



STAFF REPORT

DATE: December 15, 2020
CONSENT

AGENDA ITEM: Agreement with Leo A Daly
TO: Mayor and Council
SUBMITTED BY: Kristina Handt, City Administrator

BACKGROUND:

At the October 20, 2020 council meeting, staff was directed to begin contract negotiations with Leo A Daly for architectural and engineering services for the new city hall, fire station and addition to public works.

ISSUE BEFORE COUNCIL:

Should Council approve the agreement with Leo A Daly??

PROPOSAL DETAILS/ANALYSIS:

Included in your packet is the AIA agreement with Leo A Daly for the new city hall, fire station and public works addition. The agreement has been reviewed by legal counsel Jim Strommen at Kennedy and Graven.

The anticipated schedule is included in 1.1.4:

The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any: Preliminary Schedule as follows

December 17, 2020 - December 31, 2021: Site Due Diligence / Existing Building Verification

January 4, 2020 - July 6, 2021: Design (Schematic Design through Construction Documents)

July 7, 2021- August 17, 2021: Bidding Phase

.2 Construction commencement date: **August 18, 2021**

.3 Substantial Completion date or dates: Preliminary schedule as follows. To be verified by Construction Manager.

June 8, 2022: Addition to Public Works

June 30, 2022: Additions to Brookfield office building

October 14, 2022: Remodeling of Brookfield office building

.4 Other milestone dates:

November 18, 2022: Project Closeout.

The project schedule was shared with the construction manager, H&U, and they believe it is reasonable but will require all tenants to vacate the Brookfield building by the end of 2021. The agreement further outlines the Architect's responsibilities through the above phases.

In addition to the architect/engineer, the city will need to retain a land surveyor, geo technical engineer, utilize FOCUS engineering for civil up to the site and likely Roseville IT and the Washington Ramsey Suburban Cable staff for IT and AV needs. The Architect will provide a separate bid package for furniture, fixtures and equipment (FFE) for public bidding or procurement through the State Contracts.

The process will involve two community engagements (either in person or virtual open houses or online survey) and three public presentation at council meetings with three renderings.

FISCAL IMPACT:

Compensation is laid out in Article 11. The base fee is \$516,720. If the Architect has to perform work after 24 months from the date of approval, there will be additional fees as incurred by the Architect. The fee for the drawings and survey of existing facilities is \$7,000. The FFE design is \$39,000. All of these fees are consistent with the proposal council saw last month. As noted in the CIP, the costs would be split 80% general fund, 10% water and 10% sewer.

OPTIONS:

- 1) Approve AIA Document B133-2019 with Leo A Daly
- 2) Amend and then Approve AIA Document B133 with Leo A Daly
- 3) Do not approve the AIA Document B133 agreement

RECOMMENDATION:

If removed from the consent agenda:

“Motion to approve the AIA Document B133 with Leo A Daly.”

ATTACHMENT:

- AIA Document B133-2019 with Leo A Daly

 **AIA** Document B133™ – 2019**Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition**

AGREEMENT made as of the 15th day of December in the year 2020
(In words, indicate day, month and year.)

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

City of Lake Elmo
3880 Laverne Avenue North
Lake Elmo, MN 55042

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

LEO A DALY
730 2nd Avenue South, Suite 1300
Minneapolis, MN 55402

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

Architecture and Engineering Services for Public Facilities for

- City Hall, Fire Department Facility, and Washington County Sheriff's substation – Remodeling and Addition at the existing Brookfield office building.
- Public Works Addition and Remodeling.

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

It is anticipated to be H&U Construction.
5555 West 78th Street, Suite A
Minneapolis, MN 55439

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

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

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

This document is intended to be used in conjunction with AIA Documents A201–2017™, General Conditions of the Contract for Construction; 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; and A134–2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price. AIA Document A201™–2017 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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ARTICLE 1 INITIAL INFORMATION

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

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

§ 1.1.1 The Owner's program for the Project:

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

The preliminary fit plans developed in March of 2018 by LEO A DALY will serve as the starting point for the Owner's program as well as the related space study and recommendations prepared by BKV Group in 2017. The program will be reviewed and revised as required as part of this project. The scale of the program is not anticipated to increase or decrease substantially from the space requirements delineated in Exhibit A – Brookfield Office Building Fit Study or the BKV Facilities Study related to City Hall / Fire Station option located at the Brookfield site.

§ 1.1.2 The Project's physical characteristics:

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

.1 City Hall, Fire Station, and Washington County Sheriff's substation:

Shall be co-located at 3880 Laverne Ave. This includes an interior remodel of the Brookfield office building and an addition of fire apparatus bays and council chambers. The design is likely to include construction of approximately 9,315 square feet for City Hall, 22,300 square feet for fire and public safety, including 6 apparatus bays. The adjacent property which the current City Council Chambers is located shall be considered part of the site boundaries for this project.

.2 Public Works:

Approximately 2,340 square foot addition of Public Works office space at the current Public Works facility located at 3445 Ideal Ave North.

§ 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.)

Assumed construction cost of \$8,832,000. The total project costs are unknown currently.

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

.1 Design phase milestone dates, if any: Preliminary Schedule as follows

December 17, 2020 – December 31, 2021: Site Due Diligence / Existing Building Verification

January 4, 2020 – July 6, 2021: Design (Schematic Design through Construction Documents)

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.4 Other milestone dates:

November 18, 2022: Project Closeout.

§ 1.1.5 The Owner intends to retain a Construction Manager pursuant to the following agreement:
(Indicate agreement type.)

- AIA Document A133–2019, Standard Form of Agreement Between Owner and Construction Manager at risk where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.
- AIA Document A134–2019, Standard Form of Agreement Between Owner and Construction Manager advisor where the basis of payment is the cost of work plus a fee without a Guaranteed Maximum Price.

§ 1.1.6 The Owner's requirements for accelerated or fast-track design and construction, or phased construction are set forth below:
(List number and type of bid/procurement packages.)

The project delivery method is likely to be Construction Manager at Risk. Currently the project involves designing and constructing around an existing tenant in the Brookfield office building. The tenant's lease expires June 30, 2022. It is assumed this will require a phased construction approach without the need for separate bid/procurement packages.

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

N/A

(Paragraph deleted)

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:

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User Notes:

(926183734)

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

Kristina Handt, City Administrator
City of Lake Elmo
3880 Laverne Avenue North
Lake Elmo, MN 55042

§ 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:
to whom, upon Owner request, the Architect shall provide submittals for review.
???

§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact 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. If the Architect is to assist the Owner in selecting the Construction Manager, complete Section 4.1.1.1)

Anticipated to be known on or around December 1, 2020

- .2 Land Surveyor:

TBD - LEO A DALY to provide the Owner an RFP to help the Owner solicit the procurement of a survey at the Brookfield site and adjacent properties as well as at the existing Public Works site if deemed necessary.

