

VILLAGE OF DOWNERS GROVE
Report for the Village Council Meeting
12/7/2021

SUBJECT:	SUBMITTED BY:
Facilities Replacement & Sustainability Plan: Design and Construction Management Contracts	Enza Petrarca Village Attorney

SYNOPSIS

Resolutions have been prepared approving contracts with FGM Architects, Inc. and Leopardo Companies, Inc. for design and construction of the new combined facility and related site work that is part of the Facility Replacement and Sustainability Plan (FRSP).

STRATEGIC PLAN ALIGNMENT

The goals for 2021-2023 include *Exceptional Municipal Services* and *Top Quality Infrastructure*.

FISCAL IMPACT

The estimated cost for the FGMA contract is \$3,825,000. The cost for pre-construction services to be performed by Leopardo is \$100,460. These amounts are consistent with the project budget.

The total project budget is \$55 million. Expenses for the architect and construction manager services are reflected in the Major Building Fund in the FY21 Budget and Proposed FY22 Budget. The FY23 and 24 budgets will reflect any expenses planned to be incurred at that time. The total cost of the project will be equal to or less than the Guaranteed Maximum Price (GMP). The GMP will be prepared and submitted for Village review at the completion of the design phase of the project.

RECOMMENDATION

Approval on the December 14, 2021 Active Agenda.

BACKGROUND

The 42 year-old Police Station and 90+ year-old Village Hall are in below average condition and do not provide modern work spaces that allow for efficient and effective interactions among employees and customers. Both facilities have outdated major building systems that will require significant investment to replace. These two buildings are in need of major renovation or replacement. Maintenance activities in the Police Station and Village Hall have been limited in recent years in anticipation of replacement of these buildings.

On June 15, 2021, the Village Council discussed the Facility Replacement & Sustainability Plan (FRSP) as part of the Village's Long-Range Planning (LRP) process. The FRSP would replace the existing Village Hall and Police Station with a combined facility located on the Civic Center site. More information about this Priority Action Item can be found [here](#). At the meeting, the Village Council directed staff to proceed with the FRSP, which had been suspended since March 2020 due to the COVID-19 Pandemic.

Since the Village Council's direction in mid-June, staff has completed the following related to the FRSP:

- Reviewed and updated the space needs and programming information

- Updated project cost estimates
- Established a total project budget of \$55,000,000
- Updated and presented the preliminary project schedule
- Updated and presented the preliminary site plan
- Selected the preferred configuration of the Washington Street crossing
- Confirmed objectives for exterior design of the new facility
- Approved key terms of a partnership with School District 58

At the Village Council meeting on September 14, 2021, the Council unanimously directed staff to negotiate contract terms for the design and construction of the FRSP with FGM Architects, Inc. and Leopardo Companies, Inc. The Village has had an established contractual relationship with these firms and they have played an integral role in the progress that has been made to date. Both firms are qualified and capable of completing the design and construction work associated with this project.

The contract documents presented for Village Council consideration include use of the Construction Manager at Risk delivery method for designing and constructing the project. Under this delivery method, the Village holds separate contracts with the design firm (FGM Architects, Inc.) and construction manager (Leopardo Companies, Inc.) Contracts are typically approved early in the planning phase of the project. There are several advantages to this delivery method, including the following:

- The firms will work as a team with Village staff throughout the design and construction process
- The construction manager (CM) offers insights on constructability, value engineering, cost estimating, and schedule during the design phase
- The schedule for design and construction will progress more rapidly and offers greater flexibility
- The Village will obtain cost certainty early in the process
- Selection of construction contractor is based on qualifications rather than low bid
- The construction management firm is responsible for timely completion of the project and holds the risk of cost overruns.

The key terms of the contracts are summarized below.

Design contract with FGM Architects, Inc.

- The agreement with FGM is based on the the American Institute of Architects (AIA) Document B133 Standard Form of Agreement Between Owner and Architect
- FGM shall design the Police Station/Village Hall/District 58 Administration building and related improvements in a manner consistent with the approved project program and preliminary site plan. Design shall include architectural, civil engineering and landscape plans
- FGM shall prepare the following for review by Leopardo and approval by the Village:
 - Schematic Design Documents (site plan, preliminary building plans, sections and elevations, study models, sketches or digital representations)
 - Design Development Documents (plans, sections, elevations, typical construction details, diagrammatic layout of building systems and outline specifications that identify major materials and systems)
 - Construction Documents (final drawings and specifications suitable for construction)
 - Schedule of work
- FGM shall:
 - Participate in developing and revising the project schedule
 - Assist the Village in reviewing the cost estimate and Guaranteed Maximum Price
 - Assist in the construction bidding process
 - Provide administration of the construction manager contract

- Advise and consult the Village and Leopardo during the construction of the project and have the authority to act on behalf of the Village
- Visit the construction site to determine if the work is being performed in accordance with the construction documents
- Interpret and decide matters concerning performance under the requirements of the construction documents
- Review and certify the payments due to Leopardo
- Review items submitted by Leopardo (shop drawings, product data samples, etc.)
- Conduct inspections to determine when the project has reached substantial completion
- FGM's services and costs are summarized in the following table:

Type	Cost	Description
Basic Services	Lump sum of \$3,627,865	Usual and customary architectural, structural engineering, mechanical engineering, electrical engineering, civil engineering, landscape architecture, technology, security and acoustical consulting, IECC 2018 compliant commissioning, interior design, lighting design, furnishings, fixtures and equipment (FFE), and environmental graphics design services.
Supplemental Services	Up to \$78,000 for services that the Village elects to receive	Design of telecommunications and data systems, and commissioning services
Reimbursable Services	Up to \$119,135	Services provided by consultants working as subcontractors for FGM including geotechnical and other specialty services

Construction Management Contract with Leopardo Companies, Inc.

- The agreement with Leopardo consists of the following three key documents:
 - AIA Document A133 Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of Work Plus a Fee with a Guaranteed Maximum Price (to be approved by the Village Council with this agenda item)
 - AIA Document A201 General Conditions of the Contract for Construction (to be approved by the Village Council with this agenda item)
 - AIA Document A133 Exhibit A Guaranteed Maximum Price Amendment (to be approved by the Village Council upon the completion of the design plans and submittal of the Guaranteed Maximum Price)
- Leopardo shall provide the following Preconstruction Services at a lump sum price of \$100,460:
 - Provide a preliminary evaluation of the program, schedule and construction budget requirements
 - Advise the Village and FGM on the proposed site use and improvements, selection of materials, building systems and equipment
 - Provide recommendations on constructability, availability of materials and labor, time requirements for procurement, installation and construction, prefabrication and factors related to construction cost
 - Prepare and periodically update the Project Schedule
 - Prepare two project cost estimates; one at completion of Schematic Design, one at completion of Design Development

- Coordinate the work of the Village's consultants
 - Bidding, Negotiation and Award of all trades in multiple bid packages
- Leopardo shall provide the following Construction Services:
 - Construct the project
 - Prepare and adhere to a construction schedule
 - Develop a system for cost control
- Leopardo shall provide the Village with the Guaranteed Maximum Price (GMP) after the Design Development plans are completed:
 - The Village shall pay Leopardo an amount equal to or less than the GMP
 - The Village may accept the GMP and authorize Leopardo to proceed with the project. This action requires the Village Council to approve the GMP amendment to Leopardo's contract.
 - The Village may choose to reject the GMP and not proceed with the project.
 - The GMP consists of all project costs including the construction manager fee (3% of the project cost), a construction manager's contingency (5% of the project cost) and the Village's contingency (2% of the project cost).
 - If the actual cost of the project is less than the GMP, Leopardo and the Village shall share in the savings with the Village receiving 70% and Leopardo receiving 30%
 - The GMP may be increased using a Change Order process to address unforeseen conditions and Village authorized changes in project scope.

