



City Council

Regular Meeting & Work Session Agenda

Monday, October 20, 2025
6:00 PM or immediately following
the EDA meeting
(whichever is later)
Elk River City Hall

- Regular meeting in Council Chambers
- Work Session meeting in Upper Town Conference Room immediately following regular meeting

1. CALL MEETING TO ORDER

2. PLEDGE OF ALLEGIANCE

3. CONSIDER AGENDA

4. CONSENT AGENDA

Considered to be routine and noncontroversial and will be approved by one motion. There will be no separate discussion of these items unless there is a request to remove the item from the consent agenda to the regular agenda.

4.1 Check Register

4.2 Agreement 25-29: Construction Manager at Risk with Terra Construction for Fire Station #1

4.3 Agreement 25-30: Construction Manager at Risk with Terra Construction for Northbound/Cannabound.

4.4 Agreement 25-28: Lease of Lion John Weicht Park Basketball Courts for Outdoor Ice with Elk River Youth Hockey.

4.5 Agreement 25-26: Professional Services for Preparation of a Significant Industrial User Agreement

4.6 Agreement 25-27: Use Agreement with Minnesota Youth Ski League for Woodland Trails Shed Space

4.7 Resolution 25-60: Finding of Fact for Denial of Variance (Belde)

5. OPEN FORUM

An opportunity to provide comments and feedback regarding items not on the agenda. Information provided in Open Forum will not be discussed at this meeting; rather, the information will be referred to staff and/or scheduled for discussion at a future meeting.

6. PRESENTATIONS, AWARDS, AND RECOGNITION

6.1 City of Elk River Volunteer of the Month

7. PUBLIC HEARINGS

An opportunity for the public to express their opinions and raise questions pertaining to the agenda item. All comments become part of the official public record. For this reason, all comments must be made at the podium so they can be heard and recorded. Comments may also be provided in writing. There will not be deliberations, discussions, or answers to questions until the hearing is closed. It is important to be courteous and allow each presenter to comment before adding additional testimony.

- 7.1 Variance: Setback for Building Expansion, Spikes & Houles Feed, Seed, & Pet Supply - 906 US Highway 10 NW
- 7.2 Resolution 25-61: Easement Vacation, Ricky and Edward Buttweiler - 12891 187th Circle NW
- 7.3 Resolutions 25-62 and 25-63: Approving Easement Vacation and Final Plat of Prairie Haven
- 7.4 Twin Lakes Road Apartment PUD, Pat Briggs - 17379 Twin Lakes Road NW

8. GENERAL BUSINESS

Items in which the information is presented by city staff or consultants, then deliberation and action occur. General Business items are not opportunities to receive or provide public input. However, the presiding officer may, at its sole discretion, solicit public feedback.

8.1 Northstar Trucking Deadline Extension

8.2 Yard Waste Transfer Site Rules, Fees, and Ordinance 25-14 Amendment

9. MOTION TO ADJOURN REGULAR MEETING

10. WORK SESSION

Work Sessions are less formal meetings to encourage dialog. Official action or votes are not typically taken. At the conclusion of a discussion, a simple consensus provides staff direction for execution of the item. This portion of the agenda is audio recorded but not video recorded or broadcast. Work Sessions are open to the public; however, visitors who wish to provide input must be invited by the presiding officer, assume a seat at the discussion table and provide their full name and address for the official record.

10.1 Community Event Center Commission

11. MOTION TO ADJOURN

12. INFORMATION

The Elk River Vision

A welcoming community with revolutionary and spirited resourcefulness, exceptional service, and community engagement that encourages and inspires prosperity





Request for Action

To
City Council

Item Number
4.1

Meeting Date
October 20, 2025

Prepared By
Amy Stangler, Accounting Clerk

Item Description
Check Register

Reviewed by
Lori Stich
Joe Stremcha
Cal Portner
Tina Allard

Action Requested

Approve, by motion, the check registers for the period ending October 20, 2025.

Background/Discussion

The details for the period ending October 20, 2025, are attached to this request for action.

Total for All Funds	\$920,412.31
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Financial Impact

N/A

Mission/Policy/Goal

N/A

Attachments

1. 4.2 at1 Check Register
2. 4.2 at2 Check Register

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Report Criteria:

Invoice Detail.GL account (3 Characters) = {<>} "920"

Invoice Detail.GL account (3 Characters) = {<>} "910"

Invoice Detail.Created by = {<>} "jdengerud"

Invoice Number	Sequence Number	Description	Type	Invoice Date	Invoice Amount	GL Account Number
AIM ELECTRONICS, INC						
221						
46120	1	START/STOP CONTROLLERS FOR S	Invoice	09/24/2025	415.00	221-4-5400-4219
101						
46141	1	SCOREBOARD REPAIRS	Invoice	10/06/2025	2,500.80	101-4-5110-4404
Total 10377 AIM ELECTRONICS, INC:					2,915.80	
ASPEN MILLS						
101						
362639	1	NAMETAG - BENJAMIN, S.	Invoice	10/08/2025	34.85	101-4-2320-4217
Total 10749 ASPEN MILLS:					34.85	
BRAUN INTERTEC CORP						
603						
B445089	1	SOIL SAMPLES	Invoice	10/03/2025	7,169.00	603-4-9112-4319
604						
B445089	2	SOIL SAMPLES	Invoice	10/03/2025	3,531.00	604-4-9410-4319
Total 12444 BRAUN INTERTEC CORP:					10,700.00	
CHRONICLES IN HEALTH						
101						
2025-501	1	INSTRUCTOR FEE 10/6/25	Invoice	10/07/2025	40.00	101-4-5510-4409
Total 14073 CHRONICLES IN HEALTH:					40.00	
DAVID WILLIAMS						
101						
10082025	1	REIMB SWAT GEAR - D WILLIAMS	Invoice	10/08/2025	62.05	101-4-2130-4217
Total 36402 DAVID WILLIAMS:					62.05	
HUBBARD ELECTRIC						
101						
20251001-7700	1	ELECTRICAL SVCS - OAK KNOLL AT	Invoice	10/01/2025	245.00	101-4-5110-4409
Total 13803 HUBBARD ELECTRIC:					245.00	
KNIFE RIVER MATERIALS						
101						
1141667	1	SUPPLIES - CEMENT	Invoice	10/02/2025	559.88	101-4-5110-4219
101						
1141667	2	SUPPLIES - CEMENT	Invoice	10/02/2025	559.87	101-4-3120-4219
101						
1142677	1	SUPPLIES - CEMENT	Invoice	10/07/2025	986.00	101-4-5110-4219
101						
1142677	2	SUPPLIES - CEMENT	Invoice	10/07/2025	986.00	101-4-3120-4219

Invoice Number	Sequence Number	Description	Type	Invoice Date	Invoice Amount	GL Account Number
Total 23180 KNIFE RIVER MATERIALS:					3,091.75	
MARINE DOCK & LIFT						
101						
FALL REMOVAL	1	FALL DOCK REMOVAL-RIVERS EDG	Invoice	10/07/2025	2,400.00	101-4-5110-4409
Total 14471 MARINE DOCK & LIFT:					2,400.00	
MINNESOTA EQUIPMENT						
602						
P60923	1	RADIATOR FOR JET TRUCK	Invoice	10/06/2025	5,970.08	602-4-9020-4219
Total 12620 MINNESOTA EQUIPMENT:					5,970.08	
TWIN CITY HARDWARE						
101						
PSI2356185	1	DOOR CLOSER	Invoice	09/24/2025	766.96	101-4-2310-4219
Total 34928 TWIN CITY HARDWARE:					766.96	
A - Z RESTAURANT EQUIPMENT						
221						
129314	1	CONCESSIONS/CATERING SUPPLIE	Invoice	10/10/2025	614.28	221-4-5430-4219
221						
129314	2	CONCESSIONS/CATERING SUPPLIE	Invoice	10/10/2025	17.84-	221-4-5430-4219
Total 10160 A - Z RESTAURANT EQUIPMENT:					596.44	
ADVANCED ENGINEERING AND						
406						
106165	1	NE SUB AREA STUDY	Invoice	10/07/2025	7,460.00	406-4-8030-4319
Total 14907 ADVANCED ENGINEERING AND:					7,460.00	
AMAZON CAPITAL SERVICES						
101						
16C3-91DD-3V6W	1	SUPPLIES-SIGNATURE PAD	Invoice	10/01/2025	173.25	101-4-2410-4201
101						
19HH-WTQJ-J7FD	1	SUPPLIES	Invoice	10/08/2025	69.49	101-4-5110-4219
101						
19V3-Y6R9-3YFK	1	FARMERS MARKET STORAGE - REF	Invoice	10/01/2025	145.99-	101-4-5230-4219
101						
1C6X-TVRM-DGRK	1	PARK SHELTER RESERVATION BOX	Invoice	09/30/2025	146.99	101-4-5210-4219
602						
1D61-YYJ3-P1GJ	1	SUPPLIES	Invoice	10/03/2025	186.94	602-4-9020-4219
602						
1DK6-DC7L-NRT7	1	SUPPLIES	Invoice	10/03/2025	24.10	602-4-9020-4219
101						
1DWH-9XKL-F66L	1	LOCKERS	Invoice	09/29/2025	247.99	101-4-2190-4219
101						
1FDP-TJTH-77PH	1	DOG PARK SUPPLIES	Invoice	10/09/2025	101.59	101-4-5220-4219
101						
1FHF-T9QK-JFGQ	1	SUPPLIES	Invoice	10/08/2025	69.49	101-4-5110-4219
101						
1GKD-FRXT-XX3F	1	FARMERS MARKET SUPPLIES	Invoice	10/04/2025	166.74	101-4-5230-4219

