

***Oak Park and River Forest High School
District 200***

201 North Scoville Avenue ~ Oak Park, IL 60302-2296

TO: Board of Education

FROM: Jeff Bergmann, Director of Construction
Fred Preuss, Director of Buildings and Grounds
Mike Carioscio, Chief Operations Officer

DATE: August 22, 2019

RE: Presentation of Pepper Construction Master Agreement for Construction Manager
as Constructor

BACKGROUND:

This item was presented to the Committee of the Whole on August 13, 2019 and at the Special Board Meeting that same night. Per the Board's recommendation, we are requesting Pepper remove section 2.2.6 c. from the contract. Jay Ripsky, V.P. from Pepper, suggested that we have our attorney request this change.

A recommendation from Operations was presented at the June 18, 2019 Committee of the Whole meeting to select Pepper Construction as our construction manager. Authorization was given at the Special Board meeting on that same date to enter contract negotiations with them. (The memo from the Committee of the Whole meeting is attached.)

SUMMARY OF FINDINGS:

After negotiations and legal review, we are presenting the AIA Document A134 (Standard Form of Agreement between Owner and Construction Manager as Constructor) for your review. This document represents the Master Agreement between OPRFHS and Pepper Construction. This Master Agreement does not include costs. Based upon Board feedback on project phasing, we will be presenting project work order(s) detailing the scope, timeline and cost of each portion of the project.

RECOMMENDATION:

To approve the Master Agreement with Pepper Construction Company as presented.

Strategic Plan: Goal 6

Board Goals:

District Policy: 2:170, 4:150

TEL: 708.383.0700 **WEB:** www.oprfhs.org

TTY/TDD: 708.524.5500

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Oak Park and River Forest High School District 200

201 North Scoville Avenue · Oak Park, IL 60302-2296

TO: Committee of the Whole

FROM: Jeff Bergmann, Director of Construction
Fred M. Preuss, Director of Buildings & Grounds
Mike Carioscio, Chief Operations Officer

DATE: June 18, 2019

RE: Construction Manager for the Long Term Facilities Plan – Project 1

BACKGROUND:

On April 22, 2019 the administration issued a Request for Proposal (RFP) for a Construction Manager for the Long Term Facilities Plan – Project 1. We established an RFP review committee consisting of four staff members (Fred Preuss, Jeff Bergmann, Cyndi Sidor and Mike Carioscio), one board member (Matt Baron), one civil engineer/construction manager from the community (John Lattyak) and two representatives from FGM Architects (Josh Czerniak and Vada Kornegay). The RFP was published on April 22, and the construction management firms had until noon on May 17 to submit their proposals. We asked them to submit their fees in a separate sealed envelope so we could make the recommendation without being influenced by the costs. The following eleven firms submitted RFP responses by the deadline: Blinderman, Bulley & Andrews, FQC, Gilbane, GMA, ICI, IHC, Lamp, Nicholas & Associates, Pepper and Walsh.

Shortly after the RFP deadline, the Committee met and used a detailed scoring sheet to rate the construction management firms on the following factors.

Composition and Qualifications of the Company and Persons Designated to Form the Proposer's Staff for this Project:

- 1 Project Executive
- 2 Project Manager
- 3 Construction Superintendent
- 4 Project Engineer (if needed)

Firm Experience:

- 1 Number of years the firm has provided construction management service for similar type of projects
- 2 Firm's performance in similar scope and type of projects in the past five years
- 3 Number of projects of similar scope and type your firm has completed in the past five years

Firms Methodology:

- 1 Approach to preconstruction
- 2 Approach to bidding, review and negotiation
- 3 Approach to construction services
- 4 Approach to close-out, start-up and follow-up

Past Performance in Delivering the Required Services in an Efficient and Timely Manner:

- 1 Past performance in terms of construction schedule
- 2 Past performance in terms of meeting construction budgets

Intangibles which Best Demonstrate the Proposer's Ability to Provide Services to the Owner

Strategic Plan: 6

Board Goals:

District Policy: 2:170

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On the basis of this rating scheme and detailed discussion of the pros and cons of the various firms, the decision was made to move the following firms forward: Pepper, FQC, and Bulley & Andrews. This was a very difficult choice as several other firms were in very close consideration. We ultimately chose these firms because their submissions most closely fit the project work outlined in the Project 1 scope.

On June 5, we interviewed the three finalists. All three finalists made compelling presentations of their firms' ability to work with OPRFHS on this project, but one firm stood out.

SUMMARY OF FINDINGS:

We are recommending Pepper Construction Company as the Construction Manager for the Long Term Facilities Plan – Project 1. Listed below are some of the reasons why the Committee is recommending Pepper.

- Pepper responded completely and effectively to all aspects of the RFP, and they were the only firm that addressed each item of the interview scenario. In several cases, they went beyond what we requested. Pepper spent more time onsite and in our building at their own financial risk to gain a better understanding of the work. They presented their findings of all M/WBE contractors within a four-mile radius of Oak Park and how they would engage those contractors for the project. They had a succinct plan to engage our students in the construction process and to keep our community informed about construction progress.
- Pepper demonstrated a clear understanding of Project 1, Health/Life Safety and Capital Improvements scope and presented a compelling timeline for how they would approach the management of the project, including solutions to minimize the impact on the ongoing operations of the high school. Pepper was also the only firm that provided an order of magnitude cost savings related to the project schedule and other cost saving measures in their presentation.
- Their use of technology was impressive. Pepper developed a simulated time-lapse video of the demolition and reconstruction of the South Cafeteria/Student Resource Center above. They also flew a drone and used the video footage in their presentation to show construction logistics in the mall and separation between construction activities and our students/faculty/staff.
- Their designated project staffing had multiple years of experience (in some cases as many as 30 years) with similar work related to OPRF school settings.
- Pepper's experience in high school settings brings a vast catalog of previous cost analysis, as well as prequalified list of contractors to work with.

RECOMMENDATION/NEXT STEP:

This item will be presented later tonight at the Special Board of Education Meeting on June 18, 2019. At this time, we will be requesting authorization to enter into negotiations with Pepper Construction Company to become the District's Construction Manager for the Long Term Facilities Plan – Project 1.

Strategic Plan: 6

Board Goals:

District Policy: 2:170

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 **AIA**[®] Document A134[™] – 2009

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

(Paragraph deleted)

Master Agreement Between Owner & Construction Manager

AGREEMENT made as of the Twenty Second day of August in the year Two Thousand and Nineteen

BETWEEN the Owner:

Oak Park and River Forest High School District 200
201 North Scoville Ave.
Oak Park, IL 60302-2296
(T): (708) 383-0700

and the Construction Manager:

Pepper Construction Company, a Delaware Corporation
411 Lake Zurich Rd.
Barrington, IL 60010
(T): (847) 381-2760

for the following Project:

See applicable Project Work Order

The Architect:

See applicable Project Work Order

The Owner's Designated Representative:

See applicable Project Work Order OR, if not designated, Michael Carioscio
Chief Operations Officer
Oak Park and River Forest High School District 200
201 North Scoville Ave.
Oak Park, Illinois 60302
(T): (708) 434-3220
MCarioscio@oprfrhs.org

The Construction Manager's Designated Representative:

See applicable Project Work Order
Pepper Construction Co.
411 Lake Zurich Road
Barrington, Illinois 60010
(T) (847) 381-2760

ADDITIONS AND DELETIONS:

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

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

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

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The Architect's Designated Representative:

See applicable Project Work Order

The Owner and Construction Manager agree as follows.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Master Agreement

§ 1.1.1 The Contract Documents consist of this AIA A134-2009 and AIA A201-2017, as amended (collectively "Master Agreement"), the applicable Project Work Order as defined in Section 1.1.2, below, and the Drawings and Specifications referenced therein, Addenda issued prior to execution of a Project Work Order, other documents listed in this Master Agreement or a Project Work Order and Modifications issued after execution of this Master Agreement or any Project Work Order; all of which form the Contract, and are as fully a part of the Contract as if attached to this Master Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents is inconsistent with this Master Agreement, this Master Agreement shall govern. The term of this Master Agreement is for five (5) years from the date of execution ("Term").

§ 1.1.2 For each construction project performed under this Master Agreement, the Owner and Construction Manager shall agree upon and execute a work order detailing the Project specific details ("Project Work Order"). A sample Project Work Order is attached hereto as Exhibit 1.1.2, Project Work Order Sample. The Project Work Order sets forth Project-specific information, including, but not limited to:

- a. the name of the Project;
- b. the location of the Project;
- c. the Commencement Date of the Work;
- d. a Project Schedule and the Date of Substantial Completion of the Work;
- e. a list of Drawings and Specifications;
- f. the Cost Estimate, Schedule of Values and Construction Manager's Clarifications;
- g. any alternates, allowances or unit prices; and
- h. labor, supervisory and equipment rental rates.

The Project Work Order is referred to throughout the Contract Documents as if singular in number.

§ 1.1.3 Owner at its sole discretion will decide whether to award any Project to Construction Manager and Construction Manager reserves the right to accept or decline the Project.

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§ 1.2 Relationship of the Parties

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

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

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended and attached hereto shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

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

The Contract Sum is the actual Cost of the Work plus the Construction Manager's Fee as defined in the applicable Project Work Order. The Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work as certified by the Architect in accordance with Section 9.8 of AIA Document A201–2017. The Contract Time shall be measured from the date of commencement of the Construction Phase as established pursuant to Section 2.3.1.2 of this Agreement. Changes in the Work shall be governed by Section 5.2 of this Agreement and not by Article 7 of A201–2017. If, however, the Contract Time has been established in accordance with Section 2.2.4.5, Article 7 of A201–2017 shall control adjustments to the Contract Time.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

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

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other, for the Work to be performed under each Project Work Order.

§ 2.1.2 Consultation

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

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified in the Project Work Order, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Control Estimate; the components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner. All project schedules (including updates) shall be formatted using Critical Path Method (CPM).

§ 2.1.4 Phased Construction

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

§ 2.1.5 Preliminary Cost Estimates

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

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Construction Manager submits a Control Estimate for the Work, pursuant to Section 2.2. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project, subject to the requirements of Section 10-20.21 of the *School Code*, 105 ILCS 5/10-20.21. The Construction Manager acknowledges and understands that the Owner, as a public body, is subject to the bidding requirements of the Illinois *School Code* and that all trade contracts shall be publicly bid in accordance with such law and awarded by the Owner. When the lowest responsive and responsible multiple prime trade bidders (hereinafter referred to as "Subcontractors") are identified, Owner shall assign those trade contracts (the "Subcontracts") to Construction Manager.

§ 2.1.6.1 The Construction Manager, with the assistance of the Architect, shall issue bidding documents to bidders (including bid invitations, instructions to bidders, and general and supplementary conditions), shall ensure that the amended A201-2017 general conditions are incorporated into the bid package in the form attached hereto and that no other provisions of the bid package conflict with them, and shall conduct pre-bid conferences with prospective bidders in accordance with publicly announced and scheduled meetings. The Construction Manager shall issue the current Project schedule with each set of bidding documents. During preparation of the Construction Documents by the Architect, the Construction Manager shall review said Construction Documents to ensure consistency with the bid documents prepared by the Construction Manager. The Construction Manager shall submit for review and approval to Owner, or its attorneys if designated by Owner, all instructions, terms, conditions, and information prepared for submission to bidders prior to release of the bid package. The Construction Manager shall assist the Architect with regard to questions from bidders and with the issuance of addenda.

§ 2.1.6.2 Prior to advertisement for bids, Construction Manager shall prepare all Subcontracts and shall provide Subcontracts to the Owner's attorneys for review and comment. The Subcontracts prepared by Construction Manager shall require full compliance with all state and local laws. The Construction Manager shall cause the Subcontracts to incorporate substantially the following provisions:

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

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

Upon assignment, the Subcontractor shall become a subcontractor of the Contractor pursuant to this Agreement, and, except as identified within this Agreement and as provided by law, will no longer have any contractual rights against the Owner, and shall have contractual privity only with the Contractor."

§ 2.1.6.3 The Construction Manager shall prepare bid analyses and make recommendations to the Owner for the Owner's award of Contracts or rejection of bids subject to the requirements of Section 10-20.21 of the *School Code* (105 ILCS 5/10-20.21). The Construction Manager will advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Subcontractors.

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

§ 2.1.6.5 Once the Owner has awarded a bid to a Subcontractor, the Construction Manager shall accept the assignment of the Subcontractor agreement from the Owner to the Construction Manager on the form attached hereto as Exhibit 2.1.6.4, Sample Trade Contractor Agreement.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to advertisement for bids, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.9 Notices and Compliance with Laws

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

§ 2.1.10 Permits

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

§ 2.2 Control Estimate

§ 2.2.1 Upon the completion of the Construction Documents by the Architect, and before advertisement for bids, the Construction Manager shall prepare a Control Estimate for the Owner's review and acceptance. The Control Estimate shall be the sum of the Preconstruction Costs, Construction Manager's estimate of the Cost of the Work, Contingency as defined below, if applicable, and the Construction Manager's Fee and shall include those items set forth in Section 2.2.4 below. When the Control Estimate is acceptable to the Owner, the Owner shall, upon request by the Construction Manager, acknowledge it in writing.

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

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

§ 2.2.4 The Control Estimate shall include

- .1 a list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract, a copy of which is attached to the Project Work Order as Exhibit 2.2.4.1.;
- .2 a list of the clarifications and assumptions made by the Construction Manager in the preparation of the Control Estimate, including assumptions under Section 2.2.3, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, Contingency and the Construction Manager's Fee;
- .4 the anticipated date of Substantial Completion upon which the Control Estimate is based, and a schedule for the issuance dates of the Construction Documents upon which the anticipated Substantial Completion date relies; and
- .5 a statement as to whether or not the duration from the stated date of commencement of the Construction Phase to the estimated date of Substantial Completion shall become the Contract Time and be subject to the provisions of Article 8 of A201-2017.