ATTACHMENTS

Resolutions

Contracts

RESOLUTION NO. _____**A RESOLUTION AUTHORIZING EXECUTION OF AIA A133 AGREEMENT
BETWEEN THE VILLAGE OF DOWNERS GROVE AS OWNER AND
LEOPARDO COMPANIES, INC. AS CONSTRUCTION MANAGER/CONSTRUCTOR**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain AIA A133 Agreement (the "Agreement"), between the Village of Downers Grove, as Owner, and Leopardo Companies, Inc., as Construction Manager/Contractor, for management and construction services for the new combined Village Hall/Police Station project, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. Due to the complexity of the project and Leopardo's knowledge, skill and experience on these types of projects, the Village Council has determined that it is in the best interest of the Village and its residents to waive the competitive bidding requirements as allowed under Chapter 2, Division 2.III.4, of the Downers Grove Municipal Code.

3. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

4. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

5. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

6. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____
Village Clerk



AIA[®] Document A133[™] – 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 with a Guaranteed Maximum Price

AGREEMENT made as of the 14 day of December in the year 2021
(In words, indicate day, month, and year.)

BETWEEN the Owner:

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

Village of Downers Grove
801 Burlington Avenue
Downers Grove, IL 60515

and the Construction Manager:

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

Leopardo Companies, Inc.
5200 Prairie Stone Parkway
Hoffman Estates, Illinois 60192

for the following Project:

(Name, location, and detailed description)

Village of Downers Grove Police Department & Village Hall & SD 58 Administrative Offices
801 Burlington Ave
Downers Grove, IL 60515

The Architect:

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

FGM Architects Inc.
1211 West 22nd Street, Suite 700
Oak Brook, Illinois 60523

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

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

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

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

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ARTICLE 1 INITIAL INFORMATION

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

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

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

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

The Owner's Preliminary Program Summary dated October 4, 2021 and Preliminary Site Plan dated November 12, 2021, attached as Exhibit B.

§ 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 the design and development of a new civic center campus, at the current downtown location of 801 Burlington Avenue, Downers Grove, IL 60515 to accommodate the program for the Police Department, Village Hall & School District 58 Administrative Offices. The Owner's Preliminary Program Summary dated October 4, 2021 and Preliminary Site Plan dated November 12, 2021, attached as Exhibit B.

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

(Provide total and, if known, a line item breakdown.)

TBD

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

.1 Design phase milestone dates, if any:

As provided for in Exhibit A

.2 Construction commencement date:

As provided for in Exhibit A

.3 Substantial Completion date or dates:

As provided for in Exhibit A

.4 Other milestone dates:

As provided for in Exhibit A

§ 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.)

TBD

§ 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.)

TBD

§ 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.)

TBD

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:

(List name, address, and other contact information.)

Michael Baker
Deputy Village Manager
Village of Downers Grove
801 Burlington Avenue
Downers Grove, IL 60515
Office 630.434.6877

§ 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.)

FGMA Architects Inc.

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

.1
(Paragraphs deleted)
Traffic Engineer

.2 Environmental Consultant for Phase I and Phase II environmental survey

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

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

Brian Meade, AIA, LEED AP
FGM Architects Inc.
1211 West 22nd Street, Suite 700
Oak Brook, Illinois 60523
Telephone: 630.574.8711
Email: BrianM@fgmarchitects.com

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

Leigh McMillen
Leopardo Companies, Inc.
5200 Prairie Stone Parkway
Hoffman Estates, Illinois 60192
Telephone: 847-783-3816
Email: lamcmillen@leopardo.com

§ 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.)

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

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

§ 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 Guaranteed Maximum Price 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, General Conditions of the Contract (A201), Drawings, Specifications, Exhibits, 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 acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification (including the GMP Amendment and Change Orders) or Construction Manager's Clarifications and Assumptions (portion of *Exhibit E*), 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: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 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.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201–2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 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 except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the 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, cost-estimates, coordination, and scheduling of the Work.

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

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.4 Project Schedule

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

§ 3.1.5 Phased Construction

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

§ 3.1.6 Cost Estimates

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

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. 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.

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

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

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

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 Subcontractors and Suppliers

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

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

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

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect and Owner's review and 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 establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 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 regarding performance of the Work (but not the design of the Work) and construction means and methods requirements 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 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.)

- Coordination with Village of Downers Grove Staff & Design Team Throughout Preconstruction Phase
- Coordination of Owner's Consultants
- Assist Village of Downers Grove Staff & Design Team with Entitlements Process
- Systems comparison pricing and cost savings options pricing
- Cost segregation for School District 58
- Phasing Planning
- Logistics Planning
- Scheduling Planning
- 100% Schematic Design Estimate
- 100% Design Development Estimate & GMP Preparation
- Bidding, Negotiation, & Award of all Trades in Multiple Bid Packages
- Procurement & Coordination of Subcontractors, Materials, and equipment Prior to Construction

Init.

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and with GMP Documents to a level of completion as agreed by Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes 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 by Change Order.

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2 ("Construction Manager's Clarifications and Assumptions");
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its Construction Manager Contingency of Five Percent (5%) of the estimated Cost of the Work (exclusive of Construction Manager's Lump Sum Insurance Charge, Lump Sum Payment and Performance Bond Lump Sum Charge, Builders Risk Insurance Lump Sum Charge, and Construction Manager's Fee) for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. The Owner shall also carry its own Owner Contingency separate from the GMP, in the amount of Two Percent (2%) of the GMP value for potential unforeseen Design issues and concealed conditions that may arise during construction.

§ 3.2.4.1 The Construction Manager's Contingency is not allocated to any particular item of Cost of the Work, may be utilized without the necessity of any Change Order, and shall be used to mitigate risk and the unanticipated costs that may occur between Construction Manager and its Subcontractors' costs incurred from portions of the Work inadvertently not assigned to any Subcontractor, items that were not anticipated by Construction Manager at the time of Owner's approval of the Guaranteed Maximum Price Proposal, Subcontractor defaults, Contractor's insurance deductibles, coordination of the work of Subcontractors with Owner's Separate Contractors, corrections in the Work provided Construction Manager has exhausted all reasonable means short of arbitration to obtain correction from any responsible Subcontractors, and costs required to maintain the Project Schedule (not due to the Owner's or Architect's actions or failure to act or other excusable delays as defined by Section 8.3.1 of the General Conditions ("Excusable Delays")).

§ 3.2.4.2 The Construction Manager's Contingency shall not be used to offset or to fund Owner-ordered changes in the Work, design errors, omissions, incompleteness or lack of design coordination, changes in scope, systems, kinds and quality of materials, finishes or equipment, costs caused by Excusable Delays, costs of addressing differing or concealed conditions, costs of Handling Hazardous Substances not brought to the site by Construction Manager, costs of industry-wide shortages or industry-wide price escalations or any other costs or damages for which Construction Manager is entitled to an increase in the Guaranteed Maximum Price.

§ 3.2.4.3 Whenever any of the Contract Documents use the terms or phrases "at Contractor's (or Construction Manager's) sole expense", "at no cost to Owner", "Contractor shall pay to Owner", "Owner may deduct", "a Change Order deducting", "Contractor shall bear", "to be borne by Contractor" or the like, such terms and phrases shall be deemed modified by the

following: "subject to Construction Manager's right to use Construction Manager's Contingency, pursuant to the terms and conditions of Section 3.2.4 of the Agreement."

§ 3.2.4.4 Construction Manager shall maintain a "Construction Manager's Contingency Expense Log" which shall contain a list and description of all items paid out of the Construction Manager's Contingency and showing movement from the Construction Manager's Contingency to other line items. Construction Manager shall update and submit a copy of such Construction Manager's Contingency Expense Log and supporting documentation reasonably acceptable to Owner along with each application for payment and at any other time when reasonably requested by Owner.

§ 3.2.4.5 Any unused portion of the Construction Manager's Contingency will be considered Project Savings ("Construction Manager's Contingency Savings") and will be finally distributed as provided by Section 6.2.1 of this Agreement only at approval of the payment application after Substantial Completion.