Invoice Number	Sequence Number	Description	Type	Invoice Date	Invoice Amount	GL Account Number
221						
1H3F-P7DF-KMVG	1	COOKIE SLEEVES- RESALE	Invoice	10/10/2025	5.59	221-4-5430-4259
221						
1HT3-NNVK-9P4L	1	SUPPLIES	Invoice	10/01/2025	29.97	221-4-5430-4219
411						
1JMP-GV4C-6YHN	1	SUPPLIES - SAMSUNG TABLET	Invoice	10/02/2025	349.99	411-4-1350-4219
101						
1LDD-36DQ-R4LF	1	EVIDENCE ROOM SUPPLIES	Invoice	10/10/2025	15.88	101-4-2130-4219
101						
1NL4-X6NM-FNQL	1	SUPPLIES - ETHERNET CABLES/PO	Invoice	10/06/2025	117.11	101-4-1350-4219
101						
1NTG-QQRK-7KCV	1	SUPPLIES - HDMI ADAPTERS	Invoice	10/02/2025	64.58	101-4-1350-4219
411						
1TLV-FJ9C-TH3F	1	SAMSUNG TABLET - RETURN	Invoice	10/03/2025	338.00-	411-4-1350-4219
101						
1TWC-PC3G-HTRX	1	FARMERS MARKET SUPPLIES	Invoice	10/07/2025	138.58	101-4-5230-4219
101						
1VFR-J1WR-XNKR	1	EVIDENCE ROOM SUPPLIES	Invoice	10/09/2025	39.60	101-4-2130-4219
411						
1X9W-JHX1-RQDR	1	SAMSUNG TABLET	Invoice	10/03/2025	338.00	411-4-1350-4219
602						
1YHH-PTK7-6YRP	1	RETURN CREDIT - MONITOR	Invoice	10/05/2025	61.99-	602-4-9020-4219
602						
1YNT-V6QP-C3CY	1	SUPPLIES - MONITOR	Invoice	09/30/2025	61.99	602-4-9020-4219
101						
1YTP-1YVQ-3T6C	1	BUILDING SUPPLIES	Invoice	09/25/2025	67.53	101-4-2190-4219
Total 13706 AMAZON CAPITAL SERVICES:					1,869.42	
AMKO BOND SERVICES LLC						
607						
2025010	1	SANITARY AND STORM WATER RAT	Invoice	10/07/2025	5,000.00	607-4-9310-4409
602						
2025010	2	SANITARY AND STORM WATER RAT	Invoice	10/07/2025	5,000.00	602-4-9020-4319
Total 52497 AMKO BOND SERVICES LLC:					10,000.00	
ARTISAN BEER COMPANY						
603						
3801446	1	BEER	Invoice	10/01/2025	275.40	603-4-9111-4252
603						
3801447	1	BEER	Invoice	10/01/2025	308.55	603-4-9151-4252
603						
3802790	1	BEER	Invoice	10/08/2025	36.90	603-4-9111-4252
603						
3802791	1	BEER	Invoice	10/08/2025	236.30	603-4-9151-4252
603						
433246	1	BEER CREDIT	Invoice	09/24/2025	14.40-	603-4-9151-4252
603						
433597	1	BEER CREDIT	Invoice	09/26/2025	6.20-	603-4-9111-4252
603						
433999	1	THC PRODUCTS CREDIT	Invoice	10/02/2025	3.03-	603-4-9151-4256
603						
433999	2	BEER CREDIT	Invoice	10/02/2025	54.60-	603-4-9151-4252
Total 12167 ARTISAN BEER COMPANY:					778.92	

Invoice Number	Sequence Number	Description	Type	Invoice Date	Invoice Amount	GL Account Number
ASSA ABLOY						
603						
SEI 1911081	1	MAIN ENTRY DOOR REPAIRS	Invoice	10/07/2025	388.12	603-4-9112-4404
Total 14628 ASSA ABLOY:					388.12	
ASTLEFORD INTERNATIONAL						
101						
1P138342	1	SHOP STOCK	Invoice	10/02/2025	367.96	101-4-3150-4219
Total 10762 ASTLEFORD INTERNATIONAL:					367.96	
ATT LLC						
603						
S29431	1	UNIFORMS - TALBOT	Invoice	10/01/2025	31.30	603-4-9112-4217
603						
S29431	2	UNIFORMS - KLINKNER	Invoice	10/01/2025	65.00	603-4-9112-4217
603						
S29431	3	UNIFORMS - KNOPIK	Invoice	10/01/2025	182.30	603-4-9112-4217
603						
S29465	1	UNIFORMS - HOERNEMANN	Invoice	10/06/2025	23.00	603-4-9112-4217
Total 15332 ATT LLC:					301.60	
B & B HOFFMAN SOD FARMS						
101						
75909	1	SUPPLIES - SOD	Invoice	09/23/2025	194.31	101-4-5110-4219
Total 10855 B & B HOFFMAN SOD FARMS:					194.31	
BECKER ARENA PRODUCTS INC						
221						
617430	1	REPLACEMENT PLEXI, LEXAN FOR	Invoice	10/02/2025	1,632.66	221-4-5400-4219
Total 11700 BECKER ARENA PRODUCTS INC:					1,632.66	
BELLBOY CORPORATION						
603						
209212200	1	LIQUOR	Invoice	10/09/2025	1,368.75	603-4-9111-4251
603						
209212200	2	FREIGHT	Invoice	10/09/2025	19.26	603-4-9111-4332
Total 11800 BELLBOY CORPORATION:					1,388.01	
BENEFIT EXTRAS, INC.						
101						
1411128	1	COBRA ADMINISTRATION	Invoice	10/07/2025	155.00	101-4-1220-4319
Total 52492 BENEFIT EXTRAS, INC.:					155.00	
BERNICK'S						
603						
10408909	1	POP	Invoice	10/01/2025	80.34	603-4-9111-4255
603						
10408910	1	THC PRODUCTS	Invoice	10/01/2025	225.60	603-4-9111-4256
603						
10408911	1	BEER	Invoice	10/01/2025	2,033.25	603-4-9111-4252