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

§ 2.2.6 The Contingency, if any, shall be specifically indicated within Exhibit 2.2.1. The Construction Manager, and upon notice and written agreement of the Owner (as part of the monthly payment application and review meeting), may transfer funds from the Contingency line item to cover cost overruns in any other line item except Fee. The Construction Manager may, upon receipt of an approved change request, also transfer funds to a newly created line item to properly account for gaps in categories of Work being performed and not included in the existing Scope of Work of any trades. Such transfers shall represent additional costs incurred for the Owner's benefit and may include, but not be limited to, the following examples:

- a. costs incurred due to excusable delays but not reimbursed by Change Order;
- b. costs due to latent conditions which could not be foreseen but are not accepted as concealed conditions;
- c. costs of completing the work of a defaulted or bankrupt Subcontractor in excess of the Subcontract price;
- d. net premium time or multiple shift or weekend time not provided for in the Contract or Change Orders;
- e. costs for re-work when not a result of unworkmanlike performance or sub-standard efforts; and
- f. deductible expenses for Builder's Risk Insurance if Construction Manager is responsible for such costs under the Agreement with Owner.

At Final Completion, the unused portion of the Contingency Fund shall be credited in full to the Owner.

§ 2.2.7 Any portion of the Control Estimate shall be deemed to materially vary from the corresponding portion of the lowest responsive and responsible bid if it is at least 6% greater than that portion of the bid. In the event of such material variance, the Construction Manager shall:

- a) If, after consulting with the Construction Manager, the Owner chooses to accept the bid, negotiate respective deductive change orders with the respective Subcontractors to have the bids fall within the 6% of the Control Estimate, at no additional charge to the Owner; or

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- b) If, after consulting with the Construction Manager, the Owner chooses to reject all bids and re-bid, compensate the Owner for additional design costs to modify the scope of work for re-bidding, and administrate re-bid of the affected portions of Work at no additional cost to the Owner.

The requirements of Section 2.2.7 only apply to the Control Estimate prepared based on the 100% Construction Documents. Section 2.2.7 shall not apply to specifications or Project additions issued after the Construction Manager prepares the Control Estimate.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase under the applicable Project Work Order.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's approval of the Control Estimate or the Owner's issuance of a Notice to Proceed for the applicable Project Work Order, whichever occurs earlier.

§ 2.3.1.3 Prior to commencement of the Construction Phase under the applicable Project Work Order., the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work.

§ 2.3.2 Administration

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

§ 2.3.2.2 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 prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

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

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

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

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

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§ 2.3.2.7 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.6.

§ 2.3.2.8 In collaboration with the Architect, the Construction Manager shall establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals. The Construction Manager shall review all Shop Drawings, Product Data, Samples and other submittals from the Subcontractors for apparent compliance with Subcontract requirements. The Construction Manager shall transmit to the Architect those submittals which have been reviewed by the Construction Manager. The Construction Manager's actions shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner or Subcontractors. The Construction Manager shall receive and process all other submittals required by the Construction Documents, including certified payrolls, work plans, safety plans, periodic schedule updates, and the like.

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

§ 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases. Construction Manager shall provide immediate written notice to the Owner and Architect if the Construction Manager discovers the existence of any and all hazardous material, including, but not limited to any lead or lead based material and asbestos, asbestos-related products including the extent and location of same. Construction Manager shall not be responsible for the removal, encapsulation, transportation or disposal of any hazardous material.

§ 2.6 Staffing

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

§ 2.7 Subcontractors' Insurance and Bonds

Construction Manager shall procure Certificates of Insurance, as well as any required Performance and Payment Bonds, for each of the Subcontractors immediately upon award of the Contract and verify conformance of same with the Contract Documents prior to allowing the Subcontractors onto the Site. Insurance of Subcontractors shall name Owner, Construction Manager, and Architect as "Additional Insureds". Copies of same shall be transmitted to the Owner and Architect before Subcontractors may commence Work on the Project.

§ 2.8 Schedule

§2.8.1 Time is of the essence of this Agreement. Construction Manager shall, with the Owner's approval, establish the Project Construction Schedule in accordance with § 2.3.2.5. Construction Manager shall schedule, sequence and coordinate the performance of the Subcontractors on the Project so that completion shall be in accordance with the Project Construction Schedule.

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

discussion at each weekly construction coordination meeting. The weekly look-ahead shall, at a minimum, show the schedule for the past week and upcoming two weeks.

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

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

§2.10 Requests for Information

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

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

§ 2.11 Subcontractor Change Orders

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

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

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

§ 2.12 Claims

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

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

§ 2.13

Equitable Extension of Time and No Damages for Delay. To the extent that Construction Manager's services under this Agreement are delayed by the Owner or causes not under control of Construction Manager, the Contract Time and Construction Manager's costs shall be equitably extended.

§ 2.14 Site Safety

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

§ 2.15 Quality Control

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

§ 2.15.2 The Construction Manager shall assist the Owner in obtaining from the responsible Subcontractor correction of all portions of the Work which do not comply with the Contract Documents or do not meet good workmanlike standards.

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

§ 2.17 Submission of Record Documents. Prior to final payment at the completion of the Project, the Construction Manager shall inventory and turn over to the Owner one copy of the following: Record/As Built Drawings and Specifications prepared by the Architect, the daily log, progress reports, project manual, field orders, change orders, requests for changes, requests for information, claims, Subcontractor pay applications, communications, submittals, and all other Construction Documents.

§ 2.18 Operations and Maintenance Training Manuals. Construction Manager shall arrange and schedule operating and maintenance training on mechanical, electrical and other systems for Owner's personnel by factory authorized representatives commencing upon start-up and the commissioning of each system prior to substantial completion. Construction Manager shall receive all operating and maintenance manuals from Subcontractors, and, along with the Architect, shall review for completeness, clarity, and conformance with the respective Contract Documents. After all operations and maintenance manuals are received and approved, but no later than turnover of operations to Owner's personnel, Construction Manager shall transmit all approved operations and maintenance manuals to the Owner.

§ 2.19 Performance and Payment Bonds. Construction Manager as principal shall obtain payment and performance bonds in accordance with Article 11 of the A201 General Conditions, as amended; provided, however, that Contractor may cause each Subcontractor to furnish its own payment and performance bond covering its scope of Work, if Owner gives written pre-approval for multiple bonds furnished at the Subcontractor level.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

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

§ 3.1.2 Prior to the Owner's approval of the Control Estimate, or within seven days of receiving the Owner's written acknowledgment required by Section 2.2.1, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project Work Order, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

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

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

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

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

§ 3.1.4.4 During the Construction Phase under the applicable Project Work Order, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's

performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 3.2 Owner's Designated Representative

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

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

§ 3.3 Architect

The Owner shall retain an Architect, as identified in the applicable Project Work Order, to provide services as necessary to design and complete the Project.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

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

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

as provided in the applicable Project Work Order.

§ 4.1.3

§ 4.1.4

§ 4.2 Payments

§ 4.2.1 Payments for services shall be made by the Owner in accordance with the *Local Government Prompt Payment Act* (50 ILCS 505/1 et seq.).

§ 4.2.2 Intentionally Deleted.
(Insert rate of monthly or annual interest agreed upon.)

%

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

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

§ 5.1.1 The Construction Manager's
(Paragraphs deleted)
Fee shall be provided in the applicable Project Work Order.

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

As set forth in Section 7.2.3 in A201-2017

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

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§ 5.1.4 Rental rates for Construction Manager-owned equipment shall be provided in the applicable Project Work Order.

(Table deleted)

(Paragraphs deleted)

§ 5.2 Changes in the Work

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

§ 5.2.2 Increased costs for the items set forth in Sections 6.1 through 6.7 that result from changes in the Project Work Order shall become part of the Cost of the Work, and the Construction Manager’s Fee shall be adjusted as provided in Section 5.1.2.

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

§ 5.2.4 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager’s Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager’s Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in the applicable Project Work Order. . Subject to the requirements of the *School Code*, Owner and Construction Manager may mutually agree to have Construction Manager self-perform trade work on either a Lump Sum or itemized cost (as defined under this Article 6), not-to-exceed basis.

§ 6.1.2 Where any cost is subject to the Owner’s prior approval, the Construction Manager shall obtain this approval prior to incurring the cost.

(Paragraphs deleted)

§ 6.9 Discounts, Rebates and Refunds

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

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

Init.

§ 6.10 Related Party Transactions

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

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the transaction may proceed. Otherwise, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Master Agreement and Project Work Orders that follow, and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law. Wages, salaries and all associated taxes, costs and benefits that are combined as a comprehensive unit of pay described as "Management Rates", "Labor Rates", or "Equipment Rental Rates", as described in this Article 6, above, constitute the primary data for accounting purposes.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

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

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

§ 7.1.3 Upon receipt of a properly submitted Application for Payment, and approval by the Owner, payment shall be made as provided in the Local Government Prompt Payment Act.
(Federal, state or local laws may require payment within a certain period of time.)

§ 7.1.4 Reserved.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate each item of Work comprising the entire Direct Cost of the Work, except that the Construction Manager's Fee and Reimbursable Costs shall be shown as single separate items. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule of values, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment. 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 percentage of that portion of the Work which has actually been completed.

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

- .1 Take the Cost of the Work completed during the period covering the Application for Payment, as adjusted by Change Orders applicable to that period, if any, less retention of ten percent (10%);

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- .2 Add the Construction Manager's Fee for the period covering the Application for Payment, less retainage of ten percent (10%);
- .3 Subtract retainage of as described in Section 7.1.11 below from that portion of the Work that the Construction Manager self-performs;
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Subtract amounts, if any, for which the Architect has withheld or withdrawn a Certificate for Payment as provided in the Contract Documents.

§ 7.1.7 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors. Construction Manager shall ensure that each Subcontract provides that retention of ten percent (10%) shall be withheld from each Subcontractor Application for Payment and paid as a part of Final Payment. As set forth in Section 7.1.11, the retention amount may be reduced upon the written approval of the Owner.

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

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

§ 7.1.10 On the first application under a Project Work Order, Construction Manager will furnish its partial waiver of lien for the net amount of the application. Assuming prior, partial applications have been paid. Construction Manager will furnish with each succeeding partial application a current waiver of lien and the applicable waivers of lien and affidavits from Subcontractors for the previous partial application. On the final application, Construction Manager will furnish the applicable waivers and affidavits from Subcontractors for the previously paid partial application. At the time the final application is approved and funds are available for payment, Construction Manager will furnish its final waiver of lien and the applicable final waivers and affidavits from its Subcontractors. In the event a Subcontractor, or Sub-subcontractor or material supplier fails to provide a waiver of lien for any application for payment, or, should a Subcontractor or Sub-subcontractor record a lien, the Construction Manager may furnish, either directly or through the appropriate Subcontractor, a bond in lieu of the Subcontractor's absent waiver of lien. Such bond shall be for one hundred and fifty percent (150%) of the amount of the disputed claim.

§ 7.1.11 Ten percent (10%) retainage will be held on all individual line items until fifty percent (50%) of that Work is completed and approved by Owner. Thereafter, Owner and Contractor may agree to withhold no additional retainage except to adjust the retainage for Change Orders. No retainage shall be held on Contractor's Fee, materials, insurance premiums, or General Conditions' items.

§ 7.1.12 Any "Pencil Draw" review or pre-approved review of a monthly Application for Payment prior to the end of a current month's Work shall include Work reasonably estimated to be completed at the end of such month.

§ 7.2 Final Payment

§ 7.2.1 Final payment for each Project Work Order, 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 Work specified in the Project Work Order except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, 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 for the Work specified in the Project Work Order.

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

(Paragraphs deleted)

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project Work Order, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007. Construction Manager's Certificate of General Liability Insurance, to which the Owner and the Owner's Designer Professionals have been added as Additional Insureds, is attached at Exhibit 8.1 and establishes the coverages and limits of liability as required by Article 11.1 of the A201-2017 General Conditions.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2017.)

Type of Insurance or Bond

Limit of Liability or Bond Amount (\$0.00)

Upon Substantial Completion and/or beneficial occupancy of the building and prior to termination of the All Risk Builder's Risk Insurance coverage, the Owner will secure and place in force permanent fire and extended coverage insurance, including consequential loss and any other perils covered under a Builder's Risk policy, and will have Construction Manager named as an Additional Insured as its interests may appear.

ARTICLE 9 DISPUTE RESOLUTION

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

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

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

Arbitration pursuant to Section 15.4 of AIA Document A201-2007

Litigation in a court of competent jurisdiction

Other: *(Specify)*

(Paragraphs deleted)

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination For Convenience

§ 10.1.1 The Owner may terminate a Project Work Order 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 a Project Work Order, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201-2007.

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

§ 10.1.3 In the event of termination of a Project Work Order pursuant to Section 10.1.1, after the commencement of the Construction Phase but prior to the Owner's approval of the Control Estimate, the Owner shall pay to the Construction

Manager under Section 10.1.2 an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work actually incurred by the Construction Manager to the date of termination;
- .2 Add a monthly installment of the Construction Fee payable up to the date of termination, as prorated up to the date of termination, plus the amount of the Construction Fee previously paid under Article 4;
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

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

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

§ 10.2 Termination

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

(Paragraphs deleted)

§ 10.3 Suspension

The Work under the Project Work Order may be suspended by the Owner and the Construction Manager's Fee shall be equitably adjusted.