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

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. 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 agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

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

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the last of (a) Owner's execution of the Guaranteed Maximum Price Amendment; or (b) the Owner's issuance of a Notice to Proceed; (c) issuance of Issued for Construction Documents (*Exhibit BR*); (d) receipt by Construction Manager of Owner's written authorization that Construction Manager may award all Subcontractor and Supplier Contracts; (e) receipt by Construction Manager of confirmation that governing authorities have issued all required building permits necessary to begin and continue construction; (f) receipt by Construction Manager of written confirmation that project financing is in place sufficient to ensure payment of the entire Guaranteed Maximum Price timely and in full accordance with the payment terms of this Agreement to the reasonable satisfaction of Construction Manager; and (h) receipt by Construction Manager of (i) an original of this Agreement and the other Contract Documents executed by Owner, and (ii) if required by Section B.2.3 of *Exhibit H*, that Owner provide the Builder's Risk policy to be purchased and maintained under *Exhibit H*, Insurance and Bonds. In the event Construction Manager commences construction in advance of any of the foregoing conditions, Construction

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Manager shall be entitled to an extension of time in accordance with Section 8.3.1 of the General Conditions, if such condition's failure causes delay.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings with the Owners and Architect to discuss such matters as procedures, progress, coordination, cost-estimates 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 execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201-2017.

§ 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.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

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 execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

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

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

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative

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

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

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™-2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the 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:

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

Lump Sum Amount of One Hundred Thousand Four Hundred Sixty Dollars and Zero Cents \$100,460.00

§ 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

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

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed by June, 2022, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

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

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's
(Paragraphs deleted)
invoice, in accordance with the Illinois Prompt Payment Act.

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 execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

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

§ 6.1.2.1 The Construction Manager's Fee shall be Three Percent (3%) of the Cost of the Work as defined in Article 7 and including Construction Manager's Lump Sum General Conditions and Subcontractor Default Insurance (SDI) Lump Sum Charge.

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

Will include mark-ups of Construction Manager's Fee, Construction Manager's Lump Sum Insurance Charge, Construction Manager's Lump Sum SDI Charge, Construction Manager's Lump Sum Builder's Risk Insurance Charge, Payment and Performance Bond Lump Sum Charge all in the percentages set forth in Sections 7.2.2 of this Agreement and subject to subcontractor and Construction Manager self-performed work limitations .

There shall be no credit of Construction Manager's Fee on credit amounts in Change Orders.

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

Fifteen Percent (15%) for First Tier, Twenty Percent (20%) total limits inclusive of First Tier and all Multiple Tiers.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed Ninety percent (90%) of the AED Green Book.

§ 6.1.6 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

§ 6.1.7 Other:

(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the

Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.2.1 To the extent that the Construction Manager is able to procure ("Buyout") Subcontractor's Costs for an amount less than that shown in the Guaranteed Maximum Price Schedule of Values, the amount of such difference shall be deemed the "Buyout Savings." The Owner and Construction Manager shall share the Buyout Savings, Trade Savings and any Construction Manager's Contingency Savings of Section 3.2.4.5 (together, "Project Savings"), the Owner shall receive Seventy percent (70%) of the Project Savings and the Construction Manager shall receive Thirty percent (30%) of the Project Savings. Buyout Savings shall accrue to line items within the sworn statement titled "Owners Shared Savings" and "Construction Manager's Shared Savings." Upon the billing next after Substantial Completion, the Owner's Shared Savings shall be credited to Owner as a deductive Change Order and the Construction Manager's Shared Savings shall be added to Construction Manager's Fee.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of other than minor changes in the Work.

§ 6.3.1.1 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.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 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.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 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, and the Guaranteed Maximum Price shall be adjusted accordingly.

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 rates 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 or, with the Owner's prior approval, at off-site workshops, except if part of Construction Manager's Lump Sum Trade Items, are included in Construction Manager's Lump Sum General Conditions Charge.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site or working on this Project and performing Work, with the Owner's prior approval are included in Construction Manager's Lump Sum General Conditions Charge and Builders Risk Lump Sum Charge.

(Paragraphs deleted)

§ 7.2.2.1 A lump sum amount as set forth in the GMP Amendment for General Conditions ("Construction Manager's Lump Sum General Conditions Charge") as defined in *Exhibit A*.

§ 7.2.2.2 A lump sum amount of One and Two Tenths Percent (1.2%) of the Subcontractor portion of the Cost of the Work including General Conditions for Subcontractor Default Insurance (SDI) as defined in Section 14.6.1 of this Agreement ("Construction Manager's Lump Sum SDI Charge") as defined in *Exhibit A*.

§ 7.2.2.3 A lump sum amount of One Fourth Percent (0.25%) of the Cost of the Work, including General Conditions, Subcontractor Default Insurance (SDI), Contingency, and Construction Manager's Fee, for Construction Manager's Builder's Risk Insurance ("Construction Manager's Lump Sum Builder's Risk Insurance Charge") as defined in *Exhibit A*.

§ 7.2.2.4 A lump sum amount of One and Two Tenths Percent (1.2%) of the Cost of the Work, including General Conditions, Subcontractor Default Insurance (SDI), Contingency, Construction Manager's Fee, and Builder's Risk Insurance, for Construction Manager's Insurance ("Construction Manager's Lump Sum Insurance Charge") as defined in *Exhibit A*.

§ 7.2.2.5 A lump sum amount of One Percent (1%) of the Cost of the Work, including General Conditions, Subcontractor Default Insurance (SDI), Contingency, Construction Manager's Fee, Builder's Risk Insurance, and Construction Manager's Insurance, for Construction Manager's Payment and Performance Bond ("Construction Manager's Lump Sum Payment and Performance Bond Charge") as defined in *Exhibit A*.

§ 7.2.2.6 See attached *Exhibit G* for a list of hourly rates for Construction Manager's Additional Work.

§ 7.2.2.7 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 are included in Construction Manager's Lump Sum General Conditions Charge, 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.)*

§ 7.2.3 Wages and 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 are included in Construction Manager's Lump Sum General Conditions Charge.

§ 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.

§ 7.3.1 In addition to Construction Manager's Fee, Construction Manager's Lump Sum General Conditions Charge, Construction Manager's Lump Sum Insurance Charge and Construction Manager's Lump Sum SDI Charge, Construction Manager will be allowed to self-perform the following trade work for lump sum compensation to be agreed by Owner and Construction Manager as Subcontract Costs separately for each of (i) rough and interior

carpentry, (ii) metal studs and drywall, (iii) electrical and low voltage, (iv) demolition, and (v) painting and wall covering (exclusive of Touch-Up Allowance), each subject to increase in accordance with Article 7 of the General Conditions for changed work (collectively, the "Construction Manager's Lump Sum Trade Items"). If Owner directs that Construction Manager bid any of Construction Manager's Lump Sum Trade Items, Construction Manager shall be obligated to solicit competing bids of subcontractors for Construction Manager's Lump Sum Trade Items. Owner shall award to Construction Manager each component of the Construction Manager's Lump Sum Trade Items at the lower of (a) Construction Manager's bid price, or (b) if Construction Manager wishes to perform the work, for the price of the lowest bid received by Construction Manager from prospective subcontractors of comparable quality and financial strength of Construction Manager after detailed bid review and analysis. Notwithstanding the Owner's right otherwise to audit the Cost of the Work, none of the Construction Manager's Lump Sum Trade Items shall be auditable but instead each shall be deemed to be the actual cost for determining the Cost of the Work.

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

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

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

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

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

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract as compensated under Sections 7.2.2.2 and 7.2.2.3 above.

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

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable. The parties agree that this Project is tax exempt.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, if and for which the Construction Manager is required by the Contract Documents to pay. Owner and Architect to secure and pay for the Building Permit.

§ 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 or subject to the Guaranteed Maximum Price.

§ 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 are included in Construction Manager's Lump Sum General Conditions Charge.

§ 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.

(Paragraph deleted)

§ 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 are included in Construction Manager's Lump Sum General Conditions Charge, with the Owner's prior approval.

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

§ 7.7 Other Costs and Emergencies

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

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

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

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

§ 7.8 Related Party Transactions

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

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or (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 Other than as provided by Section 7.3.1 of this Agreement, 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 to 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 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase (which are to be reimbursed 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, subject to Section 9.1.1, 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.