Invoice Number	Sequence Number	Description	Type	Invoice Date	Invoice Amount	GL Account Number
603						
10408912	1	BEER CREDIT	Invoice	10/01/2025	117.40-	603-4-9111-4252
603						
10408913	1	POP/MISC	Invoice	10/01/2025	88.96	603-4-9151-4255
603						
10408914	1	THC PRODUCTS	Invoice	10/01/2025	61.00	603-4-9151-4256
603						
10408915	1	BEER	Invoice	10/01/2025	1,057.30	603-4-9151-4252
603						
10408916	1	BEER CREDIT	Invoice	10/01/2025	79.20-	603-4-9151-4252
603						
10412080	1	POP	Invoice	10/08/2025	159.66	603-4-9111-4255
603						
10412081	1	THC PRODUCTS	Invoice	10/08/2025	79.80	603-4-9111-4256
603						
10412082	1	BEER	Invoice	10/08/2025	1,216.60	603-4-9111-4252
603						
10412083	1	BEER CREDIT	Invoice	10/08/2025	35.40-	603-4-9111-4252
603						
10412084	1	POP/MISC	Invoice	10/08/2025	123.54	603-4-9151-4255
603						
10412085	1	BEER	Invoice	10/08/2025	596.45	603-4-9151-4252
603						
10412086	1	BEER CREDIT	Invoice	10/08/2025	84.00-	603-4-9151-4252
Total 11950 BERNICK'S:					5,406.50	
BLACKHAWK PEST CONTROL, LLC						
101						
51755	1	QUARTERLY SERVICE - PT COMPLE	Invoice	10/07/2025	75.00	101-4-5110-4401
Total 14717 BLACKHAWK PEST CONTROL, LLC:					75.00	
BLAINE LOCK & SAFE, INC						
101						
33898	1	REPAIR DOOR LOCK	Invoice	09/26/2025	180.00	101-4-2190-4401
101						
33911	1	DOOR REPAIRS - ORONO PARK	Invoice	10/06/2025	414.80	101-4-5110-4401
Total 12256 BLAINE LOCK & SAFE, INC:					594.80	
BREAKTHRU BEVERAGE MINNESOTA						
603						
123600750	1	LIQUOR	Invoice	10/02/2025	2,983.20	603-4-9151-4251
603						
123600750	2	FREIGHT	Invoice	10/02/2025	24.65	603-4-9151-4332
603						
123600751	1	POP/MISC	Invoice	10/02/2025	53.55	603-4-9151-4255
603						
123600751	2	FREIGHT	Invoice	10/02/2025	1.45	603-4-9151-4332
603						
413991406	1	LIQUOR CREDIT	Invoice	09/23/2025	27.00-	603-4-9151-4251
603						
413991407	1	BEER	Invoice	09/23/2025	13.50-	603-4-9151-4252
603						
413991407	2	FREIGHT CREDIT	Invoice	09/23/2025	.12-	603-4-9151-4332

Invoice Number	Sequence Number	Description	Type	Invoice Date	Invoice Amount	GL Account Number
603						
413991408	1	LIQUOR CREDIT	Invoice	09/23/2025	11.25-	603-4-9151-4251
603						
413991408	2	FREIGHT CREDIT	Invoice	09/23/2025	.12-	603-4-9151-4332
603						
413991409	1	POP/MISC CREDIT	Invoice	09/23/2025	3.33-	603-4-9151-4255
603						
413991409	2	FREIGHT CREDIT	Invoice	09/23/2025	.24-	603-4-9151-4332
603						
414014406	1	POP/MISC CREDIT	Invoice	09/30/2025	48.18-	603-4-9151-4255
603						
414014406	2	FREIGHT CREDIT	Invoice	09/30/2025	1.45-	603-4-9151-4332
Total 8002 BREAKTHRU BEVERAGE MINNESOTA:					2,957.66	
603						
123600413	1	LIQUOR	Invoice	10/02/2025	75.00	603-4-9111-4251
603						
123600823	1	LIQUOR	Invoice	10/02/2025	1,935.75	603-4-9111-4251
603						
123600823	2	FREIGHT	Invoice	10/02/2025	34.80	603-4-9111-4332
603						
123600824	1	POP/MISC	Invoice	10/02/2025	60.00	603-4-9111-4255
603						
123600824	2	FREIGHT	Invoice	10/02/2025	1.45	603-4-9111-4332
603						
123600825	1	WINE	Invoice	10/02/2025	536.00	603-4-9111-4253
603						
123600825	2	FREIGHT	Invoice	10/02/2025	5.80	603-4-9111-4332
603						
123707169	1	WINE	Invoice	10/09/2025	116.00	603-4-9111-4253
603						
123707169	2	FREIGHT	Invoice	10/09/2025	1.45	603-4-9111-4332
603						
123709160	1	LIQUOR	Invoice	10/09/2025	1,183.70	603-4-9111-4251
603						
123709160	2	FREIGHT	Invoice	10/09/2025	14.50	603-4-9111-4332
Total 12893 BREAKTHRU BEVERAGE MINNESOTA:					3,964.45	
BUREAU OF CRIMINAL APPREH						
101						
892111	1	CJDN ACCESS FEE	Invoice	09/30/2025	11,400.00	101-4-2110-4404
Total 13102 BUREAU OF CRIMINAL APPREH:					11,400.00	
C & L DISTRIBUTING CO						
603						
1839001463	1	BEER CREDIT	Invoice	10/01/2025	387.31-	603-4-9151-4252
603						
1839001465	1	BEER CREDIT	Invoice	10/01/2025	30.00-	603-4-9151-4252
603						
1839001468	1	BEER CREDIT	Invoice	10/08/2025	196.00-	603-4-9151-4252
603						
2182264	1	LIQUOR	Invoice	10/01/2025	92.80	603-4-9151-4251
603						
2182266	1	BEER	Invoice	10/01/2025	15,139.10	603-4-9151-4252

Invoice Number	Sequence Number	Description	Type	Invoice Date	Invoice Amount	GL Account Number
603						
2186023	1	LIQUOR	Invoice	10/08/2025	771.75	603-4-9151-4251
603						
2186026	1	BEER	Invoice	10/08/2025	4,602.10	603-4-9151-4252
Total 8003 C & L DISTRIBUTING CO:					19,992.44	
603						
1839001464	1	BEER CREDIT	Invoice	10/01/2025	165.10-	603-4-9111-4252
603						
2181050	1	LIQUOR	Invoice	09/29/2025	47.50	603-4-9111-4251
603						
2181051	1	BEER	Invoice	09/29/2025	3,821.65	603-4-9111-4252
603						
2181823	1	LIQUOR	Invoice	09/29/2025	45.00	603-4-9111-4251
603						
2183158	1	BEER	Invoice	10/01/2025	10,832.10	603-4-9111-4252
603						
2183665	1	THC PRODUCTS	Invoice	10/01/2025	318.00	603-4-9111-4256
603						
2183676	1	LIQUOR	Invoice	10/01/2025	915.27	603-4-9111-4251
603						
2183676	2	BEER	Invoice	10/01/2025	228.40	603-4-9111-4252
603						
2185290	1	THC PRODUCTS CREDIT	Invoice	10/06/2025	64.00-	603-4-9111-4256
603						
2185291	1	BEER	Invoice	10/06/2025	4,712.30	603-4-9111-4252
603						
2187561	1	THC PRODUCTS	Invoice	10/08/2025	320.00	603-4-9111-4256
603						
2187562	1	BEER CREDIT	Invoice	10/08/2025	19.60-	603-4-9111-4252
603						
2187563	1	LIQUOR	Invoice	10/08/2025	140.30	603-4-9111-4251
603						
2187564	1	POP/MISC	Invoice	10/08/2025	63.00	603-4-9111-4255
603						
2187565	1	BEER	Invoice	10/08/2025	1,101.20	603-4-9111-4252
603						
2187566	1	BEER	Invoice	10/08/2025	5,616.55	603-4-9111-4252
603						
2616000887	1	BEER CREDIT	Invoice	09/29/2025	10.60-	603-4-9111-4252
Total 13375 C & L DISTRIBUTING CO:					27,901.97	
CENTERPOINT ENERGY						
602						
11504615-3 SEP 25	1	NATURAL GAS - WW	Invoice	10/09/2025	30.40	602-4-9050-4389
101						
11809755-9 SEP 25	1	NATURAL GAS - FS #3	Invoice	10/08/2025	408.40	101-4-2310-4389
211						
6781052-3 SEP 25	1	NATURAL GAS - LIBRARY	Invoice	10/09/2025	101.16	211-4-5600-4389
602						
7628405-8 SEP 25	1	NATURAL GAS	Invoice	10/08/2025	166.73	602-4-9050-4389
602						
7836556-6 SEP 25	1	NATURAL GAS	Invoice	10/08/2025	35.37	602-4-9050-4389
101						
9497572-9 SEP 25	1	NATURAL GAS	Invoice	10/08/2025	408.96	101-4-3120-4389