ARTICLE 11 MISCELLANEOUS PROVISIONS

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

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

§ 11.3 In case of conflict between this Agreement and any other document incorporated or referenced herein, this Agreement shall prevail, followed by the A201 General Conditions as amended, the supplementary conditions, Owner's request for qualifications or proposal, the drawings and specifications, and the Construction Manager's proposal, if such proposal is a part of the Contract Documents.

(Paragraphs deleted)

§ 11.4 The Construction Manager shall endeavor to keep the Project free from mechanic's liens. If the Owner is required to withhold money pursuant to a notice of lien or lien against public funds, the Construction Manager shall indemnify, defend and hold harmless the Owner for all costs incurred in connection with such lien and any resulting litigation, including attorneys' fees, provided that Owner has paid for all Work properly performed. The Construction Manager shall ensure that a similar provision is incorporated into the Subcontracts.

§ 11.5 Construction Manager acknowledges that this is a public works project governed by the Illinois Prevailing Wage Act. Construction Manager shall pay its laborers, if any, and ensure that all Subcontractors pay their

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laborers not less than the established prevailing rate of wages. 820 ILCS 130/1 *et seq.* Construction Manager shall comply with all reporting requirements of the Illinois Prevailing Wage Act. Similarly, the Construction Manager shall assure that all Subcontractors and sub-tier subcontractors comply with the reporting requirements of the Illinois Prevailing Wage Act.

§ 11.6 Construction Manager represents that it has in place a Sexual Harassment Policy in accordance with the Illinois Human Rights Act and shall ensure that all Subcontractors have in place a Sexual Harassment Policy prior to commencement of Work on the Project. 775 ILCS 5/1-105.

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

§ 11.8 Construction Manager represents that it is in conformance with the Drug Free Workplace Act. 30 ILCS 580/1 *et seq.*

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

§ 11.10 Ownership and Use of Documents

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

§ 11.11 Governing Law

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

§ 11.12 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Except for the assignment of Subcontracts to the Construction Manager as provided herein, neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 11.13 Other provisions: None.

ARTICLE 12 SCOPE OF THE AGREEMENT

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

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A134–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price, as amended
- .2 AIA Document A201–2017, General Conditions of the Contract for Construction, as amended and attached;
- .3 AIA Document E201™–2017, Digital Data Protocol Exhibit, if completed, or the following:

(Paragraph deleted)

- .4 In the event a virtual design model is implemented for the coordinated design and construction of the Project, the ConsensusDOC 301 Building Information Modeling ("BIM") Addendum is hereby incorporated by reference as a Contract Document. The Owner shall cause an identical BIM Addendum to be appended or incorporated into all written agreements between the Owner and any design professional performing obligations to be modeled.

- .5 Other documents:
(List other documents, if any, forming part of the Agreement.)

§12.3 LIST OF EXHIBITS INCLUDED WITH THIS MASTER AGREEMENT

- Exhibit 1.1.2.1 Sample Project Work Order
- Exhibit 2.1.6.4 Sample Trade Contractor Agreement
- Exhibit 8.1 Construction Manager's Certificate of Insurance

§12.3 LIST OF EXHIBITS TO BE ATTACHED TO PROJECT WORK ORDER

- Exhibit 2.2.4.1 List of Drawings and Specifications
- Exhibit 2.3.2.5 Project Construction Schedule

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

**BOARD OF EDUCATION OF
OAK PARK RIVER FOREST SCHOOL DISTRICT 200**

PEPPER CONSTRUCTION COMPANY



OWNER *(Signature)*

CONSTRUCTION MANAGER *(Signature)*

(Printed name and title)

JAY A RIBSKY SUP
(Printed name and title)

Exhibit 1.1.2.1 - Sample Project Work Order

PROJECT WORK ORDER # ____

Oak Park and River Forest High School District 200 ("Owner") and **Pepper Construction Company** ("Construction Manager") entered into a Master Agreement on _____, 2019 ("Master Agreement"). Such Master Agreement is in the format of an AIA A134-2009, as modified, with additional Contract Documents including General Conditions (AIA A201-2007, as modified), the Project Manual, and Drawings and Specifications.

The Owner and the Construction Manager hereby agree to enter into this Project Work Order, dated _____, whereby all provisions of the Master Agreement shall be incorporated herein for the project known as " _____ " ("Project"), which is located at _____ and consists of renovations and as further described in the Contract Documents and Clarifications, a list of which is attached hereto as Project Work Order Exhibit 2.2.4.1. Project-specific terms and information pursuant to this Project Work Order are as follows:

1. Date of Commencement shall be _____.
2. Substantial Completion shall be achieved no later than _____ and as further set forth in the attached Exhibit 2.3.2.5, Project Construction Schedule.
3. The Preconstruction Cost Estimate is _____ Dollars (\$ _____) and indicated within the attached Exhibit 2.2.1, Final Cost Estimate, Schedule of Values, and Clarifications.
4. Commercial General Liability insurance premiums, as further described at Section 6.6.1 of the Master Agreement, shall be charged at the rate of _____ per thousand dollars of the Cost of the Work.
5. Construction Manager's Fee shall be _____ percent (____%).
6. The Final Cost Estimate _____ Dollars (\$ _____), and is based upon and is subject to the Schedule of Values and Clarifications, attached hereto as Exhibit 2.2.1 and Construction Manager's current rates attached hereto as Exhibits 5.1.4, 6.1.2.1, and 6.1.2.2.
7. Should any alternates, allowances, or unit prices be established subsequent to the Final Cost Estimate, the same will be incorporated by Change Order to this Project Work Order.
8. The Owner's representative for this Project shall be:

The Architect's representative for this Project shall be:

The Construction Manager's representative for this Project shall be:
Lance Trltsch

Exhibit 1.1.2.1 - Sample Project Work Order

Project Director
Pepper Construction Company
411 Lake Zurich Road
Barrington, IL 60010
(847) 381-2760

9. Exhibits attached hereto, and which are a portion of the Contract Documents, include the following:

- Exhibit 2.2.1 Final Cost Estimate, Schedule of Values, and Clarifications
- Exhibit 2.2.4.1 List of Drawings and Specifications
- Exhibit 2.3.2.5 Project Construction Schedule
- Exhibit 5.1.4 Construction Manager's Equipment Rental Rates and Practices
- Exhibit 6.1.2.1 Construction Manager's Comprehensive Trade Labor Rates
- Exhibit 6.1.2.2 Construction Manager's Comprehensive Management Rates

The parties hereto execute this Project Work Order through their authorized officers, as of the date first above written, in at least three original copies, of which one is to be delivered to the Construction Manager, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

PEPPER CONSTRUCTION COMPANY

By: _____

Its:

By: _____

Lance Tritsch
Its: **Vice President**

Exhibit 2.1.6.4 - Sample Prime Trade Contract



PRIME TRADE CONTRACT

This Contract is entered into this ___ day of _____, 20__ between the Owner through its Construction Manager as its Agent:

OWNER INFORMATION ("Owner") Phone: _____ Fax: _____ Attn: _____	PEPPER CONSTRUCTION COMPANY Construction Manager and Agent ("Pepper") General Contractor License #TGC04179 Phone: _____ Fax: _____
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And
PRIME TRADE CONTRACTOR ("Contractor") as **Contract No.:** _____

Attn: _____
 Phone: _____ Fax: _____

for Work at ("Project"): _____ **Location:** _____
Project Name: _____

And agree as follows: The Contractor shall furnish all labor, material, equipment, supervision and insurance as required to provide and fully complete all _____ work ("Work") for the above-referenced Project in strict accordance with the Contract Documents as further described in **Exhibit A**. This Work is to be performed _____, including all applicable taxes, of _____ and ___/100 Dollars (\$_____). See Article 16, Enumeration of Contract Documents, for critical Exhibits and to determine if the Project is exempt from Retail Sales Tax.

The exchange of copies of this Prime Trade Contract and of signature pages by facsimile transmission (whether directly from one facsimile device to another by means of a dial-up connection or whether conveyed electronically by the worldwide web), by electronic mail in "portable document format" ("pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means, shall constitute effective execution and delivery of this Prime Trade Contract as to the Parties and may be used in lieu of the original Prime Trade Contract for all purposes. To that end, signatures of the Parties transmitted by facsimile and/or electronic format shall be deemed to be their original signatures for all purposes.

AN UP-TO-DATE CERTIFICATE OF INSURANCE MUST BE ON FILE WITH PEPPER'S SUPERINTENDENT AT THE JOBSITE PRIOR TO BEGINNING WORK ON THIS PROJECT. PLEASE SEE ARTICLE 11 FOR FURTHER INSTRUCTIONS. CONTRACTOR'S START WORK DATE ON THE JOBSITE IS _____. SEE PARAGRAPHS 1.3 AND 1.4 BELOW.

CONTRACTOR SHALL SUBMIT INVOICES BY THE _ OF EACH MONTH. SEE PARAGRAPH 9.2, BILLING PROCEDURES. BILLING, BONDING AND INSURANCE DETAILS:

Contract Dollar Value: Subject to retainage of _____ % * (See Owner/Construction Manager Agreement or RFB for specific Retainage items)	Job No. - _____ SubJob - _____ Vendor # - _____ Phase - _____	CGL INSURANCE (See Article 11) Payment and Performance Bonds Required?(N)- If yes, Premium is included in Contract Price.
---	--	--

EXECUTION OF THE AGREEMENT INDICATES THAT CONTRACTOR HAS READ AND UNDERSTANDS THE TERMS AND OBLIGATIONS OF THIS AGREEMENT AND THE ATTACHMENTS MADE A PART HEREOF THAT FOLLOW; EXECUTION IS REQUIRED BEFORE BEGINNING WORK ON THE JOBSITE.

By: _____ Printed: _____ Title: _____ Date: _____	<p align="center">PEPPER CONSTRUCTION COMPANY AS THE CONSTRUCTION AGENT OF _____</p> By: _____ Title: _____ Date: _____
--	--

Exhibit 2.1.6.4 - Sample Prime Trade Contract

PRIME TRADE CONTRACTOR OBLIGATIONS

By executing and returning the attached acceptance copy of this Agreement, or if the acceptance copy is not executed and returned, by partial or complete performance under this Agreement, Prime Trade Contractor ("Contractor" or "Trade Contractor") agrees with Owner as follows:

1 General Terms

- 1.1 Project: The Project is generally described as _____.
- 1.2 Contract Documents. This Agreement includes: this Prime Trade Contract Agreement ("Agreement" or "Contract") and its exhibits listed in Article 16, below, any Project Labor Agreement for the Project to which Contractor is a party, and the Agreement between Owner and Pepper to the extent such terms and conditions pertain to the performance of Contractor's Work and other obligations necessary to fully complete such Work. A listing of the Contract Documents is found at **Exhibit A**, and Contractor's Scope of Work is found at **Exhibit B**.
- 1.3 Date of Commencement. The Date of Commencement of the Contractor's Work on the jobsite shall be _____. If such date is not specified, the Date of Commencement shall be the date of this Agreement, the date of the Letter of Intent or the date of the Notice to Proceed, whichever has occurred first. The Contractor shall act promptly in procuring and preparing necessary shop drawings, submittals, permits and licenses, as further described in Article 4, below, so as to not delay its date of Commencement of the Work. The Contractor is also to perform its Work in accordance with the Schedule as described in Paragraphs 3.1 and 3.2.
- 1.4 Trade Contract Time. The Trade Contract Work shall be substantially completed on or before _____, subject to adjustments as provided for in the Contract Documents. If a Commencement Date is not stated above, the Work shall be substantially complete not later than _____ (____) calendar days after commencement of its work on the jobsite, subject to adjustments provided by the Contract Documents. The Contractor is also to perform its Work in accordance with the Schedule as described in Paragraphs 3.1 and 3.2.

2 Parties to the Contract

- 2.1.1 Relationship of the Parties. Owner has selected Contractor to perform its Work pursuant to applicable laws. The Owner has directed Pepper to enter into this Agreement with the Contractor and has delegated full authority to Pepper, as the Construction Manager and representative of the Owner for this Project, to perform all of Owner's obligations and to exercise all of Owner's rights and powers under the terms of this Agreement.
- 2.2 Key Personnel and Communications. Contractor hereby agrees that key personnel assigned to the Project shall remain for the duration of this Work; reassignment or removal of said key personnel will require Pepper's approval. Pepper and Contractor shall each designate one or more persons who shall be their authorized representative(s). Such authorized representatives shall be the only person(s) the Contractor shall look to for instructions and orders, and the only person to whom Owner/Pepper shall issue instructions or orders, except in the case of an emergency. The Contractor shall also designate its Project Foreman at the job site as its Safety Representative.

Pepper's
Representative:

411 Lake Zurich Road
Barrington, IL 40010
Phone: 847-381-2760
Fax 847-304-6510

Contractor's Office Representative:

Phone: _____
Fax: _____

Contractor's Safety Representative:

Phone: _____
Fax: _____

Provide address and phone number for each if different from that shown at Page 1, above.

- 2.3 Assignments. Contractor shall not assign this Agreement, or portions thereof, without the prior written permission of Owner and Pepper. Contractor shall not sell or assign receivables acquired pursuant to this Agreement to any financial institution or third party; to do so is a material breach of this Agreement. A sale of a majority interest in Contractor shall be considered a default under this Prime Trade Contract Agreement.
- 2.4 Amendments. Once executed, this Agreement may only be amended in writing.
- 2.5 Notices.
 - 2.5.1 In performing the Work, Contractor shall give timely and proper notice as required by any federal, state and local authorities, with a copy to Pepper.
 - 2.5.2 Written notice shall be deemed to have been duly served if delivered to the last business address known to the parties stated above in this Contract using one of the following methods:
 - 2.5.2.1 in person to the individual or a member of the company or to an officer of the corporation for which it is intended;
 - 2.5.2.2 by registered or certified mail;
 - 2.5.2.3 by facsimile, with a hard copy to follow via U.S. Mail; or
 - 2.5.2.4 by a private delivery service with tracking methods to confirm delivery.

