

Addenda
Minnetonka City Council Meeting
Meeting of August 23, 2021

ITEM 9A – Items related to Ridgedale Area Park Improvements project

The Award of Contract, Assignment of Trade Contract, and Guaranteed Maximum Price Amendment are attached. These documents were not included in the packet.



14600 Minnetonka Blvd. | Minnetonka, MN 55345 | 952-939-8200 | minnetonkamn.gov

TO: City Council
FROM: Kelly O'Dea, Recreation Director
DATE: August 23, 2021
SUBJECT: Change Memo for August 23, 2021

ITEM 9A – Items related to Ridgedale Area Park Improvements project

The attached documents were not included with the distribution of the packet.

1. Award of Contract
2. Assignment of Trade Contract
3. Guaranteed Maximum Price Amendment

AWARD OF CONTRACT

THIS AWARD OF CONTRACT ("Agreement") is effective as of _____, 2021, between CITY OF MINNETONKA (hereinafter called "Owner") and _____ (hereinafter called "Contractor").

WITNESSETH THAT WHEREAS:

- A. The Owner solicited bids for the Ridgedale Commons and Crane Lake Preserve Park Improvements Project in Minnetonka, Minnesota (the "Project").
- B. The Contractor submitted a sealed bid dated August 5, 2021 for Work Scope Category _____ for the Project (the "Bid").
- C. The Contractor agrees to perform and complete all the provisions of the specifications and plans provided in the bidding documents and as approved by the Owner for: Ridgedale Commons and Crane Lake Preserve Park Improvements Project, City Project #S19212.
- D. The Contractor agrees that the work contemplated by this Agreement will be fully and satisfactorily completed per the milestone schedule included with the bidding documents.
- E. The Contractor agrees during the life of this agreement not to discriminate against any employee or applicant for employment because of race, color, creed, or national origin. The Contractor will include a similar provision in all subcontracts entered into for the performance of this agreement. This agreement may be cancelled or terminated by the City, and all money due or to become due under the Agreement may be forfeited for a second or subsequent violation of the terms or conditions of this paragraph. This paragraph is inserted in this Agreement pursuant to Minn. Stat. §181.59. Violation of this paragraph is a misdemeanor.
- F. The Contractor recognizes the City is an equal opportunity employer and agrees during the life of this agreement to take affirmative action to provide equal employment opportunities without regard to race, color, sex, creed, national origin, religion, disability, age, marital status, sexual preference, or status with regard to public assistance.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows.

- 1. The Owner hereby awards and contracts with the Contractor for Work Scope Category _____ for the lump sum amounts of its Bids as summarized below:

Labor and Owned Equipment: \$ _____

Materials: \$ _____

- 2. The Contractor shall provide to the Owner performance and payment bonds, naming the Owner and H+U Construction as co-obligees, in an amount equal to the "Contract Price" as such term is defined in the Contract (as hereinafter defined).

3. The Owner intends to assign, transfer, and set over unto H+U Construction, as Construction Manager (the "Construction Manager"), all of the Owner's right, title and interest in and to this Agreement for the Construction Manager's benefit in completing the Project. By its signature below, the Contractor hereby consents to the Owner's assignment of this Agreement to the Construction Manager pursuant to the terms of the Contract agreement provided in the bid documents. The Contractor shall execute the Contract as part of the Owner's assignment to the Construction Manager pursuant to this Agreement.

4. To the extent applicable, and to the full extent required by law, the Contractor (i) acknowledges that all provisions of Minn. Stat. § 16C.285 shall be fully incorporated herein by reference and made applicable to this Agreement and (ii) shall comply with all provisions of Minn. Stat. § 16C.285, including, without limitation, verifying under oath to Owner the Contractor's compliance and providing and updating a list of the Contractor's first-tier subcontractors retained to provide any work on the Project. The Contractor is responsible to ensure compliance with the terms of Minn. Stat. § 16C.285 by all of its subcontractors. The Contractor shall indemnify the Owner and Construction Manager for all costs, expenses and damages (including reasonable attorney's fees) incurred by the Owner or Construction Manager as a result of the Contractor's failure to comply with the terms of this section. The Contractor's failure to comply with this section shall constitute a material breach of this Agreement. All references to Minn. Stat. § 16C.285 in this paragraph shall mean the current version of such §16C.285 applicable on the date of this Agreement, including any replacement statute thereof.

