



**CHAMPAIGN
PARK DISTRICT**

**AGENDA
REGULAR BOARD MEETING
BRESNAN MEETING CENTER
706 KENWOOD ROAD, CHAMPAIGN, ILLINOIS 61821
Wednesday, January 8, 2020
7:00 P.M.**

A. CALL TO ORDER

B. PRESENTATIONS

1. Paycom Software, Inc.

C. COMMENTS FROM THE PUBLIC: *Comments must be limited to not more than three (3) minutes.*

D. COMMUNICATIONS

E. TREASURER'S REPORT

1. Acceptance of the Treasurer's Report for the Month of December 2019

F. EXECUTIVE DIRECTOR'S REPORT

1. General Announcements

G. COMMITTEE REPORT

1. Champaign Parks Foundation

H. REPORT OF OFFICERS

1. Attorney's Report
2. President's Report

I. NEW BUSINESS

1. Approval of Disbursements as of December 11, 2019
Staff recommends approval of disbursements for the period beginning December 11, 2019 and ending January 7, 2019. **(Roll Call Vote)**
2. Approval of Summer 2020 Part-Time and Seasonal Position Pay Rates
Staff recommends approval of the 2020 seasonal and part-time wages as presented by staff.
3. Approval of an Agreement with Architectural Expressions, LLP for The Bicentennial Center Project
Staff recommends approval of an agreement between Park District and Architectural Expressions, LLP for the Bicentennial Center facility renovations project.
4. Approval of RFP for Construction Manager of The Bicentennial Center Project
Staff recommends approval of an agreement between Park District and Broeren Russo Builders, Inc. to be the construction manager for the Bicentennial Center facility renovations project.

J. OLD BUSINESS

1. Approval of a Central Parks App Hosting and Support Agreement with Links Technology Solutions, Inc.
Staff recommends approval of a Central Parks App Hosting and Support Agreement with Links Technology Solutions, Inc. for hosting, support and ongoing maintenance services for the Champaign Park District's App Development Project for a three (3) year term.

K. DISCUSSION ITEMS

L. COMMENTS FROM COMMISSIONERS

M. ADJOURN



REPORT TO PARK BOARD

FROM: Joe DeLuce, Executive Director

DATE: January 2, 2019

SUBJECT: Payroll and Applicant Software

Background

The Champaign Park District staff have been using several different software programs for employment and payroll purposes. The Park District currently has an applicant tracking system with Applitrack, a time clock with Fintrac, the HR and Payroll software with BS&A. In addition, all payroll tasks are currently handled by Park District staff. There are several issues with the current system and listed below are a few of the issues:

- The current applicant tracking system (ATS) lacks ease of use for the applicant.
- The ATS requires the applicant to download a resume and then type in all the information on the resume to the application instead of an auto transfer of information.
- The ATS will not transfer any data over to the employee data base or payroll causing staff to manually enter all new employees.
- The current time clock does not allow staff who work in the parks and sports fields or remote locations for programs to clock in and out unless they are at a computer in a set facility.
- The time clock does not allow for more than one level of approval.
- The time clock does not alert supervisors when an employee is working more hours than approved or in danger of overtime.
- The current time clock does not have security systems in place to help reduce fraud.
- The current payroll system does not integrate with the applicant tracking system and currently staff enter new employee information manually.
- All payroll processing is handled in-house requiring a significant amount of staff time.
- Staff are very limited on the payroll reports.
- Manual processes for requesting time off, payroll changes and evaluations would be replaced with real time entry with Paycom electronic approvals.

Staff have looked at several software systems that would encompass all of these separate pieces into one cohesive program and one that would allow for greater controls, reports and reduce liability on the Park District. Paycom was the only program that combines all of the programs into one intergraded system. Staff explored staying with BS&A and adding the Applicant Tracking and their recommended time clock, however the BS&A preferred timeclock vendor is estimated at \$60,000 annually for only time clock feature and is not 100% integrated with BS&A or ATS without exporting and importing data.

The Paycom system would bring many benefits to the Park District including:

- Automated on-boarding of new and returning employees with electronic approvals and follow-up with all parties updated on status of the process.
- Recurring training through Paycom via videos and other training documents.
- Push out new policies to employees with electronic approvals and documents. automatically saved to employee files.
- Tracking of equipment issued to staff, i.e. keys, uniforms, etc.
- All bi-weekly payroll processing, including Federal and state taxes, IMRF, unemployment monthly reporting and check vouchers.
- Preparation and filing of quarterly payroll tax returns.
- Preparation and filing of annual W-2's to the employee; preparation of all ACA reporting forms to employees and annual employer reporting to IRS, and W-3 transmittals to Federal and State.
- Benefits administration-automated/electronic signup with automatic email reminders to staff.
- Paycom assumes all liability on taxes and payroll.
- Allows for up to five levels of approval on staff time.
- Improved accuracy and timeliness.
- Efficiency for HR and Accounting staff time, eliminates duplicate work.
- Reduce the potential for fraud.
- Improved process and eliminates lost paperwork and redundancy.
- Ownership on the employee for errors in clocking in/out.
- Reduce overtime.
- Increased accounting controls. Specifically for tracking hours for ACA reporting and IMRF eligibility hour limit.
- Time off tracking for patterns which is currently not available.
- Ability to have information in real time.
- Free up employee time to assist the Director of Finance in other projects and duties.
- Increased transparency.

The return on the investment would include the labor hours employee devote to payroll-related activities, as well as supervisors making changes to employee time records, and HR staff entering information on new hires. Staff would also have the ability to look up and print their records instead of asking HR or Accounting staff to pull up their information. The liability transfer to Paycom for tax filings. And lastly, having a team of experts to assist Park District staff with employee HR and payroll needs. Paycom continually tracks the ROI and if purchased the staff would be able to provide regular reports to the Board of Commissioners regarding the use of the program and the ROI.

Prior Board Action

None.

Budget Impact

Paycom's structure would bill the Park District only for the number of paychecks each payroll. Per paycheck cost is \$10.52, plus a base fee of \$228.54 per payroll. Last year the Park District had as few as 212 checks in a January pay period and as many as 508 paychecks in a June pay period. Overall, the Park District had 7,843 checks in 2019. Based on the number of checks in 2019, the estimated cost of all payroll processing, software and time clock would be \$88,450.40 in 2020. In addition, there is a one-time conversion, set-up and training fee of \$27,804.58.

The mission of the Champaign Park District is to enhance our community's quality of life through positive experiences in parks, recreation, and cultural arts.

The Park District would not renew licenses with the current Applicant Tracking System, FinTrac, and BS&A for Payroll and HR. These programs currently cost \$11,500.

Paycom does not require a contract for any specific time. They will process paychecks per our request. Many of the software/payroll processing companies required the Park District to pay for estimated payroll which is costly when the Park District has many more checks only in the summer months.

Recommended Action

This item is for discussion purposes.

Prepared by:

Reviewed by:

Tammy V. Hoggatt, SPHR, SHRM-SCP
Director of Human Resources

Joe DeLuce, CPRP
Executive Director

Andrea N. Wallace, CPA
Director of Finance



REPORT TO PARK BOARD

FROM: Joe DeLuce, Executive Director

DATE: January 8, 2020

SUBJECT: Seasonal and Part-Time Wages

Background

The “minimum wage” issue, the Park District wants to make sure we use this information to plan for the future but not “redefine” the Park District. We must continue to provide the same outstanding facilities, parks, services, and programs we have in the past.

In February of 2019, the state of Illinois approved an increase in the minimum wage for all employees in the State. The increases take effect on January 1, 2020 with a \$1.00 increase and then a \$0.75 cent increase on July 1, 2020. The schedule for increases is outlined below:

| | Adult Minimum Wage | Teen Sub- Minimum Wage | Exemption Amount | Exemption Percentage |
|-----------------|-----------------------------------|---------------------------------------|-----------------------------|---------------------------------|
| 2019 | \$8.25 | \$7.75 | \$0.50 | 6.06% |
| January 1, 2020 | \$9.25 | \$8.00 | \$1.25 | 13.51% |
| July 1, 2020 | \$10.00 | \$8.00 | \$2.00 | 20.00% |
| January 1, 2021 | \$11.00 | \$8.50 | \$2.50 | 22.73% |
| January 1, 2022 | \$12.00 | \$9.25 | \$2.75 | 22.92% |
| January 1, 2023 | \$13.00 | \$10.50 | \$2.50 | 19.23% |
| January 1, 2024 | \$14.00 | \$12.00 | \$2.00 | 14.29% |
| January 1, 2025 | \$15.00 | \$13.00 | \$2.00 | 13.33% |

Employee may not exceed 650 hours per calendar

The staff presented priorities in dealing with the increase in the minimum wage in 2019 and below are the updated on these action items:

1. Evaluate any additional parks, paths, or new facilities for the next five years besides the Martens Center. *(Staff will evaluate possible future projects as part of the Capital Budget proposal in early 2020)*
2. Increase the top and bottom of full-time staff pay ranges in order to reduce the compression factor once we reach \$15 per hour for all staff. *(Several full time staff are currently below \$15 per hour, so we are working to get them above \$15 per hour so in 2025 they are well above the minimum wage)*
3. Increase sponsorships and fundraising revenues. *(This is an ongoing process to generate more revenues to cover all the different increased costs)*
4. Maximize the property tax rate for the next five (5) years to help offset some the increase in the minimum wage. *(The Board approved an increase in the tax rate that will help cover a good portion of the minimum wage increases)*

5. Pay teens less than workers who are 18 years of age and older, but work on some additional benefits for high school students in order to justify the lower pay. *(Staff is concerned that if we pay our teens under 18 less they will opt to work for others instead of the Park District. Staff is recommending we pay all staff from the same pay schedule)*
6. Work on evaluating contracts and bids to make sure the Park District benefits from the best possible prices. Include options to allow to refine purchases that allow the best price but also the best product or service available. *(Staff continues to ask vendors and others to lower their costs to give us the best price possible)*
7. Evaluation of each program and service we offer to make sure it is needed and cost effective. *(Reducing our program brochures and finding another event to replace the Mini-Tri and the Taste of CU, and will evaluate other programs and services to make sure they are cost effective)*
8. Evaluate facility operating hours to make sure they are the most efficient. *(Staff are currently evaluating operating hours to make sure they are the most efficient for our patrons and budgets)*
9. Increase program, rental and service fees over the next five (5) years to help offset the cost of staff hourly rates. *(Staff continues to evaluate fees and prices to make sure we are competitive with others and striving to meet our program goals for revenues)*
10. Use of local employment programs, U of I athletes, High school programs, etc. *(Staff is working with as many of these agencies as possible to provide seasonal staff at a lower cost to the Park District)*

Staff reviewed and evaluated all of the seasonal positions for 2020 and made several changes to make sure the Park District is staffed with right positions to meet the needs of the residents. The attached document outlines the recommended positions and pay rates for the increases due in January and July 2020. The increases for January will have very little effect on the FY20 budget as there are only a few positions at minimum wage and those were adjusted to the new rate effective January 1, 2020. Beginning July 1st wages would change the \$1.00 increase on July 1st. Staff recommendation includes increasing the lower pay rates, as well as the supervisors should maintain the difference between their pay and the staff they supervise.

