



# AIA® Document A133® – 2019

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

**AGREEMENT** made as of the 8th day of April in the year 2024  
*(In words, indicate day, month, and year.)*

**BETWEEN** the Owner (Also referred to as "City"):  
*(Name, legal status, address, and other information)*

City of Lee's Summit, Missouri A Missouri Charter City  
220 SE Green St  
Lee's Summit, MO 64063

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

Newkirk Novak Construction Partners, Inc.  
11200 W 79<sup>th</sup> Street  
Lenexa, KS 66214

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

Lee's Summit Fire Station 1 Renovation or Replacement

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

WSKF Inc.  
110 Armour Road  
North Kansas City, MO 64116

The Owner and Construction Manager agree as follows.

### ADDITIONS AND DELETIONS:

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

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

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

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### ARTICLE 1 INITIAL INFORMATION

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

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

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

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

The project consists of Lee's Summit Fire Station 1 construction (renovation or replacement) and amenities and will be completed utilizing the Construction-Manager-at-Risk delivery method. Design of the project will occur during the preconstruction phase of the project with collaboration between Owner, Architect, and Construction Manager. Construction Manager will develop a Guaranteed Maximum Price based on that design and complete construction in accordance with the established schedule and price.

§ 1.1.2 The Project's physical characteristics:

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

The Project consists of the construction (renovation or replacement) of Lee's Summit Fire Station 1 located at 207 SE Douglas Street, Lees Summit, MI 64063.

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§ 1.1.3 The Owner's Project budget for the Guaranteed Maximum Price ("GMP"), as defined in Article 6:  
(Provide total and, if known, a line item breakdown.)

TBD in a written addendum and may include multiple, phased GMPs to initiate appropriate construction scopes in a practical manner.

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

.1 Design phase milestone dates, if any:

The design phase is to be determined by the Architect taking into account the Project's intended construction milestones set by the City as outlined in this Section.

.2 Construction commencement date:

The construction commencement date shall be agreed upon in writing and signed by the parties on or before the date the Guaranteed Maximum Price Amendment is executed. The intended construction commencement date is March 2025.

.3 Substantial Completion date or dates:

The Substantial Completion date shall be agreed upon in writing and signed by the parties on or before the date the Guaranteed Maximum Price Amendment is executed. The intended Substantial Completion date is May 2026.

.4 Other milestone dates:

Any other milestone dates shall be agreed upon in writing and signed by the parties on or before the date the Guaranteed Maximum Price Amendment is executed.

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:  
(Identify any requirements for fast-track scheduling or phased construction.)

Phasing to be determined during the Preconstruction Phase

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

Not Applicable

§ 1.1.6.1 Deleted

§ 1.1.7 Other Project information:  
(Identify special characteristics or needs of the Project not provided elsewhere.)

None

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:  
(List name, address, and other contact information.)

Sharon Bloom, Construction Project Manager  
City of Lee's Summit, Missouri  
220 SE Green St.  
Lee's Summit, MO 64063  
816-969-1615

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

Brian Austerman, Deputy Fire Chief  
City of Lee’s Summit Fire Department  
207 SE Douglas Street  
Lee’s Summit, MO 64063  
816-969-1320

None

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

.1 Geotechnical Engineer:

TBD at time of GMP

.2 Civil Engineer:

n.a.

.3 Other, if any:

*(List any other consultants retained by the Owner, such as a Project or Program Manager.)*

TBD at time of GMP

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

Dalyn Novak  
WSKF Inc.  
110 Armour Road  
North Kansas City, MO 64116  
816-300-4101

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

Jim Schneider, Project Executive  
Newkirk Novak Construction Partners Inc.  
11200 W 79<sup>th</sup> Street  
Lenexa, KS 66214  
913-312-9535

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:

*(List any Owner-specific requirements to be included in the staffing plan.)*

Services of Project Manager as well as estimators, schedulers and on-site superintendent as appropriate.

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:

*(List any Owner-specific requirements for subcontractor procurement.)*

All bids will be available to Owner and Architect for review prior to award.

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

None

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

## ARTICLE 2 GENERAL PROVISIONS

### § 2.1 The Contract Documents

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

### § 2.2 Relationship of the Parties

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

### § 2.3 General Conditions

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

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

### **ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

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

#### **§ 3.1 Preconstruction Phase**

##### **§ 3.1.1 Extent of Responsibility**

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

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

##### **§ 3.1.3 Consultation**

**§ 3.1.3.1** The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

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

**§ 3.1.3.3** Deleted.

##### **§ 3.1.4 Project Schedule**

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

##### **§ 3.1.5 Phased Construction**

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

##### **§ 3.1.6 Cost Estimates**

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

Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

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

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

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

§ 3.1.10 Deleted.

#### § 3.1.11 Subcontractors and Suppliers

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

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

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

#### § 3.1.12 Procurement

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

#### § 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities. The Construction Manager specifically acknowledges that Owner is a municipality and is governed by federal and state laws, and particularly by state laws on contracting and budget, and the Owner's own procurement and change order policies, and Construction Manager will assist the Owner in complying with same.

#### § 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

*(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)*

The Construction Manager shall provide Project cash flow projections to the Owner.

**§ 3.2 Guaranteed Maximum Price Proposal**

**§ 3.2.1** At a time to be mutually agreed upon by the Owner and the Construction Manager and the construction documents are completed, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2. Construction Manager acknowledges that Owner's City Council will need to approve any Guaranteed Maximum Price Amendment prior to it becoming a part of any contract documents and prior to issuance of a notice to proceed on construction.

**§ 3.2.2** To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order. Some Change Orders may require Owner's City Council approval.

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

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

**§ 3.2.4** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

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

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

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

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



furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 Owner, as a Missouri Municipal Governmental entity is exempt from Missouri state sales and use taxes on materials and equipment to be incorporated in the Work. Said taxes shall not be included in the Guaranteed Maximum Price.

### § 3.3 Construction Phase

#### § 3.3.1 General

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

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

#### § 3.3.2 Administration

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

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

#### § 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to in writing by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

#### § 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

#### § 3.3.2.5 Cost Control

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

## ARTICLE 4 OWNER'S RESPONSIBILITIES

### § 4.1 Information and Services Required of the Owner

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

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

§ 4.1.3 The Owner shall establish and periodically update the Owner’s budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner’s other costs, and (3) reasonable contingencies related to all of

these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

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

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

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

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

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

**§ 4.1.6** Deleted.

## **§ 4.2 Owner's Designated Representative**

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2017, the Architect does not have such authority. However, when the necessary authorization needs to be approved by Owner's City Council, the time period for obtaining such consent shall be deemed prompt for purposes of this Agreement and contract documents. The term "Owner" means the Owner or the Owner's authorized representative.