Invoice Number	Sequence Number	Description	Type	Invoice Date	Invoice Amount	GL Account Number
Total 13845 CENTERPOINT ENERGY:					1,151.02	
CENTRAL HYDRAULICS						
101						
656707	1	SHOP SUPPLIES	Invoice	09/29/2025	405.00	101-4-3150-4219
Total 11058 CENTRAL HYDRAULICS:					405.00	
CINTAS CORPORATION LOC 470						
602						
4245447730	1	UNIFORM RENTAL/CLEANING	Invoice	10/03/2025	164.33	602-4-9020-4417
603						
4245448017	1	MATS, TOWELS, SCRAPERS, MOPS	Invoice	10/03/2025	52.31	603-4-9112-4404
603						
4245459600	1	MATS, TOWELS, SCRAPER, MOPS	Invoice	10/03/2025	47.02	603-4-9152-4404
602						
4246189908	1	UNIFORM RENTAL/CLEANING	Invoice	10/10/2025	153.88	602-4-9020-4417
603						
4246190191	1	MATS, TOWELS, SCRAPERS, MOPS	Invoice	10/10/2025	52.31	603-4-9112-4404
603						
4246196208	1	MATS, TOWELS, SCRAPER, MOPS	Invoice	10/10/2025	47.02	603-4-9152-4404
Total 14080 CINTAS CORPORATION LOC 470:					516.87	
CNH ARCHITECTS LTD						
292						
3631	1	SEPTEMBER SERVICE - STATION 1	Invoice	09/30/2025	196,807.33	292-4-2310-4319
Total 52295 CNH ARCHITECTS LTD:					196,807.33	
CORNERSTONE AUTO						
101						
15519741	1	PARTS #603	Invoice	10/07/2025	78.29	101-4-2120-4221
Total 11047 CORNERSTONE AUTO:					78.29	
CRYSTAL SPRINGS ICE						
603						
3-501663	1	ICE	Invoice	09/30/2025	77.44	603-4-9151-4255
603						
3-501663	2	FREIGHT	Invoice	09/30/2025	4.00	603-4-9151-4332
603						
3-501716	1	ICE	Invoice	10/07/2025	241.76	603-4-9111-4255
603						
3-501716	2	FREIGHT	Invoice	10/07/2025	4.00	603-4-9111-4332
603						
3-501721	1	ICE	Invoice	10/07/2025	185.84	603-4-9151-4255
603						
3-501721	2	FREIGHT	Invoice	10/07/2025	4.00	603-4-9151-4332
Total 52407 CRYSTAL SPRINGS ICE:					517.04	
DACOTAH PAPER CO						
211						
29803	1	CLEANING SUPPLIES	Invoice	09/30/2025	514.14	211-4-5600-4219

Invoice Number	Sequence Number	Description	Type	Invoice Date	Invoice Amount	GL Account Number
101						
29805	1	CLEANING SUPPLIES	Invoice	09/30/2025	76.38	101-4-2310-4219
101						
29806	1	CLEANING SUPPLIES	Invoice	09/30/2025	142.64	101-4-5110-4219
221						
30894	1	SUPPLIES - FOOD TRAYS/SILVERWA	Invoice	10/02/2025	772.96	221-4-5430-4219
101						
30897	1	PROGRAM SUPPLIES - CUPS	Invoice	10/02/2025	66.64	101-4-5510-4219
101						
32992	1	CLEANING SUPPLIES-CAN LINERS	Invoice	10/07/2025	72.49	101-4-1600-4219
211						
33258	1	CLEANING SUPPLIES	Invoice	10/07/2025	119.89	211-4-5600-4219
101						
33259	1	CLEANING SUPPLIES	Invoice	10/07/2025	59.52	101-4-3120-4219
101						
33260	1	CLEANING SUPPLIES-ROLLER BRUS	Invoice	10/07/2025	39.75	101-4-1600-4219
221						
34422	1	TOILET TISSUE/HAND SOAP	Invoice	10/09/2025	435.60	221-4-5400-4219
Total 15887 DACOTAH PAPER CO:					2,300.01	
DAHLHEIMER BEVERAGE, LLC						
603						
2030-00031	1	BEER CREDIT	Invoice	10/06/2025	30.00-	603-4-9151-4252
603						
2585630	1	THC PRODUCTS	Invoice	09/29/2025	74.00	603-4-9151-4256
603						
2585631	1	BEER	Invoice	09/29/2025	9,447.90	603-4-9151-4252
603						
2585685	1	BEER	Invoice	09/29/2025	56.50	603-4-9151-4252
603						
2588908	1	BEER	Invoice	10/02/2025	108.00	603-4-9151-4252
603						
2588909	1	BEER	Invoice	10/02/2025	1,362.55	603-4-9151-4252
603						
2591856	1	BEER	Invoice	10/06/2025	33.80	603-4-9151-4252
603						
2591857	1	THC PRODUCTS	Invoice	10/06/2025	134.00	603-4-9151-4256
603						
2591858	1	BEER	Invoice	10/06/2025	3,796.19	603-4-9151-4252
603						
2591899	1	BEER CREDIT	Invoice	10/03/2025	50.00-	603-4-9151-4252
603						
2592140	1	BEER CREDIT	Invoice	10/03/2025	296.60-	603-4-9151-4252
603						
2593143	1	BEER	Invoice	10/09/2025	209.00	603-4-9151-4252
603						
2595639	1	BEER	Invoice	10/09/2025	48.00	603-4-9151-4252
603						
2595640	1	BEER	Invoice	10/09/2025	1,355.80	603-4-9151-4252
603						
2595697	1	BEER CREDIT	Invoice	10/08/2025	82.50-	603-4-9151-4252
603						
2596011	1	BEER CREDIT	Invoice	10/08/2025	8.40-	603-4-9151-4252
Total 8005 DAHLHEIMER BEVERAGE, LLC:					16,158.24	

Invoice Number	Sequence Number	Description	Type	Invoice Date	Invoice Amount	GL Account Number
221						
2595961	1	BEER	Invoice	10/09/2025	374.75	221-4-5430-4252
221						
2595961	2	LIQUOR	Invoice	10/09/2025	264.00	221-4-5430-4251
Total 15366 DAHLHEIMER BEVERAGE, LLC:					638.75	
603						
2585652	1	THC PRODUCTS	Invoice	09/29/2025	259.00	603-4-9111-4256
603						
2585653	1	BEER	Invoice	09/29/2025	21,047.55	603-4-9111-4252
603						
2588578	1	BEER	Invoice	10/02/2025	3,541.55	603-4-9111-4252
603						
2588844	1	BEER	Invoice	10/02/2025	515.20	603-4-9111-4252
603						
2588844	2	POP/MISC	Invoice	10/02/2025	19.00	603-4-9111-4255
603						
2591884	1	THC PRODUCTS	Invoice	10/06/2025	404.00	603-4-9111-4256
603						
2591894	1	BEER	Invoice	10/06/2025	10,204.50	603-4-9111-4252
603						
2593134	1	BEER	Invoice	10/06/2025	209.00	603-4-9111-4252
603						
2595674	1	THC PRODUCTS	Invoice	10/09/2025	382.00	603-4-9111-4256
603						
2595675	1	BEER	Invoice	10/09/2025	2,941.30	603-4-9111-4252
603						
2595698	1	BEER CREDIT	Invoice	10/08/2025	82.50-	603-4-9111-4252
Total 15900 DAHLHEIMER BEVERAGE, LLC:					39,440.60	
DANIELLE FAULHABER						
101						
97	1	TRANSCRIPTION SERVICES - AUG-S	Invoice	10/01/2025	450.54	101-4-2150-4409
Total 13642 DANIELLE FAULHABER:					450.54	
DOLPHIN CAR WASH INC						
101						
1243-R-0055	1	VEHICLE WASHING	Invoice	10/08/2025	150.00	101-4-2320-4404
Total 16625 DOLPHIN CAR WASH INC:					150.00	
E C M PUBLISHERS INC						
604						
1068557	1	BUSINESS CARDS-JACKSON	Invoice	10/03/2025	59.00	604-4-9410-4219
Total 17000 E C M PUBLISHERS INC:					59.00	
ECKBERG LAMMERS, P. C.						
101						
48776 LMB	1	LEGAL SERVICES - LIDA BANNINK A	Invoice	09/30/2025	55.00	101-4-2110-4319
Total 52446 ECKBERG LAMMERS, P. C.:					55.00	