- .3 Geotechnical Engineer:

TBD - LEO A DALY to provide the Owner an RFP to help the Owner solicit the procurement of a geotechnical report at the Brookfield site as well as at the existing Public Works site if deemed necessary.

- .4 Civil Engineer:

Focus Engineering, Inc. For any utility work leading to the site property boundary at the Brookfield site and the Public Works site, if required.

- .5 Other consultants and contractors:

(List any other consultants and contractors retained by the Owner.)

IT Consultant; Roseville IT

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

Todd LaVold, Project Manager
LEO A DALY
730 2nd Avenue South, Suite 1300
Minneapolis, MN 55402

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

§ 1.1.12.1 Consultants retained under Basic Services:

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User Notes:

(926183734)

.1 Structural Engineer:

Meyer Borgman Johnson
510 Marquette Avenue South, Suite 900
Minneapolis, MN 55402

.2 Mechanical Engineer: LEO A DALY

(Paragraphs deleted)

.3 Electrical Engineer: LEO A DALY

§ 1.1.12.2 Consultants retained under Supplemental Services:

.1 Landscape Architect:
Hoisington Koegler Group, Inc
123 North Third Street Suite 100
Minneapolis, MN 55401

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

N/A

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

(Paragraph deleted)

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 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 the agreement identified in Section 1.1.5. 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 Insurance. The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.6.1 Commercial General Liability with policy limits of not less than three-million dollars (\$ \$3,000,000) for each occurrence and three-million dollars (\$ 3,000,000) in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than five-hundred thousand dollars (\$ 500,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.6.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.6.1 and 2.6.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.6.4 Workers' Compensation at statutory limits.

§ 2.6.5 Employers' Liability with policy limits not less than five hundred thousand dollars (\$ 500,000) each accident, and five hundred thousand dollars (\$ 500,000) policy limit.

§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than two million dollars (\$ 2,000,000) per claim and two million dollars (\$ 2,000,000) in the aggregate. See attached Certificate of Liability Insurance.

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

§ 2.6.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.6.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

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

§ 3.1.1 The Architect shall manage the Architect's services, 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 consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner, the Construction Manager, and the Owner's 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, and if requested by Owner or otherwise required herein, the Architect shall submit, for the Construction Manager's review and the Owner's approval, a schedule for the performance of the Architect's services. The schedule shall include design phase milestone dates, as well as the anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the Construction Manager's review, for the performance of the Construction Manager's Preconstruction Phase services, for

the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.3.1 The Owner agrees that the Architect is not responsible for damages arising from any circumstances beyond the Architect's reasonable control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions, natural disasters, fire or other acts of God; riots, war or other emergencies; failure of any governmental agency to act in timely manner; failure of performance by the Owner or the Owner's other designers, contractor, or any of their subcontractors; or discovery of any hazardous substances or differing and unforeseeable site conditions. Notwithstanding the foregoing, time is of the essence to the Owner for the completion of each phase of the Architect's services. The Architect shall timely inform the Owner if the Architect has reason to believe that its final plans and specifications completion date will be delayed for any reason.

§ 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. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services.

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

§ 3.1.6 The Architect shall, in coordination with the Construction Manager, contact governmental authorities required to approve the Construction Documents. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.7 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.

§ 3.1.8 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, or the Owner's approval of the Construction Manager's Control Estimate, as applicable, the Architect shall consider the Construction Manager's requests for substitutions and, upon written request of the Construction Manager, provide clarification or interpretations pertaining to the Drawings, Specifications, and other documents submitted by the Architect. The Architect and Construction Manager shall include the Owner in communications related to substitution requests, clarifications, and interpretations.

§ 3.2 Review of the Construction Manager's Guaranteed Maximum Price Proposal or Control Estimate

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare, for review by the Owner and Architect, and for the Owner's acceptance or approval, a Guaranteed Maximum Price proposal or Control Estimate. The Architect shall assist the Owner in reviewing the Construction Manager's proposal or estimate. The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies; for the assumption of any responsibility for the Construction Manager's proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimates of cost or estimated cost proposals. In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager.

§ 3.2.2 Upon authorization by the Owner, and subject to Section 4.2.1.14, the Architect shall update the Drawings, Specifications, and other documents to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment or Control Estimate.

§ 3.3 Schematic Design Phase Services

§ 3.3.1 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.

§ 3.3.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, 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.

§ 3.3.3 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. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.3.4 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.

§ 3.3.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for Construction Manager's review and the Owner's approval. 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 representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.3.5.1 The Architect shall consider sustainable 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 more advanced sustainable design services as a Supplemental Service under Section 4.1.

§ 3.3.5.2 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 program, schedule, and budget for the Cost of the Work.

§ 3.3.6 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.

§ 3.3.7 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 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.

§ 3.3.8 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.

§ 3.4 Design Development Phase Services

§ 3.4.1 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, the Architect shall prepare Design Development Documents for the Construction Manager's review and the Owner's approval. 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 other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.4.2 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.

§ 3.4.3 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.

§ 3.5 Construction Documents Phase Services

§ 3.5.1 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 Construction Manager's review and the Owner's approval. 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 and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Construction Manager 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.

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

§ 3.5.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and Construction Manager in the development and preparation of (1) the Conditions of the Contract for Construction (General, Supplementary and other Conditions) and (2) a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include sample forms.

§ 3.5.4 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.

§ 3.5.5 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.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Construction Manager as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Construction Manager modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 3.6.1.2 Subject to Section 4.2, the Architect's responsibility to provide Construction Phase Services commences upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Owner's approval of the Construction Manager's Control Estimate, or by a written agreement between the Owner and Construction Manager which sets forth a description of the Work to be performed by the Construction Manager prior to such acceptance or approval. Subject to Section 4.2, and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.1.3 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 Construction Manager'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 of any other persons or entities performing portions of the Work.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site as required in Section 4.2.3, 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 observations 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 promptly report to the Owner (1) known deviations from the Contract

Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) 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. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require observations or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the 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 Construction Manager, Subcontractors, 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 either the Owner or 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 Construction Manager, 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. The Architect shall not be liable to the Owner or the Construction Manager for decisions regarding purely aesthetic interpretations rendered in good faith.

§ 3.6.2.5 Unless the Owner and Construction Manager designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Construction Manager as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Construction Manager

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

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site observations 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 suppliers and other data requested by the Owner to substantiate the Construction Manager's right to payment, or (4) ascertained how or for what purpose the Construction Manager has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 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 submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals 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 The Architect shall review, and take appropriate action upon, the Construction Manager'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 Construction Manager's responsibility. The

Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's review of a specific item shall not indicate approval of an assembly of which the item is a component. The Architect's review shall not constitute approval of a deviation from the requirements of the Contract Documents unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and the Architect has given written acknowledgement of the specific deviation.