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

§ 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 except regarding all categories set forth in this Agreement as "Lump Sum" and, accordingly, not subject to audit. 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.

§ 11.1.3 After receipt of an Application for Payment that has been reviewed and approved by the Architect, the Owner shall make payment of the undisputed amounts in accordance with the Illinois Local Government Prompt Payment Act. *(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 receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect 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, plus payrolls 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 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

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

§ 11.1.7 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:

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

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 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 included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 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 11.1.8 and State law.

§ 11.1.8 Retainage

§ 11.1.8.1 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.)

10%

§ 11.1.8.1.1 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, Subcontractor Default Insurance Lump Sum Charge, Lump Sum Builder's Risk Insurance Lump Sum Charge, Lump Sum Liability Insurance Charge, Lump Sum General Conditions Charge or Lump Sum Payment & Performance Bond Charge.

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

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, 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 11.1.8. 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.)

§ 11.1.9 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.

§ 11.1.10 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.

§ 11.1.11 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. As to Construction Manager, the retention shall be taken only from that portion of the Application for Payment consisting of Construction Manager's Fee and Construction Manager's Lump Sum Trade Items.

§ 11.1.11.1 When a subcontractor or supplier has achieved 100% completion of that subcontractor's or supplier's Work, Construction Manager may request in the succeeding Application for Payment, Architect shall certify if such completion has been achieved, and, if certified, Owner shall pay to Construction Manager, all retainage held on account of such subcontractor's or supplier's Work.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and 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.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Upon the earlier of (a) 37 days after Construction Manager delivers to Architect a final accounting for the Cost of the Work and a final Application for Payment, or (b) within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

(Paragraph deleted)

§ 11.2.3 The Owner's final payment to the Construction Manager for undisputed amounts shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or in accordance with the Illinois Local Government Prompt Payment Act.

§ 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, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.2.5 Regardless of whether concerning a progress or final payment, if Owner is not in default of Owner's payment obligations, and a Subcontractor of any tier has served notice to Owner of a mechanics lien claim, Owner agrees to accept from Construction Manager a mechanics lien indemnity bond in the penal sum of 175% of the claim from surety licensed in Illinois as satisfaction of any Owner right to pay the claimant, to withhold from Construction Manager payment, or to assert as a ground for termination of Construction Manager.

§ 11.3 Interest

Payments due and unpaid under the Contract shall

(Paragraphs deleted)

be in accordance with Illinois Prompt Payment Act.

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 binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect 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.)

Not Applicable.

§ 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.)

Init.

☐ 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 Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager for Preconstruction Services under Section 13.1.4:

- .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.

§ 13.1.6 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 13.1.5.1. 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.

§ 13.1.6.1 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 Execution of the Guaranteed Maximum Price Amendment

§ 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 amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed 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 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.

§ 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.)

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in 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 6.3.5 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.

Init.

§ 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 One Million Dollars (\$ 1,000,000) for each occurrence and Two Million Dollars (\$ 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 Dollars (\$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 Dollars (\$ 1,000,000) each accident, One Million Dollars (\$ 1,000,000) each employee, and One Million Dollars (\$1,000,000) policy limit. Workers Compensation coverage shall include a waiver of subrogation against the Village.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than Fifteen Million Dollars (\$15,000,000) per claim and Fifteen Million Dollars (\$15,000,000) in the aggregate.

§ 14.3.1.6 Other Insurance

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

Coverage

Limits

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

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

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™-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 with a Guaranteed Maximum Price, Exhibit H, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit H, and elsewhere in the Contract Documents.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 14.5 Other provisions: N/A

§ 14.6 Subcontractor Default Insurance

§ 14.6.1 In lieu of Subcontractor performance and payment bonds, Construction Manager may enroll qualified subcontractors into Construction Manager's Subcontractor Default Insurance ("SDI") program in the amount of \$15 million per loss and \$30 million in the aggregate insuring against losses arising out of defaults by a Subcontractor. The SDI shall apply to all Losses as defined by the SDI policy subject to the foregoing limits except as excluded by Exclusions F (nuclear radiation) and G (war). Construction Manager acknowledges and agrees that the existence of the SDI does not limit the liability of Construction Manager under the Contract Documents. Construction Manager shall give the Owner notice of any material default by a Subcontractor in connection with that Subcontractor's subcontract or purchase order, and Construction Manager shall keep Owner fully apprised of the amount and status of any claims made under the SDI policy that may diminish the limits.

§ 14.6.2 The Construction Manager shall ensure that the SDI is endorsed to indemnify the Owner and Lender in the event of the Construction Manager's insolvency.

§ 14.7 Owner's Insurance

§ 14.7.1 Owner shall procure general liability insurance as required by Section B.2.2, property insurance as required by Sections B.2.3.1.3 and B.2.3.3, Loss of Use insurance as provided at Section 11.4 of the General Conditions with waivers of subrogation as provided in Sections 11.3.1 and 11.3.2 of the General Conditions and, unless Construction Manager is required to procure by Section B.2.3.1 of *Exhibit H*, Insurance and Bonds, Builder's Risk Insurance in accordance with Sections B.2.3.1 through B.2.3.2 of *Exhibit H*.

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™–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 with a Guaranteed Maximum Price as modified
- .2 AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction as modified
- .4 The owner's Preliminary Program Summary dated October 4, 2021 and Preliminary Site Plan dated November 12, 2021, attached as Exhibit B.
- .5 All exhibits that may be attached to document referenced herein

- .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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.7 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.)

Exhibit A – Guaranteed Maximum Price Amendment (to be added upon Owner's acceptance of
Guaranteed Maximum Price)
Exhibit B – In Exhibit A
Exhibit BR – Issued for Construction Documents (to be added once completed and related Change
Order agreed)
Exhibit C – Insurance Requirements for Owner's Separate Contractors
Exhibit D – In Exhibit A
Exhibit E – In Exhibit A
Exhibit F – In Exhibit A
Exhibit G – In Exhibit A
Exhibit H – Insurance and Bonds
Exhibit I - Village of Downers Grove Terms and Conditions

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

THE VILLAGE OF DOWNERS GROVE

LEOPARDO COMPANIES, INC.

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

(Printed name and title)

Leigh McMillen
(Printed name and title)

Init.

AIA Document A133™ – 2019 Exhibit A

Guaranteed Maximum Price Amendment

This Amendment dated the day of in the year , is incorporated into the accompanying AIA Document A133™–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 with a Guaranteed Maximum Price dated the day of in the year (the "Agreement")

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

for the following **PROJECT**:

(Name and address or location)

Village of Downers Grove Police Department & Village Hall
801 Burlington Ave
Downers Grove, IL 60515

THE OWNER:

(Name, legal status, and address)

Village of Downers Grove
801 Burlington Avenue
Downers Grove, IL 60515

THE CONSTRUCTION MANAGER:

(Name, legal status, and address)

Leopardo Companies, Inc.
5200 Prairie Stone Parkway
Hoffman Estates, Illinois 60192

TABLE OF ARTICLES

- A.1 GUARANTEED MAXIMUM PRICE**
- A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED**
- A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS**

ARTICLE A.1 GUARANTEED MAXIMUM PRICE

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 3.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of the Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed (\$), subject to additions and deductions by Change Order as provided in the Contract Documents.

ADDITIONS AND DELETIONS:

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

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

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

Init.

§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, including allowances; the Construction Manager's contingency; alternates; the Construction Manager's Fee; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement.
(Provide itemized statement below or reference an attachment.)

In accordance with Construction Manager's Guaranteed Price Proposal dated _____, attached as **Exhibit A.1** to this Amendment.

§ A.1.1.3 The Construction Manager's Fee is set forth in Section 6.1.2 of the Agreement.

§ A.1.1.4 The method of adjustment of the Construction Manager's Fee for changes in the Work is set forth in Section 6.1.3 of the Agreement.

§ A.1.1.5 Alternates

§ A.1.1.5.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price
All alternates are outlined in Exhibit A.1 to this Amendment.	

