Construction Manager's Fee. The Control Estimate shall be used to monitor actual costs and the timely performance of the Work. The Construction Manager shall update the Control Estimate with each Application for Payment as needed to reflect changes in the Work.

§ 3.2.2 The Control Estimate shall include:

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

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

~~§ 3.2.4 To the extent that the Contract Documents are anticipated to require further development, the Control Estimate shall include the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated in a revised Control Estimate by mutual agreement of the parties.~~

~~§ 3.2.5 The Construction Manager shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Construction Manager's first Application for Payment and shall be revised and submitted with each Application for Payment.~~

~~§ 3.2.6 Prior to commencement of the Construction Phase, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, unless the Owner provides prior written authorization for such costs.~~

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

§ 3.3 Construction Phase

§ 3.3.1 General

~~§ 3.3.1.1 The date of commencement of Work shall mean the date of commencement of the Construction Phase.~~

~~§ 3.3.1.2 The Construction Phase shall commence upon the Owner's approval of the Control Estimate or, prior to acceptance of the Control Estimate, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to approval of the Control Estimate.~~

§ 3.3.1.3 Substantial Completion

~~§ 3.3.1.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of the entire Work.~~

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

Not later than _____ (_____) calendar days from the date of commencement of the Work.

By the following date: _____

By the date to be established in the Control Estimate and approved by the Owner.

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

Portion of Work	Substantial Completion Date
None - Not a Phased Completed Project requiring Phased Occupancy by The Village of Vernon Hills, IL.	

~~§ 3.3.1.3.3 None~~

§ 3.3.2 Administration

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

§ 3.3.2.2 Upon the Owner's approval of the Control Estimate, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule.

§ 3.3.2.3 Monthly Report

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

§ 3.3.2.4 Daily Logs

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

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

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

§ 4.1.2 Prior to the Owner's approval of the Control Estimate, 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. After the Owner approves the Control Estimate, the Construction Manager may request such information.

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

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and 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.

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

~~**§ 4.1.4.2** Not Required~~

~~**§ 4.1.4.3** Not Required~~

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

§ 4.1.6 None

§ 4.2 Owner's Designated Representative

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

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

§ 4.3 Architect

~~The Owner shall retain an Architect to provide services, duties and responsibilities as described in The Vernon Hills Professional Services Agreement dated 6/5/2023—Owner/Architectural Agreement for Architectural Services including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this agreement.~~

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

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

For a fixed fee of Four Thousand and no/100 Dollars (\$4,000.00) plus reimbursable expenses as listed.

- Reproduction, shopping, handling, delivery
- Transactional taxes and fees paid for approval of authorities having jurisdiction over the project (if required)
- Authorized out of town travel
- Additional insurance cover over limited requested by Client in excess of normally provided by Hezcorp Construction Services, Inc.

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

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

Individual or Position	Rate
- Principal	\$175/per hr.
- Project Manager/Project Superintendent	\$146/per hr.

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such

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as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within 90 days or (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.

§ 5.2 Payments

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

§ 5.2.2 All payments, and any associated late payment penalties or interest shall be governed by the local governmental Prompt Payment Act (50ILCS 505/1 et seq.).

(Insert rate of monthly or annual interest agreed upon.)

Rate as the prime listed by the Northern Trust from time to time plus two an one half percent (2.5%) per month.

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

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

§ 6.1.2 The Construction Manager's Fee:

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

8%

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

Change Order

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

10% plus General Conditions if any

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed percent (10 %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Unit prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
None		

§ 6.1.7 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

None

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

None

§ 6.2 Changes in the Work

§ 6.2.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work, as provided in Article 7 of AIA Document A201-2017, General Conditions of the Contract for Construction. The Construction Manager shall incorporate all changes in the Work and Contract Time as separate entries in the Control Estimate.

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

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

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

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

§ 6.2.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

~~§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.~~

~~§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.~~

~~§ 7.1.3 Costs shall be at rates not higher than the standard paid at the place of the Project, except with prior approval of the Owner.~~

§ 7.2 Labor Costs

~~§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site will be prevailing wage.~~

Init.

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

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

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

None

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

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

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

~~§ 7.3 Subcontract Costs~~

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

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

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

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

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

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

~~§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.~~

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

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

None

Init.

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

~~§ 7.6 Miscellaneous Costs~~

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

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

~~None~~

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

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

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

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

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

~~§ 7.6.7 Costs of document reproductions and delivery charges.~~

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

~~§ 7.6.9 Legal, mediation, including attorney's 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 with the Owner's prior approval, which shall not be unreasonably withheld.~~

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

~~None~~

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

~~None~~

~~§ 7.7 Other Costs and Emergencies~~

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

~~§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201-2017.~~

Init.