Exhibit 2.1.6.4 - Sample Prime Trade Contract

3. Contract Time

- 3.1 Time. **TIME IS OF THE ESSENCE OF THIS CONTRACT!** Contractor shall supply a sufficient number of competent workers and shall cooperate with Pepper and other Prime Trade Contractors in the scheduling and performance of its Work. Contractor shall commence its Work upon notification from Pepper and will proceed toward completion in accordance with the Project Schedule ("Schedule") as described in **Exhibit E**, as established by Pepper, which may be adjusted from time to time to allow for proper coordination of all Trades' Work. Should Contractor fail to pursue or complete its Work in accordance with the Schedule, it hereby agrees to indemnify Owner and Pepper for any loss or damages caused by such delay.
- 3.2 Schedule. Contractor is obligated to perform Work in accordance with the Schedule, as set forth at **Exhibit E**, as follows:
- 3.2.1 Contractor is required to prepare its detailed Schedule ("Detail Schedule") within the scope of the preliminary Project Schedule, so as not to impede the stated Project completion time.
- 3.2.2 Contractor's assistance and input, with detailed breakdown of Work items and duration for each, is required to develop an agreeable and accurate final Project Schedule. Contractor shall submit a statement outlining Start Date(s), a Completion Date and estimated times for delivery of the major components of its Work. Detail Schedules shall be in the form of a bar chart and indicate durations in weeks. The Detail Schedule shall indicate, in detail, the status and progress of Shop Drawings and submittals, fabrications, delivery and installation Start/Complete dates for various stages of Work. Contractor shall provide a Detail Schedule five (5) business days after being awarded the Work.
- 3.2.3 It is expressly understood that scheduling requirements may require temporary omissions and out of sequence Work as reasonably designated by Pepper's Superintendent. All "come back" Work required for this or other out of sequence Work, including re-mobilization, shall be completed on a timely basis at no additional cost to Owner/Pepper.
- 3.3 Progress Meetings.
- 3.3.1 Contractor shall designate a single representative assigned to the Project who will be responsible for attending meetings, monitoring schedules and coordinating all activities. Contractor's Representative shall have the authority to commit the Contractor to solutions and/or actions as agreed upon in these meetings.
- 3.3.2 Regularly scheduled Progress Meetings shall be held weekly, unless otherwise scheduled. It will be the responsibility of each Contractor to attend these meetings to determine the status of the Project and to report on the status of its Work.
- 3.4 Coordination. Contractor shall cooperate and coordinate its Work with all other Prime Trade Contractors and furnish them all details and information required for proper coordination of the Work. Contractor shall cooperate in scheduling activities in order that the Work of all parties can be completed on a timely basis, and shall immediately advise Pepper of any interferences with its Work.
- 3.5 Excusable Delays. Extensions of time for delays not caused by the Contractor or not within the Contractor's control shall be strictly governed by the terms of the Contract Documents. Contractor must give Pepper notice of any potential delay within three (3) business days, or as otherwise stipulated within the Contract Documents, after such occurrence with an estimate of the additional time needed to overcome the delay. In no event will Contractor be entitled to any consideration for delays if it has concurrently delayed its own Work. If Contractor fails to give Pepper written notice of the excusable delay, the potential claim shall be deemed waived. The Contract Documents shall exclusively govern the Contractor's right to an increase in Contract Price or extension of time because of any excusable delay.
- 3.6 Overtime. When ordered in writing by Pepper, Contractor shall perform base Contract Work under this Agreement during overtime hours. In the event overtime work is required because of Contractor's own delays to the Project Schedule, e.g., insufficient manpower or submitting Shop Drawings and other submittals too late for approval per the Project Schedule, no additional compensation will be granted. In the event overtime is required because of delays of others, Contractor shall only be compensated for the net increased labor costs.

4. Contractor's Responsibilities

- 4.1 Prime Trade Contractor. The Contractor, as an independent contractor, shall perform its obligations under this Contract using its best skill, care and diligence in the supervision and performance its Work according to the Contract Documents. Consistent with the Project Safety Requirements, as set forth at **Exhibit D**, the Contractor shall have complete responsibility and control over the performance of the Trade Contract Work, including construction means, methods, techniques, sequences and procedures for coordinating and completing its obligations under this Agreement.
- 4.2 Permits, Licenses and Prevailing Wage Act. In performing the Work, Contractor shall comply with all applicable laws and ordinances, including use of the most current statutory prevailing wage rates in effect for the location of the Project, and secure and pay for all necessary permits, licenses, inspections, tests and bonds required for the Work performed under this Contract. The general building permit will be obtained and paid for by others.
- 4.3 Examination of Site. Contractor warrants that it has visited and visually examined the Project site and general and local conditions which could affect its Work. Contractor shall make no claim for extra Work on account of existing exposed site conditions or conditions of which it knew, or in the exercise of reasonable skill as a first class contractor for this classification of Work, should have known.
- 4.4 Incomplete Details. The Work to be performed by the Contractor includes that Work specifically set forth in this Agreement, as well as any and all other work reasonably inferable from the work indicated by the Contract Documents. The Contractor shall take all field measurements necessary to perform its Work. Neither the Owner nor Pepper makes warranty, expressed or implied, as to the sufficiency of the Construction Documents furnished by the Owner. The Contractor shall furnish all required samples and Shop Drawings in order to insure that the Contractor's Scope of Work is complete in every detail and free from any gaps, duplications, or omissions.

Exhibit 2.1.6.4 - Sample Prime Trade Contract

- 4.5 Layout and Engineering. All Prime Trade Contractors will perform layout and engineering, as required to complete the Work within the scope of their respective Agreements, from vertical and horizontal principal control lines and grades established by Pepper.
- 4.6 Shop Drawings and Submittals. Contractor shall promptly submit Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of Pepper or other Prime Trade Contractors. Contractor shall be responsible to Owner/Pepper for the accuracy and conformity of its submittals to the Contract Documents. The review and/or approval of any Contractor submittal shall not be deemed to authorize deviations, substitutions or changes in the Contract Document requirements unless express written approval is obtained from Owner/Pepper, specifically authorizing such deviation, substitution or change.
- 4.7 Daily Reports. Each Contractor will submit a daily report to Pepper's Superintendent for each day Contractor is working on the Project. The daily report should state:
- A. The number of tradesmen that worked;
 - B. The positions of those tradesmen;
 - C. The number of hours each tradesmen worked;
 - D. The specific hours each tradesman worked;
 - E. The shift worked by each tradesmen: 1st, 2nd, or 3rd;
 - F. A brief description of the day's activities;
 - G. A two-day look ahead for scheduling purposes;
 - H. Any inspections, problems or otherwise pertinent information; and
 - I. Accidents that occurred during the day, if any
- 4.8 Material Delivery. Material delivery to the jobsite shall be handled in accordance with the following:
- 4.8.1 Cost of all shipping of materials, freight to the jobsite and insurance of same to be the responsibility of the Contractor.
 - 4.8.2 Contractor must notify Pepper's on-site Superintendent forty-eight (48) hours prior to delivering any materials. Copies of the delivery ticket will be stamped, showing the actual time and date shipment was received.
 - 4.8.3 Each shipment of material shall contain a packing slip with the correct nomenclature of contents; the box or carton containing this information must be so marked. At the time of shipment, one (1) copy of said packing slip shall be forwarded to the destination of shipment to alert Pepper's Superintendent as to what material is in transit so that arrangements can be made at least forty-eight (48) hours in advance to receive, allocate and store said material.
 - 4.8.4 If Contractor fails to adhere to the foregoing notification and other requirements, Pepper reserves the right to refuse, warehouse, or return to the carrier the shipment in question. All related costs incurred by Pepper, e.g., handling, storage, protection, etc., will be borne by Contractor.
- 4.9 Hoisting and Scaffolding. Contractor agrees to be solely responsible for all hoisting of materials and all scaffolding necessary for the performance of its own Work unless otherwise stated. Unless expressly provided for in Contractor's Scope of Work, no provisions for hoisting or scaffolding will be provided by Pepper. Any scaffolding or hoisting equipment used by Contractor must conform to all local code requirements including, but not necessarily limited to, those of state and federal OSHA. All cranes employed by Contractor shall have maintenance logs current as of the date on the jobsite. All logs shall be readily available for review by Pepper upon request.
- 4.10 Dewatering. Contractors who are performing excavation, trenching, utility and/or concrete work are responsible for keeping their excavations free of water during construction.
- 4.11 Cutting and Patching. Contractor shall perform cutting, patching, fire safing and caulking, as required to complete the Work within the Scope of its respective Contract.
- 4.12 Testing. Contractor will be responsible for costs of retesting and correcting or replacing Work that fails the Owner/Pepper's testing or that of local authorities, as well as all costs incurred by other Trades whose Work is delayed or damaged due to the failure of Contractor's Work to meet inspection and test requirements.
- 4.13 Environmental Compliance. Contractor agrees to comply with pollution and environmental protection regulations for the use of water and other services. Contractor further agrees to discharge waste and storm water drainage from the Project site and to comply with any "Environmental Impact" commitments that may have been made by the Owner in securing approval to proceed with construction of this Project. All waste materials and substances (e.g., solvents, cleaners, waste oils, etc.) shall be handled and/or disposed by Contractor in full compliance with all applicable federal, state and local statutes, regulations, ordinances and rules.
- 4.14 Cleanup. Contractor must provide cleanup and disposal of debris resulting from its Work on a daily basis in order to keep the Project clean, orderly and hazard free. Material will be placed in dumpsters provided by Pepper. Location of dumpsters will be at Pepper's discretion.
- Upon completion of Work and prior to leaving the site, Contractor must receive approval and acceptance by Pepper that all final cleanup requirements have been met and that the area is ready for final inspection. When directed in writing in the field by Pepper's Superintendent, Contractor agrees to cleanup all debris attributable to its Work within twenty-four (24) hours notice for any given work area, or accept the appropriate back charges for cleanup performed by Pepper or other contractors which will be billed to Contractor on a monthly basis no later than the following month in which the charges are incurred.
- 4.15 Protection of Work. Contractor shall take reasonable precautions for safety of and shall provide reasonable protection to prevent damage, injury, or loss to:
- 4.15.1 employees on the jobsite and other persons who may be affected;
 - 4.15.2 the Work, materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor or Subcontractors; and

Exhibit 2.1.6.4 - Sample Prime Trade Contract

- 4.15.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property as described above caused in whole or in part by the Contractor or its Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible, except damage or loss attributable to acts or omissions of the Owner, Architect, Pepper or anyone directly or indirectly employed by them, or by anyone for whose acts they may be liable and not attributable to the fault or negligence of the Contractor.

- 4.16 Punch List. Contractor will give written notification upon completion of the punch list.

- 4.17 As-Built Documents & Operations Manuals. Contractor is required to maintain an up-to-date set of As-Built Drawings at all times. At the completion of Contractor's Work, Contractor will provide to Pepper the number of copies of As-Built Drawings that are required per the Contract Documents and one (1) additional copy for Pepper's use. Contractor shall provide copies of Owner's Operational/Instructional/Maintenance Manuals and training materials as required by the Project Specifications.

- 4.18 Payment and Performance Bonds. If required by the Request for Bid, Contractor shall furnish to Owner, within ___ days after selection of Contractor as the lowest responsive and responsible bidder, and maintain throughout the Project, a 100% Payment and Performance Bond from a surety company acceptable to Owner. If not otherwise specified, the surety shall be A.M. Best-rated A/X or better. The Performance Bond shall include a Dual Oblige Rider naming both the Owner and Pepper as obligees. The Payment Bond shall include, among other things, a provision that will guarantee the faithful performance of the prevailing wage clause, as set forth at Paragraph 9.1, below, and pursuant to applicable laws.

- 4.19 Indemnity Bonds. Consistent with applicable law, in the event that Owner receives a notice or claim of non-payment from a Subcontractor or material supplier under contract with the Contractor, Owner shall have the right to require the Contractor to bond over the claim in an amount equal to One Hundred Seventy-Five percent (175%) of its amount. Should Contractor not be justified in refusing to pay the claim, after three (3) days' written notice to Contractor, Owner shall have the right to pay a sum sufficient to discharge such claim or obligation and charge the same against any amount owed Contractor. Pepper shall also have the right to require Contractor to furnish and pay for an indemnity bond in an amount not less than One Hundred Seventy-Five percent (175%) of (a) the sum of any final lien waivers the Contractor fails to provide or (b) the amount of any unjustified claims. Provided payment is made for Work properly performed, Contractor agrees to defend, hold harmless and indemnify Owner and Pepper against all loss, damages, judgments and expenses (including attorneys' fees), which Owner or Pepper may sustain in connection with any claim.

- 4.20 Taxes. The Owner is not subject to the payment of Retailer's Occupational Tax or any other state sales or use tax. Such exemption, however, does not apply to tools, machinery, equipment or other property leased by the Contractor, or to supplies and materials that, even though consumed, are not incorporated into the completed Project. The Contractor shall be responsible for and pay all applicable taxes, including sales and use taxes, on such leased tools, machinery, equipment or other property, and upon unincorporated supplies and materials. Tax Exempt Letter attached in **Exhibit F**.

- 4.21 Price Escalation. This Agreement includes any and all price escalation throughout the duration of the Project.