Budget Impact

Staff implemented the increases to estimate the overall increase to the Park District's budgets for FY20 and FY21 and the following outlines those increased costs due to the increase in the minimum wage. Accounting calculated approximate costs for the increases. The projected increase from January 1, 2020 to May 1, 2020 is estimated to be \$12,844. The projected increase based on the recommendation from May 1, 2020 to July 1, 2020 is estimated at \$8,931. The projected increase based on the recommendation from July 1, 2020 to December 31, 2020 is estimated at \$93,169.

Timeline

Staff evaluated the idea to implement the \$0.75 cent increase and other wage compression adjustments in May to avoid changing all of the pay rates in the middle of the summer, however this would have added an additional \$69,000 to the seasonal pay costs.

Recommended Action

Staff recommends the Board approve the updated seasonal pay rates for FY 20 and FY 21.

Prepared by:

Reviewed by:

Tammy Hoggatt
Director of HR, Risk and IT

Joe DeLuce
Executive Director

Illinois Minimum Wage Analysis: Seasonal and Part-time Wages

| Department | Position | Approx. Dates of Employment | CPD Wages as of 2019 | CPD Wages as of 1/1/2020 | CPD Wages as of 7/1/2020 |
|---------------------------|---|-----------------------------|----------------------|--------------------------|--------------------------|
| SEASONAL | | | | | |
| Aquatics | | | | | |
| | Lifeguard Supervisor | April - Sept | \$ 11.00 | \$ 11.00 | \$ 12.00 |
| | Assistant Lifeguard Supervisor | April - Sept | \$ 10.50 | \$ 10.50 | \$ 11.50 |
| | Lifeguard | May - Sept | \$ 9.50 | \$ 9.50 | \$ 10.50 |
| | Swim Lesson Supervisor | May - Sept | \$ 11.00 | \$ 11.00 | \$ 11.50 |
| | Assistant Swim Lesson Supervisor | May - Sept | \$ 10.00 | \$ 10.00 | \$ 10.50 |
| | Swim Lesson Instructor | June - Aug | \$ 9.00 | \$ 9.25 | \$ 10.00 |
| | Swim Team Coach | May - July | \$ 11.00 | \$ 11.00 | \$ 12.00 |
| | Swim Team Assistant Coach | May - July | \$ 10.00 | \$ 10.00 | \$ 10.50 |
| | Concession Supervisor | Mar - Sept | \$ 11.00 | \$ 11.00 | \$ 11.50 |
| | Assistant Concession Supervisor | May-Sept | \$ 10.00 | \$ 10.00 | \$ 10.50 |
| | Concession Worker | May - Sept | \$ 8.50 | \$ 9.25 | \$ 10.00 |
| | Front Desk Supervisor | May-Sept | \$ 11.00 | \$ 11.00 | \$ 11.50 |
| | Front Desk Assistant Supervisor | May-Sept | \$ 10.00 | \$ 10.00 | \$ 10.50 |
| | Front Desk Worker | May - Sept | \$ 8.50 | \$ 9.25 | \$ 10.00 |
| Summer Programming | | | | | |
| | Youth Summer Program Director | May - Aug | \$ 11.50 | \$ 11.50 | \$ 12.00 |
| | Youth Summer Program Assistant Director | May - Aug | \$ 10.25 | \$ 10.25 | \$ 11.00 |
| | Youth Summer Program Leader | May - Aug | \$ 9.75 | \$ 9.75 | \$ 10.00 |
| | Bus Driver | May - Aug | \$ 20.00 | \$ 20.00 | \$ 20.00 - 25.00 (DOQ) |

| | | | | | | |
|-----------------------|---|--------------|---------------------|---------------------|---------------------|---------------------|
| Youth Theatre | | | | | | |
| | Assistant Director | Ongoing | \$ 10.00 | \$ 10.00 | \$ 10.00 | \$ 10.75 |
| | Choreographer | Ongoing | \$ 10.00 | \$ 10.00 | \$ 10.00 | \$ 10.75 |
| | Music Director | Ongoing | \$ 10.00 | \$ 10.00 | \$ 10.00 | \$ 10.75 |
| Operations | | | | | | |
| | Flower Worker I | April - Nov | \$ 9.25 | \$ 9.25 | \$ 9.25 | \$ 10.00 |
| | Flower Worker II | April - Nov | \$ 10.25 | \$ 10.25 | \$ 10.25 | \$ 11.00 |
| | Natural Areas I | April - Nov | \$ 9.25 | \$ 9.25 | \$ 9.25 | \$ 10.00 |
| | Natural Areas II | April - Nov | \$ 10.25 | \$ 10.25 | \$ 10.25 | \$ 11.00 |
| | Operations Laborer I | April - Nov | \$ 9.25 | \$ 9.25 | \$ 9.25 | \$ 10.00 |
| | Operaions Laborer II | April - Nov | \$ 10.25 | \$ 10.25 | \$ 10.25 | \$ 11.00 |
| | Sports Field Worker I | April - Nov | \$ 9.25 | \$ 9.25 | \$ 9.25 | \$ 10.00 |
| | Sports Field Worker II | April - Nov | \$ 10.25 | \$ 10.25 | \$ 10.25 | \$ 11.00 |
| Prairie Farm | | | | | | |
| | Director | April - Sept | \$ 11.00 | \$ 11.00 | \$ 11.00 | \$ 12.00 |
| | Assistant Director - animal care | April - Sept | \$ 9.75 | \$ 9.75 | \$ 9.75 | \$ 11.00 |
| | Assistant Director - children's programming | April - Sept | \$ 9.50 | \$ 9.50 | \$ 9.50 | \$ 11.00 |
| | Leader | May - Sept | \$ 9.25 | \$ 9.25 | \$ 9.25 | \$ 10.00 |
| Special Events | | | | | | |
| | Special Events Assistant | Mar - Aug | \$ 10.00 | \$ 10.00 | \$ 10.00 | \$ 11.00 |
| | Driver (Showmobile/Bus) | Mar - Nov | \$20.00-25.00 (DOQ) | \$20.00-25.00 (DOQ) | \$20.00-25.00 (DOQ) | \$20.00-30.00 (DOQ) |
| | Inflatables Worker | Mar - Nov | \$ 8.50 | \$ 9.25 | \$ 9.25 | \$ 10.00 |
| CUSR | | | | | | |
| | Youth Program Director | Seasonal | \$ 12.00 | \$ 12.00 | \$ 12.00 | \$ 13.00 |
| | Youth Program Assistant Director | May - Aug | \$ 10.50 | \$ 10.50 | \$ 10.50 | \$ 11.25 |
| | *Youth Program Leader | Seasonal | \$ 10.00 | \$ 10.00 | \$ 10.00 | \$ 10.25 |
| | Inclusion/Program Specialist | Year Round | \$ 14.00 | \$ 14.00 | \$ 14.00 | \$ 14.00 |
| | *Inclusion Assistant | Seasonal | \$ 10.00 | \$ 10.00 | \$ 10.00 | \$ 10.25 |

| CUSR | | | | | |
|-------------------------------------|------------|--------------|----------|----------|--|
| *Sports and Community Support Staff | Seasonal | \$ 10.00 | \$ 10.00 | \$ 10.25 | |
| Program Leader | Year Round | \$ 12.00 | \$ 12.00 | \$ 13.00 | |
| Bus/Van Driver | Year Round | New Position | \$15.00 | \$ 15.00 | |

* Plus \$1 for teaching certificate

| Sports | | | | | |
|-------------------------------|----------------------------|---|---|---|--|
| Youth Sports Instructor | Ongoing | \$ 8.50 | \$ 9.25 | \$ 10.00 | |
| Sports Site Supervisor | Ongoing | \$ 9.50 | \$ 9.50 | \$ 10.00 | |
| Sports Concessions Manager | April - Sept | \$ 11.00 | \$ 11.00 | \$ 11.50 | |
| Sports Concession Asst Manger | April-Sept | \$ 10.00 | \$ 10.00 | \$ 10.50 | |
| Sports Concessions Worker | May - Sept | \$ 8.50 | \$ 8.50 | \$ 10.00 | |
| Youth Soccer Official | April - May and Sept - Oct | Unlicensed: \$20/game Licensed: \$30/game | Unlicensed: \$20/game Licensed: \$30/game | Youth Trainee (under 18): \$14/game Adult Trainee (18+): \$18/game U8/10 - Unlicensed: \$20/game U8/10 - Licensed: \$30/game U12/14 - Unlicensed: \$25/game U12/14 - Licensed: \$35/game | |
| Youth Softball Official | May - July | Unlicensed: \$40/game Licensed: \$50/game | Unlicensed: \$40/game Licensed: \$50/game | Unlicensed: \$45/game Licensed: \$55/game | |
| Youth Hoops Official | Jan - Mar | Unlicensed: Cross Court - \$30/game, Full Court - \$20 Licensed: Cross Court -\$35/game, Full Court - \$30 | Unlicensed: Cross Court - \$30/game, Full Court - \$20 Licensed: Cross Court -\$35/game, Full Court - \$30 | Youth Trainee: \$15/game Adult Trainee: \$18/game Unlicensed: Cross Court -\$30/game Full Court - \$20 Licensed: Cross Court -\$35/game Full Court - \$30 | |
| Adult Softball Official | Apr -Oct | Unlicensed: \$20 /game Licensed: \$25 /game | Unlicensed: \$20 /game Licensed: \$25 /game | Trainee: \$19/game Unlicensed: \$22/game Licensed: \$27/game | |
| Adult Basketball Official | Nov - Mar | Unlicensed: \$22 /game Licensed: \$32/game | Unlicensed: \$22 /game Licensed: \$32/game | Trainee: \$20/game Unlicensed: \$25/game Licensed: \$35/game | |