§ A.1.1.5.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Exhibit A. Upon acceptance, the Owner shall issue a Modification to the Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
See Exhibit A.1 to this Amendment.		

§ A.1.1.6 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)

ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ A.2.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

- ☐ The date of execution of this Amendment.
- ☒ Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)
- As provided in Section 3.3.1.2 of the Agreement.

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of execution of this Amendment.

§ A.2.2 Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The Contract Time shall be measured from the date of commencement of the Work.

§ A.2.3 Substantial Completion

§ A.2.3.1 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.)

Init.

[**X**] Not later than () calendar days from the date of commencement of the Construction Phase of the Work. As contained in Exhibit A.1.

[] By the following date:

§ **A.2.3.2** 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

§ **A.2.3.3** If the Construction Manager fails to achieve Substantial Completion as provided in this Section A.2.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.6 of the Agreement.

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ **A.3.1** The Guaranteed Maximum Price and Contract Time set forth in this Amendment are based on the Contract Documents and the following:

§ **A.3.1.1** The following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
N/A			

§ **A.3.1.2** The following Specifications:

(Either list the Specifications here, or refer to an exhibit attached to this Amendment.)

See **Exhibit A.1** – GMP Drawings & Specifications.

Section	Title	Date	Pages
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§ **A.3.1.3** The following Drawings:

(Either list the Drawings here, or refer to an exhibit attached to this Amendment.)

See **Exhibit A.1** – GMP Drawings & Specifications.

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

§ **A.3.1.4** The Sustainability Plan, if any:

(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Construction Manager's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

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

Other identifying information:

§ **A.3.1.5** Allowances, if any, included in the Guaranteed Maximum Price:

(Identify each allowance.)

Init.

Item	Price
------	-------

	See <i>Exhibit A.1</i> to this Amendment.
--	---

§ A.3.1.6 Assumptions and clarifications, if any, upon which the Guaranteed Maximum Price is based:
(Identify each assumption and clarification.)

	See <i>Exhibit A.1</i> to this Amendment.
--	---

§ A.3.1.7 The Guaranteed Maximum Price is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Amendment.)

	<i>Exhibit A.1</i> to this Amendment - GMP Drawings & Specifications
--	--

	<i>Exhibit A.1</i> to this Amendment – Construction Manager’s Guaranteed Maximum Price Proposal dated
--	---

	<i>Exhibit A.1</i> to this Amendment - Construction Manager’s Construction Schedule.
--	--

ARTICLE A.4 CONSTRUCTION MANAGER’S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

§ A.4.1 The Construction Manager shall retain the consultants, contractors, design professionals, and suppliers, identified below:

(List name, discipline, address, and other information.)

	See <i>Exhibit A.1</i> to this Amendment.
--	---

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

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

(Printed name and title)

(Printed name and title)

Init.



EXHIBIT "C"

LEOPARDO COMPANIES, INC.

INSURANCE REQUIREMENTS FOR OWNER'S SEPARATE CONTRACTORS

In consideration of entering into a contract with Owner at the Project listed above as a separate contractor to Owner (and each of Owner's separate contractor's subcontractors of any tier), the undersigned agrees to furnish to Leopardo Companies, Inc.:

1. A Certificate of Insurance evidencing that the undersigned has procured the insurance types, limits, coverages and terms as Leopardo is obligated to provide under **Exhibit H** to the Leopardo-Owner Agreement and evidencing Leopardo Companies, Inc., its subsidiaries, affiliate corporations, and each of their directors, officers, employees, agents and consultants as Additional Insureds on the undersigned's and its subcontractors' Commercial General Liability, Auto Liability and Umbrella/Excess Liability (on a follow form basis) insurance policies (the "Separate Contractor's Provided Insurance").
2. The Additional Insured Endorsement to the Commercial General Liability and Commercial Umbrella/Excess Liability insurance policies of Separate Contractor's Insurance shall provide: "With respect to any claims, losses, damages, expenses, or liabilities arising out of Named Insured's Work or the Work or performance of Named Insured's subcontractors of any tier Owner's Separate Contractor's Provided Insurance and its Subcontractors' insurance will be primary over any other insurance available to Leopardo Companies, Inc."
3. Proof that Separate Contractor's Provided Insurance policies state that the insurer is to provide Leopardo Companies, Inc. thirty (30) days advance written notice of cancellation, reduction, or material change in coverage or limits.

ACCEPTED: _____

Signature: _____

Print Name & Title: _____

Date: _____

Exhibit I**ADDITIONAL TERMS AND CONDITIONS****1. VILLAGE ORDINANCES**

- 1.1 The Contractor will strictly comply with all ordinances of the Village of Downers Grove and laws of the State of Illinois.

2. USE OF VILLAGE'S NAME

- 2.1 The Contractor is specifically denied the right of using in any form or medium the name of the Village for public advertising unless the Village grants express permission.

3. HOURS OF WORK

- 3.1 The Contractor shall do no work between the hours of 7:00 p.m. and 7:00 a.m., nor on Saturdays, Sundays or legal holidays, unless otherwise approved in writing by the Village. However, such work may be performed at any time if necessary, for the proper care and protection of work already performed, or in case of an emergency. All after-hour work is still subject to the permission of the Village. Any work, including the starting and/or idling of vehicles or machinery, or a congregation of workers prior to starting work, which may cause any noise level that can be heard by adjacent residents, performed outside of these hours of work and not authorized by the Village shall be subject to a fine of \$250 per day, per violation.

4. PERMITS AND LICENSES

- 4.1 The Contractor shall obtain all necessary permits and licenses required to complete the Work. The cost of acquisition of all necessary permits, bonds, insurance and services as specified herein shall be considered INCLUDED IN THE TOTAL COST, and no additional compensation will be allowed the Contractor.

5. INSPECTION

- 5.1 The Village shall have a right to inspect, by its authorized representative, any material, components or workmanship as herein specified. Materials, components or workmanship that have been rejected by the Village as not in accordance with the terms of the contract specifications shall be replaced by the Contractor at no cost to the Village.

6. DELIVERIES

- 6.1 All materials shipped to the Village must be shipped F.O.B. designated location, Downers Grove, Illinois.

7. SPECIAL HANDLING

- 7.1 Prior to delivery of any product that is caustic, corrosive, flammable or dangerous to handle, the Contractor will provide written directions as to methods of handling such products, as well as the antidote or neutralizing material required for its first aid before delivery. Contractor shall also notify the Village and provide material safety data sheets for all substances used in connection with this Contract which are defined as toxic under the Illinois Toxic Substances Disclosure to Employees Act.

8. NONDISCRIMINATION

8.1 Contractor shall, as a party to a public contract:

- 8.1.1 Refrain from unlawful discrimination in employment and undertake affirmative action to assure equality of employment opportunity and eliminate the effects of past discrimination;
- 8.1.2 By submission of this Bid, the Contractor certifies that he is an "equal opportunity employer" as defined by Section 2000(e) of Chapter 21, Title 42, U.S. Code Annotated and Executive Orders #11246 and #11375, which are incorporated herein by reference. The Equal Opportunity clause, Section 6.1 of the Rules and Regulations of the Department of Human Rights of the State of Illinois, is a material part of any contract awarded on the basis of this Bid.
- 8.1.3 It is unlawful to discriminate on the basis of race, color, sex, national origin, ancestry, age, marital status, physical or mental handicap or unfavorable discharge for military service. Contractor shall comply with standards set forth in Title VII of the Civil Rights Act of 1964, 42 U.S.C. Secs. 2000 *et seq.*, The Human Rights Act of the State of Illinois, 775 ILCS 5/1-101 *et seq.*, and The Americans With Disabilities Act, 42 U.S.C. Secs. 12101 *et seq.*

9. SEXUAL HARASSMENT POLICY

9.1 The Contractor, as a party to a public contract, shall have a written sexual harassment policy that:

- 9.1.1 Notes the illegality of sexual harassment;
- 9.1.2 Sets forth the State law definition of sexual harassment;
- 9.1.3 Describes sexual harassment utilizing examples;
- 9.1.4 Describes the Contractor's internal complaint process including penalties;
- 9.1.5 Describes the legal recourse, investigative and complaint process available through the Illinois Department of Human Rights and the Human Rights Commission and how to contact these entities; and
- 9.1.6 Describes the protection against retaliation afforded under the Illinois Human Rights Act.