§ 3.6.4.3 If the Contract Documents specifically require the Construction Manager 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 and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Construction Manager's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect 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 the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied 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 may order 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. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

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

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct observations to determine the date or dates of Substantial Completion and the date of final completion
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Construction Manager; and
- .4 issue a final Certificate for Payment based upon a final observation indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to (1) check conformance of the Work with the requirements of the Contract Documents and (2) verify the accuracy and completeness of the list submitted by the Construction Manager of Work to be completed or corrected.

§ 3.6.6.2.1 The Architect will conduct (1) punch-list of each building, and (1) substantial completion observation of the work of each building. If additional punch list observations or on-site reviews for compliance of punch-list of project completion are requested by the CM or Owner, the Architect may charge hourly services for all additional observations, including the costs of architects time for travel, mileage and incidentals.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Construction Manager, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Construction Manager: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Construction Manager under the Contract Documents.

§ 3.6.6.5 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 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental 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. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Assistance with Selection of Construction Manager	Not provided
§ 4.1.1.2 Programming	Architect
§ 4.1.1.3 Multiple Preliminary Designs	Architect
§ 4.1.1.4 Measured drawings	Architect
§ 4.1.1.5 Existing facilities surveys	Architect
§ 4.1.1.6 Site evaluation and planning	Architect
§ 4.1.1.7 Building Information Model management responsibilities	Architect
§ 4.1.1.8 Development of Building Information Models for post construction use	Not provided
§ 4.1.1.9 Civil engineering	Architect
§ 4.1.1.10 Landscape design	Architect
§ 4.1.1.11 Architectural interior design	Architect
§ 4.1.1.12 Value analysis	Architect
§ 4.1.1.13 Cost estimating	Not provided
§ 4.1.1.14 On-site project representation	Not provided
§ 4.1.1.15 Conformed documents for construction	Architect
§ 4.1.1.16 As-designed record drawings	Not provided
§ 4.1.1.17 As-constructed record drawings	Not provided
§ 4.1.1.18 Post-occupancy evaluation	Not provided
§ 4.1.1.19 Facility support services	Not provided
§ 4.1.1.20 Tenant-related services	Not provided
§ 4.1.1.21 Architect's coordination of the Owner's consultants	Architect
§ 4.1.1.22 Telecommunications/data design	Owner
§ 4.1.1.23 Security evaluation and planning	Architect
§ 4.1.1.24 Commissioning	Not provided
§ 4.1.1.25 Sustainable Project Services pursuant to Section 4.1.3	Not provided
§ 4.1.1.26 Historic preservation	Not provided
§ 4.1.1.27 Furniture, furnishings, and equipment design	Architect
§ 4.1.1.28 A/V Design	Owner
<i>(Row deleted)</i>	
§ 4.1.1.29 Community Engagement	Architect
§ 4.1.1.30 Renderings and Presentations	Architect
§ 4.1.1.31 Fire Protection,	Architect
§ 4.1.1.32 Life Safety, Mass Notification, Fire Detection and Alarm	Architect
§ 4.1.1.33 Access Control	Architect
§ 4.1.1.34 Surveillance	Owner

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

- .1 Programming: The preliminary fit plans developed in March of 2018 by LEO A DALY will serve as the starting point for the Owner's program as well as the related space study and recommendations prepared by BKV Group in 2017. The program will be reviewed and revised as required.
- .2 Multiple Preliminary Designs: The Architect will provide up to three (3) preliminary design options for the Work located at the Brookfield site and up to three (3) preliminary options for the Work located at the Public Works site.
- .3 Measured drawings: The Architect will review Owner provided drawings of the existing Brookfield and Public Works building, prepare REVIT models based upon these drawings, and verify the existing conditions against the model as required. Verification shall include structural columns and grids, bearing and shear walls, major floor openings and stair locations, and major wall and architectural features. Mechanical and Electrical system locations within the Brookfield building are not included in this Supplemental Service as these systems are anticipated to be demolished as part of the Project. This Supplemental Service does not include field measurements of individual structural components should this information not be available to the Architect via existing drawings.
- .4 Existing facilities surveys: The basis for this Supplemental Service shall be Measured drawings. The Architect, upon completion of the Measured drawing, will review the existing condition of the Brookfield building and the Public Works building. The Architect will provide a summary of the conditions of each major component of the building including site, envelope, architectural features/finishes, conveying systems, mechanical, and electrical systems.
- .5 Building Information Model management responsibilities: Limited to the Architect's instrument of service.
- .6 Civil Engineering: Limited to site boundaries at Brookfield site and Public Works site.
- .7 Landscape Design: Limited to the Brookfield site and the Public Works site.
- .8 Architectural Interior Design: Limited to the Brookfield building and any additions as well as any addition or areas directly remodeled within the Public Works building.
- .9: Value Analysis: Limited to responsibilities listed in Article 6.4.
- .10: Conformed documents for construction: Limited to Construction Documents modified to include any addenda issued during the bidding process and accepted alternates.
- .11 Architect's coordination of the Owner's consultants: Limited to coordination with the City of Lake Elmo's IT consultant, Roseville IT. Roseville IT shall provide design guidance for the Architect to provide conduit and rough ins for structured cabling, voice, and data communications,
- .12 Security evaluation and planning: Architect will provide best practice planning for public works, city hall, fire station, and police station design.
- .13 Furniture, furnishings, and equipment design: The Architect will provide design and specifications for a separate furniture bid package for public bidding or for procurement through State of Minnesota furniture contracts. Specialized Fire Department or Public Works equipment specifications shall be provided by the Architect or the Owner and determined on a case by case scenario.
- .14 Community Engagement: Limited to two (2) in person or virtual open houses and / or one (1) online survey.
- .15 Renderings and Presentations: Public presentations limited to three (3) City Council Meetings. Presentation renderings limited to three (3) Schematic Design renderings (one exterior rendering at the Brookfield site, one interior rendering at the Brookfield site, and one exterior rendering at the Public Works site, or any combination of three renderings). These renderings and the scope of this Supplemental Service is limited to updating the Schematic Design renderings during the Design Development phase.

- .16 Fire Protection: Architect to provide diagrammatic drawings and specifications to allow Design/Build fire protection contractors to bid this Project.
- .17 Life Safety, Mass Notification, and Fire Detection and Alarm: Architect will incorporate life safety, mass notification, and fire detection and alarm drawings and specifications into the Construction Documents.
- .18 Access Control: Architect will incorporate access control drawings and specifications, associated door hardware specifications, and low voltage drawings and specifications to allow for the access control system to be publicly bid.

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

- .1 Telecommunications/data design: Design and documentation provided by the City of Lake Elmo's IT consultant, Roseville IT.
- .2 A/V Design: It is anticipated that the City will procure A/V system design and equipment. Leo A Daly will coordinate locations and equipment for the system specified and provided by others. Pathways will be provided by LEO A DALY as directed by others.
- .3 Surveillance: It is anticipated that the City will procure security system design and equipment, integrated through their IT provider. Leo A Daly will coordinate locations and equipment for the system specified and provided by others. Pathways will be provided by LEO A DALY as directed by others.

