

## Additions and Deletions Report for AIA® Document A133® – 2019

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### PAGE 1

AGREEMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2023

...

City of Oakdale  
1584 Hadley Avenue North  
Oakdale, MN 55128  
651-739-5086

...

Oakdale Public Works  
Granada Avenue North & 32<sup>nd</sup> Street North  
Oakdale, MN 55128

...

Hagen Christensen & McIlwain Architects, P.A.  
4201 Cedar Avenue South  
Minneapolis, MN 55407

### PAGE 3

Jim Romanik  
Public Works Director  
City of Oakdale  
1900 Hadley Avenue North  
Oakdale, MN 55128

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The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15. If any ambiguity exists regarding the responsibilities of Construction Manager in the Contract Documents, Construction Manager's response to the Request for Proposals shall apply to remove the ambiguity as to Construction Manager's responsibilities, capabilities, staffing, schedule or other relevant service.

...

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. Notwithstanding the Title of this Standard Form A133-2019 Agreement or references to Work by the Contractor in the A201-2017, General Conditions, as modified, Construction Manager shall not be a constructor or otherwise perform any of the Work. Rather, Construction Manager shall upon commencement of the Construction Phase as referenced in Section 3.3, perform Construction Manager at risk services necessary to deliver the Project at the Guaranteed Maximum Price.

...

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, as modified, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

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

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

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All Work that is subject to Minnesota Statutes, Section 471.345 (Uniform Municipal Contracting Law) shall be publicly bid in accordance with Minnesota law and Construction Manager shall do all things necessary to effectuate Owner's compliance with public bidding, where applicable, in Owner's sole discretion. The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Manager, provided Owner is satisfied that such procurement complies with law. 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.

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§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency ~~for the Construction Manager's exclusive as set forth in Exhibit A to this A133-2019 for the Construction Manager's~~ reasonable use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

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§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work ~~to be performed by the Construction Manager, the Construction Manager shall cause to be performed,~~ and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.



...

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, including as such variances may affect the Construction Manager's use of contingency and allowances, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

...

**§ 4.1.2** Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2. The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

**§ 4.1.3** The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality. **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. Subject to written disclaimer or qualification from the Owner as to accuracy, the Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

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

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

**§ 4.1.4** **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services. 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. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

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

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

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

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

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, have the extent of and limitation on authority as set forth in Section 2.1.1 of the A201-2017, as modified.~~ Except as otherwise provided in Section 4.2.1 of A201-2017, the Architect does not have such authority. ~~The term "Owner" means the Owner or the Owner's authorized representative.~~

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

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§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. ~~Amounts unpaid—( Pursuant to the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.425 ("Prompt Payment Act"), amounts unpaid and not subject to a good faith dispute thirty-five ( 35 ) 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.~~

...



% 4.00 % per annum

...

The Construction Manager's Fee is        % applied to the Cost of the Work.

...

Overhead and profit for increases in the costs of the Subcontractor's portion of the Work will be limited to 10% and 5% for that work of its subcontractors and vendors.

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NA

...

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. To the extent the total cost of construction is less than the Guaranteed Maximum Price, the Owner shall receive 100% of all such savings. The Guaranteed Maximum Price ("GMP") will be established after receipt of bids for the construction Project. An addendum to this contract will be issued at the time of establishing the GMP that will modify this contract.

...

~~§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201-2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.~~

...

~~§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.~~

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

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

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

~~§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval. If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.~~

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

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

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

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

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

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

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

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

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

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

~~§ 7.6.7 Costs-Reasonable costs of document reproductions and delivery charges.~~

...

~~§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, litigation costs, not including attorneys' fees 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. Costs are not recoverable under this Agreement for disputes between the Owner and Construction Manager or because of non-frivolous third-party claims against the Construction Manager alleging negligence, breach of contract, or willful misconduct relating to the Project.~~

~~§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval. That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.~~



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

...

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

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

...

- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior written approval;

...

~~§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection. The Owner shall obtain bids from Prime Contractors pursuant to public bidding requirements under Minnesota Statutes, Section 471.345. The Owner shall award Prime Contractor contracts to the lowest responsible bidder ("LRB"). Upon approval by Owner of the Construction Manager's Guaranteed Maximum Price, the Owner shall assign to the Construction Manager the said contracts for the Work. Upon assignment of the Prime Contractor contracts, the Prime Contractor shall have the rights and responsibilities of the Subcontractors and the Construction Manager shall have the rights and responsibilities of the Contractor in the A201-2017 General Conditions, as modified, provided however, that the Contractor shall not perform any Work.~~

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The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's

auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of ~~three~~ six (6) years after final payment, or for such longer period as may be required by law.