| Sports | | | | | |
|---------------|--|--------------|---|---|---|
| | Adult Volleyball Official | Sept - April | \$17/match | Trainee: \$17/match Unlicensed: \$20/match Licensed: \$25/match | Trainee: \$17/match Unlicensed: \$20/match Licensed: \$25/match |
| | Adult Soccer - Center Referee | Sept - April | Unlicensed: \$45 /game Licensed: \$55/game | Unlicensed: \$45 /game Licensed: \$55/game | Trainee: \$45/game Unlicensed: \$50/game Licensed: \$60/game |
| | Adult Soccer - Assistant Referee | Sept - April | Unlicensed: \$30 /game Licensed: \$40/game | Unlicensed: \$30 /game Licensed: \$40/game | Trainee: \$30/game Unlicensed: \$35 /game Licensed: \$45/game |
| PART-TIME | | | | | |
| Afterschool | | | | | |
| | Afterschool Program Director | Part-time | \$ 11.25 | \$ 11.25 | \$ 12.00 |
| | Afterschool Program Assistant Director | Part-time | \$ 10.25 | \$ 10.25 | \$ 11.00 |
| | Afterschool Leader | Part-time | \$ 9.75 | \$ 9.75 | \$ 10.00 |
| | School Out Leader | Part-Time | \$ 9.75 | \$ 9.75 | \$ 10.00 |
| Cultural Arts | | | | | |
| | Dance Instructor | Part-time | \$12.00 to \$25.00 (DOQ) | \$12.00 to \$25.00 (DOQ) | \$14.00 to \$26.00 (DOQ) |
| | Special Interest Instructor | Part-time | Paid on per class basis, a percentage of class fees | Paid on per class basis, a percentage of class fees | Paid on per class basis, a percentage of class fees |
| | Pottery Instructor | Part-time | \$12.00 to \$20.00 (DOQ) | \$12.00 to \$20.00 (DOQ) | \$14.00 to \$22.00 (DOQ) |
| | Pottery Supervisor | Part-time | \$ 15.00 | \$ 15.00 | \$17.00 to \$25.00 (DOQ) |
| Facilities | | | | | |
| | Building Openers | Part-time | \$ 10.00 | \$ 10.00 | \$ 10.75 |
| | Receptionist | Part-time | \$ 10.00 | \$ 10.00 | \$ 10.75 |
| | Building Service Worker | Part-time | \$ 10.00 | \$ 10.00 | \$ 11.00 |
| | Teen Recreation Leader | Part-time | New Position | \$ 10.00 | \$ 10.00 |
| | Facility Supervisor | Part-time | New Position | \$ 11.00 | \$ 11.00 |
| Marketing | | | | | |
| | Graphic Artist | Part-time | \$12.00 to \$20.00 (DOQ) | \$12.00 to \$20.00 (DOQ) | \$14.00 to \$22.00 (DOQ) |

| Operations | | | | | | |
|-------------------|--------------------------|-----------|--------------------------------------|--------------------------------------|-------------------------------------|--|
| | Horticulture I | Part-time | \$ 11.00 | \$ 11.00 | \$ 12.00 | |
| | Horticulture II | Part-time | \$ 12.00 | \$ 12.00 | \$ 13.00 | |
| | Natural Areas Worker I | Part-time | \$ 11.00 | \$ 11.00 | \$ 12.00 | |
| | Natural Areas Worker II | Part-time | \$ 12.00 | \$ 12.00 | \$ 13.00 | |
| | Operations Worker I | Part-time | \$ 11.00 | \$ 11.00 | \$ 12.00 | |
| | Operations Worker II | Part-time | \$ 12.00 | \$ 12.00 | \$ 13.00 | |
| | Sports Field Worker I | Part-time | \$ 11.00 | \$ 11.00 | \$ 12.00 | |
| | Sports Field Worker II | Part-time | \$ 12.00 | \$ 12.00 | \$ 13.00 | |
| Preschool | | | | | | |
| | Preschool Instructor | Part-time | \$ 10.00 | \$ 10.00 | \$ 11.00 | |
| Virginia Theatre | | | | | | |
| | Concessions Worker | Part-time | \$ 8.25 | \$ 9.25 | \$ 10.00 | |
| | Box Office Receptionist | Part-time | \$ 10.25 | \$ 10.25 | \$ 11.25 | |
| Senior Programs | | | | | | |
| | Senior Recreation Leader | Part-time | \$ 9.75 | \$ 9.75 | \$ 11.00 | |
| Sports | | | | | | |
| | Sports Assignor | Part-time | Paid on a per game rate: | Paid on a per game rate: | Paid on a per game rate: | |
| | | | \$4/game for youth and adult soccer | \$4/game for youth and adult soccer | \$8/game for youth and adult soccer | |
| | | | \$3/game for youth/adult basketball | \$3/game for youth/adult basketball | \$7/game for youth/adult basketball | |
| | | | \$2.50/game for youth/adult softball | \$2.50/game for youth/adult softball | \$3/game for youth/adult softball | |
| | | | \$2.25/game youth/adult volleyball | \$2.25/game youth/adult volleyball | \$6/game for youth/adult volleyball | |
| | Group Fitness Instructor | Part-time | \$15.00 to \$25.00 (DOQ) | \$15.00 to \$25.00 (DOQ) | \$15.00 to 30.00 (DOQ) | |
| | Birthday Party Leader | Part-time | \$ 9.25 | \$ 9.25 | \$ 10.00 | |
| | Tennis Instructor | Part-time | \$10.00 to \$25.00 (DOQ) | \$10.00 to \$25.00 (DOQ) | \$11.00-26.00 (DOQ) | |
| HR and Technology | | | | | | |
| | Technology Specialist | Part-time | \$15.00 to \$25.00 (DOQ) | \$15.00 to \$25.00 (DOQ) | \$16.00-26.00 (DOQ) | |
| | Human Resources Clerk | Part-time | \$ 9.00 | \$ 9.25 | \$ 10.00 | |



REPORT TO PARK BOARD

FROM: Joe DeLuce, Executive Director

DATE: January 8, 2020

SUBJECT: Bicentennial Center Renovation Design Contract

Background

The former Spalding Recreation Center was home to Champaign-Urbana Special Recreation (CUSR) programs and services. The Park Board permitted the Unit 4 School District to demolish the Spalding Recreation Center to develop facilities for Central High School baseball. As a result, the District is planning to renovate the Bicentennial Center to provide replacement space for CUSR. In recent years, the Bicentennial Center has been leased for a batting cage operation (The Cage). The Park Board entered into an initial license agreement six years ago with Shawn Tabeling (Conway Farms, LLC) to provide space at the Bicentennial Center for The Cage. The current license agreement for The Cage expires on April 30, 2020.

In order for the Bicentennial Center to fit the program needs of CUSR and to conform to ADA requirements, renovations of the Bicentennial Center will be necessary. As a result, the services of an architect will be needed for design documents.

Budget Impact

The total project cost for Bicentennial Renovation is estimated at \$800,000 per the report by Broeren Russo. The \$48,386 design contract with Architectural Expressions is attached. Bidding and construction administration is not included in the contract with Architectural Expressions.

Timeline

Winter/Spring 2020 construction documents, Late Spring 2020 bidding and bid award, Summer/Fall 2020 construction, November 2020 move in.

Recommended Action

Staff recommends authorizing the Executive Director to enter into the contract with Architectural Expressions for the renovation of the Bicentennial Center in the amount of \$48,386.00.

Prepared by:

Reviewed by:

Joe DeLuce
Executive Director

Cindy Harvey
Assistant to the Executive Director



AIA[®] Document B132[™] – 2009

Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition

AGREEMENT made as of the Fourth day of November in the year Two Thousand Nineteen
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

Champaign Park District
706 Kenwood Road
Champaign, IL 61821
Telephone Number: 217-819-3821
Fax Number: 217-355-8421

and the Architect:
(Name, legal status, address and other information)

Architectural Expressions, LLP, Limit Liability Partnership
100 N. Chestnut STE 300
Champaign, IL 61820
Telephone Number: 217378-5300
Fax Number: 217-378-8512

for the following Project:
(Name, location and detailed description)

Bicentennial Center Remodeling

The Construction Manager:
(Name, legal status, address and other information)

The Owner and Architect agree as follows.

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

This document is intended to be used in conjunction with AIA Documents A132[™]-2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232[™]-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and C132[™]-2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232[™]-2009 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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- 9 TERMINATION OR SUSPENSION
- 10 MISCELLANEOUS PROVISIONS
- 11 COMPENSATION
- 12 SPECIAL TERMS AND CONDITIONS
- 13 SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

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

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")

§ 1.1.1 The Owner's program for the Project:

(Identify documentation or state the manner in which the program will be developed.)

§ 1.1.2 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

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

\$806,442.00

§ 1.1.4 The Owner's anticipated design and construction schedule:

.1 Design phase milestone dates, if any:

.2 Commencement of construction:

Init.

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User Notes:

(3B9ADA54)

3 Substantial Completion date or milestone dates:

4 Other:

§ 1.1.5 The Owner intends to retain a Construction Manager adviser and:

(Note that, if Multiple Prime Contractors are used, the term "Contractor" as referred to throughout this Agreement will be as if plural in number.)

One Contractor

Multiple Prime Contractors

Unknown at time of execution

§ 1.1.6 The Owner's requirements for accelerated or fast-track scheduling, multiple bid packages, or phased construction are set forth below:

(List number and type of bid/procurement packages.)

§ 1.1.7 Other Project information:

(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.5:

(List name, address and other information.)

Joe DeLuce, CPRP
706 Kenwood Road
Champaign, IL 61821

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:

(List name, address and other information.)

§ 1.1.10 The Owner will retain the following consultants:

(List name, legal status, address and other information.)

.1 Construction Manager: The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention:

.2 Cost Consultant (if in addition to the Construction Manager):

(If a Cost Consultant is retained, appropriate references to the Cost Consultant should be inserted in Sections 3.2.6, 3.2.7, 3.3.2, 3.3.3, 3.4.5, 3.4.6, 5.4, 6.3, 6.3.1, 6.4 and 11.6.)

.3 Land Surveyor:

.4 Geotechnical Engineer:

.5 Civil Engineer:

.6 Other consultants:
(List any other consultants retained by the Owner, such as a Project or Program Manager, or scheduling consultant.)

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.4:
(List name, address and other information.)

Brian Kesler, AIA

Email Address: bkesler@aexllp.com

§ 1.1.12 The Architect will retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:
(List name, legal status, address and other information.)

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

Init.

.2 Mechanical Engineer:

.3 Electrical Engineer:

§ 1.1.12.2 Consultants retained under Additional Services:

§ 1.1.13 Other Initial Information on which the Agreement is based:

Work is limited to the CU Special Recreation budget presented in the Bicentennial Center - Phase 1 Pre-Construction Report prepared by Broeren Russo Builders, dated 9/26/19 and revised on 10/9/19

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in AIA Document C132™-2009, Standard Form of Agreement Between Owner and Construction Manager. The Architect shall not be responsible for actions taken by the Construction Manager.