(Paragraph deleted)

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services 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 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 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 Additional 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, approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, 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, Guaranteed Maximum Price proposal, or Control Estimate 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 enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .4 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .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 or the Owner's consultants or contractors
- .6 Preparing digital ;models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner- authorized recipients,

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- .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 in excess of those outlined in § 4.1.2.1.15
- .9 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.
- .12 Services necessitated by replacement of the Construction Manager or conversion of the Construction Manager as constructor project delivery method to an alternative project delivery method,
- .13 Services necessitated by the Owner's delay in engaging the Construction Manager,
- .14 Making revisions to the Drawings, Specifications, and other documents resulting from agreed-upon assumptions and clarifications included in the Guaranteed Maximum Price Amendment or Control Estimate; and
- .15 Making revisions to the Drawings, Specifications, and other documents resulting from substitutions included in the Guaranteed Maximum Price Amendment or Control Estimate.

§ 4.2.2 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, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice:

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

§ 4.2.3 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 Construction Manager
- .2 Twenty (20) visits to the site by the Architect during construction
- .3 Two (2) 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 two (2) inspections for any portion of the Work to determine final completion

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within twenty-four (24) 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.

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties, and responsibilities as described in the agreement selected in Section 1.1.5.

§ 5.3 The Owner shall establish 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 update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect and Construction Manager. 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.

§ 5.3.1 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 Construction Manager 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.

§ 5.4 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. Architect understands and agrees that any Additional Services, Change Orders, or material modifications to Basic Services will need to be approved by Owner's City Council.

§ 5.5 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 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.

§ 5.6 The Owner 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.

§ 5.7 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

(Paragraph deleted)

§ 5.9 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 as the responsibility of the Architect 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 and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.10 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.

§ 5.11 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.

§ 5.12 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.

§ 5.13 The Owner shall include the Architect in all communications with the Construction Manager that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.14 The Owner shall coordinate the Architect's duties and responsibilities set forth in the Agreement between the Owner and the Construction Manager 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 Construction Manager, including the General Conditions of the Contract for Construction.

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

§ 5.16 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.

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 Construction Manager's general conditions costs, overhead, and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the compensation of the Construction Manager for Preconstruction Phase services; the costs of the land, rights-of-way, financing, or 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 the Initial Information and shall be adjusted throughout the Project as required under Sections 5.3 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, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates, or due to market conditions the Architect could not reasonably anticipate. 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 cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work together to reconcile the cost estimates.

§ 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 for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.5 If the Construction Manager's 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 terminate in accordance with Section 9.5;
- .3 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

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4 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.3, the Architect, without additional compensation, shall incorporate the revisions 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 revisions in the Construction Documents Phase shall be the limit of the Architect's responsibility 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 the Construction Manager's subsequent cost estimates, the Guaranteed Maximum Price proposal, or Control Estimate 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.

§ 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 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 under this Agreement, including prompt payment of all sums due, pursuant to Article 9 and Article 11. 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 Construction Manager, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, 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.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 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. 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 within the Project area 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 A201–2017, 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 obligation to indemnify and hold the Owner and the Owner’s officers and employees harmless does not include a duty to defend. The Architect’s duty to indemnify the Owner under this Section 8.1.3 shall be limited to the insurance claim limits without regard to the amount available in the aggregate of the insurance coverage required by this Agreement.

§ 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. Mediation shall not be a condition precedent to the commencement of binding dispute resolution but shall be carried out between the parties in good faith prior to the commencement of litigation discovery.

§ 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 this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, 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.)

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

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

(Paragraphs deleted)

§ 8.3 NOT USED

§ 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 questions 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 law or fact 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.

§ 8.4 The provisions of this Article 8 shall survive the termination of 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 Owner shall pay the Architect 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 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 Termination Fee:

N/A

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

N/A

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 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 9.7.

§ 9.10 All the sections in this Article are subject to the Prompt Payment of Local Government Bills, Minn. Stat. § 471.425 ("Prompt Payment Act").

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. 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 A201-2017, General Conditions of the Contract for Construction, except as modified in this Agreement. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 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, including any payments due to the Architect by the Owner prior to the assignment.

§ 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. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

(Paragraphs deleted)

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement

shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

ARTICLE 11 COMPENSATION

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

- .1 Stipulated Sum
(Insert amount)

Based upon the construction cost listed in Section 1.1.3. Five-hundred-sixteen thousand and six-hundred and seventy-two dollars (\$516,720).

- .2 Percentage Basis: N/A
(Insert percentage value)

- .3 Other
(Describe the method of compensation)

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, 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.)

- .1 Supplemental Services: § 4.1.1.4 Measured drawings and §4.1.1.5 Existing facility surveys - \$7,000.
- .2 Supplemental Service: § 4.1.1.27 Furniture, furnishings, and equipment design - \$39,000.
- .3 All other Supplemental Services listed in § 4.1.1 are included in the Architect's Basic Services.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

Hourly per Architect's 2021 rate schedule. Refer to Section 11.7 for rates.

§ 11.4 Compensation for Supplemental and 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 %), or as follows:
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

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

Schematic Design Phase	Fifteen	percent (15	%)
Design Development Phase	Twenty-five	percent (25	%)
Construction Documents Phase	Thirty-five	percent (35	%)
Bidding and Negotiation	Five		5	
Construction Phase	Twenty	percent (20	%)
<hr/>				
Total Basic Compensation	one hundred	percent (100	%)

The Owner acknowledges that with an accelerated Project delivery, multiple bid package process, or Construction Manager as constructor project delivery method, 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 identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis 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. 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 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.)

See below.

Employee or Category	Rate \$ / hour)
Principal in Charge	\$350
Project Manager	\$210
Architectural / Engineering Technical Leader	\$235
Visualization	\$185
Senior Architect / Engineer	\$210
Architect / Engineer	\$180
Senior Interior Designer	\$155
Interior Designer	\$125
Pre-Professional	\$115
Architectural / Engineering Designer	\$140
Construction Administration Assistant	\$115
Administrative	\$110

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, 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 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and 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 beyond those delineated in Section 4.1 , physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and
- .12 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 five percent (5 %) of the expenses incurred.

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.6 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:
(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.6, and for which the Owner shall reimburse the Architect.)

N/A

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of zero (\$ 0) 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.

(Paragraph deleted)

§ 11.10.2 Progress Payments

§ 11.10.2.1 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 sixty (60) 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.)

4 % four

§ 11.10.2.2 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.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and 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:

(Include other terms and conditions applicable to this Agreement.)