10. EQUAL EMPLOYMENT OPPORTUNITY

10.1 In the event of the Contractor's non-compliance with the provisions of this Equal Employment Opportunity Clause, the Illinois Human Rights Act or the Rules and Regulations of the Illinois Department of Human Rights ("Department"), the Contractor may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be

canceled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this contract, the Contractor agrees as follows:

- 10.1.1 That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental disability unrelated to ability, military status, order of protection status, sexual orientation, sexual identity, or an unfavorable discharge from military service; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.
- 10.1.2 That, if it hires additional employees in order to perform this Contract or any portion thereof, it will determine the availability (in accordance with the Department's Rules and Regulations) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
- 10.1.3 That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental disability unrelated to ability, military status, order of protection status, sexual orientation, or an unfavorable discharge from military services.
- 10.1.4 That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Contractor's obligations under the Illinois Human Rights Act and the Department's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the Contractor in its efforts to comply with such Act and Rules and Regulations, the Contractor will promptly so notify the Department and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations thereunder.
- 10.1.5 That it will submit reports as required by the Department's Rules and Regulations, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the Department's Rules and Regulations.
- 10.1.6 That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Department for purpose of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations.
- 10.1.7 That it will include verbatim or by reference the provisions of this clause in every

subcontract it awards under which any portion of the contract obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as with other provisions of this Contract, the Contractor will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the contracting agency and the Department in the event any subcontractor fails or refuses to comply therewith. In addition, the Contractor will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivision or municipal corporations.

11. DRUG FREE WORK PLACE

11.1 Contractor, as a party to a public contract, certifies and agrees that it will provide a drug free workplace by:

11.1.1 Publishing a statement:

(1) Notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, including cannabis, is prohibited in the Village's or Contractor's workplace.

(2) Specifying the actions that will be taken against employees for violations of such prohibition.

(3) Notifying the employee that, as a condition of employment on such contract or grant, the employee will:

(A) abide by the terms of the statement; and

(B) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.

11.1.2 Establishing a drug free awareness program to inform employee's about:

(1) the dangers of drug abuse in the workplace;

(2) the Village's or Contractor's policy of maintaining a drug free workplace;

(3) any available drug counseling, rehabilitation and employee assistance programs;

(4) the penalties that may be imposed upon employees for drug violations.

11.1.3 Providing a copy of the statement required by subparagraph 11.1.1 to each employee engaged in the performance of the contract or grant and to post the statement in a prominent place in the workplace.

11.1.4 Notifying the contracting or granting agency within ten (10) days after receiving notice under part (3)(B) of paragraph 11.1 above from an employee or otherwise receiving actual notice of such conviction.

11.1.5 Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by section 5 of the Drug Free Workplace Act.

11.1.6 Assisting employees in selecting a course of action in the event drug counseling, treatment and rehabilitation is required and indicating that a trained referral team is in place.

11.1.7 Making a good faith effort to continue to maintain a drug free workplace through implementation of the Drug Free Workplace Act.

12. SUBSTANCE ABUSE PREVENTION ON PUBLIC WORKS PROJECTS ACT

12.1 Contractor agrees to comply with the Substance Abuse Prevention on Public Works Projects Act, 820 ILCS 265/1 *et seq.*, and further agrees that all of its subcontractors shall comply with such Act. As required by the Act, Contractor agrees that it will file with the Village prior to commencing work its written substance abuse prevention program and/or that of its subcontractor(s) which meet or exceed the requirements of the Act.

13. PREVAILING WAGE ACT

13.1 Contractor agrees to comply with the Illinois Prevailing Wage Act, 820 ILCS 130/1 *et seq.*, for all work completed under this Contract. Contractor agrees to pay the prevailing wage and require that all of its subcontractors pay prevailing wage to any laborers, workers or mechanics who perform work pursuant to this Contract or related subcontract. For applicable rates, go to the State of Illinois – Department of Labor website (www.state.il.us/agency/idol/rates/rates.HTM) and use the most current DuPage County rate. The Department revises the prevailing wage rates and the Contractor or subcontractor has an obligation to check the Department's website for revisions to prevailing wage rates throughout the duration of this Contract.

13.2 Contractor and each subcontractor shall keep or cause to be kept accurate records of all laborers, mechanics and other workers employed by them on the public works project, which records must include each worker's name, address, telephone number when available, social security number, classification, hourly wage paid (including itemized hourly cash and fringe benefits paid in each pay period), number of hours worked each day, and the starting and ending times of work each day. These records shall be open to inspection at all reasonable hours by any representative of the Village or the Illinois Department of Labor and must be preserved for five (5) years from the date of the last payment on the public work.

13.3 Since this is a contract for a public works project, as defined in 820 ILCS 130/2, Contractor agrees to post at the job site in an easily accessible place, the prevailing wages for each craft or type of worker or mechanic needed to execute the contract or work to be performed.

13.4 Because this is a public works project as defined under the Prevailing Wage Act, 820 ILCS 130/2, any and all contractors and subcontractors shall submit certified payroll records to the Village no later than the tenth (10th) day of each calendar month for the immediately preceding month in which construction on a public works project has occurred. **WITHOUT THIS PAPERWORK, NO INVOICE SHALL BE PAID BY THE VILLAGE.** Contractors and subcontractors must also submit a statement affirming that the records are true and accurate, that the wages paid to each worker are not less than the prevailing rate,

and that the contractor and subcontractor are aware that filing false records is a Class A misdemeanor. The records must include the name, address, telephone number, social security number, job classification, hours of work, hourly rate, and start and end time of work each day for every worker employed on the public work. The Village reserves the right to check the pay stubs of the workers on the job. The Village further cautions that payment for any services rendered pursuant to this Contract may be predicated upon receipt of said records.

- 13.5 Any bond furnished as security for performance shall include a provision as will guarantee faithful performance of the Illinois Prevailing Wage Act, 820 ILCS 130/1 et seq.

14. PATRIOT ACT COMPLIANCE

- 14.1 The Contractor represents and warrants to the Village that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of a Specially Designated National and Blocked Person. The Contractor further represents and warrants to the Village that the it and its principals, shareholders, members, partners, or affiliates, as applicable are not, directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by this Contract on behalf of any person or entity named as a Specially Designated National and Blocked Person. The Contractor hereby agrees to defend, indemnify and hold harmless the Village, and its elected or appointed officers, employees, agents, representatives, engineers and attorneys, from and against any and all claims, damages, losses, risks, liabilities and expenses(including reasonable attorney's fees and costs) arising from or related to any breach of the foregoing representations and warranties.

15. SUBLETTING OF CONTRACT

- 15.1 No contract awarded by the Village shall be assigned or any part subcontracted without the written consent of the Village. In no case shall such consent relieve the Contractor from his obligation or change the terms of this Contract.

All approved subcontracts shall contain language which incorporates the terms and conditions of this Contract.

16. TERMINATION OF CONTRACT

- 16.1 The Village reserves the right to terminate the whole or any part of this Contract, upon written notice to the Contractor, for any reason.
- 16.2 The Village further reserves the right to terminate the whole or any part of this Contract, upon written notice to the Contractor, in the event of default by the Contractor. Default is defined as failure of the Contractor to perform any of the provisions of this Contract or failure to make sufficient progress so as to endanger performance of this Contract in accordance with its terms. In the event that the Contractor fails to cure the default upon notice, and the Village declares default and termination, the Village may procure, upon such terms and in such manner as it may deem appropriate, supplies or services similar to

those so terminated. The Village may also contact the issuer of the Performance Bond to complete the Work. The Contractor shall be liable for any excess costs for such similar supplies or services. Any such excess costs incurred by the Village may be set off against any monies due and owing by the Village to the Contractor.