...

No additional provisions.

**§ 11.1.3** ~~Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than ( ) days after the Architect receives the Application for Payment.~~ Owner payment obligations shall be governed by the Prompt Payment Act.

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**§ 11.1.5.3** When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect. The Owner must first approve such allocation for use from the contingency after consultation with Architect, Owner approval not to be unreasonably withheld.

...

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

...

Owner shall withhold five percent (5%) of the amount approved for payment in each payment period.

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None

...

**Retainage after Substantial Completion, Minn. Stat. § 15.72, subd. 2**

Subject to the following, all retainage will be released to Construction Manager no later than sixty (60) days after Substantial Completion. "Substantial Completion" shall be determined by the Architect consistent with the definition in Minnesota Statutes, Section 541.051, subd. 1(a). After Substantial Completion, Owner may withhold: (1) two hundred and fifty percent (250%) of the estimated cost to correct or complete Work known at the time of Substantial Completion; and (2) one percent (1%) of the value of the contract or \$500.00, whichever is greater, pending completion and submission of all final paperwork by Construction Manager. If Owner withholds payment under this paragraph, it will provide a written statement to Construction Manager detailing the amount and basis of the withholding. Owner will pay any amounts withheld under clause (1) within sixty (60) days after completion or correction of the Work, as determined by Architect. Owner will pay any amounts withheld under clause (2) after submission of all final paperwork, as determined by Owner.

...

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

Subcontracts.

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All punch list items have been completed to the satisfaction of Owner, all required corrections have been made, all warranties have been provided and all properly completed contractor closeout documents have been submitted to the Owner.

...

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, ~~or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~

...

4.00 % Four percent per annum  
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[ ☒ ] Litigation in a court of competent jurisdiction, in Washington County, Minnesota

...

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

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A pro rated portion of Construction Manager's fee, plus payments necessary to pay Subcontractors for Work completed through the date of termination, plus costs incurred by Construction Manager made necessary by the termination that Construction Manager could not have reasonably avoided.

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**§ 14.2.3** Prompt Payment Act subdivision 4a shall apply to payments by Contractor to Subcontractors as set forth in the A201-2017, which provides in pertinent part: each Prime Contractor must pay any subcontractor within ten (10) days of the Prime Contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. The Contract must require the Prime Contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the Prime Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a Prime Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

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After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as ~~Constructor~~ where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

...

**§ 14.5** Other provisions:

#### **§ 14.5 Insurance Required by the Owner**

The Owner property insurance shall be in accordance with Section 11.2 of A201-2017.

#### **§ 14.6 Performance Bond and Payment Bond**

**§ 14.6.1** The Construction Manager shall furnish bonds covering faithful performance of the Construction Manager's

Contract and payment of obligations arising thereunder. Bonds may be obtained through the Construction Manager's usual source and the cost thereof shall be included in the Cost of the Work. Construction Manager shall not be required to post separate performance and payment bonds to the extent they are duplicative of the Work.

§ 14.6.2 The Construction Manager shall obtain performance and payment bonds from all Subcontractors covering the full value of the Work of each Subcontractor, naming the Owner as co-beneficiary.

#### **§ 14.7 Record Keeping—Availability and Retention**

Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, Construction Manager agrees that the books, records, documents and accounting procedures and practices of Construction Manager, that are relevant to the Contract or transaction, are subject to examination by the Owner and the state auditor for a minimum of six (6) years. Construction Manager shall maintain such records for a minimum of six (6) years after final payment.

#### **§ 14.8 Data Practices**

Pursuant to Minnesota Statutes, Section 13.05, subd. 11, all of the data created, collected, received, stored, used, maintained, or disseminated by Construction Manager in performing this contract is subject to the requirements of the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes Chapter 13, and Construction Manager must comply with those requirements as if it were a government entity. The remedies in Minnesota Statutes, Section 13.08 apply to Construction Manager. Construction Manager does not have a duty to provide access to public data to the public if the public data are available from the Owner.

#### **§ 14.9 Non-Discrimination**

Pursuant to Minnesota Statutes, Section 181.59, the Construction Manager will take affirmative action to ensure that applicants are selected, and that employees are treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability or age. The Construction Manager agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this contract.

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- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager ~~as Constructor~~, as modified where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, as modified, if executed
- .3 AIA Document A133™-2019, Exhibit B, Insurance and ~~Bonds~~ Bonds, as modified
- .4 AIA Document A201™-2017, General Conditions of the Contract for ~~Construction~~ Construction, as modified

...

AIA Document A101-2017, as modified, to be assigned to the Construction Manager together with the A201 to form its contract with the Subcontractors.

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