5. The Contractor agrees to the terms and conditions of the Contract Documents that were provided prior submitting their bid and will execute the AIA A101-2017 agreement as provided in the bid documents.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

CONTRACTOR

OWNER

CITY OF MINNETONKA

By: _____

By: _____

Its: _____

Its: _____

Assignment of Trade Contract

THIS ASSIGNMENT is made and effective this day, _____, 2021, by the City of Minnetonka, a municipal corporation (“Owner”) to, H+U Construction, a Minnesota professional corporation (“Construction Manager”).

RECITALS

A. Owner and Construction Manager have entered into an agreement entitled Standard Form of Construction Management between Owner and Construction Manger as Constructor, A133 – 2019 dated May 24, 2021 (“CM Agreement”) regarding the Ridgedale Commons and Crane Lake Preserve construction project in the City of Minnetonka describe therein (“Project”).

B. Construction of the Ridgedale Commons and Crane Lake Preserve has been competitively bid pursuant to Minnesota law and Owner has awarded the bid for the performance of Work Scope _____ to _____ and entered into a contract with _____ dated _____, 2021 setting forth the terms and conditions of the work, together with all other plans, specifications, addenda, general conditions, as set forth in the Trade Contract – A101 - 2019, (“Trade Contract”).

C. By this Assignment, Owner is assigning certain rights under the Trade Contract and retaining certain rights under the Trade Contract and Construction Manager is accepting and assuming those rights and obligations for the defined work under the Trade Contract.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to the following:

1. The Recitals are made a part of this Assignment
2. Except for the terms and conditions set forth below, Owner assigns all its rights, duties, and obligations under the Trade Contract to Construction Manager, who hereby assumes such rights, duties, and obligations.
3. By this Assignment, and notwithstanding any language to the apparent contrary in the CM Agreement, Construction Manager assumes direct control over the Trade Contract, including, but not limited to the scheduling of the Work described in the Trade Contract, and payments pursuant to the Contract, and Construction Manager shall utilize its authority as assignee of the Trade Contract to facilitate timely completion of the Work.
4. Owner reserves its right to order changes to and final approval of the Work. If Owner orders changes to the Work after the Effective Date of this Assignment, Owner agrees to compensate Construction Manager in accordance with the CM Agreement.

5. Construction Manager will indemnify, defend, and hold Owner harmless from any and all claims, costs, disputes, requests for equitable adjustment or any other additional recovery sought by Trade Contractor after the effective date of this Assignment, regardless of whether the facts giving rise to such claims arose prior to the Effective Date. Construction Manager shall have no obligation to indemnify, defend, or hold Owner harmless for those Owner actions or inactions that are negligent, provided, however, that alleged Owner contributory negligence alone shall not be a basis to refuse to defend Owner, but rather the defense and indemnification shall be subject to a determination of the extent of actual Owner negligence.

IN WITNESS WHEREOF, the undersigned parties have executed this Assignment effective the date first above written.

CITY OF MINNETONKA

Owner

By: _____

Its: _____

By: _____

Its: _____

CONTRACTOR NAME

Contractor

By: _____

Its: _____

CONSTRUCTION MANAGER'S CONSENT

The undersigned Construction Manager hereby consents to this Assignment on the condition that the Contractor shall execute the Trade Contract as required by the Assignment. Upon the Contractor's execution of the Trade Contract, the Construction Manager shall execute the same.

CONSTRUCTION MANAGER

H+U CONSTRUCTION

By: _____

Its: _____

DRAFT AIA® Document A133™ - 2019 Exhibit A

Guaranteed Maximum Price Amendment

This Amendment dated the «23rd» day of «August» in the year «2021», is incorporated into the accompanying 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 dated the «24th» day of «May» in the year «2021» (the “Agreement”)
(In words, indicate day, month, and year.)

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

«Construction Management Services for the Ridgedale Commons and Crane Lake Preserve Park Improvements»
« »

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

«City of Minnetonka »« »
«14600 Minnetonka Blvd
Minnetonka, MN 55345 »

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

«Hoffmann + Uhlhorn Construction, Inc.
5555 W 78th Street, Suite A
Minneapolis, MN 55439 »« »
« »

TABLE OF ARTICLES

- A.1 GUARANTEED MAXIMUM PRICE
- A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

ARTICLE A.1 GUARANTEED MAXIMUM PRICE

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 3.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager’s Fee plus the Cost of the Work, as that term is defined in Article 6 of the Agreement.

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.