§ 2.4 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.5 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.6 The Architect shall maintain the ~~following insurance~~ insurance listed on the attached Certificate of Liability Insurance for the duration of this Agreement. ~~If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost.~~

Int.

~~§ 2.6.1 Comprehensive General Liability with policy limits of not less than (\$) for each occurrence and in the aggregate for bodily injury and property damage.~~

~~§ 2.6.2 Automobile Liability covering owned and rented vehicles operated by the Architect with policy limits of not less than (\$) combined single limit and aggregate for bodily injury and property damage.~~

~~§ 2.6.3 The Architect may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies.~~

~~§ 2.6.4 Workers' Compensation at statutory limits and Employers Liability with a policy limit of not less than (\$).~~

~~§ 2.6.5 Professional Liability covering the Architect's negligent acts, errors and omissions in its performance of professional services with policy limits of not less than (\$) per claim and in the aggregate.~~

§ 2.6.6 The Architect shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.6. The certificates will show the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner and the Construction Manager, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager and the Owner's other consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner, the Construction Manager, and the Owner's other consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit to the Owner and the Construction Manager a schedule of the Architect's services for inclusion in the Project schedule prepared by the Construction Manager. The schedule of the Architect's services shall include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required (1) for the Owner's review, (2) for the Construction Manager's review, (3) for the performance of the Owner's consultants, and (4) for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.4 The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services.

§ 3.1.5 Once the Owner and the Architect agree to the time limits established by the Project schedule, the Owner and the Architect shall not exceed them, except for reasonable cause.

§ 3.1.6 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made without the Architect's approval.

§ 3.1.7 The Architect shall, at appropriate times, in coordination with the Construction Manager, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.8 The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner and Construction Manager, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present to the Owner and Construction Manager, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval and the Construction Manager's review. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider with the Owner and the Construction Manager the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

§ 3.2.7 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, identify agreed upon adjustments to the Project's size, quality or budget, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.2.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work pursuant to Section 5.4, the Architect shall prepare Design Development Documents for the Owner's approval and the Construction Manager's review. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical

construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.

§ 3.3.3 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval and the Construction Manager's review. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and the Construction Manager in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions); and (4) compile a project manual that includes the Conditions of the Contract for Construction and may include bidding requirements and sample forms.

§ 3.4.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents.

§ 3.4.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7 and request the Owner's approval of the Construction Documents.

§ 3.5 Bidding or Negotiation Phase Services

§ 3.5.1 General

The Architect shall assist the Owner and Construction Manager in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner and Construction Manager in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and (4) awarding and preparing contracts for construction.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner and Construction Manager in bidding the Project by

- .1 facilitating the reproduction of Bidding Documents for distribution to prospective bidders,
- .2 participating in a pre-bid conference for prospective bidders, and
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents in the form of addenda.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall consult with the Construction Manager and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements, and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner and Construction Manager in obtaining proposals by

- .1 facilitating the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 participating in selection interviews with prospective contractors; and
- .3 participating in negotiations with prospective contractors.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall consult with the Construction Manager and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A232™-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition. If the Owner and Contractor modify AIA Document A232-2009, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager, or the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner and the Construction Manager (1) known deviations from the Contract Documents and from the most recent construction schedule, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents and shall notify the Construction Manager about the rejection. Whenever the Architect considers it necessary or advisable, the Architect, upon written authorization from the Owner and notification to the Construction Manager, shall have the authority to require 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. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or

responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

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

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A232-2009, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify an application for payment not more frequently than monthly. Within seven days after the Architect receives an application for payment forwarded from the Construction Manager, the Architect shall review and certify the application as follows:

- .1 Where there is only one Contractor responsible for performing the Work, the Architect shall review the Contractor's Application and Certificate for Payment that the Construction Manager has previously reviewed and certified. The Architect shall certify the amount due the Contractor and shall issue a Certificate for Payment in such amount.
- .2 Where there are Multiple Prime Contractors responsible for performing different portions of the Project, the Architect shall review a Project Application and Project Certificate for Payment, with a Summary of Contractors' Applications for Payment, that the Construction Manager has previously prepared, reviewed and certified. The Architect shall certify the amounts due the Contractors and shall issue a Project Certificate for Payment in the total of such amounts.

§ 3.6.3.2 The Architect's certification for payment shall constitute a representation to the Owner, based on (1) the Architect's evaluation of the Work as provided in Section 3.6.2, (2) the data comprising the Contractor's Application for Payment or the data comprising the Project Application for Payment, and (3) the recommendation of the Construction Manager, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.3 The issuance of a Certificate for Payment or a Project Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.4 The Architect shall maintain a record of the applications and certificates for payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's Project submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals transmitted by the Construction Manager shall be taken in accordance with the approved submittal schedule or, in the absence of an

approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved Project submittal schedule, and after the Construction Manager reviews, approves and transmits the submittals, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 After receipt of the Construction Manager's recommendations, and subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect, in consultation with the Construction Manager, shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals transmitted by the Construction Manager in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect shall review and sign, or take other appropriate action, on Change Orders and Construction Change Directives prepared by the Construction Manager for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order issued by the Architect through the Construction Manager.

§ 3.6.5.3 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect, assisted by the Construction Manager, shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion prepared by the Construction Manager; receive from the Construction Manager and review written warranties and related documents required by the Contract Documents and assembled by the Contractor; and, after receipt of a final Contractor's Application and Certificate for Payment or a final Project Application and Project Certificate for Payment from the Construction Manager, issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner and Construction Manager to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and

completeness of the list submitted by the Construction Manager and Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete by the Construction Manager and Architect, and after certification by the Construction Manager and the Architect, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect’s responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

| Services | Responsibility (Architect, Owner or Not Provided) | Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below) |
|--|---|--|
| § 4.1.1 Programming (B202™-2009) | <u>Not Provided</u> | |
| § 4.1.2 Multiple preliminary designs | <u>Not Provided</u> | |
| § 4.1.3 Measured drawings | <u>Not Provided</u> | |
| § 4.1.4 Existing facilities surveys | <u>Not Provided</u> | |
| § 4.1.5 Site evaluation and planning (B203™-2007) | <u>Not Provided</u> | |
| § 4.1.6 Building information modeling (E202™-2008) | <u>Not Provided</u> | |
| § 4.1.7 Civil engineering | <u>Not Provided</u> | |
| § 4.1.8 Landscape design | <u>Not Provided</u> | |
| § 4.1.9 Architectural interior design (B252™-2007) | <u>Not Provided</u> | |
| § 4.1.10 Value analysis (B204™-2007) | <u>Not Provided</u> | |
| § 4.1.11 Detailed cost estimating | <u>Not Provided</u> | |
| § 4.1.12 On-site project representation (B207™-2008) | <u>Not Provided</u> | |
| § 4.1.13 Conformed construction documents | <u>Not Provided</u> | |
| § 4.1.14 As-designed record drawings | <u>Not Provided</u> | |
| § 4.1.15 As-constructed record drawings | <u>Not Provided</u> | |
| § 4.1.16 Post occupancy evaluation | <u>Not Provided</u> | |
| § 4.1.17 Facility support services (B210™-2007) | <u>Not Provided</u> | |
| § 4.1.18 Tenant-related services | <u>Not Provided</u> | |
| § 4.1.19 Coordination of Owner’s consultants | <u>Not Provided</u> | |
| § 4.1.20 Telecommunications/data design | <u>Not Provided</u> | |
| § 4.1.21 Security evaluation and planning (B206™-2007) | <u>Not Provided</u> | |
| § 4.1.22 Commissioning (B211™-2007) | <u>Not Provided</u> | |
| § 4.1.23 Extensive environmentally responsible design | <u>Not Provided</u> | |
| § 4.1.24 LEED® certification (B214™-2012) | <u>Not Provided</u> | |
| § 4.1.25 Historic preservation (B205™-2007) | <u>Not Provided</u> | |
| § 4.1.26 Furniture, furnishings, and equipment design (B253™-2007) | <u>Not Provided</u> | |

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect’s responsibility, if not further described in an exhibit attached to this document.

Init.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, building systems, the Owner's schedule or budget for Cost of the Work, constructability considerations, procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6;
- .2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes or equipment;
- .3 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .4 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner, Construction Manager or the Owner's other consultants or contractors;
- .6 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .7 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or Construction Manager;
- .8 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .9 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .10 Evaluation of the qualifications of bidders or persons providing proposals;
- .11 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .12 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the initial Project submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders, and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner, Construction Manager or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or

- 6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion, identified in Initial Information, whichever is earlier.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- 1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- 2 () visits to the site by the Architect over the duration of the Project during construction
- 3 () inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- 4 () inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within () months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties and responsibilities as described in AIA Document C132-2009, Standard Form of Agreement Between Owner and Construction Manager. The Owner shall provide the Architect a copy of the executed agreement between the Owner and the Construction Manager, and any further modifications to the agreement.

§ 5.3 The Owner shall furnish the services of a Construction Manager that shall be responsible for creating the overall Project schedule. The Owner shall adjust the Project schedule, if necessary, as the Project proceeds.

§ 5.4 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. The Owner shall furnish the services of a Construction Manager that shall be responsible for preparing all estimates of the Cost of the Work. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect and the Construction Manager. 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.

§ 5.4.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Contractor to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.5 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.6 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements

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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.

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

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 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.

§ 5.11 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor through the Construction Manager, and shall contemporaneously provide the same communications to the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager and Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the contractors' general conditions costs, overhead and profit. The Cost of the Work includes the compensation of the Construction Manager and Construction Manager's consultants during the Construction Phase only, including compensation for reimbursable expenses at the job site, if any. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.4 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service,

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revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.3.1 If the Architect is providing detailed cost estimating services as an Additional Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work cooperatively to conform the cost estimates to one another.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Construction Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.5 If the estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 in consultation with the Architect and Construction Manager, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .3 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.2, the Architect, without additional compensation, shall incorporate the required modifications in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility as a Basic Service under this Article 6.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Construction Manager, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232-2009, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's duty to indemnify the Owner under this provision shall be limited to the available proceeds of insurance coverage.

§ 8.1.4 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box. If the Owner and Architect 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, the dispute will be resolved in a court of competent jurisdiction.)

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other: *(Specify)*

§ 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement, unless the parties mutually agree otherwise. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common issues of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232-2009, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect 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.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Architect's compensation through the construction document phase shall be a fixed fee in the amount of \$48,386.00.

Services provided during the Bidding Phase shall be by hourly rate. An allowance for this work is initially set at \$2,500.00.

Services provided during the Construction Phase shall be by hourly rate. An allowance for this work is initially set at \$9,600.00.