Invoice Number	Sequence Number	Description	Type	Invoice Date	Invoice Amount	GL Account Number
ELK RIVER MUNICIPAL UTILITIES						
101						
10-01-25 ERMU	1	WATER/ELECTRIC	Invoice	10/01/2025	4,550.93	101-4-5110-4389
602						
10-01-25 ERMU	2	ELECTRIC	Invoice	10/01/2025	1,565.80	602-4-9050-4389
101						
10-01-25 ERMU	3	ELECTRIC	Invoice	10/01/2025	138.09	101-4-2330-4389
101						
10-01-25 ERMU	4	ELECTRIC	Invoice	10/01/2025	64.15	101-4-2190-4389
101						
10-01-25 ERMU	5	ELECTRIC	Invoice	10/01/2025	33.35	101-4-5110-4389
Total 17700 ELK RIVER MUNICIPAL UTILITIES:					6,352.32	
291						
2469	1	SAFETY TRAINING Q4 2025 / SPLIT	Invoice	10/01/2025	6,259.50	291-4-2340-4331
296						
2481	1	ELECTRICAL SERVICES - FTCENTER	Invoice	10/10/2025	2,267.30	296-4-7000-4409
607						
2484	1	BILLING SVCS - SEP 25	Invoice	09/30/2025	871.86	607-4-9310-4319
605						
2484	2	BILLING SVCS - SEP 25	Invoice	09/30/2025	2,594.70	605-4-9210-4319
602						
2484	3	BILLING SVCS - SEP 25	Invoice	09/30/2025	596.37	602-4-9010-4319
Total 17701 ELK RIVER MUNICIPAL UTILITIES:					12,589.73	
ELK RIVER WINLECTRIC						
101						
420759 01	1	SUPPLIES	Invoice	10/08/2025	198.88	101-4-1600-4219
Total 17890 ELK RIVER WINLECTRIC:					198.88	
FASTENAL COMPANY						
101						
MNELK144017	1	SUPPLIES - VENDING	Invoice	09/30/2025	83.33	101-4-5110-4219
101						
MNELK144017	2	SUPPLIES - VENDING	Invoice	09/30/2025	214.82	101-4-3120-4219
101						
MNELK144063	1	FLOOR DRY	Invoice	09/30/2025	677.04	101-4-2320-4219
101						
MNELK144141	1	SUPPLIES - BATTERIES	Invoice	10/10/2025	35.28	101-4-2120-4219
101						
MNELK144221	1	SUPPLIES - VENDING	Invoice	10/10/2025	56.32	101-4-3120-4219
101						
MNELK144221	2	SUPPLIES - VENDING	Invoice	10/10/2025	25.07	101-4-5110-4219
101						
MNELK144221	3	SUPPLIES - VENDING	Invoice	10/10/2025	8.40	101-4-1600-4219
Total 18453 FASTENAL COMPANY:					1,100.26	
FES, INC.						
101						
21671	1	LION SMOKE FLUID	Invoice	09/30/2025	460.00	101-4-2320-4331
Total 15222 FES, INC.:					460.00	

Invoice Number	Sequence Number	Description	Type	Invoice Date	Invoice Amount	GL Account Number
FIRST HOSPITAL LABORATORIES						
101 FL00687861	1	RANDOM DRUG SCREEN	Invoice	10/03/2025	244.64	101-4-1220-4319
Total 18890 FIRST HOSPITAL LABORATORIES:					244.64	
FUTURE PLUS BATTERIES						
101 P86131889	1	12V LEAD BATTERY	Invoice	10/08/2025	164.95	101-4-1600-4219
Total 11835 FUTURE PLUS BATTERIES:					164.95	
GERTENS						
101 276047/11	1	DT FALL DISPLAY	Invoice	09/29/2025	764.71	101-4-5220-4219
101 6951/11	1	CREDIT DOWNTOWN FALL DECOR	Invoice	09/29/2025	173.96-	101-4-5220-4219
Total 13257 GERTENS:					590.75	
GESTALT ENGINEERING LLC						
228 1311	1	LANDFILL ASSIST - SEP	Invoice	10/01/2025	630.00	228-4-7000-4319
Total 14099 GESTALT ENGINEERING LLC:					630.00	
GOPHER STATE ONE-CALL INC						
602 5090375	1	LOCATION CALLS	Invoice	09/30/2025	486.00	602-4-9020-4404
Total 20150 GOPHER STATE ONE-CALL INC:					486.00	
GRAINGER						
101 9669228299	1	SUPPLIES - AIR FILTERS	Invoice	10/09/2025	282.60	101-4-2190-4219
603 9669573371	1	AIR FILTERS	Invoice	10/09/2025	95.52	603-4-9112-4404
603 9669573371	2	FREIGHT	Invoice	10/09/2025	30.00	603-4-9111-4332
101 9669732977	1	SUPPLIES - AIR FILTERS	Invoice	10/09/2025	177.30	101-4-3120-4219
101 9669733009	1	SUPPLIES - AIR FILTERS	Invoice	10/09/2025	464.40	101-4-1600-4219
211 9669733033	1	SUPPLIES - AIR FILTERS	Invoice	10/09/2025	491.22	211-4-5600-4219
Total 20300 GRAINGER:					1,541.04	
GRANITE CITY JOBBING CO						
603 485363	1	POP/MISC	Invoice	10/03/2025	862.16	603-4-9111-4255
603 485363	2	FREIGHT	Invoice	10/03/2025	5.00	603-4-9111-4332
603 485363	3	SUPPLIES	Invoice	10/03/2025	32.57	603-4-9112-4219
603 485364	1	FREIGHT	Invoice	10/03/2025	5.00	603-4-9151-4332

Invoice Number	Sequence Number	Description	Type	Invoice Date	Invoice Amount	GL Account Number
603						
485364	2	POP/MISC	Invoice	10/03/2025	811.90	603-4-9151-4255
603						
485364	3	SUPPLIES	Invoice	10/03/2025	52.41	603-4-9152-4219
603						
486719	1	POP/MISC	Invoice	10/10/2025	860.38	603-4-9111-4255
603						
486719	2	FREIGHT	Invoice	10/10/2025	5.00	603-4-9111-4332
603						
486719	3	SUPPLIES	Invoice	10/10/2025	65.14	603-4-9112-4219
603						
486720	1	POP/MISC	Invoice	10/10/2025	572.69	603-4-9151-4255
603						
486720	2	FREIGHT	Invoice	10/10/2025	5.00	603-4-9151-4332
Total 10654 GRANITE CITY JOBBING CO:					3,277.25	
GRIMCO, INC						
101						
34626616-02	1	SIGN SUPPLIES-BANNER	Invoice	10/02/2025	93.54	101-4-1120-4201
101						
34661520-01	1	SIGN MATERIALS	Invoice	10/06/2025	117.04	101-4-1120-4226
Total 14770 GRIMCO, INC:					210.58	
HAWKINS & BAUMGARTNER, P.A.						
101						
10-6-25	1	SEPT PROSECUTION SVCS	Invoice	10/06/2025	18,181.98	101-4-1400-4304
Total 21048 HAWKINS & BAUMGARTNER, P.A.:					18,181.98	
HEARTLAND TIRE, INC.						
101						
9049383	1	PARTS - TIRES	Invoice	10/09/2025	1,656.00	101-4-2120-4221
Total 14883 HEARTLAND TIRE, INC.:					1,656.00	
IACP						
101						
424542	1	IACPNET DEPARTMENT SUBSCRIPTI	Invoice	08/15/2025	875.00	101-4-2110-4433
Total 21796 IACP:					875.00	
JANE HELGESTAD						
101						
2018	1	ART CLASS 10/10/25	Invoice	10/10/2025	240.00	101-4-5510-4409
Total 52423 JANE HELGESTAD:					240.00	
JOHNSON BROS LIQUOR						
603						
152889	1	LIQUOR CREDIT	Invoice	10/03/2025	107.58-	603-4-9151-4251
603						
152889	2	FREIGHT CREDIT	Invoice	10/03/2025	1.74-	603-4-9151-4332
603						
2892195	1	LIQUOR	Invoice	10/01/2025	9,769.65	603-4-9111-4251