§ 12.1 Limit of Liability. Neither the Architect, the Architect's consultants, nor their agents or employees shall be jointly, severally or individually liable to the Owner in excess of the two million dollars (\$2,000,000) by reason of any act or omission, including breach of contract or negligence not amounting to a willful or intentional wrong.

12.2 Remodeling. Inasmuch as the remodeling and/or rehabilitation of an existing building or structure requires that certain assumptions be made regarding existing conditions, and because some of these assumptions cannot be verified without expending great sums of additional money, or destroying otherwise adequate or serviceable portions of the building or structure, the Owner agrees that, except for negligence on the part of the Architect, Owner will release and hold harmless the Architect for and against any and all claims, damages, and costs of defense arising out of such professional services involving those assumptions.

12.3 Maintenance. The Owner agrees to release and hold the Architect harmless of any and all liability should the Owner fail to adhere to any published maintenance schedule for any material or product that is a part of the Project.

§ 12.5 The Architect shall provide site observations on an average of two visits per month during the construction period according to Article 4.2.3.

§ 12.6 The Owner agrees to pay the Architect for the preparation of all Change Orders and bid alternates for any work that is in addition to and above and the construction budget noted in Article 1.1, whether or not the additional construction budget is from the Owner's project contingency or an increase construction budget monies based on five (5%) of the construction value.

§ 12.7 If a Change Order or Construction Change Directive is necessary due to an omission, oversight or other act caused by the Architect or Engineer, the Architect or Engineer shall prepare drawings, specifications and other documents and support data (including evaluating Contractor's proposals) and provide any other design services as may be required in connection with the change in the work, at no cost to the Owner. The construction costs associated with such work is to be deducted from the project contingency.

§ 12.8 The Architect cannot provide certification regarding the presence or lack of presence of hazardous materials within structure or the site.

§ 12.8 Record Keeping—Availability and Retention. Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, Architect agrees that the books, records, documents and accounting procedures and practices of Architect, 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. Architect shall maintain such records for a minimum of six (6) years after final payment.

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

§ 12.10 Non-Discrimination. Pursuant to Minnesota Statutes, Section 181.59, the Architect 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 Architect 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.

§ 12.11 Prompt Payment of Local Government Bills, Minn. Stat. § 471.425. All payments to the Architect shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.425 ("Prompt Payment Act"), provided, however, that the interest rate for payments due but unpaid shall be four percent (4.00%) per annum.

§ 12.12 Survivability. All covenants, indemnities, guarantees, releases, representations and warranties by any Party or Parties, and any undischarged obligations of the Owner and the Architect arising prior to the expiration of this Contract (whether by completion or earlier termination), shall survive such expiration.

§ 12.13 Independent Contractor Status. The Architect acknowledges that no withholding or deduction for State or Federal income taxes, FICA, FUTA, or otherwise, will be made from the payments due the Architect, and that it is the Architect's sole obligation to comply with the applicable provisions of all Federal and State tax laws.

§ 12.14 Compliance with Laws. The Architect shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Contract or to the facilities, programs and staff for which the Architect is responsible.

§ 12.15 No Waiver. Any Owner failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of Owner's right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term of this Agreement shall not be binding and effective unless made in writing and properly executed by Owner.

§ 12.21 Modifications/Amendment. Any alterations, variations, modifications, amendments, or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing and signed by authorized representative of the Owner and The Architect.

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 the Owner and Architect.

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

- .1 AIA Document B133™–2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Constructor Edition

(Paragraphs deleted)

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

OWNER *(Signature)*

(Printed name and title)

ARCHITECT *(Signature)*

Cindy McCleary, AIA
Vice President, Managing Principal

(Printed name, title, and license number, if required)

Additions and Deletions Report for **AIA[®] Document B133™ – 2019**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:38:09 ET on 12/08/2020.

PAGE 1

AGREEMENT made as of the 15th day of December in the year 2020

...

City of Lake Elmo
3880 Laverne Avenue North
Lake Elmo, MN 55042

...

LEO A DALY
730 2nd Avenue South, Suite 1300
Minneapolis, MN 55402

...

Architecture and Engineering Services for Public Facilities for

- City Hall, Fire Department Facility, and Washington County Sheriff's substation – Remodeling and Addition at the existing Brookfield office building.
- Public Works Addition and Remodeling.

...

It is anticipated to be H&U Construction.
5555 West 78th Street, Suite A
Minneapolis, MN 55439

PAGE 2

The preliminary fit plans developed in March of 2018 by LEO A DALY will serve as the starting point for the Owner's program as well as the related space study and recommendations prepared by BKV Group in 2017. The program will be reviewed and revised as required as part of this project. The scale of the program is not anticipated to increase or decrease substantially from the space requirements delineated in Exhibit A – Brookfield Office Building Fit Study or the BKV Facilities Study related to City Hall / Fire Station option located at the Brookfield site.

...

.1 City Hall, Fire Station, and Washington County Sheriff's substation:
Shall be co-located at 3880 Laverne Ave. This includes an interior remodel of the Brookfield office building and an addition of fire apparatus bays and council chambers. The design is likely to include construction of approximately 9,315 square feet for City Hall, 22,300 square feet for fire and public safety, including 6 apparatus bays. The adjacent property which the current City Council Chambers is located shall be considered part of the site boundaries for this project.

.2 Public Works:

Approximately 2,340 square foot addition of Public Works office space at the current Public Works facility located at 3445 Ideal Ave North.

PAGE 3

Assumed construction cost of \$8,832,000. The total project costs are unknown currently.

...

.1 Design phase milestone dates, if any: Preliminary Schedule as follows

December 17, 2020 – December 31, 2021: Site Due Diligence / Existing Building Verification

January 4, 2020 – July 6, 2021: Design (Schematic Design through Construction Documents)

July 7, 2021 – August 17, 2021: Bidding Phase

August 18, 2021

.3 Substantial Completion date or dates: Preliminary schedule as follows. To be verified by Construction Manager.

June 8, 2022: Addition to Public Works

June 30, 2022: Additions to Brookfield office building

October 14, 2022: Remodeling of Brookfield office building

November 18, 2022: Project Closeout.

...

[] AIA Document A133–2019, Standard Form of Agreement Between Owner and Construction Manager as ~~Constructor~~ at risk where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.

[] AIA Document A134–2019, Standard Form of Agreement Between Owner and Construction Manager as ~~Constructor~~ advisor where the basis of payment is the ~~Cost of the Work Plus a Fee~~ cost of work plus a fee without a Guaranteed Maximum Price.

...

The project delivery method is likely to be Construction Manager at Risk. Currently the project involves designing and constructing around an existing tenant in the Brookfield office building. The tenant's lease expires June 30, 2022. It is assumed this will require a phased construction approach without the need for separate bid/procurement packages.

...

N/A

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

PAGE 4

Kristina Handt, City Administrator
City of Lake Elmo
3880 Laverne Avenue North
Lake Elmo, MN 55042

...