17. BILLING AND PAYMENT PROCEDURES

- 17.1 Payment will be made upon receipt of an invoice referencing Village purchase order number. Once an invoice and receipt of materials or service have been verified, the invoice will be processed for payment in accordance with the Village's payment schedule. The Village will comply with the Local Government Prompt Payment Act, 50 ILCS 505/1 et seq., in that any bill approved for payment must be paid or the payment issued to the Contractor within 60 days of receipt of a proper bill or invoice. If payment is not issued to the Contractor within this 60 day period, an interest penalty of 1.0% of any amount approved and unpaid shall be added for each month or fraction thereof after the end of this 60 day period, until final payment is made.
- 17.2 The Village shall review each bill or invoice in a timely manner after its receipt. If the Village determines that the bill or invoice contains a defect making it unable to process the payment request, the Village shall notify the Contractor as soon as possible after discovering the defect pursuant to rules promulgated under 50 ILCS 505/1 et seq. The notice shall identify the defect and any additional information necessary to correct it.
- 17.3 As this Contract is for work defined as a "fixed public work" project under the Illinois Prevailing Wage Act, 820 ILCS 130/2, any contractor or subcontractor is required to submit certified payroll records along with the invoice. No invoice shall be paid without said records.
- 17.4 Please send all invoices to the attention of: Village of Downers Grove, Accounts Payable, 801 Burlington, Downers Grove, IL 60515.

18. COMPLIANCE WITH OSHA STANDARDS

- 18.1 Equipment supplied to the Village must comply with all requirements and standards as specified by the Occupational Safety and Health Act. All guards and protectors as well as appropriate markings will be in place before delivery. Items not meeting any OSHA specifications will be refused.

19. COPYRIGHT or PATENT INFRINGEMENT

- 19.1 The Contractor agrees to indemnify, defend, and hold harmless the Village against any suit, claim, or proceeding brought against the Village for alleged use of any equipment, systems, or services provided by the Contractor that constitutes a misuse of any proprietary or trade secret information or an infringement of any patent or copyright.

20. CAMPAIGN DISCLOSURE

- 20.1 The Contractor shall execute the Campaign Disclosure Certificate, attached hereto.
- 20.2 The Campaign Disclosure Certificate is required pursuant to the Village of Downers Grove

Council Policy on Ethical Standards and is applicable to those campaign contributions made to any member of the Village Council.

- 20.3 Said Campaign Disclosure Certificate requires the Contractor to disclose campaign contributions, as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4), made to current members of the Village Council within the five (5) year period preceding the date of the contract.
- 20.4 By signing the Agreement, Contractor agrees to refrain from making any campaign contributions as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4) to any Village Council member and any challengers seeking to serve as a member of the Downers Grove Village Council.

21. SUCCESSORS AND ASSIGNS

- 21.1 The terms of this Contract will be binding upon and inure to the benefit of the parties and their respective successors and assigns; provided, however, that neither party will assign this Contract in whole or in part without the prior written approval of the other. The Contractor will provide a list of key staff, titles, responsibilities, and contact information to include all expected subcontractors.

22. WAIVER OF BREACH OF CONTRACT

- 22.1 The waiver by one party of any breach of this Contract or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof will be limited to the particular instance and will not operate or be deemed to waive any future breaches of this Contract and will not be construed to be a waiver of any provision except for the particular instance.

23. SEVERABILITY OF INVALID PROVISIONS

- 23.1 If any provisions of this Contract are held to contravene or be invalid under the laws of any state, country or jurisdiction, contravention will not invalidate the entire Contract, but it will be construed as if not containing the invalid provision and the rights or obligations of the parties will be construed and enforced accordingly.

24. GOVERNING LAW

- 24.1 This Contract will be governed by and construed in accordance with the laws of the State of Illinois. Venue is proper only in the County of DuPage for state cases or the Northern District of Illinois for federal cases.

25. NOTICE

- 25.1 Any notice will be in writing and will be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed, and addressed to the party at the party's place of business. Notices shall be addressed to the Village as follows:

**Village Manager
Village of Downers Grove
801 Burlington Ave.**

Downers Grove, IL 60515

And to the Contractor as designated on the Contract Form.

26. AMENDMENT

- 26.1 This Contract will not be subject to amendment unless made in writing and signed by all parties.

27. COOPERATION WITH FOIA COMPLIANCE

- 27.1 Contractor acknowledges that the Freedom of Information Act may apply to public records in possession of the Contractor or a subcontractor. Contractor and all of its subcontractors shall cooperate with the Village in its efforts to comply with the Freedom of Information Act. 5 ILCS 140/1 *et seq.*

Campaign Disclosure Certificate

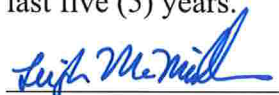
The Campaign Disclosure Certificate is required pursuant to the Village of Downers Grove Council Policy on Ethical Standards and is applicable to those campaign contributions made to any member of the Village Council.

Said Campaign Disclosure Certificate requires any individual or entity bidding to disclose campaign contributions, as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4), made to current members of the Village Council within the five (5) year period preceding the date of the bid or proposal release.

By signing this Agreement, Consultant agrees to refrain from making any campaign contributions as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4) to any Village Council member and any challengers seeking to serve as a member of the Downers Grove Village Council.

Under penalty of perjury, I declare:

☒ Consultant has not contributed to any elected Village position within the last five (5) years.



Signature



Print Name

☐ Consultant has contributed a campaign contribution to a current member of the Village Council within the last five (5) years.

Print the following information:

Name of Contributor: _____
(company or individual)

To whom contribution was made: _____

Year contribution made: _____ Amount: \$ _____

Signature

Print Name



AIA[®] Document A133™ – 2019 Exhibit H

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor (where Construction Manager provides Builder's Risk Insurance), dated the 14 day of December in the year 2021

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

for the following **PROJECT**:

(Name and location or address)

Village of Downers Grove Police Department & Village Hall
801 Burlington Ave
Downers Grove, IL 60515

THE OWNER:

(Name, legal status, and address)

Village of Downers Grove
801 Burlington Avenue
Downers Grove, IL 60515

THE CONSTRUCTION MANAGER:

(Name, legal status, and address)

Leopardo Companies, Inc.
5200 Prairie Stone Parkway
Hoffman Estates, Illinois 60092

TABLE OF ARTICLES

B.1 GENERAL

B.2 OWNER'S INSURANCE

B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

B.4 SPECIAL TERMS AND CONDITIONS

ARTICLE B.1 GENERAL

The Owner and Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

§ B.1.1 When used with an AIA Document A132, A133 or A134 Owner-Construction Manager Agreement, all references to the "Contractor" in this Exhibit (except regarding "Owner's Separate Contractor(s)") shall mean "Construction Manager."

ARTICLE B.2 OWNER'S INSURANCE

§ B.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Section B.2.3 and, upon the Construction

ADDITIONS AND DELETIONS:

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

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

This document is intended to be used in conjunction with AIA Document A201™–2017, General Conditions of the Contract for Construction. Article 11 of A201™–2017 contains additional insurance provisions.

Manager's request, provide a copy of the property insurance policy or policies required by Section B.2.3.1 and 2.3.3. Upon Owner's request, Contractor shall provide copies of the policies required of Contractor by Section B.2.3.1. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ B.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

§ B.2.3 Required Property Insurance

§ B.2.3.1 Contractor shall purchase and maintain, to be paid by Owner as part of the Contract Sum, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located with an A.M. Best "A X" rating or better, property insurance on the portion of Owner's property upon which the Work is being performed, and if relevant, with written permission by the property insurer for the portion of the structure not part of the Work for the Work to be performed, written on a builder's risk "all-risks" completed value inland marine form or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The builder's risk insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications. The property insurance shall be maintained until Substantial, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner and Contractor as named insureds and Subcontractors, and Sub-subcontractors, Owner as additional insureds as their respective interests may appear. This insurance shall include the interests of mortgagees as loss payees.

§ B.2.3.1.1 **Causes of Loss.** The insurance required by this Section B.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, water damage (including sewer backup, sprinkler leakage and pipe breakage), pollution, fungus and mold, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials to the extent provided by LEG 3 exclusion endorsement. Sub-limits, if any, are as follows but not exceeding replacement cost of Contractor's Work:

(Indicate below the cause of loss and any applicable sub-limit.)