Invoice Number	Sequence Number	Description	Type	Invoice Date	Invoice Amount	GL Account Number
603						
2892195	2	FREIGHT	Invoice	10/01/2025	220.40	603-4-9111-4332
603						
2892196	1	WINE	Invoice	10/01/2025	3,561.18	603-4-9111-4253
603						
2892196	2	FREIGHT	Invoice	10/01/2025	74.82	603-4-9111-4332
603						
2892197	1	POP/MISC	Invoice	10/01/2025	418.00	603-4-9111-4255
603						
2892197	2	FREIGHT	Invoice	10/01/2025	20.88	603-4-9111-4332
603						
2892198	1	LIQUOR	Invoice	10/01/2025	151.55	603-4-9151-4251
603						
2892198	2	FREIGHT	Invoice	10/01/2025	2.03	603-4-9151-4332
603						
2892199	1	LIQUOR	Invoice	10/01/2025	3,497.90	603-4-9111-4251
603						
2892199	2	FREIGHT	Invoice	10/01/2025	43.50	603-4-9111-4332
603						
2892200	1	LIQUOR	Invoice	10/01/2025	5,367.05	603-4-9151-4251
603						
2892200	2	FREIGHT	Invoice	10/01/2025	59.16	603-4-9151-4332
603						
2892201	1	WINE	Invoice	10/01/2025	1,371.90	603-4-9151-4253
603						
2892201	2	FREIGHT	Invoice	10/01/2025	22.62	603-4-9151-4332
603						
2892202	1	LIQUOR	Invoice	10/01/2025	1,938.93	603-4-9151-4251
603						
2892202	2	FREIGHT	Invoice	10/01/2025	26.10	603-4-9151-4332
603						
2896690	1	LIQUOR	Invoice	10/08/2025	4,377.00	603-4-9111-4251
603						
2896690	2	FREIGHT	Invoice	10/08/2025	59.16	603-4-9111-4332
603						
2896691	1	LIQUOR	Invoice	10/08/2025	6,062.46	603-4-9111-4251
603						
2896691	2	FREIGHT	Invoice	10/08/2025	87.12	603-4-9111-4332
603						
2896692	1	WINE	Invoice	10/08/2025	1,532.00	603-4-9111-4253
603						
2896692	2	FREIGHT	Invoice	10/08/2025	48.72	603-4-9111-4332
603						
2896694	1	FREIGHT	Invoice	10/08/2025	3.48	603-4-9151-4332
603						
2896695	1	WINE	Invoice	10/08/2025	80.00	603-4-9151-4253
603						
2896695	2	FREIGHT	Invoice	10/08/2025	1.74	603-4-9151-4332
603						
2896696	1	LIQUOR	Invoice	10/08/2025	1,796.18	603-4-9151-4251
603						
2896696	2	FREIGHT	Invoice	10/08/2025	35.21	603-4-9151-4332
603						
2896697	1	FREIGHT	Invoice	10/08/2025	6.96	603-4-9151-4332
603						
2896697	2	WINE	Invoice	10/08/2025	160.00	603-4-9151-4253

Invoice Number	Sequence Number	Description	Type	Invoice Date	Invoice Amount	GL Account Number
603						
2896698	1	LIQUOR	Invoice	10/08/2025	1,567.00	603-4-9151-4251
603						
2896698	2	FREIGHT	Invoice	10/08/2025	17.40	603-4-9151-4332
Total 22775 JOHNSON BROS LIQUOR:					42,270.78	
JUNKYARD BREWING COMPANY						
603						
8458	1	BEER	Invoice	09/30/2025	201.00	603-4-9151-4252
603						
8458	2	THC PRODUCTS	Invoice	09/30/2025	168.00	603-4-9151-4256
Total 14086 JUNKYARD BREWING COMPANY:					369.00	
KRISS PREMIUM PRODUCTS, INC						
221						
197019	1	WATER TREATMENT & TECH SVCS	Invoice	10/03/2025	281.50	221-4-5400-4219
Total 23297 KRISS PREMIUM PRODUCTS, INC:					281.50	
KUTAK ROCK LLP						
467						
3583263 - CITY	1	LEGAL - TIF 27 ADMIN	Invoice	06/24/2025	70.00	467-4-7000-4319
Total 52416 KUTAK ROCK LLP:					70.00	
LAKE STATE RECYCLING INC						
603						
82313	1	CARDBOARD RECYCLING-NB	Invoice	10/10/2025	150.00	603-4-9112-4389
Total 13119 LAKE STATE RECYCLING INC:					150.00	
LEAGUE OF MN CITIES INS TRUST						
291						
1004566 10/1	1	WORKMAN COMP CLAIMS	Invoice	10/01/2025	1,278.25	291-4-7000-4109
Total 23800 LEAGUE OF MN CITIES INS TRUST:					1,278.25	
LEAST SERVICES/COUNSELING						
101						
1839	1	COUNSELING, CHECK-UPS, RETAIN	Invoice	10/03/2025	1,110.00	101-4-2110-4319
Total 15055 LEAST SERVICES/COUNSELING:					1,110.00	
M T I DISTRIBUTING INC						
101						
1497307-00	1	PARTS #724	Invoice	10/06/2025	277.10	101-4-5110-4221
Total 24475 M T I DISTRIBUTING INC:					277.10	
MARCO HOLDINGS LLC						
101						
INV14372046	1	TECH SUPPORT	Invoice	09/29/2025	920.00	101-4-1350-4319
101						
INV14409964	1	CISCO DUO ADV SUBSCRIPTIONS	Invoice	10/08/2025	1,830.00	101-4-1350-4404

Invoice Number	Sequence Number	Description	Type	Invoice Date	Invoice Amount	GL Account Number
Total 24714 MARCO HOLDINGS LLC:					2,750.00	
MARTIES INC						
290						
311	1	TRAINING SUPPLIES	Invoice	09/26/2025	40.00	290-4-2350-4219
101						
318	1	TRAINING SUPPLIES	Invoice	10/10/2025	30.00	101-4-2320-4331
Total 15079 MARTIES INC:					70.00	
MATTHEW J STIEHM						
101						
Albert-ERPD	1	REGISTRATION NICK ALBERT	Invoice	10/02/2025	250.00	101-4-2120-4331
Total 52496 MATTHEW J STIEHM :					250.00	
MAVERICK BEVERAGE CO MN LLC						
603						
INV1678479	1	LIQUOR	Invoice	10/02/2025	594.00	603-4-9111-4251
603						
INV1678479	2	FREIGHT	Invoice	10/02/2025	24.50	603-4-9111-4332
603						
INV1678509	1	LIQUOR	Invoice	10/02/2025	594.00	603-4-9151-4251
603						
INV1678509	2	FREIGHT	Invoice	10/02/2025	24.50	603-4-9151-4332
Total 14588 MAVERICK BEVERAGE CO MN LLC:					1,237.00	
MENARDS - ELK RIVER						
602						
9302025	1	SUPPLIES	Invoice	09/30/2025	1,169.60	602-4-9020-4219
101						
9302025	2	SUPPLIES	Invoice	09/30/2025	683.28	101-4-5110-4219
290						
9302025	3	SUPPLIES	Invoice	09/30/2025	682.19	290-4-2350-4219
221						
9302025	4	SUPPLIES	Invoice	09/30/2025	676.00	221-4-5430-4219
291						
9302025	5	SAFETY TRAINING SUPPLIES	Invoice	09/30/2025	392.75	291-4-2340-4331
101						
9302025	6	SUPPLIES	Invoice	09/30/2025	242.22	101-4-3120-4219
101						
9302025	7	SUPPLIES	Invoice	09/30/2025	182.17	101-4-1600-4219
603						
9302025	8	REPAIR SUPPLIES	Invoice	09/30/2025	100.20	603-4-9112-4404
101						
9302025	9	PARTS	Invoice	09/30/2025	48.96	101-4-3120-4221
101						
9302025	10	SUPPLIES	Invoice	09/30/2025	46.71	101-4-2190-4219
602						
9302025	11	SUPPLIES	Invoice	09/30/2025	34.99	602-4-9050-4219
101						
9302025	12	SUPPLIES	Invoice	09/30/2025	33.94	101-4-3150-4219
603						
9302025	13	SUPPLIES	Invoice	09/30/2025	31.67	603-4-9152-4219

Invoice Number	Sequence Number	Description	Type	Invoice Date	Invoice Amount	GL Account Number
211						
9302025	14	SUPPLIES	Invoice	09/30/2025	25.94	211-4-5600-4219
101						
9302025	15	SUPPLIES	Invoice	09/30/2025	15.98	101-4-2120-4219
101						
9302025	16	SUPPLIES	Invoice	09/30/2025	14.03	101-4-2310-4219
221						
9302025	17	SUPPLIES	Invoice	09/30/2025	11.97	221-4-5400-4219
Total 25145 MENARDS - ELK RIVER:					4,392.60	
MEND COLLABORATIVE, INC						
225						
COER2501-004	1	WATER TOWER PARK DESIGN	Invoice	10/03/2025	6,803.32	225-4-5110-4319
Total 52440 MEND COLLABORATIVE, INC:					6,803.32	
MINNESOTA FIRE SERVICE CERT BOARD						
101						
14767	1	FAO CERTIFICATIONS & RETEST	Invoice	10/07/2025	550.50	101-4-2320-4331
Total 26360 MINNESOTA FIRE SERVICE CERT BOARD:					550.50	
MN DEPT OF COMMERCE						
999						
FILE ID 102325	1	UNCASHED CK #116012 GREEN LIG	Invoice	10/09/2025	1,387.30	999-1000
999						
FILE ID 102325	2	UNCASHED CK #116897 BLAZIN WIN	Invoice	10/09/2025	1,300.00	999-1000
999						
FILE ID 102325	3	UNCASHED CK #117045 GRAND REN	Invoice	10/09/2025	182.60	999-1000
999						
FILE ID 102325	4	UNCASHED CK #119436 THOMAS W	Invoice	10/09/2025	779.00	999-1000
999						
FILE ID 102325	5	UNCASHED PR CK #100743 DARSO	Invoice	10/09/2025	51.23	999-1000
999						
FILE ID 102325	6	UNCASHED PR CK #100752 MCGOR	Invoice	10/09/2025	15.93	999-1000
999						
FILE ID 102325	7	UNCASHED PR CK #100868 BERTHIA	Invoice	10/09/2025	25.85	999-1000
999						
FILE ID 102351	1	UNCASHED CK #115435 REBROGILL	Invoice	10/09/2025	5.00	999-1000
999						
FILE ID 102351	2	UNCASHED CK #115458 ANNA VOIGT	Invoice	10/09/2025	72.00	999-1000
999						
FILE ID 102351	3	UNCASHED CK #119325 VERNDAL	Invoice	10/09/2025	33.50	999-1000
999						
FILE ID 102351	4	UNCASHED CK #119766 GIRL SCOUT	Invoice	10/09/2025	100.00	999-1000
Total 26120 MN DEPT OF COMMERCE:					3,952.41	
MN DEPT OF LABOR & INDUSTRY						
101						
SEP 2025 BP	1	BP SURCHARGE - SEP CONF #SEPT	Invoice	10/03/2025	1,431.80	101-3-0000-3233
Total 26180 MN DEPT OF LABOR & INDUSTRY:					1,431.80	
MN DEPT OF MOTOR VEHICLES						