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

~~§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.~~

~~§ 7.8 Related Party Transactions~~

~~§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; and (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.~~

~~§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.~~

~~§ 7.9 Costs Not to Be Reimbursed~~

~~§ 7.9.1 The Cost of the Work shall not include the items listed below:~~

- ~~1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;~~
- ~~2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;~~
- ~~3 Expenses of the Construction Manager's principal office and offices other than the site office;~~
- ~~4 Overhead and general expenses, except as may be expressly included in Sections 7.1 through 7.7;~~
- ~~5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;~~
- ~~6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;~~
- ~~7 Any cost not specifically and expressly described in Sections 7.1 through 7.7; and~~
- ~~8 Costs for services incurred during the Preconstruction Phase.~~

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 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 the amount to be paid, less such discount, 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.

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager

shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

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

ARTICLE 10 ACCOUNTING RECORDS

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

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

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

~~§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 1st day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the 30th day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than Thirty (30) days after the Architect receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)~~

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit the cost control information required in Section 3.2.5, plus waivers of lien to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Applications for Payment shall show the Cost of the Work actually incurred by the Construction Manager through the end of the period covered by the Application for Payment and for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment.

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

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

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

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

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

§ 11.1.7 Retainage

§ 11.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Retainage in the amount of 10% of the requested amount on the Contractor's application for payment will be withheld from each monthly payout to the Contractors.

§ 11.1.7.1.1 The following items are not subject to retainage:

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

- Preconstruction Services
- General Conditions
- Insurance
- Bonds

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

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

Retainage amounts will be reduced to 5% of the requested amounts to be withheld from future payments to the CMC at Risk, once the project exceeds 50% completion.

§ 11.1.7.3 Except as may be set forth in this Section 11.1.7.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

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

Retainage amounts will be released on the date of Substantial Completion, less any amounts reasonably withheld to cover the cost of correction of outstanding Punch List Items, including cost to correct defective and non-conforming work.

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

~~§ 11.1.9 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.~~

~~§ 11.1.10 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.~~

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

~~§ 11.2 Final Payment~~

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

- ~~1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment;~~
- ~~2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and~~
- ~~3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.~~

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

~~§ 11.2.3 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:~~

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~~§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs described in Sections 7.1 through 7.7 and not excluded by Section 7.9 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment.~~

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

At the prime rate as listed by the Northern Trust from time to time plus 2.5% per month until payment is satisfied.

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

~~§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201-2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or dispute resolution, and Section 12.1.2 of this Agreement shall not apply.~~

§ 12.1.2 The Owner will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201-2017, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

- Arbitration pursuant to Article 15 of AIA Document A201-2017
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Owner's Approval of the Control Estimate

§ 13.1.1 Prior to the Owner's approval of the Control Estimate, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201-2017.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of

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termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 In the event of termination of this Agreement pursuant to Section 13.1.1 after the commencement of the Construction Phase but prior to the Owner's approval of the Control Estimate, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.4 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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

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

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201-2017.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201-2017, the Owner shall then only pay the Construction Manager an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager'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;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201-2017.

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

§ 13.2.3 Termination by the Owner for Convenience

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

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

Amount of current work completed at time of termination.

§ 13.2.4 Suspension

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

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

§ 14.2 Successors and Assigns

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

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

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

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

§ 14.3.1.1 Commercial General Liability with policy limits of not less than two million (\$2,000,000) for each occurrence and two million (\$2,000,000) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than one million (\$ 1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than one million (\$ 1,000,000) each accident, one million (\$ 1,000,000) each employee, and one million (\$ 1,000,000) policy limit.

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§ 14.3.1.6 Other Insurance

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

Coverage

Limits

Umbrella Liability and Excess Liability with Policy Limits not less than Four Million (\$4,000,000).

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

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

See attached Exhibit for Construction Managers Certificate of Insurance.

§ 14.3.2 Construction Phase

After the Owner approves the Control Estimate, the Owner and Construction Manager shall purchase and maintain insurance.

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

Per prepared Construction Documents defining scope of the project if required by the municipality.

ARTICLE 15 SCOPE OF THE AGREEMENT

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

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§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A134™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price
- .2 AIA Document A134™-2019, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction

- .4 Other Exhibits:
(Check all boxes that apply.)

AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
(Insert the date of the E234-2019 incorporated into this Agreement.)

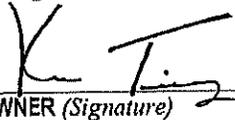
Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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- .5 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

None

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


OWNER (Signature)

Kevin Timony, Village Manager

(Printed name and title)
Village of Vernon Hills, IL


CONSTRUCTION MANAGER (Signature)

Kurt E. Hezner, President

(Printed name and title)
Hezcorp Construction Services, Inc.

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