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

## **§ 4.3 Architect**

The Owner shall retain an Architect to provide services, duties and responsibilities as described in the Agreement for Professional Architectural Services for the Project dated December 21, 2023 and any amendments, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

**ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**

**§ 5.1 Compensation**

§ 5.1.1 For the Construction Manager’s Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

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

\$20,000 as the total compensation to be paid to the Construction Manager for the Preconstruction Phase.

**§ 5.1.2**

*(Paragraphs deleted)*

Deleted.

**§ 5.1.2.1 Deleted.**

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within fourteen ( 14 ) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager’s compensation for Preconstruction Phase services shall be equitably adjusted.

**§ 5.2 Payments**

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

§ 5.2.2 Payments are due and payable within 30 days upon presentation of the Construction Manager’s invoice.

*(Paragraphs deleted)*

All amounts not paid when due will bear interest at the rate as specified by Missouri State Statute, RSMo 8.960.

**ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

**§ 6.1 Contract Sum**

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager’s performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager’s Fee.

§ 6.1.2 The Construction Manager’s Fee:

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

One point nine five percent (1.95% ) of the Cost of the Work

§ 6.1.3 The method of adjustment of the Construction Manager’s Fee for changes in the Work:

The fee percentages are fixed at one point nine five Percent (1.95% ) for the Construction Manager’s Fee

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

A Subcontractor’s overhead and profit fee for increases in the cost of its portion of the Work is limited to fifteen percent (15%)

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed one hundred percent ( 100 %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

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

A liquidated damages clause will be included in the GMP and negotiated at time of GMP Amendment

§ 6.1.7 Other:

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

None

Init.

## § 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

## § 6.3 Changes in the Work

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

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

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

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

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

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7, unless specifically limited or specifically stated as not subject to reimbursement, or subject to limited reimbursement, as set out in said Section.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

### § 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops. Employees, laborers and other craftsmen or workers whose work on the Project is subject to the Prevailing Wage law of Missouri shall be paid in accordance with the State of Missouri's applicable prevailing wage and the wage order in effect on the date of the award of this Agreement.

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

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

See Exhibit C – Personnel Rates

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

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

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

### § 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement. Subcontractors shall pay their workers applicable prevailing wage rates if required by Missouri Law.

### § 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

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

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner’s property at the completion of the Work.

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

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

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

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

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

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

### § 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

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

Init.

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

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable provided such taxes are not exempt due to the work being performed for a governmental entity of Missouri.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay. The Construction Manager's fee shall not be applied to these costs without the Owner's prior approval.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements shall not be included in the Cost of the Work. However, the Construction Manager shall be responsible for securing insurance to protect against such costs and if such insurance is not obtained, the Owner shall not be required and is released from any responsibility or duty to reimburse or pay any such costs.

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

§ 7.6.7 Costs of document reproductions and delivery charges.

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

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work shall not be considered as costs to be reimbursed to the Construction Manager. However, if incurred with the Owner's prior approval, and following review by Owner's City Attorney for the appropriateness of such costs, particular and specifically approved costs may be considered "Miscellaneous Costs" to be reimbursed. The decision of Owner's City Attorney shall be final with respect to whether any of such costs listed herein may be considered costs to be reimbursed. Such costs shall not be used to calculate the Construction Manager's fee or the Guaranteed Maximum Price.

§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

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

## § 7.7 Other Costs and Emergencies

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

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

§ 7.7.3 Costs of repairing or correcting damaged Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged Work was not caused by the negligence of, or failure to fulfill a specific

responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others; provided that such costs shall not raise the Guaranteed Maximum Price.

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

### **§ 7.8 Related Party Transactions**

**§ 7.8.1** For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

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

### **§ 7.9 Costs Not To Be Reimbursed**

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .9 Costs for services incurred during the Preconstruction Phase other than the agreed upon preconstruction fee;
- .10 Those costs specifically set out in 7.1 through 7.9.1 as limited or prohibited; and
- .11 Those costs for which the Construction Manager could have obtained insurance or other protective contract and failed to do so.

## **ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS**

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

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

## ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner subject to the right of the Owner's City Council to deny and not approve such Change Order. .

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

## ARTICLE 10 ACCOUNTING RECORDS

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

## ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

### § 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents. Notwithstanding anything to the contrary in this Agreement or in AIA Document A201-2017, if any requirement in this Agreement or in AIA Document A201-2017 would cause the Owner to violate Section 8.960, RSMo., such clause is void and unenforceable. In such case, the parties shall meet in good faith to amend such terms to bring them into compliance with Section 8.960.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 11.1.3 Provided that an Application for Payment is received by the Architect, Applications for Payment shall be processed in accordance with Article 9 of AIA Document A201-2017. The Architect shall have seven calendar days to



review applications. If the Application for Payment is certified for payment by the Architect and agreed to by Owner, Owner will submit application for payment within 30 calendar days of receipt from Architect.  
(Federal, state or local laws may require payment within a certain period of time.)

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

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

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

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

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

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

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

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

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

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;

- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner’s auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

**§ 11.1.8 Retainage**

**§ 11.1.8.1** For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

five percent (5%)

**§ 11.1.8.1.1** The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

Costs of general conditions, insurance, and bonds

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

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

Not applicable.

**§ 11.1.8.3** Upon final completion of the Work, after all punch list items have been completed as required, the Construction Manager may submit an Application for Payment for the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage, such as upon completion of the Owner’s audit and reconciliation, upon Substantial Completion.)*

Submission and acceptance by Owner of all prevailing wage documents and any other government required document.

**§ 11.1.9** If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

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

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

**§ 11.1.12** In taking action on the Construction Manager’s Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner’s auditors acting in the sole interest of the Owner.

## § 11.2 Final Payment

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

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment;
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2; and
- .4 record plans, lien releases, test reports, O&M manuals, warranties, and other closeout documentation as required by Owner are received and accepted as adequate and meeting Contract Document requirements.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

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

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

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager may file a claim pursuant to Article 15 of AIA Document A201–2017. If after the Initial Decision, mediation is requested and agreed to by Owner, and pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment provided such amount has been approved and within the contract authority of the Owner's staff. If there is no request for mediation or Owner does not agree, the Owner's Auditors' report shall stand as the final decision.

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

Not applicable.

§ 11.2.4 Deleted.

## § 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate *(Paragraphs deleted)* set by statute for late payments on public improvement projects and if none, at 3%.

## ARTICLE 12 DISPUTE RESOLUTION

### § 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

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

Not Used.