- 4.22 Laws. This Agreement shall be governed by the law of the Project location. Laws include, but are not limited to, laws, ordinances, regulations, rules and orders of public authorities. The Contractor agrees to be bound by, and at its own cost, comply with all federal, state and local laws applicable to the Trade Contract Work, including, but not limited to, equal employment opportunity, minority business enterprise, women's business enterprise, disadvantaged business enterprise, and all others required by the Contract Documents or as may be set forth in the Request for Bid. The Contractor shall be liable to Owner/Pepper for all loss, cost and expense attributable to any failure of the Contractor, its employees, agents, and Subcontractors to comply with such laws, including, but not limited to, fines, penalties or corrective measures.

- 4.23 Performance. Pepper's failure to require strict performance of any provision of this Agreement shall not constitute a waiver of its right to require strict performance in the future.

5. Scope of Work

The Scope of Contractor's Work shall include, but not necessarily be limited to the following:
See Scope of Work, attached hereto at **Exhibit B**.

6. Subcontractors

- 6.1 Subcontracts. Contractor agrees not to subcontract more than five percent (5%) of this Contract without the prior written consent of Pepper. For all proposed Subcontracts in excess of five percent (5%), Contractor shall furnish to Pepper an AIA Document A-305 or equal Contractor's Qualification Statement, not less than five (5) working days prior to final execution of any Subcontract. In accordance with the Contract Documents as defined in Article 1, above, Contractor agrees it shall not contract with any such proposed person or entity to which the Owner, Pepper or the Architect has a reasonable objection.

Contractor agrees that any part of Work performed for the Contractor by an approved Subcontractor shall be pursuant to a written Subcontract between the Contractor and each Subcontractor. Said written Subcontract shall contain provisions that:

- 6.1.1 Require the Work be performed in accordance with the requirements of these Contract Documents;
- 6.1.2 Require the Subcontractor to carry and maintain liability insurance coverage in accordance with these Contract Documents;

Exhibit 2.1.6.4 - Sample Prime Trade Contract

- 6.1.3 Require the Subcontractor to agree to the Construction Schedule as outlined and/or detailed in Paragraph 3.2, above; and
- 6.1.4 Require the Subcontractor to provide waivers and other required billing materials as set forth in Paragraph 9.2, below.
- 6.1.5 Upon receipt of payment, Contractor shall promptly disburse from such payment, in exchange for waivers, the sums due and owing to any Subcontractor and/or material supplier for their Work included in payment to Contractor. Waivers must be supplied for Subcontractors and/or material suppliers at the time they are listed in the "This Payment" section of the affidavit provided with the waiver.
- 6.2 **Labor Harmony.** The Contractor shall (and shall expressly require in writing any of its Subcontractors, to) employ only field labor and tradesmen to perform Work on the site whose presence on the jobsite will not result in strikes, work stoppages, picketing, or other labor disputes with any other field labor and tradesmen present on the Project site. The Contractor shall manage its work force so as to avoid labor disputes with its own or other Trades on the job, and shall keep current in the payment of all wages and benefits required to be paid to or on behalf of its employees working on the job under any collective bargaining agreements or trust agreements to which it is signatory. The diligent progress of the Work is of the essence and Contractor's violation of this Paragraph shall be a material breach of this Agreement.
- 7. Changes in the Work**
- 7.1 **Change Orders.** When Pepper so orders in writing, the Contractor shall make any and all changes in the Work that are in the general Scope of this Agreement. Adjustments in the Contract Price or Contract Time, if any, resulting from such changes, shall be set forth in a Contract Change Order pursuant to the Contract Documents. No adjustment shall be made for any changes performed by the Contractor that have not been ordered in writing by Pepper.
- 7.2 **Contractor Notification.** As additional information or revisions are provided by the Owner, Pepper or Architect, the Contractor shall review such information for inclusion of its Work and notify Pepper within ten (10) working days of any cost or schedule changes to the Contract. If no response is received from Contractor within this time frame, it will be assumed that no additional costs or time extensions will apply. Any changes which are made without prior written authorization of Pepper's Project Manager will be done at Contractor's own risk and payment for such changes is not guaranteed. All revisions causing potential cost increases to the Contractor must be approved prior to commencement of said Work.
- 7.3 **Compensation.** Compensation for extra work shall be by one or more of the following methods at the option of Owner/Pepper:
- A. Unit prices contained in the Scope of Work;
 - B. Alternate prices contained in the Scope of Work;
 - C. Negotiated Lump Sums;
 - D. Negotiated unit prices; or
 - E. Cost plus compensation. In the case of cost plus compensation, costs shall be defined as and specifically include the following: cost of materials, including sales tax and cost of delivery; cost of labor in the field, including social security, old age and unemployment insurance; Workers' Compensation and general liability costs; bond premiums; and rental value of the power tools and equipment at rates not to exceed those contained in the current edition of the Associated Equipment Distributors Construction Equipment Rental Rates.
- 7.4 **Change Order Overhead and Profit.**
- 7.4.1 Change Order overhead and profit shall include the following: costs to prepare estimates or Shop Drawings; wages of Superintendents, Project Managers, non-working foremen (unless specifically included in the Scope of Work), timekeepers, watchmen and clerks; hand tools, incidentals, general office expenses; interest expense; warranty expense; and all other expenses not included in "costs" as defined above.
- 7.4.2 Unless otherwise stipulated, the following percentages for overhead and profit shall be added to approved costs:
- 7.4.2.1 For any Work performed by Contractor's own forces: 10% for overhead and 5% for profit.
 - 7.4.2.2 For Work performed by Contractor's Subcontractor: 10% for overhead and 5% for profits due to the Subcontractor, plus 5% Fee due to the Contractor.
- 7.5 **Change Order Proposals.** To facilitate checking of quotations for extras or credits, all proposals must be accompanied by complete itemization of cost including labor, materials, equipment and Subcontractors.
- 7.6 **Field Changes.** For field changes, time and material tickets signed by the Pepper Superintendent at the jobsite are to be retained to verify actual hours worked, and materials and equipment used; such tickets must be signed within twenty-four (24) hours of completing the Work. The verification that the Work is additional work outside of the contractual Scope is subject to approval by Pepper's Project Manager. No changes will be approved without such itemization.
- 7.7 **Pending Change Request Log.** A Pending Change Request Log shall be submitted electronically by the Contractor to the Pepper Project Manager at the time of each monthly Application for Payment submission. Such Log shall identify any outstanding change requests ("CRs") as well as correlating CR date, description, dollar value and the status of the Change Request. Receipt of such Log does not imply acknowledgement or approval of identified CRs, but rather that such CRs have been submitted for review. CRs are finalized when incorporated into Contractor's Contract via Change Order. Change Order pricing must be in accordance with the Contract. Monthly progress payments may be delayed or withheld by Pepper if such Pending CR Log is not timely provided by Contractor to Pepper.

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- 7.8 Concealed Site Conditions. If conditions are encountered at the Project site that are: (1) subsurface or other physical conditions which differ materially from those indicated in the Contract Documents; or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction and activities in the area of the Project, written notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event, later than two (2) days after first observance of such conditions. Unless otherwise provided for in the Contract Documents, equitable adjustment to the Prime Trade Contract Price and Time shall be made by Change Order.
8. **Jobsite**
- 8.1 Access/Parking. The use of and access to the site shall be restricted to those areas and limited to those temporary roads authorized and designated by Pepper's on-site Superintendent. Parking on the jobsite is restricted to company vehicles and equipment only if allowed by Pepper's Superintendent. Contractor's employees shall park in designated areas.
- 8.2 Jobsite Offices/Storage. The Project site may have limited space available for storage; therefore, any on-site storage will require prior approval of Pepper's Superintendent. Contractors' jobsite trailers, materials, tools and equipment may be stored on the jobsite at locations approved by Pepper and must be removed or relocated when directed. Contractor shall use, for this purpose only, the minimum space that is absolutely required for proper performance of the Work. Any damage or losses resulting from storage of material, tools and equipment shall be remedied at the cost of the Contractor. Each Prime Trade Contractor shall be responsible for erection, dismantling, maintenance, utilities, security, etc., that it may deem necessary in setting up its trailers, sheds and storage area.
- 8.3 Temporary Facilities.
- 8.3.1 Contractor may establish a temporary office at the jobsite; the exact size and location of said facilities shall be subject to the approval of Pepper's Superintendent. The temporary office, along with any electrical, telephone or similar service for such field office, shall be the responsibility of the Contractor. As the Work progresses, Contractor agrees to relocate and/or remove said facilities upon seventy-two (72) hours written notice from Pepper's Superintendent.
- 8.3.2 Temporary facilities furnished by Pepper for Contractor's use on the site shall be limited to the following:
- 8.3.2.1 Temporary sanitary services for Contractor's personnel.
- 8.3.2.2 Temporary non-potable water service only after the permanent tap is made at water main. Water will be available at a minimum of one location, adjacent to the construction area. It shall be the Contractor's responsibility to provide hook-ups and extensions as required and to coordinate with Pepper's on-site Superintendent.
- 8.3.2.3 Temporary power and lighting for the building shall be specific to OSHA standards and provided by the Electrical Trade Contractor for all Prime Trade Contractors' use. If special or additional services are required, arrangements through Pepper's on-site Superintendent will be necessary. However, the contractual relationship shall be directly between the on-site Electrical Trade Contractor and Contractor.
- 8.3.2.4 Temporary power will be limited to 120-volt, single-phase temporary electric service in the construction area only after temporary or permanent power is established on the jobsite. If temporary power is not available or is insufficient for the Contractor, the Contractor shall furnish generators at its expense. The Contractor shall be required to provide extension cords for all power tools.
9. **Wage Scale and Payments**
- 9.1 Prevailing Wage Requirements.
- 9.1.1 Not less than the prevailing rate of wages for work of a similar character in the locality of the Project, as determined by the Illinois Department of Labor, shall be paid to all laborers, workers and mechanics performing Work under this Contract. Contractor shall comply with all requirements of the Illinois Wages of Employees on Public Works Act.
- 9.1.2 It shall be mandatory upon Contractor to cause to be inserted into each lower tiered subcontract and into the Project Specifications for each lower tiered subcontractor a stipulation to the effect of this Paragraph 9.1.
- 9.2 Billing Procedures. The following terms and conditions are an integral part of this Contract:
- 9.2.1 **PEPPER CONSTRUCTION COMPANY IS ONLY ABLE TO PROCESS INVOICES THROUGH ITS ACCOUNTING SYSTEM AFTER THE CONTRACT AGREEMENT HAS BEEN SIGNED WITHOUT ALTERATION AND RETURNED TO PEPPER, INCLUDING APPROPRIATE INSURANCE AND SAFETY DOCUMENTATION.**
- 9.2.2 CHANGES TO CONTRACTOR'S AGREEMENT CANNOT BE BILLED UNTIL A FORMAL CHANGE ORDER HAS BEEN RECEIVED BY CONTRACTOR FROM AN AUTHORIZED REPRESENTATIVE OF PEPPER CONSTRUCTION COMPANY AND EXECUTED BY BOTH CONTRACTOR AND PEPPER. ONCE APPROVED, CHANGES SHOULD NOT BE SEPARATELY BILLED, BUT SHOULD BE INCLUDED IN CONTRACTOR'S MONTHLY BILLING AT THE REVISED CONTRACT AMOUNT.
- 9.2.3 All billings for materials delivered or Work completed will be done per the Pepper billing procedures. The affidavit, a sample of which is attached, must accompany all invoicing or Contractor's invoice will be returned unprocessed. See the attached affidavit Completion Requirements for instructions. All amounts to be billed must be approved before requisitions or billings are submitted. Payments received from Owner shall be held for Contractor's account and promptly disbursed according to the terms of this Agreement.
- 9.2.4 Applications for Payment for Work performed and accepted by Owner and Pepper shall include one (1) copy of the following:
- 9.2.4.1 Affidavit;

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- 9.2.4.2 Application and Certificate for Payment signed and notarized (AIA G702);
- 9.2.4.3 Schedule of Values (AIA G703) in format approved by Pepper;
- 9.2.4.4 Signed documents for stored material; and
- 9.2.4.5 Pending Change Request Log, submitted electronically, identifying outstanding Change Requests ("CRs"), as well as correlating CR date, description, dollar value and status of the Change Request, as further described at Article 7, above.
- 9.2.5 Applications for Payment for Work performed and accepted by Owner and Pepper shall include three (3) Partial or Final Waivers of Lien, as appropriately required, including waivers from all Subcontractors and material suppliers listed in the "This Payment" section of the Contractor's Affidavit provided within the Waiver, and for further lower tiers upon request.
- 9.2.6 All invoice packages must be received no later than the day of the month indicated on Page 1, above, for Work performed, as projected, from the ___ to the ___ of the month. Invoice packages not received by this deadline WILL NOT be processed until the following month.
- 9.2.7 Unless the Owner requires current Waivers of Lien with each Application for Payment, upon Pepper's receipt of payment from the Owner, Contractor will be contacted with the correct information to be included in the Waiver of Lien. The Waiver and Affidavit format to be used shall be that attached hereto, unless otherwise specified by Owner.
- 9.2.8 Owner's payment to Pepper is a condition precedent to Pepper's obligation to pay Contractor. When payment to Contractor is received from Owner, and provided the billing and insurance requirements have been met as required under this Contract, all payments by Pepper for Contractor's Work accepted by Owner shall be made in the net amount of its request within two (2) business days of receipt of Owner's payment.
- 9.2.9 At the time the Final Waiver is required, it shall be in the full amount of the adjusted Contract Price.
- 9.2.9.1 Retainage shall be held as indicated on Page 1, above, and paid to Contractor after approval and acceptance by Owner or Pepper and upon payment by Owner to Pepper.
- 9.2.9.2 The Affidavit must accompany all invoicing or Contractor's invoice will be returned unprocessed. All amounts to be billed must be approved before the billings are submitted.
- 9.2.10 In the event Contractor suffers financial distress as described in Paragraph 14.1, below, Pepper, on Owner's behalf, may pay Subcontractors or material suppliers directly or tender payment jointly to Contractor and lower tiers.
- 9.3 Accounting Records. Contractor shall make and keep, for a period of not less than three (3) years, true and accurate records of the name, address, telephone number (when available), last four (4) digits of the Social Security number and labor classification of all laborers, workers, and mechanics employed by them in connection with the Project. The records shall also show actual hourly wages paid in each pay period to each employee and the hours worked each day in each work week by each employee. While performing the Work of this Agreement, Contractor's payroll records shall include the starting and ending times of work for each employee. Such records shall be open at all reasonable hours to the inspection of the Owner, consistent with applicable law.
- 9.4 Off Site Materials. Unless expressly made a part of the Scope of Work for this Agreement or approved in advance in writing, the cost of construction work completed does not include materials or equipment stored off the site.