(List name, address, and other contact information.) to whom, upon Owner request, the Architect shall provide submittals for review.

???

...

Anticipated to be known on or around December 1, 2020

...

TBD - LEO A DALY to provide the Owner an RFP to help the Owner solicit the procurement of a survey at the Brookfield site and adjacent properties as well as at the existing Public Works site if deemed necessary.

...

TBD - LEO A DALY to provide the Owner an RFP to help the Owner solicit the procurement of a geotechnical report at the Brookfield site as well as at the existing Public Works site if deemed necessary.

...

Focus Engineering, Inc. For any utility work leading to the site property boundary at the Brookfield site and the Public Works site, if required.

...

IT Consultant; Roseville IT

...

Todd LaVold, Project Manager
LEO A DALY
730 2nd Avenue South, Suite 1300
Minneapolis, MN 55402

PAGE 5

Meyer Borgman Johnson 510 Marquette Avenue South, Suite 900
Minneapolis, MN 55402

.2 Mechanical Engineer: LEO A DALY

.3 — Electrical Engineer:

.3 Electrical Engineer: LEO A DALY

...

.1 Landscape Architect:
Hoisington Koegler Group, Inc
123 North Third Street Suite 100
Minneapolis, MN 55401

...

N/A

...

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. ~~The parties will use AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.~~

~~§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™ 2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.~~

PAGE 6

§ 2.6.1 Commercial General Liability with policy limits of not less than three-million dollars (\$ 3,000,000) for each occurrence and three-million dollars (\$ 3,000,000) in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than five-hundred thousand dollars (\$ 500,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

...

§ 2.6.5 Employers' Liability with policy limits not less than ~~(\$) each accident, (\$) each employee, and (\$ five hundred thousand dollars (\$ 500,000) each accident, and five hundred thousand dollars (\$ 500,000)~~ policy limit.

§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than two million dollars (\$ 2,000,000) per claim and two million dollars (\$ 2,000,000) in the aggregate. See attached Certificate of Liability Insurance.

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

...

§ 3.1.3 As soon as practicable after the date of this Agreement, and if requested by Owner or otherwise required herein, the Architect shall submit, for the Construction Manager's review and the Owner's approval, a schedule for the performance of the Architect's services. The schedule shall include design phase milestone dates, as well as the anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the Construction Manager's review, for the performance of the Construction Manager's Preconstruction Phase services, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.3.1 The Owner agrees that the Architect is not responsible for damages arising from any circumstances beyond the Architect's reasonable control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions, natural disasters, fire or other acts of God; riots, war or other emergencies; failure of any governmental agency to act in timely manner; failure of performance by the Owner or the Owner's other designers, contractor, or any of their subcontractors; or discovery of any hazardous substances or differing and unforeseeable site conditions. Notwithstanding the foregoing, time is of the essence to the Owner for the completion of each phase of the Architect's services. The Architect shall timely inform the Owner if the Architect has reason to believe that its final plans and specifications completion date will be delayed for any reason.

PAGE 7

§ 3.1.6 The Architect shall, in coordination with the Construction Manager, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. Documents. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

PAGE 8

§ 3.3.7 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~~, ~~6.4~~ 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.

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§ 3.5.5 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~~, ~~6.7~~ and request the Owner's approval of the Construction Documents.

...

§ 3.6.2.1 The Architect shall visit the site ~~at intervals appropriate to the stage of construction, or as otherwise required~~ in Section 4.2.3, 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~~ observations 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 promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) 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. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require ~~inspection~~ observations or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the 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 Construction Manager, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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§ 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 Construction Manager, 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. The Architect shall not be liable to the Owner or the Construction Manager for decisions regarding purely aesthetic interpretations rendered in good faith.

...

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site ~~inspections-observations~~ 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 suppliers and other data requested by the Owner to substantiate the Construction Manager's right to payment, or (4) ascertained how or for what purpose the Construction Manager has used money previously paid on account of the Contract Sum.

...

§ 3.6.4.2 The Architect shall review, ~~and approve, or take other~~ appropriate action upon, the Construction Manager'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 Construction Manager's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's ~~approval-review~~ of a specific item shall not indicate approval of an assembly of which the item is a component. The Architect's review shall not constitute approval of a deviation from the requirements of the Contract Documents unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and the Architect has given written acknowledgement of the specific deviation.

PAGE 11

- .1 conduct ~~inspections-observations~~ to determine the date or dates of Substantial Completion and the date of final ~~completion;completion~~

...

- .4 issue a final Certificate for Payment based upon a final ~~inspection-observation~~ indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

...

§ 3.6.6.2.1 The Architect will conduct (1) punch-list of each building, and (1) substantial completion observation of the work of each building. If additional punch list observations or on-site reviews for compliance of punch-list of project completion are requested by the CM or Owner, the Architect may charge hourly services for all additional observations, including the costs of architects time for travel, mileage and incidentals.

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§ 4.1.1.1	Assistance with Selection of Construction Manager	<u>Not provided</u>
§ 4.1.1.2	Programming	<u>Architect</u>
§ 4.1.1.3	Multiple Preliminary Designs	<u>Architect</u>
§ 4.1.1.4	Measured drawings	<u>Architect</u>
§ 4.1.1.5	Existing facilities surveys	<u>Architect</u>
§ 4.1.1.6	Site evaluation and planning	<u>Architect</u>
§ 4.1.1.7	Building Information Model management responsibilities	<u>Architect</u>
§ 4.1.1.8	Development of Building Information Models for post construction use	<u>Not provided</u>
§ 4.1.1.9	Civil engineering	<u>Architect</u>
§ 4.1.1.10	Landscape design	<u>Architect</u>
§ 4.1.1.11	Architectural interior design	<u>Architect</u>
§ 4.1.1.12	Value analysis	<u>Architect</u>
§ 4.1.1.13	Cost estimating	<u>Not provided</u>
§ 4.1.1.14	On-site project representation	<u>Not provided</u>
§ 4.1.1.15	Conformed documents for construction	<u>Architect</u>
§ 4.1.1.16	As-designed record drawings	<u>Not provided</u>
§ 4.1.1.17	As-constructed record drawings	<u>Not provided</u>
§ 4.1.1.18	Post-occupancy evaluation	<u>Not provided</u>
§ 4.1.1.19	Facility support services	<u>Not provided</u>
§ 4.1.1.20	Tenant-related services	<u>Not provided</u>
§ 4.1.1.21	Architect's coordination of the Owner's consultants	<u>Architect</u>
§ 4.1.1.22	Telecommunications/data design	<u>Owner</u>
§ 4.1.1.23	Security evaluation and planning	<u>Architect</u>
§ 4.1.1.24	Commissioning	<u>Not provided</u>
§ 4.1.1.25	Sustainable Project Services pursuant to Section 4.1.3	<u>Not provided</u>
§ 4.1.1.26	Historic preservation	<u>Not provided</u>
§ 4.1.1.27	Furniture, furnishings, and equipment design	<u>Architect</u>
§ 4.1.1.28	A/V Design	<u>Owner</u>
§ 4.1.1.28	Other services provided by specialty Consultants	
§ 4.1.1.29	Community Engagement	<u>Architect</u>
§ 4.1.1.29	Other Supplemental Services § 4.1.1.30 Renderings and Presentations	<u>Architect</u>

...