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Compensation for the Architect's work covered under Additional Services described in Section 4.1 shall be by hourly rate.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

Compensation for the Architect's work covered under Section 4.3 shall be by hourly rate.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus Five percent (5.00 %), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

| | | | | |
|------------------------------|--------------|-----------|--------------|----|
| Schematic Design Phase | <u>Fifty</u> | percent (| <u>50.00</u> | %) |
| Design Development Phase | | percent (| | %) |
| Construction Documents Phase | <u>Fifty</u> | percent (| <u>50.00</u> | %) |

| | | |
|---------------------------------|------------------------------|---------------|
| Bidding or Negotiation Phase | percent (| %) |
| Construction Phase | percent (| %) |
| Total Basic Compensation | one hundred percent (| 100 %) |

The Owner acknowledges that with an accelerated Project delivery or multiple bid package process, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work prepared by the Construction Manager for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

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

| Employee or Category | Rate (\$0.00) |
|----------------------|---------------|
|----------------------|---------------|

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Zero percent (0.00 %) of the expenses incurred.

§ 11.9 Compensation for Use of Architect's Instruments of Service

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

No licensing fee is required for the Owner's continued use of the Architect's Instruments of Service solely for the purpose of completing, using and maintaining the Project.

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§ 11.10 Payments to the Architect

§ 11.10.1 An initial payment of Zero Dollars and Zero Cents (\$ 0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Forty-five (45) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

6 % per annum

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect 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 Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B132™-2009, Standard Form Agreement Between Owner and Architect, Construction Manager as Adviser Edition
- .2 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:
- .3 AIA Document E202™-2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
- .4 Other documents:
(List other documents, if any, including additional scopes of service forming part of the Agreement.)

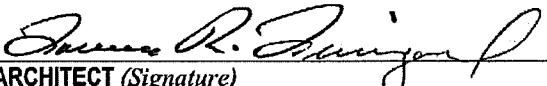
Exhibit A - Hourly Rate Schedule

Exhibit B - Certificate of Liability Insurance

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

OWNER (Signature)

Joe DeLuca, CPRP Executive Director
(Printed name and title)


ARCHITECT (Signature)

Lawrence R. Livergood, FAIA Principal
(Printed name and title)

Init.

ARCHITECTURAL EXPRESSIONS, LLP
HOURLY RATE SCHEDULE
October 2019

| POSITION/STAFF | HOURLY RATE |
|----------------------------|--------------------|
| ARCHITECTURAL STAFF | |
| Principal | |
| Lawrence Livergood | \$165 |
| John Ligon | \$165 |
| James Fouse | \$165 |
| Senior Architect | |
| Neil Strack | \$150 |
| Brian Kesler | \$130 |
| Kenneth Knox | \$130 |
| Architect | |
| James Anderson | \$103 |
| Mathew Pica | \$82 |
| Andrew Graumlich | \$80 |
| Interior Designer | |
| Angela Johnston | \$98 |
| Architectural Intern | |
| Jennifer Keigher | \$54 |
| Michelle Lorenz | \$54 |
| Mathew Kluge | \$51 |
| Project Assistant | |
| Marissa Luck | \$88 |
| Dawn Lamb | \$69 |
| Sharron Thornton | \$49 |
| ENGINEERING STAFF | |
| Principal | |
| Kenneth Klein | \$165 |
| Senior Electrical Engineer | |
| Steve Ragan | \$150 |
| Electrical Engineer | |
| Elliot Struve | \$85 |
| Mechanical Engineer | |
| Patrick Corrigan | \$113 |
| Engineering Technician | |
| Kevin Bowers | \$72 |
| Craig Rawlings | \$51 |

**AMENDMENT TO AIA DOCUMENT B132-2009
Standard Form of Agreement Between Owner and Architect,
Construction Manager as Adviser Edition**

THIS AMENDMENT to AIA Document B132-2009 Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition (hereinafter referred to as, "Agreement") is made and effective as of the ___ day of _____ 2019, between the Champaign Park District, 706 Kenwood Road, Champaign, IL 61821 (hereinafter referred to alternatively as, Owner or District) and the Architect: Architectural Expressions, LLP, 100 N. Chestnut, Suite 300, Champaign, IL 61820 (hereinafter referred to alternatively as, Architect or Architectural Expressions).

WHEREAS, the Architect has drafted and proposed contemporaneously herewith AIA Document B132-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Advisor Edition (hereinafter referred to as, Agreement) for a project generally described as Bicentennial Center Remodeling services proposal to be undertaken at Centennial Park in Champaign, Illinois; and

WHEREAS, certain terms, conditions, and provisions stated in the Agreement and Exhibit A attached thereto and incorporated by reference therein are to be amended, deleted, or clarified as set forth in this Amendment.

NOW, THEREFORE, in consideration of the mutual covenants contained in the Agreement, Exhibit A and herein, the receipt and sufficiency of which are hereby acknowledged, the Owner and Architect hereby agree that the Agreement is hereby amended, changed, and clarified, anything in the Agreement to the contrary notwithstanding, as follows:

1. Section 7.1 shall be amended and restated as follows:

The Owner is the copyright owner of such information and its agents have permission to transmit applicable information for use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

2. Section 7.2 shall be amended and restated as follows:

The Instruments of Service prepared under this agreement shall become the property of the Owner upon completion of the Architect's services and payment in full of all monies due to the Architect.

- .1 The Architect, its consultants, and its sub-consultants retain the right to the continued use of all content contained within those documents, including but not limited to, specifications, standardized notes, charts, schedules, calculations, details and title blocks.
- .2 The Owner agrees to defend, indemnify and hold harmless the Architect, its officers, directors, employees, consultants, and sub-consultants against any damages, liabilities or costs, including reasonable attorney's fees and defense costs, arising from the Owner's future use or modification of the documents without the Architect's knowledge and approval.
- .3 The Architect, its consultants, and its sub-consultants make no warranties, either expressed or implied, of merchantability and fitness for any future use of the documents.

3. Section 7.3 shall be amended and restated as follows:

Upon completion of this Agreement, the Owner grants to the Architect a nonexclusive license to use the Owner's Instruments of Service solely and exclusively for purposes of constructing, using,

maintaining, altering and adding to the Project, provided that the Architect substantially performs its obligations under this Agreement. The Owner shall obtain similar licenses from its consultants consistent with this Agreement. The license granted under this section permits the Architect to authorize the Contractor, Construction Manager, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Architect's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Owner rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

4. Section 7.3.1 shall be amended and restated as follows:

The Architect, to the extent permitted by law, further agrees to indemnify and hold harmless the Owner and its consultants from all costs and expenses, including the cost of defense, and reasonable attorney's fees, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Architect's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Architect rightfully terminates this Agreement for cause under Section 9.4.

5. Section 7.4 shall be amended and restated as follows:

Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Architect shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Owner. Any unauthorized use of the Instruments of Service by the Architect shall be at the Architect's sole risk and without liability to the Owner and the Owner's consultants.

6. Section 8.1.1 shall be amended and restated as follows:

The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law pursuant to the statute of limitations then in effect in the State of Illinois.

7. Section 8.1.3 the last sentence shall be stricken.

8. Section 8.1.4 shall be stricken in its entirety.

9. Section 9.2 shall be amended and restated as follows:

If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

10. Section 9.6 shall be amended and restated as follows:

In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due.

11. Section 9.7 shall be stricken in its entirety.

12. Section 9.8 shall be amended and restated as follows:

The Owner's rights to the transfer of ownership of the Architect's Instruments of Service in the event of termination of this Agreement are set forth in Article 7 and section 11.9.

13. Section 10.1 shall be amended and restated as follows:

This Agreement shall be governed by the laws of the place where the Project is located.

14. Section 10.6 shall be amended and restated as follows:

Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site; provided that, Architect shall promptly inform the Owner if any such material or substances are discovered.

15. Section 10.7 the last sentence shall be amended and restated as follows:

The Owner may provide professional credit for the Architect in the Owner's promotional materials for the Project.

16. Section 11.4 shall be amended and restated as follows:

Compensation for Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect.

17. Section 11.8.1.1 shall be amended and restated as follows:

Transportation and authorized out-of-town travel and subsistence as specifically authorized in writing by Owner.

18. Section 11.8.1.8 shall be stricken.

19. Section 11.8.1.9 shall be stricken.

20. Section 11.8.1.10 shall be stricken.

21. Section 11.8.1.11 shall be stricken.

22. Section 13.2 shall be amended and restated as follows:

Exhibit B – Certificate of Liability Insurance and policy endorsements.

IN WITNESS WHEREOF, the Owner and Architect have executed this Amendment to be effective as of the day and year first above written.

Owner: Champaign Park District, a municipal Corporation,

Architect: Architectural Expressions, LLP

By: _____
Joseph DeLuce
Executive Director

By: _____
Lawrence R. Livergood, Principal

ATTEST:



REPORT TO PARK BOARD

FROM: Joe DeLuce, Executive Director

DATE: January 8, 2020

SUBJECT: Bicentennial Center Construction Manager Contract

Background

The typical facility construction process for the District has been to hire an architect for design and bidding and then select the lowest bidding general contractor. As we move forward with renovating the Bicentennial Center, staff thought this would be a good opportunity to see if a construction manager model could help us control costs, reduce change orders, and expedite the schedule. This process also is an opportunity to evaluate the construction manager process to see if might be used for the construction of the new Martens Center.

The construction manager will be an advisor to the District during the preconstruction phase as well as during the renovation of the Bicentennial Center. The construction manager will assume all liability and responsibility of a general contractor. The construction manager will bid to trade contractors.

The advantages of this method are design advice, construction advice, careful oversight of costs and schedule, early cost commitments, and opportunities to shorten the overall project schedule. The construction manager would also provide advice on the selection of materials, with an understanding that specifying locally available materials will reduce lead times and materials costs. The construction manager also can provide a more accurate early budget to final cost, as the builder is part of the design process. Several local agencies are using a construction manager over the general contractor process.

The District requested proposals from construction management companies for consideration to work on the renovation of the Bicentennial Center. Staff prepared and advertised a Request for Proposals for a Construction Manager to oversee the renovation of the Bicentennial Center. On November 12, 2019, the District received four (4) proposals from construction management firms including: Petry Kuhne Contractors, Broeren Russo Companies, Berglund Contractors, and Carson Construction Company.

A selection committee made up of staff and board members were asked to review the proposals. The committee members included: Commissioners Craig Hays and Kevin Miller, Staff: Joe DeLuce, Andrew Weiss, Bridgette Moen, and Dan Olson. The committee met on Monday, November 25, 2019 and discussed each of the proposals in detail.

The evaluation focused on the firm's overall qualifications, experience with similar projects, and any past work with the District. Below is a summary of each firm's proposal and their respective pro's and con's.