10. Safety Regulations

A Pepper representative is required to be on site any time Work is being performed by the Contractor. The Contractor, its agents, employees, Subcontractors and materialmen will comply with all laws, ordinances, and industry standards applicable to the performance of its Scope of the Work on the Project in a safe and responsible manner. In particular, Contractor shall, at its own expense, conform to the safety policies and regulations established by Pepper as listed within this Agreement and within the "Jobsite Safety Handbook", set forth at **Exhibit D**, and shall comply with all specific safety requirements promulgated by any government authority, including, without limitation, the requirements of the Occupational Safety and Health Act of 1970, the Construction Safety Act of 1969, and all standards and regulations which have been or shall be promulgated by the parties or agencies which administer the Acts.

The Jobsite Safety Handbook, Exhibit D, may be accessed at

- www.pccsafety.com,

as well as the following within <https://pepper.plansandspecs.com>:

- Project Name>Documents>Bid Packages (during the bidding stage) and

- Project Name>Documents>General & Photos>Safety Documents (once construction starts).

If for any reason Contractor is unable to access the Jobsite Safety Handbook from either of these sources, contact the Pepper Project Manager.

Contractor shall comply with said requirements, standards, and regulations and require and be directly responsible for compliance therewith on the part of its agents, employees, Subcontractors, and materialmen and shall directly receive, respond to, defend and be responsible for all citations, assessments, fines or penalties which may be incurred by reason of its failure on the part of its agents, employees, Subcontractors or materialmen to so comply.

- 10.1 Contractor Safety Plan. The Contractor must develop a site-specific pre-job safety plan outlining any hazards and the procedures it will use to eliminate those hazards. Contractor will review its plan with Pepper's field supervisory personnel and crews. This plan is to be submitted to the Pepper Superintendent at least two (2) weeks prior to commencing Work.

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- 10.2 Drug & Alcohol Policy. The Contractor's field personnel assigned to this Project, including Subcontractors of the Contractor, will abide by the Pepper **Drug & Alcohol Policy** as further detailed in the Jobsite Safety Handbook. In addition, Contractor will commit to no drug or alcohol use by its employees over the lunch period or any other break time. Contractor agrees to remove from the jobsite any of its employees or Subcontractor employees who violate this policy.
- 10.3 Accident Report. Contractor shall report immediately to Pepper any injuries suffered by its employees or any injuries to other persons or property damage arising out of its operation. Pepper shall be furnished one (1) copy of the written accident report within twenty-four (24) hours of the injury or damage.
- 10.4 Protective Equipment. Contractor will equip its personnel with all necessary personal protective equipment required by law or Pepper. This includes, but is not limited to, hard hats, eye protection, foot and hand protection, ear protection, fall protection and respiratory protection.
- 10.5 Ground Fault Circuit Interrupters. Contractor will assure protection of all of its employees when using electric power equipment by utilizing Ground Fault Circuit Interrupters **at all times**. As supplemental protection, the Assured Equipment Grounding Program may be implemented. As stated in the Jobsite Safety Handbook, all branch circuit conductors shall be permitted only within cable assemblies or be multi-conductor cord or cable of a type identified for *hard usage* or *extra hard usage*. NEC Table 400-4 lists "hard" and "extra hard" usage wire types.
- 10.6 Scaffolds and Ladders. All of the Contractor's scaffolds and ladders shall be in accordance with all required safety regulations and manufacturers' requirements.
- 10.7 Fall Protection. Contractor will comply with all applicable standards contained within OSHA's Construction Industry Regulations, Subpart M. With regard to steel erection and decking, Contractor and its employees shall comply with **specific fall protection guidelines**, as contained within the Pepper Project Safety Plan For Steel Erection and within the Instructions to Bidders. In addition, those Contractors engaged in the steel erection process will comply with all requirements of the revised Subpart R Standard, except where the requirements of Pepper's Steel Erection Plan are more stringent. In such cases, the Contractor will abide by the stricter standard.
- 10.8 Safety Policies. Contractor agrees to require all of its employees and Subcontractor's employees to abide by OSHA regulations and Pepper's Jobsite Safety Handbook, **Exhibit D**, on all Pepper Projects. Contractor shall provide training to all its employees of the possible hazards associated with the tasks each employee performs and each employee must know and understand all of these safety regulations. Prior to entering the jobsite, ALL PERSONS performing Work must attend the Pepper jobsite safety orientation training.
- 10.9 Contractor's employees are required to attend Pepper's Jobsite Orientation prior to beginning Work at the site. Contractor shall coordinate and schedule the orientation with Pepper's Superintendent in a timely manner for all personnel for this Project. This mandatory orientation consists of a general safety orientation and a Project-specific orientation for each person entering the jobsite.
- 10.10 OSHA Training. Contractor shall ensure that its jobsite Supervisor has completed the thirty (30) hour OSHA Construction Safety Course and Contractor shall provide Pepper with certification of such training prior to start of its Work.
- 10.11 Tool Box Safety Meetings. Contractor will hold weekly Tool Box Safety Meetings, led by its jobsite Supervisor. Minutes of the Tool Box Safety Meetings, as well as a signature sheet of all attendees, are to be turned in to the Pepper jobsite Superintendent weekly.
- 10.12 First Aid. Contractor must provide first aid equipment to be made accessible to its employees.
- 10.13 Hazardous Materials.
- 10.13.1 Contractor agrees to submit all necessary Safety Data Sheets, SDS-OSHA Form 20 or equivalent, for all hazardous substances introduced on the jobsite and shall inform Pepper's office prior to its introduction to the jobsite. Contractor must be in compliance with the OSHA Hazard Communication Standard 1926.59. It is imperative that the Material Safety Data Sheets be on file in Pepper's office prior to Contractor's starting Work on the site.
- 10.13.2 Should Contractor encounter existing asbestos, polychlorinated biphenyl (PCB) or other hazardous substances at the site which potentially are harmful to persons or property, Contractor shall take all actions required by the Contract Documents and by law to protect persons and property from injury or damage, including stopping the Contractor's Work in the affected areas and immediately notifying the Owner/Pepper verbally, and shortly thereafter in writing.
- 10.13.3 Should Contractor be required to stop its Work as a result of existing hazardous materials located at the jobsite, Contractor shall not resume its Work in the affected area until the hazardous substances have been removed or rendered harmless or the Owner/Pepper and Contractor agree in writing to commence Work in all or a portion of the area.
- 11. Insurance**
- 11.1 Insurance Requirements. Contractor shall maintain, at its own expense, during the progress of the Work and throughout the warranty period, insurance written by insurance companies as required by the Owner's Request for Proposals (as further described below) with the minimum limits and coverage as shown below or, if higher, the requirements set forth in the Contract Documents. For purposes of this insurance section, major trades include: Concrete//Pre-cast Concrete; Curtainwall; Electrical; Elevator; Excavation/Earthwork; Fire Protection; Hoisting/Tower Crane; HVAC; Plumbing/Piping; Shoring/Underpinning; Soil Stabilization; Special Foundations/Caissons; and Steel (collectively, "Major Trades").
- Unless otherwise required by the Contract Documents, at a minimum, Contractor's insurance shall be provided by:
- 1) Insurer(s) authorized to transact business in the state where the Work or operations will be performed by Contractor; and
 - 2) Admitted insurers that maintain an A.M. Best's rating of not less than A-/VIII.
- 11.1.1 **WORKERS' COMPENSATION** including **Employers' Liability Insurance** in an amount of at least:
- 1) \$1,000,000, bodily injury by accident – each accident;

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- 2) \$1,000,000, bodily injury by disease – policy limit; and
- 3) \$1,000,000, bodily injury by disease each employee.

Where applicable, evidence of coverage shall be required for Longshore and Harbor Workers' Compensation, Maritime coverage, Federal Employers' Liability Act and other unique exposures requiring endorsement of coverage.

Workers' Compensation coverage must extend to every employee, including owners/officers of a closely held corporation and/or individuals operating as a sole proprietorship or partnership

- 11.1.2 **COMMERCIAL GENERAL LIABILITY ("CGL")** insurance for Major Trades with a limit of not less than \$2,000,000 per occurrence for both Premises/Ongoing Operations, \$2,000,000 Products-Completed Operations aggregate; and \$2,000,000 general aggregate applicable to claims other than Products-Completed Operations. For all other trades, with a limit of not less than \$1,000,000 per occurrence for both Premises/Ongoing Operations, \$1,000,000 Products-Completed Operations aggregate; and \$1,000,000 general aggregate applicable to claims other than Products-Completed Operations. To the extent that Contractor's CGL insurance is subject to aggregate limits, the policy shall be endorsed so as to apply such aggregate limits separately to each Project.

Coverage afforded under Contractor's CGL and any Commercial Umbrella insurance shall be provided on an occurrence basis and shall be subject to the terms of the Insurance Services Office ("ISO") Commercial General Liability Coverage Form CG 0001, or an equivalent form providing coverage at least as broad as the ISO form specified. There shall be no limitations or exclusions of coverage beyond those contained in the standard coverage form and coverage shall include liability arising from Premises/Operations, Elevators, Broad-Form Property Damage, Independent Contractors, Contractual Liability, Products-Completed Operations including Construction Defect, Contractual Liability or Personal Injury and Advertising Injury.

All coverages shall be maintained in force for a period of three (3) years after Substantial Completion of the Project or for such period of time as is described in the Contract Documents ("Products-Completed Operations Period"). All terms and conditions of such coverage shall be maintained during this Products-Completed Operations Period, including the required coverage limits and the requirement to provide Pepper and Owner with coverage as an **Additional Insured** for Products-Completed Operations. XCU Exclusions must be deleted when applicable to operations performed by the Contractor.

- 11.1.3 **COMMERCIAL UMBRELLA LIABILITY** ("Umbrella Liability") shall be maintained by Contractor, providing the same coverage and with the same **Additional Insureds** as the primary policy in the amount of \$5,000,000 for Major Trades and \$1,000,000 for all other trades. All terms and conditions of such coverage shall be maintained during the three (3) year Project-Completed Operations Period, including the required coverage limits and the requirement to provide Pepper and Owner with coverage as an **Additional Insured** for Products- Completed Operations. Umbrella Liability insurance required under this Prime Trade Contract shall follow the form of the Commercial General Liability insurance, Business Automobile insurance, and Employers' Liability insurance as required in the Prime Trade Contract. To the extent that Contractor's Umbrella Liability insurance is subject to aggregate limits, policies shall be endorsed so as to apply such aggregate limits separately to each Project.

When providing a Blanket Certificate of Insurance, the following wording must be included: "*All work provided by [Contractor's Company Name] for all Pepper Construction Company jobsites. Additional Insureds: Pepper Construction Company and all others identified at Exhibit C of the Prime Trade Contract.*"

- 11.1.4 **BUSINESS AUTOMOBILE LIABILITY** on an accident basis covering all Owned, Leased, Non-Owned and Hired Vehicles providing limits of liability for Bodily Injury and Property Damage of \$1,000,000 each occurrence, including coverage of its own employees.
- 11.1.5 **CONTRACTOR'S POLLUTION LIABILITY** insurance shall be provided by Contractor with minimum limits of \$1,000,000 per occurrence and \$1,000,000 per aggregate for at least the following types of Contractors: building enclosure systems, drywall/insulation, MEP (including but not limited to HVAC, plumbing, sprinkler), and excavating. Policy shall include affirmative mold coverage. The policy must include the parties listed in **Exhibit C** Insurance Requirements as **Additional Insureds** on a primary and non-contributory basis. Occurrence or claims-made coverage is acceptable. Occurrence-based coverage is to be maintained for five (5) years after completion. Claims-made coverage is to have a retroactive date prior to the date the Contractor commences contracting services on the Project and shall include an Extended Reporting Period of three (3) years. **Additional Insured** coverage under the Contractor's Pollution Liability shall apply to both ongoing and completed operations.
- 11.1.6 **ADDITIONAL INSURED:** The Contractor's CGL and Umbrella Liability policies must include the parties listed in **Exhibit C** as **Additional Insureds**, on an ISO **Additional Insured** Endorsement (CG 2010 and CG 2037, Edition #07 04 or older, or equivalent) covering Ongoing and Completed Operations. Contractor's insurance will be Primary and Non-Contributory to any insurance carried by any of the **Additional Insured**. Contractor's required insurance shall apply separately to each **Additional Insured**. Any other insurance or self-insurance maintained by Pepper or Owner shall be excess of, and non-contributory with, the coverage afforded by Contractor's CGL and Umbrella Liability insurance.
- 11.1.7 A Certificate of Insurance on an ACORD form, and the **Additional Insured** Endorsement (including a waiver of subrogation) must be delivered to the Pepper Project Manager of record and FAXED TO THE PEPPER JOBSITE SUPERVISOR PRIOR TO THE **COMMENCEMENT OF ANY WORK**. The Contractor shall notify Pepper by email within thirty (30) days if such coverage is to be altered, cancelled, or allowed to expire.
- 11.1.8 Equivalent insurance coverage must be obtained from each of Contractor's Subcontractors or Suppliers, if any, before permitting them on the Project site. In the event Contractor fails to obtain such coverage from its lower tiers, protection of such parties shall be included within Contractor's insurance policies.
- 11.1.9 Contractor's required insurance shall apply separately to each **Additional Insured**.
- 11.1.10 Pepper may furnish, erect or provide equipment, appurtenances and devices, motorized or otherwise, for its use to complete its Agreement with the Owner. Contractor may use such items upon Pepper's prior written authorization. In the event of any such Contractor use, the Contractor agrees to insure against claims of injury or damage caused by such items while in Contractor's care, custody or control by naming

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Pepper as an insured party and/or a loss payee for Physical Damage losses. Liability limits shall be the same as in Subparagraphs 11.1.2 – 11.1.5, above. Physical Damage Insurance against damage to the items themselves shall be on a "Replacement Cost" basis.