### § 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

- Arbitration pursuant to Article 15 of AIA Document A201–2017
- Litigation in a court of competent jurisdiction
- Other: (Specify)

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

## ARTICLE 13 TERMINATION OR SUSPENSION

### § 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

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

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

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

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1. Equitable compensation shall mean a pro rata payment of the Preconstruction Phase compensation set out in this Agreement based on the tasks to be completed and the percentage of said tasks actually completed and the entire compensation that could have been earned for Preconstruction Phase services, minus the aggregate of payments actually made by the Owner for Preconstruction Phase services and Work.

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

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an

- amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

**§ 13.1.6** The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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

## **§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment**

### **§ 13.2.1 Termination**

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

### **§ 13.2.2 Termination by the Owner for Cause**

**§ 13.2.2.1** If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager’s Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

**§ 13.2.2.2** The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

### **§ 13.2.3 Termination by the Owner for Convenience**

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

*(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner’s convenience.)*

No additional termination fee shall be paid to the Construction Manager. The amount, if any, to be paid shall be calculated as stated in Section 13.2.2.1 of this Agreement.

### § 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

## ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

### § 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

### § 14.3 Insurance and Bonds

#### § 14.3.1 Preconstruction Phase

The Construction Manager shall maintain Commercial General Liability, Vehicle Liability, Workers' Compensation, Employers' Liability and (if applicable) Professional Liability **and all other forms of insurance required and** set forth in AIA Document A133™–2019, Exhibit B, for the duration of the Preconstruction Services performed under this Agreement.

*(Paragraph deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

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

#### § 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents. The Construction Manager shall provide certificates of insurance and required endorsements to the Owner that evidence compliance with the requirements in this Section 14.3.2. The Construction Manager can fulfill this provision by providing a written notice that the evidence of insurance required by Section 14.3.1 of this Contract is still effective and applies to work performed during the Construction Phase.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents. In addition to any other bonds or required sureties listed on A133–2019 Exhibit B, such bonds shall include performance and payment bonds. If authorized by the Owner in writing, in lieu of purchasing subcontractor performance bonds the Construction Manager may utilize coverage under the Construction Manager's subcontractor default insurance program to provide for reimbursement of any and all defaults of any and all enrolled Subcontractors or Suppliers.

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

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

Not applicable. Electronic transmission of notices is not permitted.

§ 14.5 Other provisions:

§ 14.5.1 Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement will promptly be physically amended to make such insertion or correction.

§ 14.5.2 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a court of competent jurisdiction shall not affect any other provision or application of the Agreement which may remain in effect without the invalid provision or application.

§ 14.5.3 Work Authorization/E-verify. Pursuant to § 285.530, RSMo. if this Agreement exceeds five thousand dollars (\$5,000.00), Construction Manager warrants and affirms to the Owner that (i) Construction Manager is enrolled and participates in a federal work authorization program with respect to the employees working in connection with the contracted services and (ii) Construction Manager does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

Construction Manager shall swear to and sign an affidavit declaring such affirmation, and provide the Owner with supporting documentation of its enrollment and participation in a federal work authorization program with respect to the employees working in connection with this Agreement. The required documentation must be from the federal work authorization program provider (e.g. the electronic signature page from the E-Verify program’s Memorandum of Understanding); a letter from Construction Manager reciting compliance is not sufficient.

§ 14.5.4 Prevailing Wages. Pursuant to § 290.230.5, RSMo. if this Agreement, or a project of which this Agreement is a part, exceeds seventy-five thousand dollars (\$75,000.00) and involves construction of public works, Construction Manager shall pay all its workers the applicable prevailing hourly rate of wages for work of a similar character in City of Lee’s Summit. If there is a dispute whether this Agreement is subject to prevailing wages as required by §§ 290.210, et. seq., RSMo. the Owner’s determination shall control.

§ 14.5.5 E-Signature and Counterparts. The Parties agree that this Agreement may be signed in two or more counterparts and/or signed electronically, and all such counterparts together shall constitute one and the same contract; such signatures shall bind the signing party in the same manner as if a handwritten signature had been delivered.

§ 14.5.6 Governing Law; Venue. This Agreement shall be governed by the law of the State of Missouri and construed in accordance with the laws of the State of Missouri and any suit pertaining to this Agreement may be brought only in courts in eastern Jackson County, Missouri. The Parties expressly and irrevocably consent to the exclusive jurisdiction and venue of such courts and expressly waive the right to transfer or remove any such action.

§ 14.5.7 Independent Contractor. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Construction Manager acknowledges and agrees that all Work provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the Owner. Construction Manager, its employees and Subcontractors are not entitled to workers’ compensation benefits from the Owner. The Owner does not have the authority to supervise or control the actual work of Construction Manager, its employees or Subcontractors. Construction Manager is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. Owner and Construction Manager do not intend to nor will they combine business operations under this Agreement.

**ARTICLE 15 SCOPE OF THE AGREEMENT**

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

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™-2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .5

*(Paragraphs deleted)*  
Not Used

.6 Other Exhibits:  
*(Check all boxes that apply.)*

AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:  
*(Insert the date of the E234-2019 incorporated into this Agreement.)*

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Not Applicable			

.7 Other documents, if any, listed below:  
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

Exhibit C - Hourly rate for staff

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

\_\_\_\_\_  
**OWNER** *(Signature)*

Mark Dunning City Manager, City of Lee’s Summit,  
Missouri  
*(Printed name and title)*

  
\_\_\_\_\_  
**CONSTRUCTION MANAGER** *(Signature)*

Lynn Newkirk - President  
*(Printed name and title)*



EXHIBIT C

STANDARD CORPORATE RATES

Executive	\$190 / hour
Principle in Charge	\$163 / hour
Group Leader	\$150 / hour
General Superintendent	\$145 / hour
Senior Project Manager	\$125 / hour
Project Manager	\$105 / hour
Senior Superintendent	\$125 / hour
Superintendent	\$117 / hour
Assistant Superintendent	\$111 / hour
Field Engineer	\$73 / hour
Field Laborer	\$65 / hour
Project Engineer	\$73 / hour
Senior Estimator	\$125 / hour
Estimator	\$105 / hour
Accountant	\$80 / hour
Billings	\$65 / hour
Clerical	\$63 / hour
Internal Support	\$60 / hour
Internal Operations	*\$17.75 / hour for every hour charged by above personnel
Accounting Clerk	**\$1.90 / hour for every hour charged by above personnel

Rates may be adjusted annually and typically will occur in April of each year.

\*Internal Operations will be charged at \$17.75/hour for every hour charged within Exhibit C.

\*\* Accounting Clerk/Billing Clerk will be charged at \$1.90/hour for every hour charged within Exhibit C

# Additions and Deletions Report for AIA® Document A133® – 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 11:27:13 ET on 03/29/2024.

## PAGE 1

**AGREEMENT** made as of the 8th day of April in the year 2024

...

**BETWEEN** the ~~Owner:~~Owner (Also referred to as "City");

...

City of Lee's Summit, Missouri A Missouri Charter City  
220 SE Green St  
Lee's Summit, MO 64063

...

Newkirk Novak Construction Partners, Inc.  
11200 W 79<sup>th</sup> Street  
Lenexa, KS 66214

...

Lee's Summit Fire Station 1 Renovation or Replacement

...

WSKF Inc.  
110 Armour Road  
North Kansas City, MO 64116

## PAGE 2

The project consists of Lee's Summit Fire Station 1 construction (renovation or replacement) and amenities and will be completed utilizing the Construction-Manager-at-Risk delivery method. Design of the project will occur during the preconstruction phase of the project with collaboration between Owner, Architect, and Construction Manager. Construction Manager will develop a Guaranteed Maximum Price based on that design and complete construction in accordance with the established schedule and price.

...

The Project consists of the construction (renovation or replacement of Lee's Summit Fire Station 1 located at 207 SE Douglas Street, Lees Summit, MI 64063.

**§ 1.1.3** The Owner's Project budget for the Guaranteed Maximum Price, Price ("GMP"), as defined in Article 6:

## PAGE 3

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**User Notes:**

(2021028943)

TBD in a written addendum and may include multiple, phased GMPs to initiate appropriate construction scopes in a practical manner.

...

The design phase is to be determined by the Architect taking into account the Project’s intended construction milestones set by the City as outlined in this Section.

...

The construction commencement date shall be agreed upon in writing and signed by the parties on or before the date the Guaranteed Maximum Price Amendment is executed. The intended construction commencement date is March 2025.

...

The Substantial Completion date shall be agreed upon in writing and signed by the parties on or before the date the Guaranteed Maximum Price Amendment is executed. The intended Substantial Completion date is May 2026.

...

Any other milestone dates shall be agreed upon in writing and signed by the parties on or before the date the Guaranteed Maximum Price Amendment is executed.

...

Phasing to be determined during the Preconstruction Phase

...

Not Applicable

~~§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™ 2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner’s Sustainable Objective. If E234 2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234 2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.~~~~Deleted~~

...

None

...

Sharon Bloom, Construction Project Manager  
City of Lee’s Summit, Missouri  
220 SE Green St.  
Lee’s Summit, MO 64063  
816-969-1615

**PAGE 4**

~~(List name, address and other contact information.)~~Brian Austerman, Deputy Fire Chief  
City of Lee’s Summit Fire Department  
207 SE Douglas Street

Lee's Summit, MO 64063  
816-969-1320

None

...

TBD at time of GMP

...

n.a.

...

TBD at time of GMP

...

Dalyn Novak  
WSKF Inc.  
110 Armour Road  
North Kansas City, MO 64116  
816-300-4101

...

Jim Schneider, Project Executive  
Newkirk Novak Construction Partners Inc.  
11200 W 79<sup>th</sup> Street  
Lenexa, KS 66214  
913-312-9535

**PAGE 5**

Services of Project Manager as well as estimators, schedulers and on-site superintendent as appropriate.

...

All bids will be available to Owner and Architect for review prior to award.

...

None

...

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

**PAGE 6**

**§ 3.1.3.3** ~~The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™–2013, Building Information~~

Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data. Deleted.

PAGE 7

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

...

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities. The Construction Manager specifically acknowledges that Owner is a municipality and is governed by federal and state laws, and particularly by state laws on contracting and budget, and the Owner's own procurement and change order policies, and Construction Manager will assist the Owner in complying with same.

PAGE 8

The Construction Manager shall provide Project cash flow projections to the Owner.

...

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction ~~Manager, Manager and the~~ construction documents are completed, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2. Construction Manager acknowledges that Owner's City Council will need to approve any Guaranteed Maximum Price Amendment prior to it becoming a part of any contract documents and prior to issuance of a notice to proceed on construction.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order. Some Change Orders may require Owner's City Council approval.

...

- .5 A date by which the Owner must accept the Guaranteed Maximum Price. Such date shall be scheduled to permit approval by Owner's City Council.

...

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

PAGE 9

§ 3.2.9 ~~The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.~~ Owner, as a Missouri Municipal Governmental entity is exempt from Missouri state sales and use taxes on materials and equipment to be incorporated in the Work. Said taxes shall not be included in the Guaranteed Maximum Price.

...

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to in writing by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

**PAGE 10**

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

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

...

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

...

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. However, when the necessary authorization needs to be approved by Owner's City Council, the time period for obtaining such consent shall be deemed prompt for purposes of this Agreement and contract documents. The term "Owner" means the Owner or the Owner's authorized representative.

...

The Owner shall retain an Architect to provide services, duties and responsibilities as described in ~~AIA Document B133™ 2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition,~~ the Agreement for Professional Architectural Services for the Project dated December 21, 2023 and any amendments, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

**PAGE 11**

\$20,000 as the total compensation to be paid to the Construction Manager for the Preconstruction Phase.

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.  
*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

**Individual or Position**

**Rate**

Deleted.

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

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within fourteen ( 14 ) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

...

§ 5.2.2 Payments are due and payable within 30 days upon presentation of the Construction Manager's invoice. Amounts unpaid ~~( — )~~ days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager. *(Insert rate of monthly or annual interest agreed upon.)*

~~—%~~ All amounts not paid when due will bear interest at the rate as specified by Missouri State Statute, RSMo 8.960.

...

One point nine five percent (1.95% ) of the Cost of the Work

...

The fee percentages are fixed at one point nine five Percent (1.95% ) for the Construction Manager's Fee

...

A Subcontractor's overhead and profit fee for increases in the cost of its portion of the Work is limited to fifteen percent (15%)

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed one hundred percent ( 100 %) of the standard rental rate paid at the place of the Project.

...

A liquidated damages clause will be included in the GMP and negotiated at time of GMP Amendment

...

None  
**PAGE 12**

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through ~~7.7.7.7~~, unless specifically limited or specifically stated as not subject to reimbursement, or subject to limited reimbursement, as set out in said Section.

...

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

and other craftsmen or workers whose work on the Project is subject to the Prevailing Wage law of Missouri shall be paid in accordance with the State of Missouri's applicable prevailing wage and the wage order in effect on the date of the award of this Agreement.

**PAGE 13**

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

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

See Exhibit C – Personnel Rates

...

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement. Subcontractors shall pay their workers applicable prevailing wage rates if required by Missouri Law.

...

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, ~~shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.~~

...

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

**PAGE 14**

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is ~~liable~~ liable provided such taxes are not exempt due to the work being performed for a governmental entity of Missouri.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay. The Construction Manager's fee shall not be applied to these costs without the Owner's prior approval.

...

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



...

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys’ fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work ~~and with the Owner’s prior approval, which shall not be unreasonably withheld.~~ shall not be considered as costs to be reimbursed to the Construction Manager. However, if incurred with the Owner’s prior approval, and following review by Owner’s City Attorney for the appropriateness of such costs, particular and specifically approved costs may be considered "Miscellaneous Costs" to be reimbursed. The decision of Owner’s City Attorney shall be final with respect to whether any of such costs listed herein may be considered costs to be reimbursed. Such costs shall not be used to calculate the Construction Manager’s fee or the Guaranteed Maximum Price.

...

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

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

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

...

- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;~~and~~

- .9 Costs for services incurred during the Preconstruction ~~Phase.~~ Phase other than the agreed upon preconstruction fee;

- .10 Those costs specifically set out in 7.1 through 7.9.1 as limited or prohibited; and

- .11 Those costs for which the Construction Manager could have obtained insurance or other protective contract and failed to do so.

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§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the ~~Owner.~~ Owner subject to the right of the Owner’s City Council to deny and not approve such Change Order. .

...

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents. Notwithstanding anything to the contrary in this Agreement or in AIA Document A201-2017, if any requirement in this Agreement or in AIA Document A201-2017 would cause the Owner to violate Section 8.960, RSMo., such clause is void and unenforceable. In such case, the parties shall meet in good faith to amend such terms to bring them into compliance with Section 8.960.

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

month.

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than ( ) days after the Architect receives the Application for Payment. Architect, Applications for Payment shall be processed in accordance with Article 9 of AIA Document A201-2017. The Architect shall have seven calendar days to review applications. If the Application for Payment is certified for payment by the Architect and agreed to by Owner, Owner will submit application for payment within 30 calendar days of receipt from Architect.

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

...

- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; **justified if approved by Owner through Owner's approval process;** and

PAGE 18

five percent (5%)

...

Costs of general conditions, insurance, and bonds

...

Not applicable.

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, Upon final completion of the Work, after all punch list items have been completed as required, the Construction Manager may submit an Application for Payment that includes for the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

...

Submission and acceptance by Owner of all prevailing wage documents and any other government required document.

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- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section ~~11.2.2.2~~ 11.2.2.2; and

4 record plans, lien releases, test reports, O&M manuals, warranties, and other closeout documentation as required by Owner are received and accepted as adequate and meeting Contract Document requirements.

...

~~§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision may file a claim pursuant to Article 15 of AIA Document A201-2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending If after the Initial Decision, mediation is requested and agreed to by Owner, and pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment. for Payment provided such amount has been approved and within the contract authority of the Owner's staff. If there is no request for mediation or Owner does not agree, the Owner's Auditors' report shall stand as the final decision.~~

...

Not applicable.

~~§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager. Deleted.~~

...

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.  
*(Insert rate of interest agreed upon, if any.)*

~~—%—set by statute for late payments on public improvement projects and if none, at 3%.~~

...

~~§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201-2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, mediation, and Section 12.1.2 of this Agreement shall not apply.~~

**PAGE 20**

Not Used.

...

Litigation in a court of competent jurisdiction

...

**§ 13.1.4** In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of

termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1. Equitable compensation shall mean a pro rata payment of the Preconstruction Phase compensation set out in this Agreement based on the tasks to be completed and the percentage of said tasks actually completed and the entire compensation that could have been earned for Preconstruction Phase services, minus the aggregate of payments actually made by the Owner for Preconstruction Phase services and Work.

**PAGE 21**

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

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No additional termination fee shall be paid to the Construction Manager. The amount, if any, to be paid shall be calculated as stated in Section 13.2.2.1 of this Agreement.

...

The Construction Manager shall maintain ~~the following insurance for Commercial General Liability, Vehicle Liability, Workers' Compensation, Employers' Liability and (if applicable) Professional Liability and all other forms of insurance required and set forth in AIA Document A133™-2019, Exhibit B, for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.~~

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

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than ~~—(\$ —) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.~~

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than ~~—(\$ —) each accident, —(\$ —) each employee, and —(\$ —) policy limit.~~

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

**§ 14.3.1.6 Other Insurance**

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

**Coverage**

**Limits**

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

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

...

After execution of the Guaranteed Maximum Price Amendment, the ~~Owner and the~~ Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents. The Construction Manager shall provide certificates of insurance and required endorsements to the Owner that evidence compliance with the requirements in this Section 14.3.2. The Construction Manager can fulfill this provision by providing a written notice that the evidence of insurance required by Section 14.3.1 of this Contract is still effective and applies to work performed during the Construction Phase.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™-2019 Exhibit B, and elsewhere in the Contract Documents. In addition to any other bonds or required sureties listed on A133-2019 Exhibit B, such bonds shall include performance and payment bonds. If authorized by the Owner in writing, in lieu of purchasing subcontractor performance bonds the Construction Manager may utilize coverage under the Construction Manager's subcontractor default insurance program to provide for reimbursement of any and all defaults of any and all enrolled Subcontractors or Suppliers.

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Not applicable. Electronic transmission of notices is not permitted.

...

§ 14.5.1 Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement will promptly be physically amended to make such insertion or correction.

§ 14.5.2 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a court of competent jurisdiction shall not affect any other provision or application of the Agreement which may remain in effect without the invalid provision or application.

§ 14.5.3 Work Authorization/E-verify. Pursuant to § 285.530, RSMo. if this Agreement exceeds five thousand dollars (\$5,000.00), Construction Manager warrants and affirms to the Owner that (i) Construction Manager is enrolled and participates in a federal work authorization program with respect to the employees working in connection with the contracted services and (ii) Construction Manager does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

Construction Manager shall swear to and sign an affidavit declaring such affirmation, and provide the Owner with supporting documentation of its enrollment and participation in a federal work authorization program with respect to the employees working in connection with this Agreement. The required documentation must be from the federal work authorization program provider (e.g. the electronic signature page from the E-Verify program's Memorandum of Understanding); a letter from Construction Manager reciting compliance is not sufficient.

§ 14.5.4 Prevailing Wages. Pursuant to § 290.230.5, RSMo. if this Agreement, or a project of which this Agreement is a part, exceeds seventy-five thousand dollars (\$75,000.00) and involves construction of public works, Construction Manager shall pay all its workers the applicable prevailing hourly rate of wages for work of a similar character in City

of Lee's Summit. If there is a dispute whether this Agreement is subject to prevailing wages as required by §§ 290.210, et. seq., RSMo. the Owner's determination shall control.

§ 14.5.5 E-Signature and Counterparts. The Parties agree that this Agreement may be signed in two or more counterparts and/or signed electronically, and all such counterparts together shall constitute one and the same contract; such signatures shall bind the signing party in the same manner as if a handwritten signature had been delivered.

§ 14.5.6 Governing Law; Venue. This Agreement shall be governed by the law of the State of Missouri and construed in accordance with the laws of the State of Missouri and any suit pertaining to this Agreement may be brought only in courts in eastern Jackson County, Missouri. The Parties expressly and irrevocably consent to the exclusive jurisdiction and venue of such courts and expressly waive the right to transfer or remove any such action.

§ 14.5.7 Independent Contractor. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Construction Manager acknowledges and agrees that all Work provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the Owner. Construction Manager, its employees and Subcontractors are not entitled to workers' compensation benefits from the Owner. The Owner does not have the authority to supervise or control the actual work of Construction Manager, its employees or Subcontractors. Construction Manager is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. Owner and Construction Manager do not intend to nor will they combine business operations under this Agreement.

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.5 AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
(Insert the date of the E203-2013 incorporated into this Agreement.)

Not Used

...

Not Applicable

...

Exhibit C - Hourly rate for staff

...

Mark Dunning City Manager, City of Lee's Summit,  
Missouri

## **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 11:27:13 ET on 03/29/2024 under Order No. 2114430331 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
*(Signed)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Dated)*



**AIA**<sup>®</sup>

# Document A133<sup>®</sup> – 2019 Exhibit B

## Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the day of in the year 2024  
(In words, indicate day, month and year.)

for the following **PROJECT**:  
(Name and location or address)

Fire Station 1 Renovation or Replacement  
207 SE Douglas Street, Lee’s Summit, MO 64063

**THE OWNER:**  
(Name, legal status, and address)

City of Lee’s Summit, Missouri A Missouri Charter City  
220 SE Green St.  
Lee’s Summit MO 64063

**THE CONSTRUCTION MANAGER:**  
(Name, legal status, and address)

Newkirk Novak Construction Partners  
11200 W. 79<sup>th</sup> Street  
Lenexa, KS 66214

### TABLE OF ARTICLES

- B.1 GENERAL**
- B.2 OWNER’S INSURANCE**
- B.3 CONSTRUCTION MANAGER’S INSURANCE AND BONDS**
- B.4 SPECIAL TERMS AND CONDITIONS**

### ARTICLE B.1 GENERAL

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

### ARTICLE B.2 OWNER’S INSURANCE

**Occupancy or Use Prior to Substantial Completion.** The Owner’s occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.3.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

### ADDITIONS AND DELETIONS:

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

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

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



*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

## **ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS**

### **§ B.3.1 General**

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

**§ B.3.1.2 Deductibles and Self-Insured Retentions.** The Construction Manager shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Construction Manager. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the Owner and shall be paid at the expense of the Construction Manager. Construction Manager shall be solely responsible for any such deductible or self-insured retention amount.

**§ B.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts, directive, errors, or omissions during the Construction Manager's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts, directive, errors, or omissions for which loss occurs during completed operations. The additional insured coverage shall be, or endorsed to be, primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. Such coverage shall be at least as broad as ISO CG 20 01 04 13. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

**§ B.3.1.4 Insurer Qualifications.** Without limiting any obligations or liabilities of Construction Manager, Construction Manager shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Missouri, with an AM Best, Inc. rating of A or above, and at least a Class X financial rating, with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of any applicable agreements for the Project and revocation of any applicable permits for the Project, at the Owner's option.

**§ B.3.1.5. Use of Subcontractors.** If any Work is subcontracted in any way, Construction Manager shall either cover all subcontractors in the Construction Manager's liability insurance policy or execute written agreements with its subcontractors containing the indemnification provisions set forth in the Agreement and insurance requirements set forth herein protecting the Owner and Construction Manager. Construction Manager shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

**§ B.3.1.6. Notice of Claim.** The Construction Manager shall upon receipt of notice of any claim in connection with the Work promptly notify the Owner, providing full details thereof, including an estimate of the amount of loss or liability. If the Construction Manager shall subsequently determine that the Construction Manager's aggregate limits of protection shall have been impaired or reduced to such extent that they are inadequate for the balance of the Project, the Construction Manager shall, upon notice from the Owner, promptly reinstate the original limits of liability required by this Exhibit and shall furnish evidence thereof to the Owner. All policies shall contain an endorsement providing that the coverage afforded under such policies shall provide thirty (30) days' prior written notice of cancellation, except for non-payment of premium, will be given to Owner. Construction Manager shall be responsible

for ensuring that the Owner is notified within thirty (30) days of the occurrence of any reduction in the insurance coverage amounts, cancellation, or expiration of any of the policies as required by these Requirements that are not replaced.

**§ B.3.1.7 Claim Reporting.** Any failure of the Construction Manager to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the Owner. Construction Manager shall promptly furnish Owner's Legal Department with copies of any accident or incident report(s) sent to Construction Manager's insurance carriers covering accidents/incident occurring in connection with and/or as a result of the Work.

### **§ B.3.2 Construction Manager's Required Insurance Coverage**

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

Not Applicable

**§ B.3.2.1.1 Cancellation and Expiration Notice.** Insurance required herein shall not expire, be canceled, or be materially changed without thirty (30) days' prior written notice to the City.

### **§ B.3.2.2 Commercial General Liability**

**§ B.3.2.2.1** Commercial General Liability with policy limits of not less than Four Million Dollars (\$4,000,000.00) for each occurrence Four Million Dollars (\$4,000,000) Products and Completed Operations Annual Aggregate and a Four Million Dollars (\$4,000,000) General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, bodily injury, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 04 13 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law and in addition to the additional insureds listed in Section B.3.1.3, for claims arising out of the performance of this Agreement, the Owner, its agents, representatives, officers, officials and employees shall be endorsed as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement forms CG 20 10 07 04 and CG 20 37 07 04, or their equivalents, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." The policy shall contain an endorsement waiving rights of recovery (subrogation) against the Owner, its agents, representatives, officers, officials and employees. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance , providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Construction Manager's indemnity obligations under Section 3.18 of the General Conditions.

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

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Construction Manager's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.

- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

**§ B.3.2.3 Vehicle Liability.** Construction Manager shall maintain Business Automobile Liability insurance with an unimpaired limit of \$2,000,000 each occurrence on Construction Manager's owned, hired and non-owned vehicles assigned to or used in the performance of the Construction Manager's work or services under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof and contain, or be endorsed to contain Transportation Pollution Liability insurance covering materials to be transported by Construction Manager pursuant to this Agreement and such coverage shall be at least as broad as policy form CA 99 48 03 06. This coverage may also be provided on the Construction Managers Pollution Liability policy. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Owner, its agents, representatives, officers, directors, officials and employees shall be endorsed as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. The policy shall contain an endorsement waiving rights of recovery (subrogation) against the Owner, its agents, representatives, officials, officers and employees. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

**§ B.3.2.4** The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section B.3.2.2 and B.3.2.3, 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.

**§ B.3.2.5 Workers' Compensation Insurance.** Construction Manager shall maintain Workers' Compensation insurance to cover obligations at statutory limits imposed by federal and state statutes having jurisdiction over Construction Manager's employees engaged in the performance of work or services under this Agreement.

**§ B.3.2.6 Employers' Liability Insurance:** Construction Manager shall maintain such insurance with an unimpaired limit of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee and \$1,000,000 disease policy limit. To the extent permitted by law, the policy shall contain an endorsement waiving rights of recovery (subrogation) against the Owner, its agents, representatives, officials, officers and employees.

**§ B.3.2.7 Not Used**

**§ B.3.2.8 Professional Liability.** If this Agreement is the subject of any professional services or work, or if the Construction Manager engages in any professional services or work in any way related to performing the work under this Agreement, the Construction Manager shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Construction Manager, or anyone employed by the Construction Manager, or anyone for whose negligent acts, mistakes, errors and omissions the Construction Manager is legally liable, with an liability insurance limit of \$4,000,000 each claim and \$4,000,000 annual aggregate. The Policy shall include, or be endorsed to include, property damage liability coverage for damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the Owner in the care, custody, or control of Construction Manager.

**§ B.3.2.9 Not Used.**

§ B.3.2.10 Not Used.

§ B.3.2.11 Not Used.

§ B.3.2.12 Not Used.

**§ B.3.3 Construction Manager's Other Insurance Coverage**

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

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

**§ B.3.3.1.1 Builder's Risk Insurance.** Unless expressly waived by the City Manager of Owner in a written addendum or amendment to this Contract, the Construction Manager shall purchase and maintain insurance to protect the Project from perils of physical loss. Such coverage shall name the Owner as a loss payee as its interest may appear. The insurance shall provide for the full cost of replacement for the entire Project at the time of any loss. The insurance shall include as named insureds the Owner, the Construction Manager, the Construction Manager's Subcontractors and sub-subcontractors and shall insure against loss from the perils of fire and all-risk coverage for physical loss or damage due to theft, vandalism, collapse, malicious mischief, transit, flood, earthquake, testing, resulting loss arising from defective design, negligent workmanship or defective material. The Construction Manager shall increase the coverage limits as necessary to reflect changes in the estimated replacement cost. If the insurance required by this Section B.3.3.1.1 is subject to deductibles or self-insured retentions, the Construction Manager shall be responsible for all loss not covered because of such deductibles or retentions.

**§ B.3.3.2 Contractor's Environmental/Pollution Liability.** Construction Manager shall carry and maintain Pollution Liability and/or Asbestos Pollution Liability and/or Errors and Omissions insurance applicable to the services and work being performed, with an unimpaired limit of no less than \$4,000,000 per claim or occurrence and \$4,000,000 aggregate per policy period of one year.

*(Paragraphs deleted)*

**§ B.3.3.3 Umbrella Insurance.** Construction Manager shall carry and maintain Umbrella/Excess Liability insurance with an unimpaired limited of not less than \$5,000,000 per occurrence/aggregate combined limit bodily injury and property damage, and applies in excess of the insurance policies required in this Exhibit.

**§ B.3.4 Performance Bond and Payment Bond**

The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

*(Specify type and penal sum of bonds.)*

Type	Penal Sum (\$0.00)
Payment Bond	Amount Equal to the GMP when established
Performance Bond	Amount Equal to the GMP when established

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

**ARTICLE B.4 SPECIAL TERMS AND CONDITIONS**

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

Init.

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User Notes:

(1295012930)

| Not Applicable



Init.

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**User Notes:**

(1295012930)

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

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 11:05:54 ET on 03/29/2024.

## PAGE 1

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the day of in the year 2024

...

Fire Station 1 Renovation or Replacement  
207 SE Douglas Street, Lee's Summit, MO 64063

...

City of Lee's Summit, Missouri A Missouri Charter City  
220 SE Green St.  
Lee's Summit MO 64063

...

Newkirk Novak Construction Partners  
11200 W. 79<sup>th</sup> Street  
Lenexa, KS 66214

...

**Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.3.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

### **§ B.2.1 General**

~~Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article B.2 and, upon the Construction Manager's request, provide a copy of the property insurance policy or policies required by Section B.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.~~

### **§ B.2.2 Liability Insurance**

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

### **§ B.2.3 Required Property Insurance**

~~**§ B.2.3.1** Unless this obligation is placed on the Construction Manager pursuant to Section B.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value~~

or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

~~§ B.2.3.1.1 Causes of Loss.~~ The insurance required by this Section B.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

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

**Cause of Loss**

**Sub-Limit**

~~§ B.2.3.1.2 Specific Required Coverages.~~ The insurance required by this Section B.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Construction Manager's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

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

**Coverage**

**Sub-Limit**

~~§ B.2.3.1.3~~ Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section B.2.3.1 or, if necessary, replace the insurance policy required under Section B.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

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

~~§ B.2.3.2 Occupancy or Use Prior to Substantial Completion.~~ The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

#### ~~§ B.2.3.3 Insurance for Existing Structures~~

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

#### ~~§ B.2.4 Optional Extended Property Insurance.~~

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

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

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

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

**§ B.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

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

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

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

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

**§ B.2.5 Other Optional Insurance.**

The Owner shall purchase and maintain the insurance selected below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*

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

**§ B.2.5.2 Other Insurance**  
*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*



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**§ B.3.1.2 Deductibles and Self-Insured Retentions.** The Construction Manager shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Construction Manager. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the Owner and shall be paid at the expense of the Construction Manager. Construction Manager shall be solely responsible for any such deductible or self-insured retention amount.

**§ B.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent ~~acts-acts, directive, errors,~~ or omissions during the Construction Manager's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent ~~acts-acts, directive, errors,~~ or omissions for which loss occurs during completed operations. The additional insured coverage shall ~~be-be,~~ or endorsed to be, primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. Such coverage shall be at least as broad as ISO CG 20 01 04 13. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

**§ B.3.1.4 Insurer Qualifications.** Without limiting any obligations or liabilities of Construction Manager, Construction Manager shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Missouri, with an AM Best, Inc. rating of A or above, and at least a Class X financial rating, with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of any applicable agreements for the Project and revocation of any applicable permits for the Project, at the Owner's option.

**§ B.3.1.5. Use of Subcontractors.** If any Work is subcontracted in any way, Construction Manager shall either cover all subcontractors in the Construction Manager's liability insurance policy or execute written agreements with its subcontractors containing the indemnification provisions set forth in the Agreement and insurance requirements set forth herein protecting the Owner and Construction Manager. Construction Manager shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

**§ B.3.1.6. Notice of Claim.** The Construction Manager shall upon receipt of notice of any claim in connection with the Work promptly notify the Owner, providing full details thereof, including an estimate of the amount of loss or liability. If the Construction Manager shall subsequently determine that the Construction Manager's aggregate limits of protection shall have been impaired or reduced to such extent that they are inadequate for the balance of the Project, the Construction Manager shall, upon notice from the Owner, promptly reinstate the original limits of liability required by this Exhibit and shall furnish evidence thereof to the Owner. All policies shall contain an endorsement providing that the coverage afforded under such policies shall provide thirty (30) days' prior written notice of cancellation, except for non-payment of premium, will be given to Owner. Construction Manager shall be responsible for ensuring that the Owner is notified within thirty (30) days of the occurrence of any reduction in the insurance coverage amounts, cancellation, or expiration of any of the policies as required by these Requirements that are not replaced.

**§ B.3.1.7 Claim Reporting.** Any failure of the Construction Manager to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the Owner. Construction Manager shall promptly furnish Owner's Legal Department with copies of any accident or incident report(s) sent to Construction Manager's insurance carriers covering accidents/incident occurring in connection with and/or as a result of the Work.

## PAGE 3

Not Applicable

§ B.3.2.1.1 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without thirty (30) days' prior written notice to the City.

...

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than (\$ ) each occurrence, (\$ ) general aggregate, and (\$ ) aggregate for products-completed operations hazard, Four Million Dollars (\$4,000,000.00) for each occurrence Four Million Dollars (\$4,000,000) Products and Completed Operations Annual Aggregate and a Four Million Dollars (\$4,000,000) General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, bodily injury, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 04 13 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law and in addition to the additional insureds listed in Section B.3.1.3, for claims arising out of the performance of this Agreement, the Owner, its agents, representatives, officers, officials and employees shall be endorsed as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement forms CG 20 10 07 04 and CG 20 37 07 04, or their equivalents, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." The policy shall contain an endorsement waiving rights of recovery (subrogation) against the Owner, its agents, representatives, officials, officers and employees. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance , providing coverage for claims including

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§ B.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than (\$ ) 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. **Vehicle Liability.** Construction Manager shall maintain Business Automobile Liability insurance with an unimpaired limit of \$2,000,000 each occurrence on Construction Manager's owned, hired and non-owned vehicles assigned to or used in the performance of the Construction Manager's work or services under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof and contain, or be endorsed to contain Transportation Pollution Liability insurance covering materials to be transported by Construction Manager pursuant to this Agreement and such coverage shall be at least as broad as policy form CA 99 48 03 06. This coverage may also be provided on the Construction Managers Pollution Liability policy. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Owner, its agents, representatives, officers, directors, officials and employees shall be endorsed as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. The policy shall contain an endorsement waiving rights of recovery (subrogation) against the Owner, its agents, representatives, officials, officers and employees. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

...

§ B.3.2.5 Workers' Compensation at statutory limits. Insurance. Construction Manager shall maintain Workers' Compensation insurance to cover obligations at statutory limits imposed by federal and state statutes having jurisdiction over Construction Manager's employees engaged in the performance of work or services under this Agreement..

§ B.3.2.6 Employers' Liability with policy limits not less than (\$ ) each accident, (\$ ) each employee, and (\$ ) policy limit. Insurance: Construction Manager shall maintain such insurance with an unimpaired limit of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee and \$1,000,000 disease policy limit. To the extent permitted by law, the policy shall contain an endorsement waiving rights of recovery (subrogation) against the Owner, its agents, representatives, officials, officers and employees.

§ B.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks Not Used

§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than —(\$ —) per claim and —(\$ —) in the aggregate. Professional Liability. If this Agreement is the subject of any professional services or work, or if the Construction Manager engages in any professional services or work in any way related to performing the work under this Agreement, the Construction Manager shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Construction Manager, or anyone employed by the Construction Manager, or anyone for whose negligent acts, mistakes, errors and omissions the Construction Manager is legally liable, with an liability insurance limit of \$4,000,000 each claim and \$4,000,000 annual aggregate. The Policy shall include, or be endorsed to include, property damage liability coverage for damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the Owner in the care, custody, or control of Construction Manager.

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than —(\$ —) per claim and —(\$ —) in the aggregate. Not Used.

§ B.3.2.10 Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than —(\$ —) per claim and —(\$ —) in the aggregate. Not Used.

§ B.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than —(\$ —) per claim and —(\$ —) in the aggregate. Not Used.

§ B.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than —(\$ —) per claim and —(\$ —) in the aggregate. Not Used.

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§ B.3.3.1.1 Builder's Risk Insurance. Unless expressly waived by the City Manager of Owner in a written addendum or amendment to this Contract, the Construction Manager shall purchase and maintain insurance to protect the Project from perils of physical loss. Such coverage shall name the Owner as a loss payee as its interest may appear. The insurance shall provide for the full cost of replacement for the entire Project at the time of any loss. The insurance shall include as named insureds the Owner, the Construction Manager, the Construction Manager's Subcontractors and sub-subcontractors and shall insure against loss from the perils of fire and all-risk coverage for physical loss or damage due to theft, vandalism, collapse, malicious mischief, transit, flood, earthquake, testing, resulting loss arising from defective design, negligent workmanship or defective material. The Construction Manager shall increase the coverage limits as necessary to reflect changes in the estimated replacement cost. If the insurance required by this Section B.3.3.1.1 is subject to deductibles or self-insured retentions, the Construction Manager shall be responsible for all loss not covered because of such deductibles or retentions.

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

(Select the types of insurance the Construction Manager is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.) Contractor's Environmental/Pollution Liability. Construction Manager shall carry and maintain Pollution Liability and/or Asbestos Pollution Liability and/or Errors and Omissions insurance applicable to the services and work being performed, with an unimpaired limit of no less than \$4,000,000 per claim or occurrence and \$4,000,000 aggregate per policy period of one year.

[ ] § B.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the

insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

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

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

~~§ B.3.3.2.2 Railroad Protective Liability Insurance~~, with policy limits of not less than ~~(\$ )~~ per claim and ~~(\$ )~~ in the aggregate, for Work within fifty (50) feet of railroad property.

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

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

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

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

**Coverage**

**Limits**

§ B.3.3.3 Umbrella Insurance. Construction Manager shall carry and maintain Umbrella/Excess Liability insurance with an unimpaired limited of not less than \$5,000,000 per occurrence/aggregate combined limit bodily injury and property damage, and applies in excess of the insurance policies required in this Exhibit.

...

Payment Bond

Amount Equal to the GMP when established

Performance Bond

Amount Equal to the GMP when established

**PAGE 6**

Not Applicable