Berglund Construction Company is headquartered in Chicago but also has a local office. They are a Building and Restoration Firm but has no previous experience with the District. Their previous relevant work includes the Carle at the Fields Facilities, the Schererville Community Center, Valparaiso Central Park Expansion, and the Naperville Beach Bathhouse.

Petry Kuhne Company has construction experience working with the District on Sunset Ridge Park, Hessel Park Playground, Material Handling project, and the Unit 4 Spalding Park Baseball Field, but no specific experience with District indoor facilities.

Broeren Russo Companies has experience working with the District on several indoor facilities including extensive restoration work at the Virginia Theatre and the gazebo construction within West Side Park. They also constructed the YMCA in southwest Champaign.

Carson Construction Company is a national company headquartered in Joliet, Illinois and do not have a local office. Locally, they have worked on the LA Fitness Facility, Bristol Place Champaign, and Walmart Stores, but have not worked with the District.

Each of the firms provided a proposed percentage for Construction Manager Services which ranged from 4% to 4.75%. After close examination of all proposals and evaluation of each, the committee believes the best overall proposal was Broeren Russo. Broeren Russo Companies did provide the lowest rate of 4% for construction manager services.

Budget Impact

The total estimated project cost for Bicentennial Renovation is \$800,000. The contract for construction manager services with Broeren Russo Companies is attached. This proposed fee includes \$7,000 for pre-construction services, 4% for construction management services and 6% for general conditions.

Timeline

Winter/Spring 2020 construction documents, Late Spring 2020 bidding and bid award, Summer/Fall 2020 construction, November/December 2020 move in.

Recommended Action

The committee recommends authorizing the Executive Director to enter into the contract with Broeren Russo Companies for construction management services for the renovation of the Bicentennial Center.

Prepared by:

Reviewed by:

Joe DeLuce
Executive Director

Cindy Harvey
Assistant to the Executive Director

DRAFT AIA® Document A133™ - 2009

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

AGREEMENT made as of the «26th» day of «November-January» in the year «201920»

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

BETWEEN the Owner:

(Name, legal status and address)

Champaign Park District
706 Kenwood Road
Champaign, IL 61821

«»«»
«»

and the Construction Manager:

(Name, legal status and address)

Broeren Russo Builders, Inc.
602 N. Country Fair Drive
Champaign, IL 61821

«»«»
«»

for the following Project:

(Name and address or location)

«CPD Bicentennial»
2112 Sangamon Drive
Champaign, IL 61821

«»

The Architect:

(Name, legal status and address)

TBD by Champaign Park District Architectural Expressions
100 N. Chestnut Street
Champaign, IL 61820 «»«»

«»

The Owner's Designated Representative:

(Name, address and other information)

Joe DeLuce
Champaign Park District
706 Kenwood Road
Champaign, IL 61821

«»

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

AIA Document A201™-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.

ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

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

Jim Lopez
Broeren Russo Builders, Inc.
602 N. Country Fair Drive
Champaign, IL 61821«→

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

~~TBD by Champaign Park District~~ Brian Kesler «→

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The Owner and Construction Manager agree as follows.

Construction Manager shall undertake services for the renovation of the Owner's Bicentennial Center (formerly known as Leonhard Recreation Center). The process for the work will include development of a project scope within the overall renovation, for which bids will be sought either for the overall project or component parts thereof. The Bicentennial Center is to be renovated to provide replacement space for the Champaign-Urbana Special Recreation (CUSR) Program. In connection therewith, the renovation work undertaken by the Construction Manager shall conform to the Americans With Disabilities Act (ADA), Americans with Disabilities Act Amendments Act (ADAA) and other applicable requirements. Elements of the work will include stabilization of the building structure from further deferred maintenance damage, as well as work necessary to meet code compliance. This work shall be identified as asset protection and is associated with making the facility suitable for CUSR programming. The work will include such extended upgrades as are necessary to comply with the requirements for CUSR. In addition, work associated with extended upgrades and in order to make Bicentennial Center more operationally functional with similar facilities will be undertaken. Such work will include without limitation, structural stabilization, roof repair and repainting, and heating, ventilation and air conditioning (HVAC) maintenance and improvements. Construction of the HVAC system shall include the gymnasium area.

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| 3 | OWNER'S RESPONSIBILITIES |
| 4 | COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES |
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EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

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

§ 1.2 Relationship of the Parties

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

§ 1.3 General Conditions

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

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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.

§ 2.1 Preconstruction Phase

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

§ 2.1.2 Consultation

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

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

§ 2.1.4 Phased Construction

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

§ 2.1.5 Preliminary Cost Estimates

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

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

§ 2.1.6 Subcontractors and Suppliers

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

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

shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

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

§ 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.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

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

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

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

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

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

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

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

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

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

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

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

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

§ 2.3.2 Administration

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

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

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

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

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

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.

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

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

§ 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.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

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

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

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

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information

or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

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

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

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

§ 3.2 Owner's Designated Representative

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

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

§ 3.3 Architect

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

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

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

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

←→Fee proposal based on a construction cost of \$800,000 to \$1,200,000
Pre-Construction Services - \$7,000

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within « » (« ») months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

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

§ 4.2 Payments

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

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid ~~thirty~~ (~~30~~) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager, in accordance with the Illinois Local Government Prompt Payment Act.

(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. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

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

Fee proposal based on a construction cost of \$800,000 to \$1,200,000

CM Fee – 4% of Construction Costs

General Conditions – 6% of Construction Costs

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

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

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

§ 5.1.5 Unit prices, if any:

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

| Item | Units and Limitations | Price per Unit (\$0.00) |
|------|-----------------------|-------------------------|
|------|-----------------------|-------------------------|

§ 5.2 Guaranteed Maximum Price

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

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

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work

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

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

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

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

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

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

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

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

§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner’s prior approval, at off-site workshops.

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

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

§ 6.2.3 Wages and salaries of the Construction Manager’s supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

~~§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval. [Reserved.]~~

§ 6.3 Subcontract Costs

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

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

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

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

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

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

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

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

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

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

§ 6.6 Miscellaneous Costs

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

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

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

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

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

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

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

§ 6.6.8 ~~Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld. [Reserved.]~~

§ 6.6.9 ~~Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work. [Reserved.]~~

§ 6.7 Other Costs and Emergencies

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

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

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

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8 or otherwise.

§ 6.8 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;

- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

§ 6.9 Discounts, Rebates and Refunds

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

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

§ 6.10 Related Party Transactions

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

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

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

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

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

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

~~Construction Manager shall submit payment applications to the Owner the 25th of each month, projected through the end of that month. Owner shall pay the 10th of the following month after approval pursuant to its policy.~~

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the ~~30th~~ day of a month, the Owner shall make payment of the certified amount to the Construction Manager ~~not later than the 10th day of the following month pursuant to policy.~~ If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner ~~not later than thirty (30) days after the Architect receives the Application for Payment after approval pursuant to its policy.~~ (Federal, state or local laws may require payment within a certain period of time.)

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

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

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

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of ~~zero~~ percent (~~0~~ %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of ~~ten~~ percent (~~10~~ %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

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

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

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

§ 7.2 Final Payment

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

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, 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.

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

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

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

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

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

| Type of Insurance or Bond | Limit of Liability or Bond Amount (\$0.00) |
|---|--|
| No Bonds or Builders Risk Included <u>Certificate of Insurance Attached</u> | |

§ 8.1 The Construction Manager shall maintain the following insurance for the duration of this Agreement (Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

- .1 General Liability. The Construction Manager shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 for each occurrence and \$2,000,000 in the aggregate. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location. CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 04 93, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). Owner shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to Owner. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage.
- .2 Automobile Liability. The Construction Manager shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 for each accident. Such insurance shall cover liability arising out of any auto. Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.
- .3 Workers' Compensation. The Construction Manager shall maintain workers compensation as required by statute and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 for each accident for bodily injury by accident or for each employee for bodily injury by disease. If Owner has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 10 under the Commercial General and Umbrella Liability Insurance required in this Contract, the Construction Manager waives all rights against Owner and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Construction Manager's work.
- .4 Professional Liability. The Construction Manager shall maintain professional liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$5,000,000 for each wrongful act arising out of the performance or failure to perform professional services and \$5,000,000 aggregate.

§ 8.2 General Insurance Provisions

- .1 Evidence of Insurance. Prior to beginning the Services, the Construction Manager shall furnish Owner with a certificate(s) of insurance and applicable policy endorsement(s) or riders, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above. All certificates shall provide for 30 days' written notice to Owner prior to the cancellation or material change of any insurance referred to therein. Written notice to Owner shall be by certified mail, return receipt requested. Failure of Owner to demand such certificate, endorsement

or other evidence of full compliance with these insurance requirements or failure of Owner to identify a deficiency from evidence that is provided shall not be construed as a waiver of Construction Manager's obligation to maintain such insurance. Owner shall have the right, but not the obligation, of prohibiting Construction Manager from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by Owner. Failure to maintain the required insurance may result in termination of this Contract at Owner's option. Construction Manager shall provide certified copies of all insurance policies required above within 10 days of Owners' written request for said copies. Documentation endorsements or riders shall include coverage of Owner and its commissioners, officers, employees, agents and volunteers.

.2 **Acceptability of Insurers.** For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the Owner has the right to reject insurance written by an insurer it deems unacceptable.

.3 **Cross-Liability Coverage.** If Construction Manager's commercial general liability policy does not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

.4 **Consultants.** The Construction Manager shall cause each consultant employed by Construction Manager to purchase and maintain insurance of the type specified above. Professional liability limits for such consultants shall be in an amount not less than \$2,000,000.00 per occurrence. When requested by the Owner, Construction Manager shall furnish copies of certificates of insurance evidencing coverage for each consultant.

§ 8.3 Indemnification. To the fullest extent permitted by law, the Construction Manager shall indemnify and hold harmless the Owner and its commissioners, officers, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses, including but not limited to legal fees (attorney's and paralegals' fees and court costs), arising out of or resulting from the performance of the Construction Manager's services; provided that, any such claim, damage, loss or expense (i) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property, other than the work itself, including the loss of use resulting therefrom and (ii) is caused in whole or in part by any wrongful or negligent act or omission of the Construction Manager, Construction Manager's consultants, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except to the extent it is caused in whole or in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph. Construction Manager shall similarly protect, indemnify and hold and save harmless the Owner, its commissioners, officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses including but not limited to legal fees, incurred by reason of Construction Manager's breach of any of its obligations under, or Construction Manager's default of, any provision of the Contract.