§ 4.1.1.34	Surveillance	<u>Owner</u>
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- 1 Programming: The preliminary fit plans developed in March of 2018 by LEO A DALY will serve as the starting point for the Owner's program as well as the related space study and recommendations prepared by BKV Group in 2017. The program will be reviewed and revised as required.
- 2 Multiple Preliminary Designs: The Architect will provide up to three (3) preliminary design options for the Work located at the Brookfield site and up to three (3) preliminary options for the Work located at the Public Works site.
- 3 Measured drawings: The Architect will review Owner provided drawings of the existing Brookfield and Public Works building, prepare REVIT models based upon these drawings, and verify the existing conditions

against the model as required. Verification shall include structural columns and grids, bearing and shear walls, major floor openings and stair locations, and major wall and architectural features. Mechanical and Electrical system locations within the Brookfield building are not included in this Supplemental Service as these systems are anticipated to be demolished as part of the Project. This Supplemental Service does not include field measurements of individual structural components should this information not be available to the Architect via existing drawings.

- .4 Existing facilities surveys: The basis for this Supplemental Service shall be Measured drawings. The Architect, upon completion of the Measured drawing, will review the existing condition of the Brookfield building and the Public Works building. The Architect will provide a summary of the conditions of each major component of the building including site, envelope, architectural features/finishes, conveying systems, mechanical, and electrical systems.
- .5 Building Information Model management responsibilities: Limited to the Architect's instrument of service.
- .6 Civil Engineering: Limited to site boundaries at Brookfield site and Public Works site.
- .7 Landscape Design: Limited to the Brookfield site and the Public Works site.
- .8 Architectural Interior Design: Limited to the Brookfield building and any additions as well as any addition or areas directly remodeled within the Public Works building.
- .9: Value Analysis: Limited to responsibilities listed in Article 6.4.
- .10: Conformed documents for construction: Limited to Construction Documents modified to include any addenda issued during the bidding process and accepted alternates.
- .11 Architect's coordination of the Owner's consultants: Limited to coordination with the City of Lake Elmo's IT consultant, Roseville IT. Roseville IT shall provide design guidance for the Architect to provide conduit and rough ins for structured cabling, voice, and data communications.
- .12 Security evaluation and planning: Architect will provide best practice planning for public works, city hall, fire station, and police station design.
- .13 Furniture, furnishings, and equipment design: The Architect will provide design and specifications for a separate furniture bid package for public bidding or for procurement through State of Minnesota furniture contracts. Specialized Fire Department or Public Works equipment specifications shall be provided by the Architect or the Owner and determined on a case by case scenario.
- .14 Community Engagement: Limited to two (2) in person or virtual open houses and / or one (1) online survey.
- .15 Renderings and Presentations: Public presentations limited to three (3) City Council Meetings. Presentation renderings limited to three (3) Schematic Design renderings (one exterior rendering at the Brookfield site, one interior rendering at the Brookfield site, and one exterior rendering at the Public Works site, or any combination of three renderings). These renderings and the scope of this Supplemental Service is limited to updating the Schematic Design renderings during the Design Development phase.
- .16 Fire Protection: Architect to provide diagrammatic drawings and specifications to allow Design/Build fire protection contractors to bid this Project.
- .17 Life Safety, Mass Notification, and Fire Detection and Alarm: Architect will incorporate life safety, mass notification, and fire detection and alarm drawings and specifications into the Construction Documents.
- .18 Access Control: Architect will incorporate access control drawings and specifications, associated door hardware specifications, and low voltage drawings and specifications to allow for the access control system to be publicly bid.

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- .1 Telecommunications/data design: Design and documentation provided by the City of Lake Elmo's IT consultant, Roseville IT.
- .2 A/V Design: It is anticipated that the City will procure A/V system design and equipment. Leo A Daly will coordinate locations and equipment for the system specified and provided by others. Pathways will be provided by LEO A DALY as directed by others.
- .3 Surveillance: It is anticipated that the City will procure security system design and equipment, integrated through their IT provider. Leo A Daly will coordinate locations and equipment for the system specified and provided by others. Pathways will be provided by LEO A DALY as directed by others.

~~§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E234™ 2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.~~

...

- .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 or the Owner's consultants or ~~contractors;contractors~~
- .6 Preparing digital ~~models;models~~ or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner- authorized ~~recipients;recipients,~~
- .7 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or Construction ~~Manager;Manager.~~
- .8 Preparation for, and attendance at, a public presentation, meeting or ~~hearing;hearing in excess of those outlined in § 4.1.2.1.15~~

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- .11 Assistance to the Initial Decision Maker, if other than the ~~Architect;Architect.~~
- .12 Services necessitated by replacement of the Construction Manager or conversion of the Construction Manager as constructor project delivery method to an alternative project delivery ~~method;method.~~
- .13 Services necessitated by the Owner's delay in engaging the Construction ~~Manager;Manager.~~

...

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Construction Manager
- .2 Twenty (20) visits to the site by the Architect during construction
- .3 Two (2) 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 two (2) inspections for any portion of the Work to determine final completion

...

§ 4.2.5 If the services covered by this Agreement have not been completed within twenty-four (24) 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.

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§ 5.4 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. Architect understands and agrees that any Additional Services, Change Orders, or material modifications to Basic Services will need to be approved by Owner's City Council.

...

~~§ 5.8 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.~~

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~~§ 6.2 The Owner's budget for the Cost of the Work is provided in the Initial Information, Information and shall be adjusted throughout the Project as required under Sections 5.3 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.~~

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~~§ 8.1.1 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, but in any case not more than 10 years after the date of Substantial Completion of the Work, law. 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 within the Project area 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 A201-2017, 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 obligation to indemnify and hold the Owner and the Owner's officers and employees harmless does not include a duty to defend. The Architect's duty to indemnify the Owner under this Section 8.1.3 shall be limited to the available proceeds insurance claim limits without regard to the amount available in the aggregate of the insurance coverage required by this Agreement.~~

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~~§ 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. Mediation shall not be a condition precedent to the commencement of binding dispute resolution but shall be carried out between the parties in good faith prior to the commencement of litigation discovery.~~

~~§ 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 this Agreement. Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, 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.~~

...

[X] Litigation in a court of competent jurisdiction

...

§ 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, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. 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 NOT USED

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N/A

...