Invoice Number	Sequence Number	Description	Type	Invoice Date	Invoice Amount	GL Account Number
101						
2024 TRAILER 12056	1	TITLE/REGISTRATION - TRAILER 120	Invoice	10/13/2025	173.63	101-4-5110-4219
Total 26190 MN DEPT OF MOTOR VEHICLES:					173.63	
MONTICELLO SENIOR CENTER						
101						
10082025	1	POOL TOURNAMENT - OCTOBER	Invoice	10/08/2025	48.00	101-4-5510-4409
Total 27070 MONTICELLO SENIOR CENTER:					48.00	
MR CUTTING EDGE						
221						
7749	1	ZAMBONI BLADE SHARPENING	Invoice	09/30/2025	162.00	221-4-5400-4401
Total 13984 MR CUTTING EDGE:					162.00	
N C S I						
221						
62169	1	BACKGROUND CHECK-FTCEC	Invoice	10/01/2025	18.50	221-4-5410-4409
Total 27519 N C S I:					18.50	
NAPA OF ELK RIVER, LLC						
101						
311418	1	SHOP STOCK - HYDRAULIC HOSES	Invoice	09/30/2025	113.30	101-4-3150-4219
Total 52338 NAPA OF ELK RIVER, LLC:					113.30	
OMANN BROS INC						
101						
19176*	1	SUPPLIES - AC FINES MIX	Invoice	10/02/2025	135.00	101-4-3120-4219
101						
19183*	1	SUPPLIES - AC FINES MIX	Invoice	10/03/2025	90.00	101-4-3120-4219
101						
19197*	1	SUPPLIES - AC FINES MIX	Invoice	10/07/2025	136.80	101-4-3120-4219
Total 28850 OMANN BROS INC:					361.80	
OXYGEN SERVICE CO, INC						
101						
3631068	1	SHOP SUPPLIES	Invoice	09/30/2025	194.96	101-4-3150-4219
Total 28960 OXYGEN SERVICE CO, INC:					194.96	
PAUSTIS WINE COMPANY						
603						
276361	1	WINE	Invoice	09/29/2025	264.00	603-4-9111-4253
603						
276361	2	FREIGHT	Invoice	09/29/2025	7.50	603-4-9111-4332
603						
277458	1	WINE	Invoice	10/09/2025	1,028.00	603-4-9111-4253
603						
277458	2	FREIGHT	Invoice	10/09/2025	12.00	603-4-9111-4332
Total 29251 PAUSTIS WINE COMPANY:					1,311.50	

Invoice Number	Sequence Number	Description	Type	Invoice Date	Invoice Amount	GL Account Number
PERFECTION PLUS, INC.						
101						
316180	1	CLEANING SVCS - TROTT BROOK B	Invoice	10/01/2025	60.00	101-4-5210-4401
211						
316181	1	MONTHLY CONTRACT CLEANING - P	Invoice	10/01/2025	2,490.00	211-4-5600-4405
Total 12651 PERFECTION PLUS, INC.:					2,550.00	
PHILLIP FINKELSTEIN						
101						
10/8/25 Fee	1	ARBITRATION - LOCAL 49	Invoice	10/08/2025	750.00	101-4-1400-4304
Total 52499 PHILLIP FINKELSTEIN:					750.00	
PHILLIPS WINE & SPIRITS CO						
603						
5054719	1	LIQUOR	Invoice	10/01/2025	3,234.03	603-4-9111-4251
603						
5054719	2	FREIGHT	Invoice	10/01/2025	43.80	603-4-9111-4332
603						
5054720	1	WINE	Invoice	10/01/2025	1,741.30	603-4-9111-4253
603						
5054720	2	FREIGHT	Invoice	10/01/2025	55.68	603-4-9111-4332
603						
5054721	1	POP/MISC	Invoice	10/01/2025	167.50	603-4-9111-4255
603						
5054721	2	FREIGHT	Invoice	10/01/2025	2.74	603-4-9111-4332
603						
5054722	1	THC PRODUCTS	Invoice	10/01/2025	315.00	603-4-9111-4256
603						
5054723	1	FREIGHT	Invoice	10/01/2025	13.92	603-4-9151-4332
603						
5054723	2	LIQUOR	Invoice	10/01/2025	1,000.81	603-4-9151-4251
603						
5054724	1	WINE	Invoice	10/01/2025	1,145.25	603-4-9151-4253
603						
5054724	2	FREIGHT	Invoice	10/01/2025	36.54	603-4-9151-4332
603						
5058105	1	LIQUOR	Invoice	10/08/2025	2,779.45	603-4-9111-4251
603						
5058105	2	FREIGHT	Invoice	10/08/2025	37.41	603-4-9111-4332
603						
5058106	1	WINE	Invoice	10/08/2025	2,451.50	603-4-9111-4253
603						
5058106	2	FREIGHT	Invoice	10/08/2025	55.68	603-4-9111-4332
603						
5058107	1	POP/MISC	Invoice	10/08/2025	110.50	603-4-9111-4255
603						
5058107	2	FREIGHT	Invoice	10/08/2025	2.24	603-4-9111-4332
603						
5058108	1	THC PRODUCTS	Invoice	10/08/2025	189.00	603-4-9111-4256
603						
5058109	1	LIQUOR	Invoice	10/08/2025	1,252.61	603-4-9151-4251
603						
5058109	2	FREIGHT	Invoice	10/08/2025	20.01	603-4-9151-4332
603						
5058110	1	WINE	Invoice	10/08/2025	592.10	603-4-9151-4253

Invoice Number	Sequence Number	Description	Type	Invoice Date	Invoice Amount	GL Account Number
603						
5058110	2	FREIGHT	Invoice	10/08/2025	13.92	603-4-9151-4332
Total 29665 PHILLIPS WINE & SPIRITS CO:					15,260.99	
PITNEY BOWES INC						
101						
1028105219	1	POSTAGE MACHINE SUPPLIES	Invoice	09/10/2025	132.79	101-4-1210-4201
Total 15282 PITNEY BOWES INC:					132.79	
PLAISTED COMPANIES INC						
101						
89456	1	SUPPLIES-BLACK DIRT	Invoice	10/07/2025	86.85	101-4-5110-4219
101						
97929	1	SUPPLIES	Invoice	10/02/2025	244.99	101-4-5110-4219
101						
97940	1	SUPPLIES	Invoice	10/02/2025	220.99	101-4-5110-4219
Total 29845 PLAISTED COMPANIES INC:					552.83	
POLYDYNE INC.						
602						
1967814	1	CLARIFLOC	Invoice	10/06/2025	7,314.00	602-4-9020-4219
Total 14886 POLYDYNE INC.:					7,314.00	
PRO-TEC DESIGN, INC						
292						
120659	1	STATION 3 ACCESS CONTROL ADDI	Invoice	09/30/2025	14,470.62	292-4-2310-4401
Total 30229 PRO-TEC DESIGN, INC:					14,470.62	
PRYES BREWING COMPANY LLC						
603						
W-108061	1	BEER	Invoice	10/09/2025	441.42	603-4-9111-4252
Total 52318 PRYES BREWING COMPANY LLC:					441.42	
QUALITY FLOW SYSTEMS INC						
602						
49793	1	LIFT STATION SCADA WORK	Invoice	10/01/2025	2,400.00	602-4-9050-4404
602						
49858	1	REPLACE LIGHT FOR WATER SENS	Invoice	10/10/2025	813.60	602-4-9020-4404
Total 30500 QUALITY FLOW SYSTEMS INC:					3,213.60	
QUICKSCORES LLC						
101						
252220	1	QUICKSCORES-VOLLEYBALL	Invoice	10/01/2025	112.00	101-4-5220-4409
Total 12654 QUICKSCORES LLC:					112.00	
R & H PAINTING LLC						
607						
1560	1	APPLY SPECTRASHIELD LINER-CAT	Invoice	09/22/2025	20,057.70	607-4-9310-4409