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

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed «Five million eight hundred fifty one thousand eight hundred dollars» (\$ «5,851,800»), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 **Itemized Statement of the Guaranteed Maximum Price.** Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, including allowances; the Construction Manager’s contingency; alternates; the Construction Manager’s Fee; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement.

(Provide itemized statement below or reference an attachment.)

«See attached Exhibit – GMP Exhibit A »

§ A.1.1.3 The Construction Manager’s Fee is set forth in Section 6.1.2 of the Agreement.

§ A.1.1.4 The method of adjustment of the Construction Manager’s Fee for changes in the Work is set forth in Section 6.1.3 of the Agreement.

§ A.1.1.5 **Alternates**

§ A.1.1.5.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price
No alternates are included in the GMP. If the City elects to accept an alternate or alternates, the GMP will be increased by the amount of the alternate which is stated below in section 1.1.5.2.	

§ A.1.1.5.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Exhibit A. Upon acceptance, the Owner shall issue a Modification to the Agreement. (Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
1 Fire features	\$43,100	The City must accept an alternate at the time of contract award or within 60 days of the bid date. If the City accepts an alternate outside of this timeframe, the alternate will be repriced and any decrease or increase in costs associated with the alternate will be reflected in the awarded value.
2 Crane Lake shelter	\$280,576	
3 Tiered stone seat wall (west)	\$55,163	
4 Tiered stone seat wall (east)	\$37,496	
5 Louver fence \$86,230	\$86,230	
6 Extended Maintenance package	\$20,000	
7 Carved stone slab \$25,739	\$25,739	
8 Schweiss garage door	N/A - To be contracted direct with the City	
9 Galvanized coping	\$2,150	

§ A.1.1.6 Unit prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
N/A		

ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ A.2.1 The anticipated date of substantial completion established by the Amendment shall be:

(Check one of the following boxes.)

«The Owner and Construction Manager agree that the date of commencement shall be September 7, 2021 providing a building permit has been issued. The date of substantial completion shall be December 1, 2022 provided the fiber line that currently runs through the project site is relocated by October 5, 2021. »

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Guaranteed Maximum Price and Contract Time set forth in this Amendment are based on the Contract Documents and the following:

§ A.3.1.1 The following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
N/A			

§ A.3.1.2 The following Specifications:
(Either list the Specifications here, or refer to an exhibit attached to this Amendment.)

«See attached Exhibit – GMP Exhibit A»

Section	Title	Date	Pages

§ A.3.1.3 The following Drawings:
(Either list the Drawings here, or refer to an exhibit attached to this Amendment.)

«See attached Exhibit – GMP Exhibit A »

Number	Title	Date

§ A.3.1.4 Allowances, if any, included in the Guaranteed Maximum Price:
(Identify each allowance.)

Item
Contract 0610 contains 300 labor hours, 250 carpenter hours and \$15,000 for allowances.

§ A.3.1.5 Assumptions and clarifications, if any, upon which the Guaranteed Maximum Price is based:
(Identify each assumption and clarification.)

- «1. Performance and Payment Bonds for the Construction Manager’s portion of the work are to be provided by the Construction Manager.
2. Performance and Payment Bonds for the work provided by publicly bid contracts are provided by the Contractors with the City and Construction Manager listed as co-beneficiaries of the bond proceeds.
3. Hazardous material handling or removal costs are excluded from the GMP.
4. All sales tax is excluded from the GMP.
5. SAC/WAC and other water/sewer charges are excluded from the GMP.
6. Special Inspection costs are excluded from the GMP.
7. Commissioning costs are excluded from the GMP.
8. FFE costs that are not specifically included in the Contract documents are excluded from the GMP.
9. Soil corrections beyond what is identified in the Geotechnical Reports are excluded from the GMP. Soil improvements at the Crane Lake site are assumed to be helical piers.

- 10. Costs for relocating the Century Link fiber line at the site are excluded from the GMP.
- 11. Costs for the White Pine Trees that are to be installed in the Forest Lounge area are excluded from the GMP.
- 12. Costs for the flooring, site lumber, and metal bi-fold doors are excluded from the GMP.
- 13. \$20,000 is included in the GMP for surveying.
- 14. DBE/MBE or other workforce goal costs are excluded from the GMP.
- 15. Winter Conditions except as proposed in the Milestone Schedule are excluded from the GMP.
- 16. Builders Risk Insurance costs are excluded from the GMP.
- 17. Natural gas and Electric service provider fees for connections are excluded from the GMP.

»

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

OWNER *(Signature)*

« »« »

(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

« »« »

(Printed name and title)