N/A

...

§ 9.10 All the sections in this Article are subject to the Prompt Payment of Local Government Bills, Minn. Stat. § 471.425 ("Prompt Payment Act").

...

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

Based upon the construction cost listed in Section 1.1.3. Five-hundred-sixteen thousand and six-hundred and seventy-two dollars (\$516,720).

.2 ~~Percentage Basis~~Basis: N/A

...

~~() % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.~~

...

.1 Supplemental Services: § 4.1.1.4 Measured drawings and §4.1.1.5 Existing facility surveys - \$7,000.

.2 Supplemental Service: § 4.1.1.27 Furniture, furnishings, and equipment design - \$39,000.

.3 All other Supplemental Services listed in § 4.1.1 are included in the Architect's Basic Services.

...

Hourly per Architect's 2021 rate schedule. Refer to Section 11.7 for rates.

§ 11.4 Compensation for Supplemental and 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 %), or as follows:

...

Schematic Design Phase	<u>Fifteen</u>	percent (<u>15</u>)	%)
Design Development Phase	<u>Twenty-five</u>	percent (<u>25</u>)	%)
Construction Documents Phase	<u>Thirty-five</u>	percent (<u>35</u>)	%)
<u>Bidding and Negotiation</u>	<u>Five</u>		<u>5</u>		%)
Construction Phase	<u>Twenty</u>	percent (<u>20</u>)	%)

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See below.

<u>Employee or Category</u>	<u>Rate (\$0.00) \$ / hour</u>
<u>Principal in Charge</u>	<u>\$350</u>
<u>Project Manager</u>	<u>\$210</u>
<u>Architectural / Engineering Technical Leader</u>	<u>\$235</u>
<u>Visualization</u>	<u>\$185</u>
<u>Senior Architect / Engineer</u>	<u>\$210</u>
<u>Architect / Engineer</u>	<u>\$180</u>
<u>Senior Interior Designer</u>	<u>\$155</u>
<u>Interior Designer</u>	<u>\$125</u>
<u>Pre-Professional</u>	<u>\$115</u>
<u>Architectural / Engineering Designer</u>	<u>\$140</u>
<u>Construction Administration Assistant</u>	<u>\$115</u>
<u>Administrative</u>	<u>\$110</u>

...

.7 ~~Renderings~~Renderings beyond those delineated in Section 4.1 , physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;

...

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus five percent (5 %) of the expenses incurred.

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N/A

...

§ 11.10.1.1 An initial payment of zero (\$ 0_) 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.

~~§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of (\$ —) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.~~

§ 11.10.2.1 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 sixty (60_) 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.

...

4 % four

...

§ 12.1 Limit of Liability. Neither the Architect, the Architect's consultants, nor their agents or employees shall be jointly, severally or individually liable to the Owner in excess of the two million dollars (\$2,000,000) by reason of any act or omission, including breach of contract or negligence not amounting to a willful or intentional wrong.

12.2 Remodeling. Inasmuch as the remodeling and/or rehabilitation of an existing building or structure requires that certain assumptions be made regarding existing conditions, and because some of these assumptions cannot be verified without expending great sums of additional money, or destroying otherwise adequate or serviceable portions of the building or structure, the Owner agrees that, except for negligence on the part of the Architect, Owner will release and hold harmless the Architect for and against any and all claims, damages, and costs of defense arising out of such professional services involving those assumptions.

12.3 Maintenance. The Owner agrees to release and hold the Architect harmless of any and all liability should the Owner fail to adhere to any published maintenance schedule for any material or product that is a part of the Project.

§ 12.5 The Architect shall provide site observations on an average of two visits per month during the construction period according to Article 4.2.3.

§ 12.6 The Owner agrees to pay the Architect for the preparation of all Change Orders and bid alternates for any work that is in addition to and above and the construction budget noted in Article 1.1, whether or not the additional construction budget is from the Owner's project contingency or an increase construction budget monies based on five (5%) of the construction value.

§ 12.7 If a Change Order or Construction Change Directive is necessary due to an omission, oversight or other act caused by the Architect or Engineer, the Architect or Engineer shall prepare drawings, specifications and other documents and support data (including evaluating Contractor's proposals) and provide any other design services as may be required in connection with the change in the work, at no cost to the Owner. The construction costs associated with such work is to be deducted from the project contingency.

§ 12. 8 The Architect cannot provide certification regarding the presence or lack of presence of hazardous materials within structure or the site.

§ 12.8 Record Keeping—Availability and Retention. Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, Architect agrees that the books, records, documents and accounting procedures and practices of Architect, 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. Architect shall maintain such records for a minimum of six (6) years after final payment.

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

§ 12.10 Non-Discrimination. Pursuant to Minnesota Statutes, Section 181.59, the Architect 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 Architect 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.

§ 12.11 Prompt Payment of Local Government Bills, Minn. Stat. § 471.425. All payments to the Architect shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.425 ("Prompt Payment Act"), provided, however, that the interest rate for payments due but unpaid shall be four percent (4.00%) per annum.

§ 12.12 Survivability. All covenants, indemnities, guarantees, releases, representations and warranties by any Party or Parties, and any undischarged obligations of the Owner and the Architect arising prior to the expiration of this Contract (whether by completion or earlier termination), shall survive such expiration.

§ 12.13 Independent Contractor Status. The Architect acknowledges that no withholding or deduction for State or Federal income taxes, FICA, FUTA, or otherwise, will be made from the payments due the Architect, and that it is the Architect's sole obligation to comply with the applicable provisions of all Federal and State tax laws.

§ 12.14 Compliance with Laws. The Architect shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Contract or to the facilities, programs and staff for which the Architect is responsible.

§ 12.15 No Waiver. Any Owner failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of Owner's right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term of this Agreement shall not be binding and effective unless made in writing and properly executed by Owner.

§ 12.21 Modifications/Amendment. Any alterations, variations, modifications, amendments, or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing and signed by authorized representative of the Owner and The Architect.

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~~2~~ AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below, if completed, or the following:

(Insert the date of the E203 2013 incorporated into this agreement.)

~~3~~ Exhibits:

(Check the appropriate box for any exhibits incorporated into this Agreement.)

~~[]~~ AIA Document E234™ 2019, Sustainable Projects Exhibit, Construction Manager as
Constructor Edition dated as indicated below.
~~(Insert the date of the E234 2019 incorporated into this agreement.)~~

~~[]~~ Other Exhibits incorporated into this Agreement:
~~(Clearly identify any other exhibits incorporated into this Agreement, including any
exhibits and scopes of services identified as exhibits in Section 4.1.2.)~~

~~4~~ Other documents:
~~(List other documents, if any, forming part of the Agreement.)~~

...

Cindy McCleary, AIA
Vice President, Managing Principal

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:38:09 ET on 12/08/2020 under Order No. 1714899430 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B133™ – 2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)