- 11.1.11 Contractor will be responsible for any deductible or self-insured retention under its insurance policies.
- 11.1.12 It is understood and agreed that Pepper shall withhold payments to the Contractor until a properly executed Certificate of Insurance and endorsement providing insurance as required herein, accompanied by a signed Prime Trade Contract, are received by Pepper. The failure of Pepper to withhold such payments or obtain the required Certificates or endorsement shall not be deemed to be a waiver of Contractor's obligation to provide the insurance required under this Agreement.
- 11.1.13 Contractor hereby waives any rights of subrogation against Owner, Pepper, the Architect, and any other **Additional Insured** as required by this Agreement or the Request for Proposal. If insurance policies specified within this Article 11 require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owner of such policies will cause them to be so endorsed. This waiver shall apply to all first party Property, Equipment, Vehicle and Workers' Compensation claims (unless prohibited under applicable state statutes), and all third party liability claims.
- 11.1.14 Limits under the Commercial General Liability, Business Auto Liability, and Employer's Liability policies can be obtained by any combination of primary and excess coverage.
- 11.2 **Contractor's Tools and Equipment.** Contractor shall assume all risks and liability for damage or loss to all materials, tools or equipment not incorporated in the Work and which belong to it or are under its care, custody or control.
- 11.3 **Indemnification.** To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, Pepper, the Architect and others required in the Contract Documents and their agents, other employees and invitees, from and against all claims, damages, losses and expenses, including by not limited to, attorneys' fees ("Claims"), arising out of or resulting from Contractor's performance of or failure to perform its obligations under this Contract, provided that such Claim is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, but only to the extent caused by negligent acts or omissions of the Contractor, or anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable. This indemnification shall not be limited in any way by any limitations on the amount or type of damages, compensation or benefits payable by or for the Contractor under Workers' Compensation, disability benefit or other employee benefit acts and shall survive the Completion and the final payment of this Contract.

Contractor further agrees to obtain, maintain, and pay for such insurance as will insure the provisions of this Paragraph 11.3

12. **Warranties**

Contractor shall provide a separate written warranty in triplicate at the time of final billing, guaranteeing its Work against defects in materials and/or workmanship for the period required in the Specifications. If required by the Contract Documents and Request for Proposal, Contractor shall also provide a Manufacturer's Warranty for installed materials and equipment. All warranties shall meet the express terms and conditions required under the provisions of the Contract Documents for the period called for in the Specifications or, if not specified, for twelve (12) months from acceptance of Project by Owner. Contractor shall promptly repair or replace any such defects occurring within the warranty period without cost or liability to Owner or Pepper.

13. **Equal Employment Opportunity**

During the performance of this Contract, the **Contractor shall incorporate the requirements of 41 C.F.R. §§60-1.4(a)(7), 60-250.5 and/or 60-300.5, 60-741.5, EO 13496 and 29 C.F.R. part 471, Appendix A to Subpart A, if applicable,** and agrees as follows:

- 13.1. **Non-Discrimination.**
- 13.1.1 The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- 13.1.2 The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- 13.1.3 The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 13.1.4 The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 13.1.5 The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 13.1.6 In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further

Exhibit 2.1.6.4 - Sample Prime Trade Contract

Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- 13.1.7 The Contractor will include the provisions of Subparagraphs 13.1.1 – 13.1.6, above, in every Subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any Subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.
- 13.2 Affirmative Action.
- 13.2.1 The Contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans status in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 13.2.2 The Contractor agrees that all suitable employment openings of the Contractor which exist at the time of the execution of this Contract and those which occur during the performance of this Contract, including those not generated by this Contract and including those occurring at an establishment of the Contractor other than the one wherein the Contract is being performed but excluding those of independently operated corporate affiliates, shall be listed at an appropriate local office of the State employment service system wherein the opening occurs. The Contractor further agrees to provide such reports to such local offices regarding employment openings and hires as may be required.
- State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service, but are not required to provide those reports set forth in Subparagraphs 13.2.4 and 13.2.5, below.
- 13.2.3 Listing of employment openings with the employment service system pursuant to this Clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and non-veterans. The listing of employment openings does not require the hiring of any particular job applicant or from any particular group of job applicants, and nothing herein is intended to relieve the Contractor from any requirements in Executive orders or regulations regarding non-discrimination in employment.
- 13.2.4 The reports required by Subparagraph 13.2.2 of this Clause shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local office or, where the Contractor has more than one hiring location in a State, with the central office of that State employment service. Such reports shall indicate for each hiring location: (1) the number of individuals hired during the reporting period; (2) the number of non-disabled veterans of the Vietnam era hired; (3) the number of disabled veterans of the Vietnam era hired; and (4) the total number of disabled veterans hired. The reports should include covered veterans hired for on-the-job training under 38 U.S.C. 1787. The Contractor shall submit a report within thirty (30) days after the end of each reporting period wherein any performance is made on this Contract identifying data for each hiring location. The Contractor shall maintain at each hiring location copies of the reports submitted until the expiration of one (1) year after final payment under the Contract, during which time these reports and related documentation shall be made available, upon request, for examination by any authorized representatives of the contracting officer or of the Secretary of Labor. Documentation would include personnel records respecting job openings, recruitment and placement.
- 13.2.5 Whenever the Contractor becomes contractually bound to the listing provisions of this clause, it shall advise the employment service system in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these provisions and has so advised the State system, there is no need to advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this Contract clause.
- 13.2.6 This Clause does not apply to the listing of employment openings which occur and are filled outside of the 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.
- 13.2.7 The provisions of Subparagraphs 13.2.2-13.2.5 of this Clause do not apply to openings which the Contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of his own organization or employer-union arrangement for that opening.
- 13.2.8 As used in this Clause:
- 13.2.8.1 "All suitable employment openings" includes, but is not limited to, openings which occur in the following job categories: Production and non-production; plant and office; laborers and mechanics; supervisory and non-supervisory; technical; and executive, administrative, and professional openings as are compensated on a salary basis of less than \$25,000 per year. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment. It does not include openings which the Contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement or openings in an educational institution which are restricted to students of that institution. Under the most compelling circumstances an employment opening may not be suitable for listing, including such situations where the needs of the Government cannot reasonably be otherwise supplied, where listing would be contrary to national security, or where the requirement of listing would otherwise not be for the best interest of the Government.
- 13.2.8.2 "Appropriate office of the State employment service system" means the local office of the Federal-State national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Columbia, Guam,

Exhibit 2.1.6.4 - Sample Prime Trade Contract

Puerto Rico, and the Virgin Islands.

- 13.2.8.3 "Openings which the Contractor proposes to fill from within his own organization" means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) and includes any openings which the Contractor proposes to fill from regularly established "recall" lists.
- 13.2.8.4 "Openings which the Contractor proposes to fill pursuant to a customary and traditional employer-union hiring arrangement," means employment openings which the Contractor proposes to fill from union halls, which is part of the customary and traditional hiring relationship which exists between the Contractor and representatives of his employees.
- 13.2.9 The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- 13.2.10 In the event of the Contractor's non-compliance with the requirements of this Clause, actions for non-compliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- 13.2.11 The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notice shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era for employment, and the rights of applicants and employees.
- 13.2.12 The Contractor will notify each labor union or representative of workers with which it has a collective bargaining Agreement or other contract understanding, that the Contractor is bound by the terms of the Vietnam Era Veterans Readjustment Assistance Act, and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era.
- 13.2.13 The Contractor will include the provisions of this Clause in every Subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to the Act, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any Contract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.
- 13.2.14 The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to a position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 13.2.15 The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- 13.2.16 In the event of the Contractor's non-compliance with the requirements of this Clause, actions for non-compliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- 13.2.17 The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- 13.2.18 The Contractor will notify each labor union or representative of workers with which it has a collective bargaining Agreement or other contract understanding, that the Contractor is bound by the terms of section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- 13.2.19 The Contractor will include the provisions of this Clause in every Subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to section 503 or the Act, so that such provisions will be binding upon each Subcontractor or vendor. The Subcontractor will take such action with respect to any Contract or purchase order as the Director of the Office of Federal Contract Compliance. Programs may direct to enforce such provisions, including action for non-compliance.
- 13.3 The Contractor shall comply with all federal, state, and local equal employment and affirmative action statutes, rules and regulations including, to the extent applicable given the geographical location of the Project (and not in limitation of any other particular law that would pertain to the Contractor's Scope of Work), the City of Chicago Human Rights Ordinance and the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1993), the Illinois Prevailing Wage Act, 820 ILCS 130/1 et seq., and any subsequent amendments to or regulations thereof.

Violation of any anti-discrimination or affirmative action requirements, whether or not expressly described herein, that are lawfully imposed on the operation of the Contractor's business in the performance of the Scope of Work described herein, shall be a material breach of this Contract and a basis for default under Article 14, below.

14. **Default and Termination**

- 14.1 **Default by Contractor.** Should the Contractor fail in any manner to perform this Work properly or default in the performance of any provision of this Agreement or suffer any delay not accepted by Owner and Pepper as authorized under the Contract Documents, or should the Contractor suffer any form of financial distress so that it could not give reasonable assurance to Pepper that it can continue to perform its obligations under this Agreement, Pepper may give written notice to the Contractor to begin with all necessary diligence to cure such defaults within a twenty-four (24) hour period or failing to do so, Pepper may, without prejudice to any other remedies it may have under the law or in equity, terminate this Agreement and look to the Contractor or its surety for payment of all damages which it incurs. Owner's and Pepper's remedies shall include, but not be limited to, completing the Work and correcting any defective Work at a commercially reasonable cost given exigent circumstances, the cost of which will be charged against the balance of any sums due Contractor. In the event of such a breach, in addition to any other remedy Owner and Pepper may have, the Contractor agrees to indemnify, defend, and hold Owner and Pepper harmless from all

Exhibit 2.1.6.4 - Sample Prime Trade Contract

losses, damages, expenses, (including reasonable attorneys' fees) as well as any judgments suffered by Owner and Pepper as a result of Contractor's acts or omissions in the performance of its Work. As to any damages incurred by Pepper, Pepper shall have the right of set off and to deduct from any balance due under this Agreement or from any other accounts under separate contracts under which Pepper is holding net funds due the Contractor.

14.2 Default by Owner.

14.2.1 Pepper does not financially guarantee the Owner's ability to fund the Project cost. It is an express condition of this Agreement that Pepper's obligation to pay Contractor is contingent upon receipt of payment from Owner for Contractor's Work. Owner's withholding of a Pepper payment, due to an alleged failure by Pepper to perform any of its obligations unrelated to this Prime Trade Contract Agreement, will not excuse payment to Contractor according to the terms of this Contract Agreement. Retainage shall be held by Pepper as provided in the Owner/Pepper Agreement, or as deemed necessary by Pepper until any failure of performance is corrected and Contractor is in compliance with this Contract Agreement.

14.2.2 In the event of Owner's nonpayment, nothing contained in this Agreement shall be construed as a waiver or impairment of Contractor's mechanic lien rights.

14.3 Contract Termination. It is agreed that should the Owner terminate or stop the progress of the Work of the Project, due to conditions which Owner or Pepper cannot control, Owner or Pepper may terminate this Agreement without any liability to the Contractor and the Contractor will be entitled to payment for materials and/or labor approved and accepted by Pepper and by Owner (including all materials specially manufactured pursuant to this Agreement at the date of its termination), and actually paid to Pepper by Owner. Contractor shall also be entitled to payment for any unavoidable cancellation or restocking charges for material orders.

14.4 Prevailing Party/Attorneys' Fees and Costs. In the event any arbitration, legal proceeding, or other form of dispute resolution is commenced between the parties to this Agreement, the prevailing party shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for attorneys' fees and costs, which award shall be determined at the conclusion of the proceedings by the presiding arbitrator(s) or judge.

15. UAS Usage

Contractor shall not be permitted to use an unmanned aircraft system ("UAS") on the Project site without the prior written approval of Pepper. Should the use of any UAS be permitted, Contractor shall enter into a separate agreement ("UAS Agreement") with Pepper with regard to such usage, submit proof of compliance with all Federal Aviation Administration, state, county, local, and any other applicable laws and regulations in effect, and provide proof of insurance as set forth within such UAS Agreement.