§ 8.4 Bond. The Construction Manager as principal shall furnish to the Owner as obligee bonds covering faithful performance of the Contract and payment of obligations arising from the Contract. The payment and performance bonds shall strictly comply with the Public Construction Bond Act, 30 ILCS 550/0.01, *et seq.* (the "Act"), and with all provisions of this Section 11.1.2 and its subparts to the extent not in conflict with the Act. The Construction Manager shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located. Each such surety shall have a Best's Key Rating Guide rating of at least A / VIII.

§ 8.5 The payment and performance bonds shall be executed on AIA Document A311 or A312, or on another form acceptable to the Owner, and shall include a penal sum equivalent to or greater than the Contract Sum as defined in Section 5.1.1.

§ 8.6 All terms and conditions of all Contract Documents shall be deemed incorporated by reference into each bond furnished in connection with this section. In case of any conflict between any provision of any performance or payment bond and the Contract Documents, the provisions of the Contract Documents shall prevail to the extent of

such conflict. Any provision of any bond purporting to create a condition precedent for Owner not otherwise contained herein or otherwise, or which otherwise purports to abrogate or nullify the Owner's rights or remedies otherwise available in contract, law, or equity, is void. If any provision of any bond purports to shorten the period of limitations and/or the period of repose as provided in Section 13-214 of the Code of Civil Procedure, 735 ILCS 5/13-214, or if any provision of any bond purports to shorten any other applicable statute of limitation or repose, such provision of such bond shall be null and void, but all other provisions of such bond shall remain enforceable.

§ 8.7 No surety shall assert solvency of its principal or its principal's denial of default as a defense to any claim under any bond furnished in accordance with this section.

§ 8.8 If any surety shall make any assignment for the benefit of creditors or commit any act of bankruptcy, or is declared bankrupt, or if it shall file a voluntary petition in bankruptcy, or shall in the opinion of the Owner be insolvent, the Construction Manager shall immediately upon request by the Owner furnish and maintain other bonds satisfactory to the Owner. No further payment shall be due nor shall be made to Construction Manager until the new surety or sureties shall have met the Owner's qualifications.

§ 8.9 If at any time the Owner shall become reasonably dissatisfied with any surety, or for any other reason such bonds shall cease to be adequate security for the Owner, Construction Manager shall, within five (5) days after notice to do so, substitute acceptable bonds in such form and sum and signed by such other surety or sureties as may be reasonably satisfactory to the Owner. No further payment shall be deemed due nor shall be made to Construction Manager until the new surety or sureties shall have met the Owner's qualifications.

§ 8.10 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Construction Manager shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. The Owner may furnish bonds to any person, at any time, without consent of the Construction Manager.

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)*

§ 9.3 Initial Decision Maker

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

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

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

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

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

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

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

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

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

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

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

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

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

§ 10.3 Suspension

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

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law and Venue

~~Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases. The law of the State of Illinois shall govern the terms and conditions of this Agreement. Venue for any legal proceeding, whether mediation, litigation, or of any kind or character whatsoever, shall be Champaign County, Illinois.~~

§ 11.4 Assignment

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

§ 11.5 Other provisions:

«→[Reserved]

ARTICLE 12 SCOPE OF THE AGREEMENT

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

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

« »

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

« »

- .5 Other documents:

(List other documents, if any, forming part of the Agreement.)

[«-»RFP Response dated 11/12/19](#)
[BRBI Phase I Preconstruction Report dated 9/26/19](#)
[BRBI Remediation Budget Summary dated 10/9/19](#)
[BRBI Schedule dated 10/9/19](#)

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

OWNER (Signature)

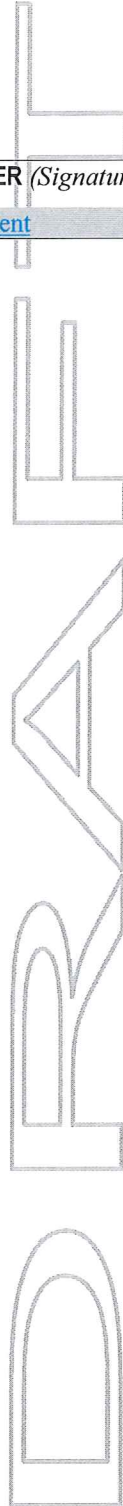
[«-»«-»Joe DeLuce, Executive Director](#)

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

[«-»«-»Jim Lopez, President](#)

(Printed name and title)





REPORT TO PARK BOARD

FROM: Joe DeLuce, Executive Director

DATE: January 8, 2020

SUBJECT: LINKS Technology Central Parks App Hosting & Support Agreement

Background

The Champaign Park District entered into a contract for app development per the capital plan. Like the website, maintaining an app requires monthly maintenance for tech support, data hosting, and security. The agreement proposes a 3-year contract for these services at a monthly cost of \$225. Additional fees may apply at an hourly rate should support outside the scope be required.

The Park Board of Commissioners had a question related to language in the contract, which is listed below with more information.

Page 4: What is the database content of which LINKS retains ownership? *Database content refers to the database that serves your content. In short, this means LINKS owns the database itself (its structure, pre-built or auto-generated elements).*

Additionally, CPD owns the content we publish into the database, such as events, facility info, etc. CPD also owns information on membership scans in the same way that it works for Rectrac. LINKS communicates with Rectrac securely to maintain the users input in a secure way and ensure their app activity is ammonized so a specific user cannot be tracked to a specific action in analytics to further protect their identity. All data is encrypted as it transfers through the internet to and from LINKS servers and Rectrac's, so user data is very well protected.

Prior Board Action

Approval of Capital Improvements Plan that included App Development.

Budget Impact

Monthly cost of \$225 for entirety of agreement (3 years).

Recommended Action

Staff recommends approval of the Central Parks App Hosting & Support Agreement to allow consistent support and communication in the launching and first three years of hosting app.

Prepared by:

Reviewed by:

Chelsea Norton
Director of Marketing and Communications

Joe DeLuce, CPRP
Executive Director



Central Parks App Hosting & Support Agreement

This Agreement defines hosting, support and ongoing maintenance services to be provided for the Champaign Park District's App Development Project.

Scope of Services

Upgrades, Patches and Re-Deployments

Once the apps are deployed to the distribution service providers (Apple and/or Google), the client may request upgrades that require changes to the platform or require redeployment of the apps to the distribution service providers. Each request of this nature will be evaluated individually and LINKS reserves the right to provide a quote to the client before beginning work and request payment for work when completed client-requested upgrade efforts.

Occasionally, changes in technology, changes to the terms of use/service of the distribution provider services (Apple and/or Google), or other unforeseen changes may occur and require that your app to be patched/updated and re-deployed to the distribution providers to remain publicly available for download. In the event a patch and re-deployment is required, LINKS will notify the you to inform you of your options. LINKS reserves the right to provide a quote before beginning any work and request payment for work completed related to patch and re-deployment.

App Support

Ongoing App Support: At Links Technology, we pride ourselves on providing amazing support to our customers. When you have a question about your app or any issue arises, our support team will be there to assist. LINKS provides in-person, email, phone and shared-screen web-based support for customers worldwide, and all from the same staff that designed and built your app. Our teams have intimate knowledge of your app and we do not outsource support to a call center or third party.

- **Our SLA:** Support of the account shall be provided via email, web portal, phone, or in person as determined by LINKS. LINKS will respond to all support requests within 24 hours on weekdays and 48 hours on weekends, via email or phone, with a confirmation that the request was received, and an estimated completion date for each action item in the request. Most requests are completed the same day as they are made however, support

requests received after 3:00pm CDT may not be completed until the next business day. Our team has live support personnel at our Schaumburg headquarters 9AM to 5PM Monday through Friday except on holidays.

- **Support requests** are handled by our professional design and web marketing staff. Tickets are escalated to management or development staff as needed. Clients have direct phone numbers for project manager and division managers as well as access to company executives as needed.
- **Post-Launch Support** Requests may be made by phone, email or web portal at websupport.linkstechnology.com.
- **Emergency needs** are handled on a case by case basis, but are typically handled by the client or project manager who is available and responsive at off hours for emergency needs. In the event of a system failure or downtime, your client or project manager will be automatically notified and work to remedy the situation quickly.
- **Training:** Administrator training will be provided for the user groups responsible for maintenance of the app (usually in 1-hour user training sessions for up to 10 participants at a time.) Training will continue on an as needed basis via online web meetings.)

Hosting, Security and Maintenance

Your app will be hosted on a secure and reliable network infrastructure where the server and internet connections will be maintained and monitored at all times. Data Centers maintain industry-leading security and fail-safes along with physical security and 24/7 monitoring. Your app data and its server will be well maintained for security patches and upgrades without additional costs.

- Data Center location and operational procedures vary are hosted by LINKS and we take responsibility for working with and managing your hosting inclusive of your support services. Some aspects of the hosting and serving environment are reliant on our third-party service providers, and while LINKS cannot control everything that happens at a third-party service provider, we choose to only work with high-quality companies with long and successful track-records.
- Systems receive daily backups, ample storage and bandwidth space. Each platform and plan varies, but LINKS works with you to determine an amount of resources appropriate so it is never a concern.
- Downtime Maintenance of hosting environments is extremely rare as is limitations on access due to maintenance. Our sites and app services maintain a minimum SLA of 98.9% uptime/yr. Should a site or service fall below that threshold appropriate actions will be taken to immediately alleviate and improve the situation at LINKS expense. Systems are monitored at all times for uptime and we are automatically notified of any trouble. As part of our SLA, in the event of a downtime longer than 4 hours, LINKS will pro-rate the customers hosting/support billing accordingly as well as determine appropriate resolutions to ensure a more robust hosting environment.
- Customer contacts will be notified of any scheduled downtime in as much advance as possible. Customers will also be notified immediately for any unscheduled downtime. In the extremely rare event of a security breach, customers will be notified immediately, and steps will be taken to resolve and secure the system.

Cost Summary & Terms

Total Ongoing Costs:

- **Data Hosting, Support and Maintenance** \$225/month _____

**These quoted fees represent an initial estimation based on limited discovery ascertained from the discussions with client representatives. LINKS reserves the right to adjustment or withdrawal of this proposal in whole or in part based on future discovery to be agreed upon before project start.*

Signatures

Please indicate your acceptance of this Proposal Agreement with the signature of an authorized official below:

Client Information:

Key Contact: _____ Billing Contact: _____
Email: _____ Email: _____
Phone: _____ Phone: _____
Address: _____

Signatures and Authorization:

The undersigned agrees to the scope and terms of this agreement on behalf of his or her organization or business:

On behalf of the Client: _____ Date _____
CHAMPAIGN PARK DISTRICT

Print Name: _____

On behalf of Agency: _____ Date _____
LINKS TECHNOLOGY SOLUTIONS

Print Name: _____

Terms of Agreement

This agreement is by and between LINKS TECHNOLOGY SOLUTIONS, INC., hereafter "LINKS" or "company" and the CHAMPAIGN PARK DISTRICT, hereafter "CPD" or "client".