Cause of Loss	Sub-Limit
.1 Earthquake – annual aggregate	\$25,000,000
.2 Flood	
.1 Critical/High Hazard	\$2,500,000
.2 Moderate Hazard	\$25,000,000
.3 Low Hazard	\$25,000,000
.3 Named Storm – occurrence limit	\$100,000,000.

§ B.2.3.1.2 **Specific Required Coverages.** The insurance required by this Section B.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, not testing and to building systems from equipment breakdown, testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Construction Manager's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows but not exceeding replacement cost of Contractor's Work:

(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage	Sub-Limit
Debris Removal Including Recycling Additional Expense	Additional Amount \$2,500,000
Equipment Breakdown and Testing:	
.1 Testing	Included
.2 Operational Testing	\$100,000,000
.3 Equipment Breakdown	\$100,000,000

Ordinance or Law – Demolition and Increased Cost of Construction	\$2,500,000.
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Ordinance or Law – Loss to Undamaged Portion of Building	Included
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Loss Adjustment Expense	\$100,000.
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(Paragraph deleted)

§ B.2.3.1.3 Upon Substantial Completion of each phase, the Owner shall replace the insurance policy required under Section B.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2.1 of the General Conditions to the Contract.

§ B.2.3.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section B.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions. The deductibles are:

A.	All occurrences for all covered causes of loss, unless a more specifically described deductible amount is shown in this Section 2.3.1. 4 below	\$5,000
B.	Equipment Breakdown (after "testing")	\$5,000
C.	Operational Testing	\$5,000
D.	Property in Transit	\$5,000
E.	"Water Damage"	\$50,000
F.	Time Element Waiting Period	7 Days
G.	Earthquake Per Occurrence	\$50,000
H.	Flood:	
	Critical/High Hazard	\$500,000
	Moderate Hazard	\$100,000
	Low Hazard	\$25,000
I.	LEG 3	\$100,000.

§ B.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ B.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions of the Contract, "all-risks" property insurance, on a replacement cost basis, protecting any existing structure on the site of the Work not to be demolished against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties. Contractor's Builder's Risk policy includes coverage on Existing Structures to the "functional replacement cost" but not exceeding One Million Dollars (\$1,000,000).

§ B.2.4 Optional Extended Property Insurance.

The Contractor shall purchase and maintain the insurance selected and described below.

(For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

- ☒ **§ B.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance,** to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

Business Income Limit:	\$500,000.
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Extra Expense Limit: \$1,000,000.
Contractual Penalties Limit: \$50,000.

- ☒ **§ B.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

Demolition and Increased Cost of Construction: \$2,500,000.
Loss to Undamaged Portion of Building: Included.

- ☒ **§ B.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property to return to the completion status of the schedule as of the date immediately prior to the loss.

Included.

- ☒ **§ B.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

Extra Expense Limit: \$1,000,000.

- ☒ **§ B.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

Civil Authority and Ingress/Egress Joint Time Limit: 30 Days (combined time limit with B.2.4.5 and B.2.4.6) After 7 Days' Waiting Period.

- ☒ **§ B.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

Civil Authority and Ingress/Egress Joint Time Limit: 30 Days (combined time limit with B.2.4.5 and B.2.4.6).

- ☒ **§ B.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

Soft Costs Limit: \$1,500,000.

§ B.2.5 Other Owner Insurance.

The Owner shall purchase and maintain the insurance selected below.

(Paragraph deleted)

- ☒ **§ B.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information.
(Indicate applicable limits of coverage or other conditions in the fill point below.)

- ☐ **§ B.2.5.2 Other Insurance**

Init.

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

Coverage	Limits
Boiler and Machinery Insurance	Value of Equipment Purchased by Owner from Contractor is included in Builder's Risk Policy of Section B.2.3.1.

ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

§ B.3.1 General

§ B.3.1.1 Certificates of Insurance. The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured on the Construction Manager's Commercial General Liability and excess or umbrella liability policy or policies.

§ B.3.1.2 Deductibles and Self-Insured Retentions. The Construction Manager shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Construction Manager.

§ B.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 04 13, CG 20 37 04 13, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

FGM Architects Inc
MidAmerica Towers, Inc.
Enterprise Equipment & Tool (Rental Co)
Leopardo Companies, Inc. its subsidiaries, affiliate corporations and each of their directors, officers, employees, agents and consultants (General Contractor)
True North Consultants, Inc.
Owner's elected and appointed officials also shall be Additional Insureds under Section B.3.1.3 of this Exhibit H.

§ B.3.2 Construction Manager's Required Insurance Coverage

§ B.3.2.1 The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below: *(If the Construction Manager is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

Completed operations for four (4) years after Substantial Completion.

§ B.3.2.2 Commercial General Liability

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One Million Dollars (\$ 1,000,000) each occurrence, Two Million Dollars (\$ 2,000,000) general

aggregate, and Two Million Dollars (\$ 2,000,000) aggregate for products-completed operations hazard, with waiver of subrogation and providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Construction Manager's indemnity obligations under Section 3.18.1 of the General Conditions.

§ B.3.2.2.2 The Construction Manager's Commercial General Liability policy under this Section B.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Construction Manager's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18.1 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7
- .8 Claims related to roofing, if the Work involves roofing.
- .9
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ B.3.2.3 Business Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than One Million Dollars (\$ 1,000,000) 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.

§ B.3.2.4 Contractor's Umbrella/Excess Liability insurance for the Project written on a "follow form" basis over the Commercial General Liability, Business Automobile Liability and Employers Liability Insurance with limits of Fifty Million Dollars (\$50,000,000) per claim and Fifty Million Dollars (\$50,000,000) in the aggregate with waiver of subrogation. In no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy.

§ B.3.2.5 Workers' Compensation at statutory limits with waiver of subrogation against the Village.

§ B.3.2.6 Employers' Liability with policy limits not less than One Million Dollars (\$ 1,000,000) each accident, One Million Dollars (\$ 1,000,000) each employee, and One Million Dollars (\$ 1,000,000) policy limit.

§ B.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks.

§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits in the aggregate provided by Section B.3.2.10 below.

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits in the aggregate provided by Section B.3.2.10 below.

§ **B.3.2.10** Coverage under Sections B.3.2.8 and B.3.2.9 is procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than Fifteen Million Dollars (\$15,000,000) per claim and Fifteen Million Dollars (\$ 15,000,000) in the aggregate.

§ **B.3.2.11** Intentionally omitted.

§ **B.3.2.12** Intentionally omitted.

§ B.3.3 Construction Manager's Other Insurance Coverage

§ **B.3.3.1** Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Construction Manager is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

N/A

§ **B.3.3.2** The Construction Manager shall purchase and maintain the following types and limits of insurance in accordance with Section B.3.3.1.

(Select the types of insurance the Construction Manager is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

- ☐ § **B.3.3.2.1** Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

(Where the Construction Manager's obligation to provide property insurance differs from the Owner's obligations as described under Section B.2.3, indicate such differences in the space below.

Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

- ☒ § **B.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than Two Million Dollars (\$ 2,000,000) per claim and Six Million Dollars (\$ 6,000,000) in the aggregate, for Work within fifty (50) feet of railroad property.

- ☒ § **B.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than Fifteen Million Dollars (\$ 15,000,000) per claim and Fifteen Million Dollars (\$ 15,000,000) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

- ☐ § **B.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

- ☐ § **B.3.3.2.5** Property insurance on an "all-risks" completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.

[X] § B.3.3.2.6 Other Insurance
(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage	Limits
Subcontractor Default Insurance	Total of Subcontract Prices and Modifications of all SDI-Enrolled Subcontractors.

§ B.3.4 Performance Bond and Payment Bond

The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:
(Specify type and penal sum of bonds.)

Type	
Payment Bond	100% of Guaranteed Maximum Price
Performance Bond	100% of Guaranteed Maximum Price

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows: