

CONSTRUCTION MANAGER AT RISK SERVICES FOR PUBLIC SAFETY BUILDING
CONSTRUCTION at VILLAGE OF CALEDONIA
RACINE COUNTY, WISCONSIN

NOTICE IS HEREBY GIVEN That sealed proposals will be received by the Village Clerk for Construction Manager at Risk Services for the Construction of a new Public Safety Facility. All proposals must be submitted to the Village Clerk by **2:00 p.m., October 14, 2021** at the Caledonia Village Hall, 5043 Chester Lane, Racine, Wisconsin. All proposals received will be opened and the names of the proposers will be publicly read at the Village Hall at the time of opening.

The Village Board reserves the right to accept or reject any and all bids, to waive any informalities in bidding and to award a contract to the bidder, who will best serve the interests of the village.

Copies of specification will be mailed upon request or may be obtained at the Caledonia Village Hall, Monday through Friday, 8:00 a.m. to 4:30 p.m. Electronic copies of the bid documents may be downloaded for free at www.caledonia-wi.gov.

Dated September 24, 2021

Joslyn Hoeffert
Village Clerk

Village of Caledonia

Request for Proposals

Construction Manager at Risk Services for Public Safety Facility Construction

SCHEDULE

Date	Action
September 24, 2021	RFP distribution
September 30, 2021 at 2 PM	Pre-proposal conference via zoom
October 4, 2021	Questions regarding RFP due to via email to kkasper@caledonia-wi.gov
October 7, 2021	Addenda issued if needed
October 14, 2021 at 2 PM	RFP Submittal Deadline
October 25 & 26	Evaluation Committee meetings/interviews with short listed firms
November 1, 2021	Recommendation to Village Board
November 2, 2021	Contract with Firm

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1.0 Project Description

1.01 Introduction

Village of Caledonia ("The Village") is inviting Construction Management proposals for the construction of a new Public Safety Facility to be constructed on the Village Hall campus, located near 5043 Chester Lane, Racine, WI 53402.

The Village currently operates police, fire administration and a fire station at 6900 Nicholson Rd. A new Public Safety Facility is being designed to replace the existing police facility located at 6900 Nicholson Road, to house Fire Administration and current Fire Station #12, 6040 Douglas Avenue to meet the Village's present and future public safety facility needs.

The Village's day-to-day Representative for the Project will be Village Administrator, Kathryn Kasper. The Village has retained FGM Architects as the Architect for this project.

1.02 Project Location

The Project will be located on land contiguous to Village Hall, 5043 Chester Lane in the Village of Caledonia, Wisconsin.

1.03 Project Design and Specifications

The new Public Safety Building is anticipated to be approximately 53,200 SF of single-story slab on grade construction (the "Project"). Conceptual drawings are provided (Attachment D) as part of this document to give an idea of scope and concept of the Project. It is anticipated that the Construction Manager at Risk (CMR) will validate the budget and associated construction cost to result in a process with a high assurance for cost conformance.

1.04 Project Budget

The Village's not-to-exceed budget for all Project construction and commissioning work, required for the Project is approximately \$18,280,000. This includes, but is not necessarily limited to construction, site improvements, Project contingency and other services reasonably necessary to provide a complete and usable facility.

1.05 Milestone Schedule

The Village has established the following Milestone Schedule for completion of the Project:

Notice to Proceed	November 2021
Bidding	Spring 2022
Award of Trade Subcontracts	Summer 2022
Start of Construction	Summer/Fall 2022
Substantial Completion	August 2023

2.0 RFP Process

2.01 Process for Construction Manager Selection

The RFP will be issued and a pre-proposal conference will be held to answer any questions about the RFP materials (the "Pre-Proposal Conference"). Attendance at the virtual Pre-Proposal Conference is strongly suggested for representatives of each interested firm if they wish to respond to the RFP. A written reiteration of the questions asked at the Pre-Proposal Conference and the Village's responses will be supplied via Addendum to all firms receiving the RFP and will be considered a part of this RFP.

Firms submitting responsive and responsible proposals in response to this RFP (the "Proposers") will have their proposals reviewed by a panel selected by the Village, having expertise relating to the Village operations or the construction management process (the "Evaluation Panel"). Oral interviews will be held to allow teams to present the features and benefits of their proposals, to tell members how their proposal best meets the needs and objectives of the Village, to introduce key staff people who will work on the Project if selected and to answer any questions from the Evaluation Panel. It is mandatory for each team to have its proposed Project Manager, Project Superintendent and Lead Cost Estimator for this Project at the oral interview.

The Evaluation Panel will recommend the selection of one firm for this Project to the Village Board subject to finalization of contract terms. The Village Board may accept, reject or modify this recommendation. Upon selection of a firm or team for this Project, the Village will negotiate final contract terms with the selected firm or team. Upon completion of negotiations, the contract will be presented to the Village Board for its final approval.

2.02 RFP Questions and Clarifications

The Village will accept and respond to any written questions sent by email and to verbal questions raised at the Pre-Proposal Conference. Written questions received prior to the Pre-Proposal Conference, and all verbal questions raised at the Pre-Proposal Conference, will be answered in an Addendum. Questions shall be submitted via e-mail to kkasper@caledonia-wi.gov.

2.03 Location for Pre-Proposal Conference and Presentations

The Pre-Proposal Conference will be held virtually via zoom utilizing the following link
<https://us02web.zoom.us/j/85962682825?pwd=NG9NeTZhWC9RZnJoR2RpYWY4RXZ6dz09> .

Oral interviews will be held at Caledonia Village Hall on the date indicated in the schedule.

3.0 Construction Manager Contract Requirements

3.01 Construction Manager Agreement and General Conditions

The Village intends to use AIA form A133-2019/CMc Construction Manager as Constructor Agreement and A201 General Conditions for this Project. Both documents have modifications from the standard form (see Attachment E for example purposes only which will be subject to additional revisions required by the retained Architect, Village Staff and the Village Attorney). This form of agreement is also known as the Construction Manager as Risk.

The Construction Manager Agreement will be modified to include requirements for public bidding of the Project and specific management responsibilities for the trade contracts retained by the Village (see Section 3.02 below).

3.02 Construction Manager Scope of Work

The Construction Manager (CMR) will be expected to provide complete management of construction and installation services for this project. Generally, the CMR will coordinate and manage all construction services on the project and procure trade subcontracts and owner-direct purchases under the Wisconsin Statutes and public bidding requirements applicable to municipal construction.

Trade subcontracts will be publicly bid and awarded by the Village to the trade subcontractors and may be assigned to the CMR by the Village. The CMR will be responsible for the project completion and cost for the subcontracts assigned to it.

Direct Owners Purchase items should be identified by the CMR in the pre-construction phase and managed and coordinated by the CMR.

For those trade subcontracts that are not assigned to the CMR by the Village, the CMR shall manage that portion of the work but shall not be responsible for that work or the price of that work.

The CMR will not perform, nor permit the trade subcontractors to perform, the construction, execution, repair, remodeling or improvements, nor furnish supplies or materials, unless the performance or supply complies with public works contracts and bid requirements of the Wisconsin Statutes. See Wisconsin Statutes Sections 61.55 and 66.29.

During the pre-construction period, the CMR will also assist in completion of the design for the project by providing critical review and suggestions for improving economy, schedule and constructability of the project. The CMR will also provide cost estimates for the project during pre-construction and provide pre-bid services to assemble individual bid packages for all sub-contract divisions necessary for construction of the complete project.

The Village will limit the CMR to self-performance of a maximum 33% of the entire value of the project. Any self-performance of a portion of the project shall only occur if CMR submits a sealed bid as part of the public bidding project and prior to receipt of any other bids. A CMR that intends to submit any bids for work shall not participate in the bid openings, evaluation and award process for those component parts.

Services shall include, but not be limited to:

Pre-construction Phase Scope of Services:

- Constructability Reviews
- Site Logistics Plan
- Building Evacuation Plan
- Schedule and Phasing Coordination
- Cost Control Management
- Establish direct purchase item list
- Construction Documents Conversion into Subcontractor Bid Packages

Bid-Phase Services:

- Develop the Master Project Schedule
- Bid each Bid Package with public advertising bids
- Issue subcontractor bid packages
- Conduct preconstruction conferences and site visits
- Process all addenda
- In conjunction with the Village, receive bids from subcontractors and conduct public bid openings (except in the case of the submission of the submission of sealed bids from the CMR under Section 3.02)
- Issue Guaranteed Maximum Price (will be an amendment to the CMR Agreement)
- Execute subcontractor agreements

Construction Phase Scope of Services:

- Comply with General Condition & Requirements
- Conduct Pre-construction Conference
- Periodic update the Master Construction Schedule
- Monthly update of Schedule of values
- Review and Prepare Monthly Progress Payment Requests; obtain lien waivers
- Periodic Update of Project Cash Flow Projections
- Act as the Project's Prime Liaison
- Coordinate Requests for Information Responses
- Coordinate all change requests and responses
- Coordinate all types of submittals
- Coordinate all types of testing and Inspections
- Coordinate all sub-contractors
- Direct Owner Purchase Order System – execute and monitor
- Provide construction trailers, storage, equipment, barriers, and etc.
- Provide all necessary on-site CM personnel
- Coordinate Substantial Completion and Turn Over
- Closeout the Project

It shall be the CMR's responsibility to be familiar with, and take into consideration when responding to, this RFP, all of the Village of Caledonia and State of Wisconsin requirements including, but not limited to: construction contract requirements, permitting, warranty for construction defects, assurance of completion, progress payment requests, construction guidelines (including but not limited to: project planning & technical review, construction costs, energy conservation, environmental & hazardous material review), standards of design, cost certification, affirmative action, substantial completion/permission to occupy and final closeout.

4.0 General Proposal Requirements

4.01 Due Date, Time, and Location

See schedule on initial page of RFP.

4.02 Proposal Format

Six (6) paper proposal copies and one electronic copy submitted on a flashdrive are required. Proposals are to be formatted and tabbed in the exact form and numeric sequence as described in Section 5.0 of this RFP.

4.03 Proposal Conditions

By submitting a proposal, each proposer accepts in all respects the conditions of this RFP, including the following:

1. The Village in its sole discretion reserves the right to reject all proposals, waive any minor irregularity in these or other RFP requirements; to issue a new request for proposal; and/or to cancel the project entirely
2. All proposals will become the property of the Village and will not be returned.
3. Any proprietary restriction to the use of proposal materials must be clearly indicated. A requested limitation or prohibition on use or release of materials must be clearly identified in writing on a cover sheet and on each page such materials appear. Blanket claims of proprietary submittal will not be honored. The Village is subject to the public records laws of the State of Wisconsin and such proposals, or portions of them, may become public records upon submission.

5.0 Specific Proposal Requirements

5.01 Cover Letter

Provide a proposal cover letter that identifies the entity, address, telephone number, email address and contact person for the proposer.

5.02 Proposer Identity and Structure

Identify the entity that will enter into the CMR Agreement with the Village by providing the information shown below. If the entity is a joint venture, the proposal must include a copy of i) the executed joint venture agreement, or ii) a memorandum of agreement which fully discloses the relationship between the entities of the joint venture.

- 1) Firm or Identity
- 2) City, State, Zip, Phone, Facsimile
- 3) Type of Organization (individual, partnership, corporation, LLC, LLP, other) and if an entity a Certificate of Status from the Wisconsin Department of Financial Institutions
- 4) If joint venture, name of joint venture partner(s)
- 5) List the number of professional/technical persons in the organization
- 6) How many years has the organization provided professional Construction Management services? Under what names if different.
- 7) Provide details of in-house construction management services and other relevant capabilities.
- 8) List any other specialty consultants who would be retained by the organization on this project by name and type of service they would provide.
- 9) List any awards the organization has won in the last three years.
- 10) List any professional organizations the firm, or its members belong to.

5.03 Experience and References

Attach a list of not less than five (5) projects on which your firm or team has provided Construction Management Services during the last five years with an emphasis on the types of projects similar in nature and scope to the Village's Public Safety Facility. In addition, identify all projects in which your firm has engaged as a Construction Manager as Constructor and specify whether such projects have been for a public or private entity.

- 1) Name and location(s)
- 2) Scope of your services – specify if pre-construction services were provided
- 3) Type of facility
- 4) Gross square footage and net square footage
- 5) Project budget and your fee for services
- 6) Change order dollar amounts on projects
- 7) Savings returned to owner at completion of project
- 8) Indicate goals given by the client, the strategies you employed to meet the goals and the results of your efforts

- 9) Project schedule
- 10) Name of contact at venue who is familiar with your work on this past project.
- 11) Name, address and telephone number of reference(s) that can provide corroboration of information provided in your proposal if different from contact person listed in 8 above.

5.04 Key Personnel

Identify the Project Manager to be assigned to the Project and provide a copy of his/her resume. Identify and briefly describe any projects this person is currently assigned to, their expected completion dates and any projects this person may be simultaneously assigned to during this Project. This person must attend the oral interview.

Identify the on-site Construction Superintendent to be assigned to this Project and provide a copy of his/her resume. Identify and briefly describe any projects this person is currently assigned to, their expected completion dates and any projects this person may be simultaneously assigned to during this Project. This person must attend the oral interview.

5.05 Project Management Approach

Provide a detailed outline of the Proposer's approach toward the delivery of services to complete the Project in accordance with the Village's goals, objectives and timeline. The Project Management Approach will describe the process formaking recommendations to the Village and define procedures that will be employed to address the following (maximum 1 page for each item):

- 1) Communications with and reporting to the Village, the Architect, and with Sub-Contractors.
- 2) Project scope and cost control
- 3) Project Schedule - critical path
- 4) Coordination of site and regulatory approvals/inspections
- 5) Quality Control
- 6) Site Safety
- 7) Philosophy of dispute resolution

5.06 Compensation and Expenses

Provide a fee proposal for the total services related to the Project (Attachment A).

5.07 Affidavit of Non-Collusion and/or Conflict of Interest

A party having signature authority for the Proposer must execute and have notarized the Affidavit of Non-Collusion and/or Conflict of Interest (Attachment B) and submit it with the proposal.

5.08 Acknowledgement And Attestation Form

A person having signature authority for the Proposer must complete and execute the Attestation Form (Attachment C).

5.09 Insurance and Legal Responsibilities

List the names and addresses of the insurance companies that have written commercial liability insurance policies for your organization and for the projects listed in the experience section of this RFP during the past three (3) years. Joint ventures should list the insurers for the company or person expected to be the major owner of the joint venture.

Has any insurance company made any payment on behalf of the persons or organizations covered? If so, indicate names and addresses of insurance companies, particulars of payment and date(s).

Is your firm now, or has it been within the past five (5) years, involved in any legal action, related to any projects? If yes, please explain in detail and identify any judgments entered in such action.

5.10 Financial Statement

Attach a copy of your organization's most recent financial statement and any other pertinent information. In lieu of providing a financial statement, you may provide a notarized representation that certifies that your organization and its underlying businesses have a sound financial standing and will provide all pertinent information regarding your financial status to the Village, in confidence, if so requested.

5.11 Project Schedule

Provide a proposed critical path Project Schedule that achieves the Milestone dates identified in Section 1.05 of this RFP above.

5.12 Insurance

Submit proof of proposer's insurance coverage consistent with the terms and conditions identified in the General Conditions, for each of the following (minimum required aggregate policy limits as noted):

- 1) Worker's Compensation Insurance (Wisconsin Statutory Limits)
- 2) Commercial General Liability
 - a. \$1,500,000 Each Occurrence
 - b. \$2,000,000 General Aggregate
 - c. \$1,500,000 Personal and Aggregate Injury
- 3) Automobile Liability (\$1,000,000 Each Accident)
- 4) Umbrella Excess Liability (\$5,000,000) (Project Based)
- 5) Professional Liability (\$2,000,000)
- 6) Builder's Risk Insurance (variable)
- 7) Installation Floater Insurance (variable)

6.0 Evaluation Criteria

Evaluation and selection of the construction manager for this project will be based on information submitted in the request for proposal plus references, oral presentations (if requested), other references and supplemental information. Failure to respond to each requirement in the RFP may be the basis for rejecting a proposal. Proposals will be evaluated by the Evaluation Panel. Proposals will be scored and finalist firms will be determined by group consensus.

No.	Factor	Weight
1	Firms experience with construction management of Public Safety building construction or similar projects in the 50,000 to 100,000 plus square foot range of new building experience.	25
2	Experience of key personnel proposed for this project, including any sub-consultants, with relevant experience to carry out a successful building project.	25
3	Success in completing comparable design evaluations of a Public Safety building and completing projects on schedule and within budget.	15
4	Demonstrated ability to communicate effectively with Architects, Village Staff, Police and Fire Departments, Village Board, and other key stake holder groups formed around the project.	10
5	Firms experience with preconstruction management of Public Safety building construction or similar projects in the 50,000 to 100,000 plus square foot range of new building experience.	15
6	Cost	10

Price Proposal Form (Page 1 of 2)

Provide a breakdown of your Price Proposal.

1.0 Construction Manager's Fee

Identify the fee established by the Proposer for all overhead and profit using the budget amounts provided in this RFP. (the "Construction Manager's Fee")

Express the fee as a percentage of those expected construction costs where the Construction Manager is also the Constructor: _____ %

Express the fee as a percentage of those expected construction costs where the Construction Manager is not the Constructor _____ %

2.0 Not-to-Exceed Reimbursable Expenses

Identify the cost of all reimbursable expenses for this Project.

\$ _____

3.0 General Conditions - Project Management and Supervision

Identify the costs of all direct project management and supervision for this Project using the schedule and budget information provided in this RFP.

\$ _____

4.0 Other General Conditions \${Reserved- Count as \$0.00}

5.0 Trade Subcontracts \${Reserved- Count as \$0.00}

6.0 Management & Coordination of
Direct Owner Purchases \${Reserved - Count as \$0.00}

7.0 Owner's Contingency \${Reserved - Count as \$0.00}

8.0 Total Not-to-Exceed Price \$ _____

Price Proposal Form (page 2 of 2)

9.0 Itemization of Labor Rates and Level of Effort

Provide a breakdown of expected hours devoted to this project, labor rates and estimated costs for Project Personnel.

Position	Estimated Hours	Labor	Hourly Rates OH & P	Total	Estimated Total Cost
Project Manager	_____	_____	_____	_____	_____
Project Superintendent	_____	_____	_____	_____	_____
Lead Estimator	_____	_____	_____	_____	_____
Other (Specify)	_____	_____	_____	_____	_____
Other (Specify)	_____	_____	_____	_____	_____
Other (Specify)	_____	_____	_____	_____	_____
Other (Specify)	_____	_____	_____	_____	_____
Other (Specify)	_____	_____	_____	_____	_____
Project Totals	_____				_____

Attachment B

AFFIDAVIT OF NON-COLLUSION AND/OR CONFLICT OF INTEREST

Name _____

Title _____

Deposes and says That: _____

Name of Entity or other form of business

has not, either directly or indirectly, entered into any agreement or participated in any collusion or otherwise taken any action in restraint of free competition in connection with this proposal;

That the proposal has been independently arrived at without collusion with any other proposal or any other competitor or potential competitor;

That the proposal has not knowingly been disclosed prior to the opening of proposals to any other proposal or competitor;

That no attempt has been made to induce any other person or firm to submit or not to submit a proposal;

That aforementioned company is in compliance with Chapter 946.13 of the Wisconsin Statutes in the matter of private interest in public contracts;

That the above statement is accurate under penalty of perjury.

Signed _____

Subscribed and sworn before me this ____ day of _____, 2021

Notary Public _____

My Commission expires _____, _____

Attachment C

ACKNOWLEDGEMENT AND ATTESTATION FORM

By submitting a proposal, the undersigned certifies that he or she has reviewed the Request for Proposals for Construction Manager at Risk and all Addenda listed below, all as issued by The Village for its Project, is familiar with their terms and conditions, and accepts the requirements imposed by them on the Proposer. The undersigned further certifies that if selected as the Construction Manager at Risk, it can and will satisfy the objectives of the Project within the constraints of the Milestone Schedule and Project Budget, all as set forth in this RFP and its Proposal.

I hereby certify that the foregoing is true and correct:

Proposer's Name: _____

By: _____

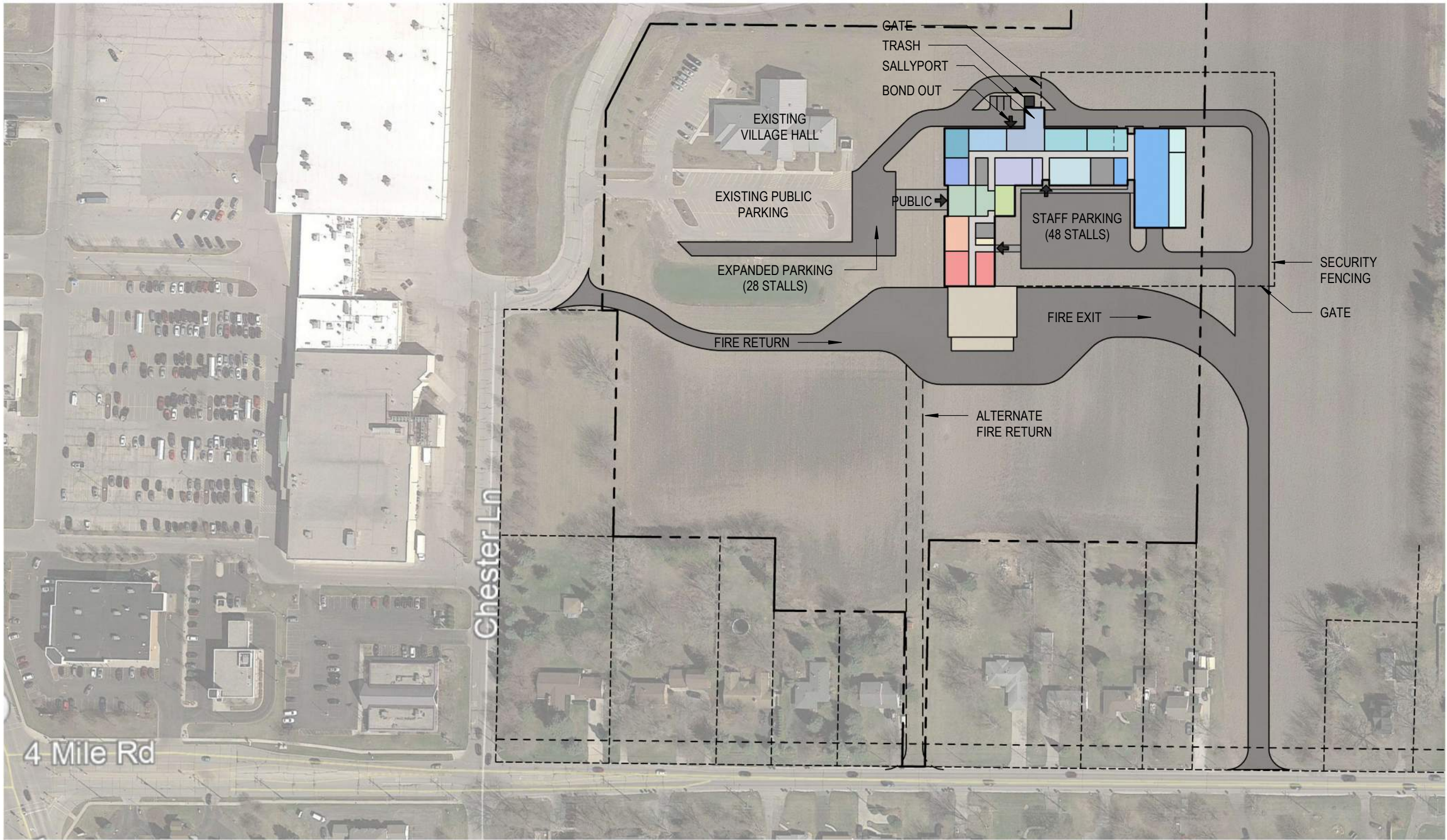
Printed Name _____

Title: _____

Date _____

Caledonia Public Safety Building

Caledonia, WI

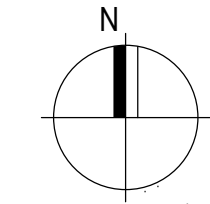


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SITE CONCEPT A

Village of Caledonia
Job No. 21-3121.01

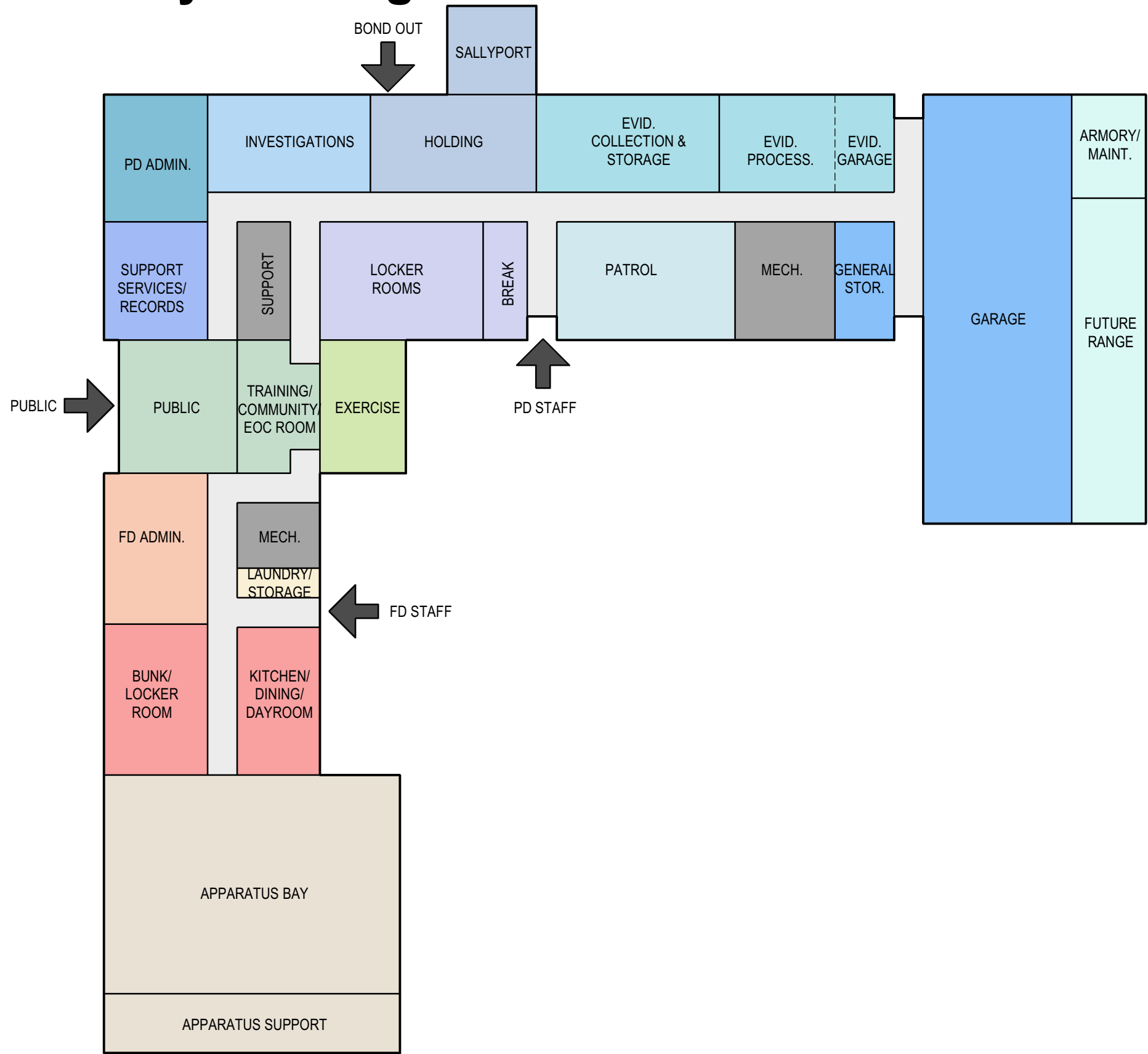
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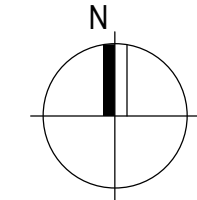
Caledonia Public Safety Building

Caledonia, WI



SCALE: 1:40

PLAN CONCEPT A



Caledonia Public Safety Building

Caledonia, WI



EXTERIOR CONCEPT - WEST

Village of Caledonia
Job No. 21-3121.01

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Caledonia Public Safety Building

Caledonia, WI



EXTERIOR CONCEPT - NORTH

Village of Caledonia
Job No. 21-3121.01

Published 08/26/21
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fgma

Caledonia Public Safety Building

Caledonia, WI



EXTERIOR CONCEPT - SOUTH

Village of Caledonia
Job No. 21-3121.01

Published 08/26/21
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fgma

DRAFT 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 « » day of « » in the year « »
(In words, indicate day, month, and year.)

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

«VILLAGE OF CALEDONIA »
«5043 Chester Lane »
«Racine, WI 53402 »
« »

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

« »
« »
« »
« »

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

Village of Caledonia New Public Safety Building
5043 Chester Ln.
Caledonia, WI 53402

Description: The project consists of a new Public Safety Building for Police and Fire of approximately 52,000 square feet.

« »
« »
« »

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

FGM Architects Inc.
219 N. Milwaukee St., Suite 325
Milwaukee, WI 53202« »
« »
« »
« »

The Owner and Construction Manager agree as follows.

**DRAFT IS FOR EXAMPLE
PURPOSES SUBJECT TO
ADDITIONAL VILLAGE
CHANGES**

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

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

AIA Document A201™–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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TABLE OF ARTICLES

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EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B INSURANCE AND BONDS

NOTE:

PERFORMANCE BOND AND PAYMENT BOND REQUIREMENTS TO BE ADDED TO EXHIBIT B

The Construction Manager shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Construction Manager's usual source, and the cost thereof shall be included in the Construction Manager's fee. The amount of each bond shall be equal to 110% of the Contract Sum for the Work; except that the Construction Manager may reduce the amount of the bond or bonds to be furnished under this Section to the extent that a subcontractor of the Construction Manager is furnishing bonds (which bonds must name the Owner as a beneficiary) covering such portion of the Work to be undertaken by the subcontractor. All bonds shall be in a form approved by the Village Public Services Director.

The Construction Manager shall deliver the required bonds to the Owner at least three days before the commencement of any Work at the Project site.

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.)

See Exhibit B for program spreadsheet«—»

§ 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 includes construction management for a new Public Safety Building to house the Police and Fire Departments. The new building will be located on Village owned land adjacent to the existing Village Hall at 5043 Chester Lane, Caledonia, WI. The building is planned to be approximately 52,500 SF.

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

Total Construction Costs	\$16,347,400
Total Construction Contingency	\$1,634,700
Total Soft Costs	\$1,686,900
Total Soft Costs Contingency	\$251,000
Total Project Budget	\$20,743,000

The total approved cost of work shall not exceed \$21 Million as per Village of Caledonia Board Resolution No. 2021-94 unless otherwise approved by the Village Board.

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

.1 Design phase milestone dates, if any:

Schematic Design	September 2021 – December 2021
Design Development	December 2021 – January 2022
Construction Documents	February 2022 – July 2022
Public Bidding & Negotiations	August 2022 – September 2022«—»

.2 Construction commencement date:

October 2022

.3 Substantial Completion date or dates:

November 2023

.4 Other milestone dates:

«—»N/A

§ 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.)

« »

§ 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.)

«—»N/A«—»

§ 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.

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

« »

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

[Kathy Kasper](#)
[Village Administrator](#)
[Village of Caledonia](#)
[5043 Chester Lane](#)
[Caledonia, WI 53402](#)
[262-835-6422](#)

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

[Chief Christopher Botsch](#)
[Caledonia Police Department](#)
[6900 Nicholson Road](#)
[Caledonia, WI 53108](#)
[262-835-4423](#)
cbotsch@caledonia-wi.gov

[Chief Jeff Henningfeld](#)
[Caledonia Fire Department](#)
[6900 Nicholson Road](#)
[Caledonia, WI 53108](#)
[262-835-2050](#)
firechief@caledonia-wi.gov

«
» [Raymond Lee, AIA](#)
[Principal-in-charge](#)
[FGM Architects](#)
[630-574-8711](#)
rayl@fgmarchitects.com

§ 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. Architect will assist owner in selecting a geotechnical engineer«-»«-»

«-»
«-»
«-»
«-»

.2 Civil Engineer:

Included in Architect's services«-»«-»

«-»
«-»
«-»
«-»

.3 Other, if any:

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

«-»Land Surveyor- Included in Architect's services

Additional Consultants retained under Architect's Agreement Basic Services:

Structural Engineer:

Ambrose Engineering
W66N215 Commerce Court
Cedarburg, WI 53012

Mechanical Engineer:

Clark Dietz, Inc.
625 57th Street
Kenosha, WI 53140

Electrical Engineer (including low-voltage and audio-visual design):

Clark Dietz, Inc.
625 57th Street
Kenosha, WI 53140

Plumbing & Fire Protection Designer:

Clark Dietz, Inc.
625 57th Street
Kenosha, WI 53140

Civil Engineer & Surveyor:

Clark Dietz, Inc.
625 57th Street
Kenosha, WI 53140

Security Systems Designer:

Correct Electronics
1807 South Washington Street
Suite 110, PMB 386
Naperville, IL 60565

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

Raymond Lee, AIA
Principal-in-charge
FGM Architects
630-574-8711
rayl@fgmarchitects.com

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

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§ 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.)

« »

§ 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 subcontractor Work shall be in compliance with the public contract and bidding requirements as set forth in the Owner's Code of Ordinances and the Wisconsin Statutes. «→

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

All Work for this Project shall be in compliance with the public bidding requirements as set forth in the Owner's Code of Ordinances and the Wisconsin Statutes.

«→

§ 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 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager. **THE GENERAL CONDITIONS ARE SUBJECT TO FURTHER EDITING BY VILLAGE**

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 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.

§ 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 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.

§ 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. Trade subcontracts will be publicly bid and awarded by the Village to the trade subcontractors and may be assigned to the Construction Manager by the Village. The Construction Manager will be responsible for the project completion and cost for the subcontracts assigned to it under the Guaranteed Maximum Price Amendment.

EDITOR'S NOTE: The Village will limit the Construction Manager to self-performance of a maximum XX% of the entire value of the project. Any self-performance of a portion of the project shall only occur if Construction Manager submits a sealed bid as part of the public bidding project and prior to receipt of any other bids. A Construction Manager that intends to submit any bids for work shall not participate in the bid openings, evaluation and award process for those component parts.

§ 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. EDITOR'S NOTE: OWNER PROCUREMENT NEEDS TO BE ADDRESSED HERE FOR POSSIBLE TAX EXEMPT PURCHASES

§ 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. Notwithstanding any other provision under this Agreement, to the extent that disclosure of any information or record related to the Work or this Agreement as required by the public records laws of the State of Wisconsin, the Owner shall not be liable or responsible for any disclosure or transmission of any such information.

§ 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.)

« »

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, 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.

§ 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.

§ 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.

§ 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 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. Acceptance of the Guaranteed Maximum Price Amendment shall require approval by the Owner's Village Board.

§ 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 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.

§ 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 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 shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands;

adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

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

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

§ 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.

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

« »

§ 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
------------------------	------

§ 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.

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

§ 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 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.)

« » % « »

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.)

« »

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

« »

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

« »

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed « » percent (« » %) 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.)

« »

§ 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.)

« »

§ 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.

§ 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.

§ 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, and limited to the personnel and activities listed below:

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

« »

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

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions,

provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

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

§ 7.3 Subcontract Costs

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

§ 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 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 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 purchase price of any comparable item.

§ 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.

§ 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.

§ 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.

§ 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 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.

§ 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 and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 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 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.

§ 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.

§ 7.8 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, unless the Owner has provided prior approval;
- .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; and
- .9 Costs for services incurred during the Preconstruction Phase.

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 Editor's note: subject to further revisions depending on whether there will be sealed bidding by Construction Manager.

§ 9.1 All Work shall be publically bid in accordance with Owner's Code of Ordinances and the Wisconsin Statutes. 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 Village that may be assigned to the with the Construction Manager. The Owner may will designate specific persons-process for public bidding 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.

§ 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.

§ 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:

« »

§ 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.

(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.

§ 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; 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.)

« »

§ 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.)

« »

§ 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.)

« »

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes 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.)

« »

§ 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; and
- 3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 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 shall be entitled to request mediation of the disputed amount without seeking an initial decision 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 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.

§ 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:

« »

§ 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.

§ 11.3 Interest

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.)

« » % « »

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 or binding dispute resolution, 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.)

« »

« »

« »

« »

§ 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

[« » X] Litigation in the Racine County Circuit Court, Racine, Wisconsin. Governing law shall be the State of Wisconsin. 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.

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

§ 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.)

« »

§ 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 the following insurance 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 ~~\$1,500,000 per occurrence and a \$2,000,000 per project General Aggregate~~ » (\$ « ») for each occurrence and « » (\$ « ») in the aggregate for 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 ~~« » (\$ « ») \$1,500,000~~ per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 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 ~~in an amount not less than \$100,000 each accident, \$500,000 Disease Policy Limit and \$100,000 Disease Each Employee.~~ « » (\$ « ») each accident, « » (\$ « ») each employee, and « » (\$ « ») no 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 ~~«Two Million Dollars »~~ (\$ « » \$2,000,000.00) per claim and ~~«Three Million Dollar »~~ (\$ « » \$3,000,000.00 ») 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, ~~its officers, employees, departments, agents and officials,~~ as an additional insured ~~by specific endorsement~~ 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. ~~Construction Manager shall maintain insurance issued by an insurer with a rating of at least "A-" and in the financial size category of at least "VII" as established by the A.M. Best Company and licensed to do business in the State of Wisconsin. The endorsement shall require the insurer to provide at least thirty (30) days prior written notice to the Owner of any cancellation of such policy.~~

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance 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 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 and in accordance with Section 14.3.1.7.

Bonds are to be determined.

§ 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.

§ 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.)

« »

§ 14.5 To the fullest extent permitted by law, the Construction Manager shall defend, indemnify and hold harmless the Owner and its elected officials, officers, employees, agents and consultants from and against all claims, damages, losses and expenses, including attorney's fees, arising out of this Agreement and/or services and Work performed or controlled by Construction Manager.

§ 14.65 Other provisions:

« »

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: **FORMS ARE SUBJECT TO REVISION BY VILLAGE**

- .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 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.)

« »

- .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

- .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.)

« »

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

CONSTRUCTION MANAGER (Signature)

« »« »

(Printed name and title)

OWNER

VILLAGE OF CALEDONIA

By:

James Dobbs, Village President

Attest:

Joslyn Hoeffert, Village Clerk

Approved:

By:

Bane Thomey, Village Finance Director

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EXHIBIT B

INSURANCE AND LIABILITY REQUIREMENTS

LIABILITY AND INSURANCE – The Contractor shall provide and maintain from insurance companies acceptable to the Village of Caledonia, insurance to protect the Contractor, employees of the Contractor, Subcontractors of the Contractor, members of the public, Village of Caledonia and Engineer, and their authorized Officials, employees and agents, against all hazards and risks of loss. The Contractor shall also include the Village of Caledonia and Engineer as additional insureds in liability policies required by the Contract Documents with the exception of Worker's Compensation. The Contractor shall not commence work under a Contract until he has obtained all insurance required hereunder and has filed certification thereof with the Owner, nor shall the Contractor allow a Subcontractor to commence work until all similar insurance required has been so obtained and filed with the Contractor. The insurance certification shall be in a form that is satisfactory to Owner and shall be signed and dated by an authorized representative of the insurance carrier(s).

(A) Worker's Compensation Insurance – The Contractor shall maintain during the life of this Contract the statutory coverage as required by Chapter 102 of the Statutes of the State of Wisconsin, as revised, and all acts amendatory thereof and supplementary thereto, for all employees of the Contractor, and Employer's Liability Insurance in an amount not less than \$100,000 each accident, \$500,000 Disease Policy Limit and \$100,000 Disease Each Employee. All Subcontractors and suppliers of material shall furnish to the Contractor evidence of similar insurance for all of their respective employees unless such employees are covered by the protection afforded by the Contractor.

(B) Comprehensive General Liability and Property Damage Insurance – The Contractor shall maintain during the life of this Contract Comprehensive General Liability and Property Damage insurance coverage to protect the Contractor, employees of the Contractor, Subcontractors of the Contractor, members of the public, Village of Caledonia and Engineer, and their authorized Officials, employees and agents, against all claims arising from injuries to members of the public or damage to the property of others arising out of any act or omission of the Contractor or his agents, employees or Subcontractors. In addition, this coverage shall insure the contractual liability assumed by the Contractor under the Contract Documents. The scope of this coverage shall include commercial general liability, premises and operations, independent contractors, products liability and completed operations (which shall be maintained for a minimum period of 2 years after final payment), broad form property damage, contractual liability coverage, explosion and collapse hazard and underground hazard, all subject to the following limits:

Bodily Injury and Property Damage: \$1,500,000 per occurrence and a \$2,000,000 per project General Aggregate

(C) Comprehensive Automotive Liability and Property Damage Insurance - The Contractor shall maintain during the life of this Contract Comprehensive Automotive Liability and Property Damage insurance coverage to protect the Contractor, employees of the

Contractor, Subcontractors of the Contractor, members of the public, Village of Caledonia and Engineer, and their authorized Officials, employees and agents, against all claims for injuries, including uninsured and underinsured motorists coverage, and accidental death to members of the public and damage to property of others arising from the use of motor vehicles, used on or off the construction site, whether they are owned, hired, or non-owned vehicles, all subject to the following limits:

Bodily Injury and Property Damage: \$1,500,000 per occurrence.

- (D) Umbrella - The Contractor shall maintain during the life of this Contract Comprehensive Umbrella Liability covering all referenced liability policies in this contract in an amount not less than \$2,000,000.
- (E) Builder's Risk – The Contractor shall maintain during the life of this Contract Builder's Risk insurance coverage. This insurance shall protect the Contractor and the Village of Caledonia from all insurable risks of physical loss or damage to buildings, structures, and materials and equipment, not otherwise covered under Installation Floater insurance. It shall be of the "all risk" type, with coverages designed for the circumstances which may occur in the particular work included in the Contract. The amount of such insurance shall not be less than the insurable value of the work at completion, including the aggregate value of the buildings, structures, materials and equipment to be erected or installed by the Contractor, less the value of the materials and equipment insured under the Installation Floater insurance. If the work does not include the construction of buildings or structures, the Builder's Risk insurance may be omitted providing the Installation Floater insurance fully covers the work. In the event the property to be installed requires any off premises storage in a warehouse or storage area, the policy shall be extended to provide coverage including transit between such location and the place of installation. Builder's Risk insurance shall provide for losses to be payable to the Contractor and the Village of Caledonia as their interests may appear.
- (F) Installation Floater – The Contractor shall maintain during the life of this Contract Installation Floater insurance coverage. This insurance shall protect the Contractor and the Village of Caledonia from all insurable risks of physical loss or damage to materials and equipment, not otherwise covered under Builder's Risk insurance, while in warehouses, storage areas, during construction, testing and after the work is completed. It shall be of the "all risk" type, with coverages designed for the circumstances which may occur in the particular work included in the Contract. The amount of such insurance shall not be less than the insurable value of the work at completion, including the aggregate value of the materials and equipment to be erected or installed by the Contractor, less the value of the materials and equipment insured under the Builder's Risk insurance. In the event the materials or equipment to be installed requires any off premises storage in a warehouse or storage area, the policy shall be extended to provide coverage including transit between such location and the place of installation. Installation Floater insurance shall provide for losses to be payable to the Contractor and the Village of Caledonia as their interests may appear.

(G) Employer's Liability \$100,000.00 per occurrence

The Contractor shall file with the Village of Caledonia a certification of insurance containing an endorsement adding the Village of Caledonia, its employees, its officials and its agents as specific additional insureds and an endorsement to the effect that cancellation or material change of such policies shall not be effective unless thirty (30) days written notice is given to the Village of Caledonia prior to such cancellation or material change.

NOTES: The required limits of liabilities may be obtained with primary liability policies or in combination with an umbrella excess liability policy. Limitations of insurance shall be those specified above, or in the declarations for said policies, whichever is greater. The insurance of the Contractor and all Subcontractors shall be primary and non contributory. Any insurance maintained by the additional insureds named above shall be excess and non contributory to the insurance of the Contractor and all Subcontractors.

**Amendment No. 1 to
AIA Document A133-2019
Between the Village of Caledonia, Wisconsin and _____**

On an even date herewith, the parties hereto have entered into the contract set forth in section 2.a, below. This Amendment No. 1 modifies this contract as set forth herein. This Amendment No. 1 is made and entered into as of this ____ day of _____, 2021 by and between:

The Village of Caledonia (the “Owner”), a Wisconsin Municipal Corporation with its Village Hall located at 5043 Chester Lane, Racine, WI 53402; and

(the “Amendment No. 1”).

Introduction

The Owner wishes to construct a new Public Safety Building for Police and Fire of approximately 52,000 square feet.. The construction of the new facility at this site is hereinafter referred to as the “Project.” FGM Architects, Inc. is the contracted Architect will perform architectural services (the Architect”). _____ is defined as the CM would perform construction management services as constructor as needed by the Owner.

The Owner wishes to retain the services of CM, all under the terms and conditions of the Standard Form Contracts (defined below) entered, as revised by this Amendment No. 1. Owner and CM acknowledge and agree that the Standard Form Contracts were written for the purpose of undertaking and completing private construction projects and were not intended, and were not written for, municipal construction projects such as Owner’s Project which is the subject of this Amendment No. 1.

Municipal construction projects must be undertaken in compliance with special laws, rules and regulations, none of which are sufficiently addressed in the standard form contracts. For example, public bidding provisions are requirements as set forth in Wisconsin Statutes, Chapter 66. For this reason, the Standard Form Contracts are being substantially modified and amended in this Amendment No. 1, as described herein.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES CONTAINED HEREIN, THE ABOVE-NAMED PARTIES AGREE AS FOLLOWS:

1. **Introduction is Correct.** The above “Introduction” is true and correct and is hereby incorporated herein by reference.

2. **Contracts Included.** The underlying contractual provisions for this Amendment No. 1 are contained in the following documents and Standard Form Contract executed on even date hereof and along with this Amendment No. 1 are referred to collectively as the “Agreement”:

a. The Standard Form Contracts shall mean the following:

(1) The “Standard Form of Agreement between Owner and Construction Manager as Constructor” being known as AIA Document A133-2019; and

(2) The “General Conditions of the Contract for Construction,” being known as AIA Document A201-2007, except as modified by the other Standard Form of Contracts, by the approved plans, specifications and bidding documents as approved by Owner, the competitive bidding requirements of the Wisconsin Statutes and of the Owner, and this Amendment No. 1. The Owner reserves the right to modify the General Conditions in the Owner approved specifications and documents for the bidding of the Project. The Owner does not waive any rights it may have to limits of liability under Wisconsin law, whether statutory or common law.

b. The Village of Caledonia Department of Public Safety Facility Technical Proposal Response submitted to the Village of Caledonia by CM. dated _____, 2021 and revised fee proposal dated _____, 2021 and the Owner’s Request for Proposals dated September __, 2021 are incorporated herein by reference.

DRAFTER'S NOTE: Include any other necessary referenced documents.

3. **General Modification.**

a. The terms and provisions contained in the numbered paragraphs of this Amendment No. 1 are intended to amend, modify and override the Standard Form Contracts set forth above in the manner and fashion indicated in each such numbered paragraph. Under the laws of the State of Wisconsin, however, there may be other laws, rules and regulations applicable to this Project by virtue of being a municipal construction project that are not expressly reflected or dealt with in this Amendment No. 1. The Owner and CM accordingly expressly agree that at all times this Amendment No. 1 shall be interpreted and construed so that it is, and/or will be in compliance with all laws rules and regulations applicable to the Project and this Agreement shall be interpreted by the parties even after its execution and effective date as may be necessary to be in compliance with all such laws rules and regulations applicable to this Project.

b. If the duties in the Standard Form Contract require with the advice of one to the other, the CM agrees to consult with the Architect in fulfillment of those duties.

DRAFTER'S NOTE: The below section is subject to additional revision based on scope.

4. **Construction Management Services.** The CM shall furnish the following services for the design and construction of a new facility, previously defined as the Project herein.

The Village and CM are committed to working together to achieve a cost-efficient, economical design for the Project. The CM shall furnish the following services, in addition to the services set forth in the standard contract, during the design and construction of the Project at the Project site:

- a. Assist Owner and Architect in all aspects of the design phase so that Architect can prepare plans and specifications and bidding documents necessary for the Project.
- b. In conjunction with the Architect, prepare all documents necessary for the Project Manual, including but not limited to, the bid packages, contract, invitation to bid, instructions to bidders, contractor's bid form, payment and performance bonds, general Project requirements and host such documents on its website for access by potential bidders subject to review and approval by the Village Public Services Director.
- c. Assist in the advertisement for public bid in the appropriate legal publication(s) and assist the Village in selecting the lowest responsible bidders on each of the bidding packages as set forth below.
- d. Assist in the procurement of all required Local permits.
- e. Supervise the construction of the Project and its successful completion.
- f. Assist with system startup an instruction and in creation of operation and maintenance manuals.
- g. Other services as set forth in the Request for Proposals.

5. **Additional Services.** Unless provided by the contractors as part of a bid package, CM will be responsible for arranging or securing, at Owner's cost and with the Owner's prior approval:

Building permit, occupancy permit
Dumpsters and Trashcans
Weather protection
Arrange service Cleaning
Progress photos
Arrange Site fencing
Temporary toilets
Enclosures
If needed, upon mutual agreement with Village, Winter work

6. **Excluded Services.** The following services are not included under this Amendment No. 1:

7. **Public Bidding.** All of the work for the Project shall be bid out and awarded to multiple contractors pursuant to and in compliance with the terms and provisions of the public

bidding procedures contained in Sections 62.15 and 66.0901 of the Wisconsin Statutes as well as any other applicable provisions of the laws of Wisconsin and the Owner's Code of Ordinances.

DRAFTER'S NOTE: The below section is subject to additional revision based on scope.

8. **Bidding Logistics.** The public bidding process for the contracts for the Project shall be undertaken as follows:

a. The Owner shall determine after consultation with the Architect and CM the categories and specifications for each contract to be advertised and let for bids. The CM and Architect, in consultation with the Owner, shall prepare the bid documents and specifications, and advertisements, subject to approval by the Owner. CM, as constructor, will file both performance and payment bonds with the Village per Section 779.14 of the Wisconsin Statutes, and comply with any applicable provisions of the laws of Wisconsin and any applicable ordinances of the Village of Caledonia.

b. Each lowest responsible bidder awarded a subcontract for the Project shall be approved in writing by the Owner.

c. The Construction Manager, in consultation with Architect and Owner, shall prepare a separate written agreement for each contractor for the Project who shall contract directly with the CM. The Owner shall be responsible for paying the monies due to the CM in accordance with the agreement between the Owner and CM, as may be amended from time-to-time, and CM will pay the subcontractors under the contracts awarded for this Project in accordance with the Project Manual.

d. The CM may not bid on any subcontract or any portion of the work for the Project. **DRAFTER'S NOTE: MAYBE BE REVISED WITH PERCENT LIMITATIONS AND REQUIRE SEALED BIDS**

e. Pursuant to standard public bidding procedures, all bids submitted by the bidders for a contract shall be sealed and shall be delivered to Owner and not to the Architect or CM, and shall be opened by Owner on the date and at the time indicated in the advertisements for the bids. The CM, in consultation with the Architect,, shall prepare bid tabulations sheets and assist the Owner in determining the lowest responsible bidder for each subcontract.

f. All of the documents and procedures used to obtain bids for the contracts for the Project shall be approved by the Owner.

g. Once all bids for the contracts for the Project are opened and evaluated by the Owner, the Owner shall then in its sole discretion determine whether to proceed with the Project, cancel the Project, or amend the Project.

9. **Purchasing.** The Owner is exempt from sales taxes.

10. **Compensation.** The Owner shall only be required to pay and/or reimburse CM for the costs for the Project as set forth below.

a. **Compensation and Payments for CM.** For the CM, the Owner shall compensate the CM in accordance with the agreement between the Owner and CM, including the Guaranteed Maximum Price Amendment.

b. **Termination.** In the event of termination of the contracts prior to completion:

(1) If the contracts are terminated after completion of the Design Phase, but prior to commencement of the Construction Phase, the Owner shall be entitled to a license from the CM for use of the Design.

(2) If the contracts are terminated during the Construction Phase, the CM shall be entitled to be paid a reasonable amount for services performed or furnished, expenses incurred, and reasonable overhead and profit for the work performed.

c. Any provisions contained in the Standard Form Contracts contrary to the above-cited financial obligations of the Owner to the CM are deleted from the Standard Form Contracts by this Amendment No. 1. In keeping with the limitations of the Owner's financial obligations under this Amendment No. 1, with respect to all costs otherwise payable by the Owner under any Owner-cost provisions contained in the Standard Form Contracts, whether to incur and pay such costs shall be at the sole discretion of Owner.

11. **Governing Law and Venue.** This Agreement shall be governed, controlled, interpreted and construed by and under the laws of the State of Wisconsin. Venue for any legal action arising under and/or pertaining to this Agreement shall solely and exclusively be Racine County Circuit Court in Racine County, Wisconsin. All provisions of the Standard Form Contracts pertaining to arbitration are removed by this Amendment No. 1 from the said Standard Form Contracts.

12. **Owner Decisions.** The decisions required of Owner under this Amendment No. 1 shall be communicated solely by the Village of Caledonia Administrator or designee. The CM understands and agrees that any decisions of the Owner deemed significant by the Village Administrator shall be submitted to the Village of Caledonia Board of Trustees for a final decision on the matter.

13. **Liability Insurance.** With respect to the liability insurance that is required to be obtained by CM under the provisions of the Standard Form Contracts for the Project, the Owner, its elected officials, officers, employees and agents shall be named as an additional insured on the policy by specific endorsement. Certificate(s) of insurance shall be provided to Owner prior to commencement of work on the Project.

14. **Independent Contractor.** The Owner retains the CM as an independent contractor. The CM is not an employee of the Owner and are free to contract with other entities. CM shall be responsible for selecting the means and methods of performing the work under these Contracts and this Amendment No. 1. CM shall not at any time or in any manner represent that CM or any of CM's agents or employees are in any manner agents or employees of the Village. CM shall be exclusively responsible for CM's own FICA payments, workers compensation payments, unemployment compensation payments, withholding amounts, and/or self-employment taxes, if any such payments, amounts, or taxes are required to be paid by law or regulation.

15. **Public Records.** The books, records, and documents of the CM relating to these Contracts and this Amendment No. 1 shall be subject to the Open Records laws of the State of Wisconsin. In the event CM receives a request to release data, CM will immediately notify the Owner and the Owner will give CM instructions concerning the release of the data to the requesting party before the data is released.

16. **Compliance with Laws and Regulations.** In providing services hereunder, CM shall abide by all statutes, ordinances, rules and regulations pertaining to the provision of the work or services to be provided for the Project. Any violation shall constitute a material breach of this Agreement and entitle the Village to immediately terminate this Agreement. Upon such termination, the Village shall be entitled to offset costs due to such termination by any amounts then owed to CM.

IN WITNESS WHEREOF this Amendment No. 1 is being executed at Caledonia, Wisconsin and made effective as of the date first written above.

OWNER
Village of Caledonia, Wisconsin

CONSTRUCTION MANAGER

By: James R. Dobbs
Village President

By: _____
Title: _____

Attest:

By: Joslyn Hoeffert
Village Clerk