Project Understanding

"CPD" is contracting "LINKS" as a provider of Support and Hosting Services for a previously agreed to mobile app development project. Services not considered 'standard' or 'in scope' are subject to be charged at a regular hourly rate of \$150/hr, and will not be considered part of this contract.

"LINKS" shall provide "CPD" with Support and Hosting Services for the proposed Scope of Services within this contract. The project shall be inclusive of the scope as outlined within this document and confirmed by the client's representative's signature on the Cost Summary and Signatures page above.

Compensation

"CPD" agrees to compensate "LINKS" as follows: Billing Invoices must be received by the Champaign Park District Accounting Department no later than the first Wednesday of the month in order to be paid by the second Thursday of the same month. The Champaign Park District does not pay sales tax, excise tax, service charges, finance charges, late fees or interest. "LINKS" reserves the right to withhold delivery and any transfer of ownership of any current work if accounts are not current or overdue invoices are not paid in full. All grants of any license to use or transfer of ownership of any intellectual property rights under this Agreement are conditioned upon receipt of payment in full which shall be inclusive of any and all outstanding Additional Costs.

Schedule of Payment:

"CPD" agrees to the make payment for services provided or to be provided per terms invoiced by "LINKS"

Support Terms

"LINKS" will provide complimentary support for the first 30 days following the launch of the live app. After that time, support will be provided according to the Scope of Services section of this document. Support of the Account shall be provided via email, web portal, phone, or in person as determined by "LINKS". "LINKS" will respond to all support requests from "CPD" within 24 hours on weekdays and 48 hours on weekends, via email or phone, with a confirmation that the request was received, and an estimated completion date for each action item in the request. Support requests received after 3:00pm CDT may not be completed until the next business day.

During the duration of this contract, "CPD" agrees that the "LINKS" will be the sole provider of app maintenance for "CPD" and no other party will have access to or rights to use the software or server. If a party other than the "LINKS" accesses the software, any errors that are created that must be repaired will be charged at the hourly rate specified above. Ongoing hosting, support and maintenance rates may be reassessed and adjusted after 90 days.

Ownership/Copyrights

The ownership of the content of any published work related to this project is retained by "CPD". Ownership of the underlying code, source art files, and database content is retained by "LINKS" unless otherwise determined by the Scope of Services section of this document.

“CPD” grants “LINKS” a royalty-free and permanent license to use of the client’s entity name and representations of any or all creative work developed within this project in the “LINKS” portfolio or case studies that may be published in all types of media as a sample of past works, in trade publications, educational material, to promote the company, and for entry into trade competitions.

Additional Services

This Agreement does not extend to the provision or support of email services, ongoing search engine optimization, or any items not specifically identified by the Scope of Services section of this document.

Additional Terms

Any revisions, additions or redesign “CPD” requests "LINKS" to perform that is not specified in this document shall be considered "additional" and will require separate agreement and payment. “LINKS” shall advise “CPD” on any requested work that is “additional”.

Termination:

This agreement is for a term inclusive of 3-years of from the date of deployment of the projects into either Google or Apple App stores unless extended for a set period by separate amendment agreed to by both parties. After the initial 1-year period, either party may cancel this agreement at any time, for any reason, by providing 30 days’ notice either electronically or in writing sent to the address of record, provided that payment is up to date.

This app, including its content management system (Central Parks), is a monthly agreement subject to cancellation. Upon termination of this agreement, by either party, hosting of all assets will be suspended and disabled within 30 days and “LINKS” may remove apps from deployed app store locations.

Legal:

“CPD” and "LINKS" are independent parties and nothing in this Agreement shall constitute either party as the employer, principal or partner of or joint venture with the other party. Neither “CPD” nor "LINKS" has any authority to assume or create any obligation or liability, either express or implied, on behalf of the other. This Agreement shall be governed by and construed in accordance with the laws of Illinois applicable therein.

Ownership/Copyrights

Insurance:

“LINKS” shall keep in full force and effect at all times during this Agreement a comprehensive general liability insurance policy, with contractual liability coverage, with minimum limits of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate together with property damage insurance of not less than \$1,000,000. All insurance carriers providing the coverage set forth herein shall have a rating of A as assigned by A.M. Best and Co. and shall be reasonably satisfactory to Park District. All insurance coverage provided by “LINKS” shall be primary insurance as to Park District. Any insurance or self-insurance maintained by Park District shall be in excess of “LINKS” insurance and shall not contribute with it. The Park District, its commissioners, officers, employees, agents, representatives, and volunteers shall be covered as additional insured’s under the general liability coverage which shall contain no special limitation on the scope of protection afforded to the additional insured’s, and shall contain appropriate extensions or riders necessary to assure coverage. The policy shall not be cancelled or amended without at least ten (10) days prior written notice having been given to the Park District. Cancellation of any such coverage without a substitute policy containing the required coverage’s being put in force, shall be grounds for the Park District to immediately terminate this Agreement with no

further rights afforded "LINKS". At its option, Park District may continue such insurance at its cost and obtain reimbursement and repayment thereof from "LINKS". In such event, "LINKS" shall pay the amount due within ten (10) days of payment by Park District. The Parties acknowledge that "LINKS" may from time to time change insurers; provided that, the Park District shall be provided with a certificate of such insurance otherwise conforming to and in compliance with the terms hereof, promptly upon such change.

"LINKS" will provide a certificate of such insurance as may be applicable from time to time, listed below, at the time Agreement is signed and annually thereafter. Note that all limits of liability for insurance shall be not less than the following amounts, and must be greater where required by other laws or regulations and must be insured on an "occurrence" basis and not on a "claims made" basis:

"LINKS" shall maintain in effect at its sole expense the following insurance applicable to the work performed hereunder:

- a) Workers' Compensation:
 - a. State Statutory
 - b. Applicable Federal Statutory
 - c. Must show policy number on certificate of insurance if workman's compensation is provided
- b) Comprehensive General Liability:
 - a. General Liability: 1,000,000 each occurrence (including completed operation and products liability)
 - b. Property Damage: \$1,000,000 each occurrence
 - c. General Aggregate: \$2,000,000 or a combined single limit of \$2,000,000
 - d. Property damage liability insurance will provide Explosion, Collapse and underground coverages where applicable
- c) Contractual Liability (Hold Harmless Coverage):
 - a. bodily Injury: \$1,000,000
 - b. Property Damage: \$1,000,000 each occurrence
 - c. Annual Aggregate: \$2,000,000 each occurrence
- d) Umbrella Liability:
 - a. \$5,000,000 each occurrence

The Park District, its officers, agents and employees are to be covered and named as additional insureds under the General Liability coverage and shall contain no special limitation on the scope of protection afforded to the additional insureds. The policy and/or coverage shall also contain a "contractual liability" clause.

Prior to beginning work, "LINKS" shall furnish the Park District with certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above. All certificates shall provide for 30 days written notice to Park District prior to cancellation or material change of any insurance referred to therein. Failure of the Park District to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of the Park District to identify a deficiency from the evidence that is provided shall not be construed as a waiver of "LINKS"' obligation to maintain such insurance.

All insurance carriers providing the coverage set forth herein shall have a rating of A as assigned by A.M. Best and Co. and satisfactory to the Park District at its sole discretion. All insurance coverage provided by "LINKS" shall be primary coverage as to the Park District. Any insurance or self-insurance maintained by the Park District shall be excess of "LINKS" and shall not contribute to it.

"LINKS" shall furnish Park District with a certificate evidencing such coverage. "LINKS" will be solely responsible for ensuring that its agents (including its consultants, contractors and subcontractors) who are given access to the data

center or to services provided by the "LINKS" to Park District, maintain separate insurance at levels no less than those required herein above.

As an IT Vendor, "LINKS" shall maintain the following insurance coverage:

- Comprehensive general liability insurance in an amount not less than five million and no/100 dollars (\$5,000,000.00) per occurrence for bodily injury and property damage.
- Employer's liability insurance in an amount not less than one million and no/100 dollars (\$1,000,000.00) per occurrence.
- Workers' compensation insurance in an amount not less than the statutory requirements.

"LINKS" shall furnish Customer with a certificate evidencing such coverage. "LINKS" will be solely responsible for ensuring that its agents (including its consultants, contractors and subcontractors) who are given access to the data center or to services provided by the "LINKS" to Customer, maintain separate insurance at levels no less than those required herein above.

Cyber Risk Insurance: Subject to the limit of at least \$1,000,000 per claim, minimum of at least \$2,000,000 in the aggregate, to be maintained for the term of the MSA and three years following its termination, to respond to privacy and network security liability claims including, but not limited to the following, and arising directly or indirectly from "LINKS"'s failure to carry out its obligations under the MSA, or the negligent or intentional wrongful act, error or omission of "LINKS", its employees or agents, or third parties not associated with Customer to whom "LINKS" has given access to the data center premises or systems:

- A. Liability arising from theft, dissemination, and/or use of Customer confidential information, including, but not limited to, bank, credit card account, and personally identifiable information such as name, address, social security numbers, etc., regardless of how the information is stored or transmitted.
- B. Network security liability arising from (i) the unauthorized access to, use of, or tampering with computer systems, including hacker attacks; or (ii) the inability of an authorized third party to gain access to supplier systems and/or Customer data, including denial of service, unless caused by a mechanical or electrical failure or acts of God.
- C. Liability arising from the introduction of a computer virus into, or otherwise causing damage to, Customer's or third person's computer, computer system, network, or similar computer-related property and the data, software, and programs thereon.
- D. Crisis-management expenses (i.e., notification, public relations, reputation damage, forensics, etc.) for a data breach.

The above policies shall provide a waiver of subrogation. Customer its elected and appointed officials, officers, employees, agents and volunteers shall be included as additional insured with respect to liability arising out of the goods, services and activities performed by or on behalf of IT Vendor.

Professional Liability for IT Technology, including Cyber Risk (Claims-Made): \$1,000,000 each claim/loss \$2,000,000 aggregate for contracts under \$500,000. (For contracts over \$500,000, \$5,000,000 each claim/loss \$5,000,000 aggregate the policy shall cover professional misconduct or lack of ordinary skill for persons providing the services to be provided by or on behalf of "LINKS" under the MSA.

"LINKS" warrants that any retroactive date under the policy shall precede the effective date of the MSA; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning on the last day of the MSA term. The insurance should provide coverage for the same risks identified above for cyber risk insurance.

“LINKS” does not provide insurance to cover losses by the Customer at the “LINKS” facility, other than as provided above.

“LINKS” provides insurance for its own losses. This includes insurance to cover day-to-day risks and long-term business continuity.