16. Miscellaneous Terms

16.1 Enumeration of Documents

In addition to this Prime Trade Contract and the Construction Manager Agreement between Owner and Pepper, the Contract Documents are comprised of the following:

- Exhibit A – Contract Document Listing
- Exhibit B – Scope of Work
- Exhibit C – Insurance Requirements
- Exhibit D – 01/01/17 Jobsite Safety Handbook (See Article 10 for on-line access)
- Exhibit E – Project Schedule as prepared by Pepper Construction Company
- Exhibit F – Tax Exempt Letter

16.2 Exemption Status

This Project is / is not exempt from Retail Sales Tax.

Exhibit 2.1.6.4 - Sample Prime Trade Contract

WAIVER OF LIEN TO DATE

STATE of _____) SS
 County of _____) SS

TO WHOM IT MAY CONCERN:

WHEREAS the undersigned has been employed by _____ to furnish _____ for the premises known as _____ of which _____ is the owner.

THE undersigned, for and in consideration of _____ (\$_____) Dollars, and other good and valuable considerations, the receipt whereof is hereby acknowledged, do(es) hereby waive and release any and all lien or claim of, or right to, lien, under the statutes of the State of _____, relating to mechanics' liens, with respect to and on said above-described premises, and the improvements thereon, and on the material, fixtures, apparatus or machinery furnished, and on the moneys, funds or other considerations due or to become due from the owner, on account of labor, services, material, fixtures, apparatus or machinery, furnished to this date by the undersigned for the above-described premises, including extras.*

Given under my hand and sealed this _____ day of _____, 20_____

Signature and Seal: _____

*Extras include but are not limited to Change Orders, both oral and written, to the Contract

CONTRACTOR'S AFFIDAVIT

STATE of _____) SS
 County of _____) SS

TO WHOM IT MAY CONCERN:

THE undersigned, being duly sworn, deposes and says that he/she is _____ of the _____ who is contractor for the _____ work on the building located at _____ owned by _____.

That the total amount of the contract, including additional work and Change Orders, is \$_____ on which he/she has received payment of \$_____ prior to this payment. That all waivers are true, correct and is genuine and delivered unconditionally and that there is no claim, either legal or equitable, to defeat the validity of said waivers. That the following are the names of all parties who have furnished material or labor, or both, for said work and all parties having contracts or subcontracts for specific portions of said work or for material entering into the construction thereof and the amount due or to become due to each, and that the items mentioned include all labor and material required to complete said work according to plans and specifications:

NAMES	WHAT FOR	CONTRACT PRICE INCLDG EXTRAS*	AMOUNT PAID	THIS PAYMENT	BALANCE DUE
	See Attached	Sworn Statement			
TOTAL LABOR AND MATERIAL INCLUDING EXTRAS* TO COMPLETE					

That there are no other contracts for said work outstanding, and that there is nothing due or to become due to any person for material, labor or other work of any kind done or to be done upon or in connection with said work other than above stated.

Signed this _____ day of _____, 20_____

Signature: _____

Subscribed and sworn to before me this _____ day of _____, 20_____

Signature: _____

Exhibit 2.1.6.4 - Sample Prime Trade Contract

*Extras include but are not limited to Change Orders, both oral and written, to the Contract

Exhibit 2.1.6.4 - Sample Prime Trade Contract

FINAL WAIVER OF LIEN

STATE of _____) SS
 County of _____) SS

TO WHOM IT MAY CONCERN:

WHEREAS the undersigned has been employed by _____ to furnish _____ for the premises known as _____ of which _____ is the owner.

THE undersigned, for and in consideration of _____ (\$_____) Dollars, and other good and valuable considerations, the receipt whereof is hereby acknowledged, do(es) hereby waive and release any and all lien or claim of, or right to, lien under the statutes of the State of _____, relating to mechanics' liens, with respect to and on said above-described premises, and the improvements thereon, and on the material, fixtures, apparatus or machinery furnished, and on the moneys, funds or other considerations due or to become due from the owner, on account of labor, services, material, fixtures, apparatus or machinery, heretofore furnished, or which may be furnished at any time hereafter, by the undersigned for the above-described premises, including extras.*

Given under my hand and sealed this _____ day of _____, 20_____

Signature and Seal: _____

*Extras include but are not limited to Change Orders, both oral and written, to the Contract

CONTRACTOR'S AFFIDAVIT

STATE of _____) SS
 County of _____) SS

TO WHOM IT MAY CONCERN:

THE undersigned, being duly sworn, deposes and says that he/she is _____ of the _____ who is contractor for the _____ work on the building located at _____ owned by _____.

That the total amount of the contract, including additional work and Change Orders, is \$_____ on which he/she has received payment of \$_____ prior to this payment. That all waivers are true, correct and is genuine and delivered unconditionally and that there is no claim, either legal or equitable, to defeat the validity of said waivers. That the following are the names of all parties who have furnished material or labor, or both, for said work and all parties having contracts or subcontracts for specific portions of said work or for material entering into the construction thereof and the amount due or to become due to each, and that the items mentioned include all labor and material required to complete said work according to plans and specifications:

NAMES	WHAT FOR	CONTRACT PRICE INCLDG EXTRAS*	AMOUNT PAID	THIS PAYMENT	BALANCE DUE
	See Attached	Sworn Statement			
TOTAL LABOR AND MATERIAL INCLUDING EXTRAS* TO COMPLETE					

That there are no other contracts for said work outstanding, and that there is nothing due or to become due to any person for material, labor or other work of any kind done or to be done upon or in connection with said work other than above stated.

Signed this _____ day of _____, 20_____

Signature: _____

Subscribed and sworn to before me this _____ day of _____, 20_____

Signature: _____

Exhibit 2.1.6.4 - Sample Prime Trade Contract

*Extras include but are not limited to Change Orders, both oral and written, to the Contract



Exhibit 8.1 - Construction Manager's Sample Certificate of Insurance

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/17/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER ACIG Insurance Agency, Inc. 2600 N. Central Expwy. Suite 800 Richardson, TX 75080 www.acig.com	CONTACT NAME: PHONE (A/C, No, Ext): 972-702-9004 FAX (A/C, No): 972-687-0601 E-MAIL ADDRESS: accountmanagers@acig.com	
	INSURER(S) AFFORDING COVERAGE NAIC #	
INSURED Pepper Construction Company 411 Lake Zurich Road Barrington IL 60010	INSURER A : American Contractors Ins. Co RRG 12300	
	INSURER B : ACIG Insurance Company 19984	
	INSURER C :	
	INSURER D :	
	INSURER E :	
INSURER F : Allstate Insurance Company 19232		

COVERAGES

CERTIFICATE NUMBER: 48768845

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY			GL19A00036	6/1/2019	6/1/2020	EACH OCCURRENCE	\$ 10,000,000
A	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR			GL19B00036 (GL Excess)	6/1/2019	6/1/2020	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000
A	<input checked="" type="checkbox"/> Contractual Liability			GL19C00036 (GL Excess)	6/1/2019	6/1/2020	MED EXP (Any one person)	\$ 5,000
	<input checked="" type="checkbox"/> Completed Operations						PERSONAL & ADV INJURY	\$ 10,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	\$ 10,000,000
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG	\$ 10,000,000
	OTHER:							\$
F	AUTOMOBILE LIABILITY			048 892 150	6/1/2019	6/1/2020	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO			048 734 219	6/1/2019	6/1/2020	BODILY INJURY (Per person)	\$
	<input type="checkbox"/> OWNED AUTOS ONLY		<input type="checkbox"/> SCHEDULED AUTOS	048 866 668	6/1/2019	6/1/2020	BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> HIRED AUTOS ONLY		<input type="checkbox"/> NON-OWNED AUTOS ONLY				PROPERTY DAMAGE (Per accident)	\$
								\$
	<input type="checkbox"/> UMBRELLA LIAB			SEE ATTACHED FOR excess/umbrella policy nos., coverage & limits	6/1/2019	6/1/2020	EACH OCCURRENCE	\$ see attached
	<input checked="" type="checkbox"/> EXCESS LIAB						AGGREGATE	\$ see attached
	<input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$							\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			WCA000011519	6/1/2019	6/1/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER	
B	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N <input checked="" type="checkbox"/> N / A	WCA000003419 Ohio WC State Fund #1500532	6/1/2019	6/1/2020	E.L. EACH ACCIDENT	\$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

--See Attached Remarks Schedule--

-see attached addendum-

CERTIFICATE HOLDER**CANCELLATION**

PCC Sample

PCC Sample

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Michael J. O'Neill

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ACORD 25 (2016/03)

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Exhibit 8.1 - Construction Manager's Sample Certificate of Insurance

AGENCY CUSTOMER ID: PEPPER

LOC #: _____



ADDITIONAL REMARKS SCHEDULE

Page ____ of ____

AGENCY ACIG Insurance Agency, Inc.		NAMED INSURED Pepper Construction Company 411 Lake Zurich Road Barrington IL 60010	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE	(Empty space)	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** Certificate of Liability (03/16)

HOLDER: PCC Sample

ADDRESS:

Additional Insured(s) is/are included when required by written contract & per attached endorsement. If contract requires primary non-contributory coverage see para D. If contract requires specific AI endorsements see para C. If contract requires ongoing & completed operations see para B.1.

GL - If these policies are cancelled, non-renewed or materially changed, 60 days notice, except 10 days for nonpayment of premium, will be mailed to the Certificate Holder, when required by written contract, permit or agreement with the Named Insured.

WC - If these policies are cancelled, non-renewed or materially changed, 60 days notice, except 10 days for nonpayment of premium, will be mailed to the Certificate Holder, when required by written contract, permit or agreement with the Named Insured.

When Auto Liability Additional Insured and/or Waiver of Subrogation coverage is required Allstate will provide a certificate of insurance with copies of the endorsements

Exhibit 8.1 - Construction Manager's Sample Certificate of Insurance

AGENCY CUSTOMER ID: PEPPER

LOC #: _____



ADDITIONAL REMARKS SCHEDULE

Page ____ of ____

AGENCY ACIG Insurance Agency, Inc.		NAMED INSURED Pepper Construction Company 411 Lake Zurich Road Barrington IL 60010	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** Certificate of Liability (03/16)

HOLDER: PCC Sample

ADDRESS:

PEPPER ADDENDUM EXCESS LIABILITY COVERAGE
 6-1-2019 to 6-1-2020

 Insurer: XL Insurance America, Inc.
 Limit: \$25,000,000 per occurrence, \$25,000,000 aggregate excess of primary
 Policy No.: US00075474LI19A

 Insurer: Allied World National Assurance Company
 Limit: \$25,000,000 excess \$25,000,000 excess of primary
 Policy No.: 0305-6000

 SHARED LAYER:
 Insurer: RSUI Indemnity Company
 Limit: \$25,000,000 part of \$50,000,000 excess \$50,000,000 excess of primary
 Policy No.: NHA086407
 Insurer: Berkley National Insurance Company
 Limit: \$25,000,000 part of \$50,000,000 excess \$50,000,000 excess of primary
 Policy No.: CEX09600269-06

Exhibit 8.1 - Construction Manager's Sample Certificate of Insurance
ADDITIONAL INSURED – AUTOMATIC STATUS
AS REQUIRED BY CONTRACT – BLANKET

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Any person or organization that you are required by written contract to include as an additional insured on this policy if the contract is executed prior to the loss.

- A. Who is an Insured (Section II) is amended to include as an insured any person or organization shown in the above SCHEDULE (called additional insured), but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of your premises or your operations for the additional insured, and only to the extent and for the minimum limits required in the written contract.
- B. The insurance provided to the additional insured is subject to the following limitations:
 - 1. Unless required by written contract, this insurance does not apply to "bodily injury" or "property damage" occurring after "your work" for the additional insured has been completed or after that portion of "your work" out of which the "bodily injury" or "property damage" arises has been put to its intended use by any person or organization, whichever occurs first.
 - 2. Unless specifically required by written contract, this insurance does not apply to "bodily injury" or "property damage" arising out of the sole negligence, act or omission of the additional insured.
 - 3. This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" for which the additional insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement except to the extent that the additional insured would have been obligated to pay such damages in the absence of the contract or agreement.
 - 4. This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering or failure to render any professional services by any insured or on any insured's behalf, including:
 - a) The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, drawings or specifications; and
 - b) Supervisory, inspection, architectural or engineering services.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.
 - 5. This endorsement shall not apply to a person or organization if any other additional insured endorsement attached to this policy specifically applies to that person or organization.
 - 6. The insurance afforded herein only applies to the extent permitted by applicable state law, including statutes governing additional insured coverage in the construction industry.
 - 7. The insurance afforded to the additional insured shall not exceed the minimum limits required in the written contract.
- C. In no event shall the insurance provided to the additional insured exceed the scope of coverage, including minimum limits, required by the contract. If a written contract or agreement requires that additional insured status be provided by the use of specified edition dates of the ISO CG2010 and/or CG2037, then the terms of that endorsement are incorporated into this endorsement as respects such additional insured and shall supersede the coverage grant and limitations in Sections A. and B. of this endorsement. In the event that CG2010 and/or CG2037 are required but no edition dates are specified, the 04/13 editions shall apply.
- D. This insurance is excess to any other insurance, whether primary, excess, contingent or on any other basis, available to the additional insured unless a written contract requires that this insurance be primary or primary and non-contributing. However, this insurance is always excess to other insurance, whether primary, excess, contingent or on any other basis, when the additional insured has been added to the other insurance as an additional insured.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the mentioned Policy, other than as above stated.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: **Same as policy effective date unless otherwise indicated above.**

Policy Effective: 6/1/2019

Policy No.: GL19A00036

Endorsement No.:

Insured: Pepper Construction Company

Premium \$

Insurance Company: American Contractors Insurance Co. RRG