Invoice Number	Sequence Number	Description	Type	Invoice Date	Invoice Amount	GL Account Number
602						
1567	1	APPLY SPECTRASHIELD LINER - MA	Invoice	10/13/2025	25,064.00	602-4-9020-4404
Total 13464 R & H PAINTING LLC:					45,121.70	
RED BULL DISTRIBUTION COM						
603						
5019273954	1	POP/MISC	Invoice	10/08/2025	277.40	603-4-9151-4255
Total 12944 RED BULL DISTRIBUTION COM:					277.40	
REPUBLIC SERVICES #899						
101						
899-004848872	1	GARBAGE SVC - THUMBS UP 2025	Invoice	09/30/2025	212.66	101-4-5110-4389
101						
899-004851079	1	GARBAGE SVC - RIVERS EDGE	Invoice	09/30/2025	395.61	101-4-5110-4389
Total 10407 REPUBLIC SERVICES #899:					608.27	
SARAH HARTUNG						
101						
10032025	1	REFUND LL24-28 TIPSYP ON MAIN	Invoice	10/03/2025	4,767.00	101-3-0000-3211
Total 52495 SARAH HARTUNG:					4,767.00	
SCHINDLER ELEVATOR CORP						
101						
4607256710	1	4TH QTR MAINTENANCE - CITY HAL	Invoice	10/06/2025	639.24	101-4-1600-4401
101						
4607256711	1	4TH QTR MAINTENANCE - PSB	Invoice	10/06/2025	1,278.46	101-4-2190-4401
603						
4607256837	1	4TH QTR MAINTENANCE - NB	Invoice	10/06/2025	581.04	603-4-9112-4404
Total 31890 SCHINDLER ELEVATOR CORP:					2,498.74	
SHERWIN-WILLIAMS						
101						
608-7	1	SUPPLIES - PAINT	Invoice	09/30/2025	31.67	101-4-2190-4219
Total 32280 SHERWIN-WILLIAMS:					31.67	
SOUTHERN GLAZER'S WINE & SPIRITS OF MN						
603						
2676070	1	LIQUOR	Invoice	10/02/2025	180.00	603-4-9151-4251
603						
2676070	2	FREIGHT	Invoice	10/02/2025	1.28	603-4-9151-4332
603						
2678695	1	LIQUOR	Invoice	10/09/2025	945.65	603-4-9151-4251
603						
2678695	2	FREIGHT	Invoice	10/09/2025	10.45	603-4-9151-4332
603						
2678696	1	WINE	Invoice	10/09/2025	641.56	603-4-9151-4253
603						
2678696	2	FREIGHT	Invoice	10/09/2025	11.52	603-4-9151-4332
603						
2678697	1	FREIGHT	Invoice	10/09/2025	1.28	603-4-9151-4332

Invoice Number	Sequence Number	Description	Type	Invoice Date	Invoice Amount	GL Account Number
603						
2679361	1	LIQUOR	Invoice	10/10/2025	234.00	603-4-9151-4251
603						
2679361	2	FREIGHT	Invoice	10/10/2025	6.40	603-4-9151-4332
603						
5131022	1	LIQUOR	Invoice	10/02/2025	164.16	603-4-9151-4251
603						
5131022	2	FREIGHT	Invoice	10/02/2025	1.28	603-4-9151-4332
603						
5131023	1	WINE	Invoice	10/02/2025	595.77	603-4-9151-4253
603						
5131023	2	FREIGHT	Invoice	10/02/2025	11.52	603-4-9151-4332
Total 8000 SOUTHERN GLAZER'S WINE & SPIRITS OF MN:					2,804.87	
603						
2676069	1	LIQUOR	Invoice	10/02/2025	180.00	603-4-9111-4251
603						
2676069	2	FREIGHT	Invoice	10/02/2025	1.25	603-4-9111-4332
603						
2678692	1	LIQUOR	Invoice	10/09/2025	6,981.26	603-4-9111-4251
603						
2678692	2	FREIGHT	Invoice	10/09/2025	94.16	603-4-9111-4332
603						
2678693	1	WINE	Invoice	10/09/2025	977.84	603-4-9111-4253
603						
2678693	2	FREIGHT	Invoice	10/09/2025	20.00	603-4-9111-4332
603						
2678694	1	FREIGHT	Invoice	10/09/2025	2.50	603-4-9111-4332
603						
5131020	1	LIQUOR	Invoice	10/02/2025	4,380.89	603-4-9111-4251
603						
5131020	2	FREIGHT	Invoice	10/02/2025	51.73	603-4-9111-4332
603						
5131021	1	WINE	Invoice	10/02/2025	1,274.07	603-4-9111-4253
603						
5131021	2	FREIGHT	Invoice	10/02/2025	28.75	603-4-9111-4332
603						
9663299	1	WINE CREDIT	Invoice	10/03/2025	18.00-	603-4-9111-4253
603						
9663300	1	WINE CREDIT	Invoice	10/03/2025	13.33-	603-4-9111-4253
Total 11314 SOUTHERN GLAZER'S WINE & SPIRITS OF MN:					13,961.12	
STEPHEN NEURURER						
101						
Munzke	1	MUNZKE BACKGROUND	Invoice	10/08/2025	584.10	101-4-1350-4319
101						
Tourville	1	TOURVILLE BACKGROUND	Invoice	10/08/2025	1,062.05	101-4-1350-4319
Total 14929 STEPHEN NEURURER:					1,646.15	
STREICHER'S						
101						
I1786780	1	INITIAL ISSUE - NEW CSO - ECKSTR	Invoice	10/02/2025	11.99	101-4-2150-4217

Invoice Number	Sequence Number	Description	Type	Invoice Date	Invoice Amount	GL Account Number
Total 33300 STREICHER'S:					11.99	
SUPERIOR CAPITAL HOLDINGS						
101						
2510224	1	REPAIR MOTOROLA RADIO	Invoice	10/01/2025	146.00	101-4-2110-4404
Total 15211 SUPERIOR CAPITAL HOLDINGS:					146.00	
SYSCO MINNESOTA INC						
221						
647185804	1	CATERING/CONCESSIONS FOOD &	Invoice	10/09/2025	708.71	221-4-5430-4259
Total 12551 SYSCO MINNESOTA INC:					708.71	
TELEMEDICINE GROUP DE						
290						
3498	1	SIGMA TACTICAL WELLNESS	Invoice	09/25/2025	23,000.00	290-4-2330-4219
290						
3498	2	SIGMA TACTICAL WELLNESS	Invoice	09/25/2025	8,464.00	290-4-2110-4219
Total 52493 TELEMEDICINE GROUP DE:					31,464.00	
THE AMERICAN BOTTLING CO						
603						
4847906470	1	POP	Invoice	10/06/2025	232.50	603-4-9111-4255
Total 10415 THE AMERICAN BOTTLING CO:					232.50	
THE WINE COMPANY						
603						
313960	1	WINE	Invoice	10/10/2025	664.00	603-4-9111-4253
603						
313960	2	FREIGHT	Invoice	10/10/2025	18.00	603-4-9111-4332
Total 36423 THE WINE COMPANY:					682.00	
TRANSUNION RISK & ALTERNATIVE						
101						
556261-202509-1	1	ONLINE INVESTIGATIVE SVCS	Invoice	10/01/2025	113.00	101-4-2130-4433
Total 12665 TRANSUNION RISK & ALTERNATIVE:					113.00	
TROJAN TECHNOLOGIES CORP						
602						
200/50006754	1	SEAL KITS	Invoice	10/10/2025	949.98	602-4-9020-4219
Total 52374 TROJAN TECHNOLOGIES CORP:					949.98	
TWIN CITY GARAGE DOOR-GARAGE DOOR STORE						
101						
432548727	1	GARAGE DOOR 1 AND 3 REPAIRS	Invoice	10/03/2025	625.00	101-4-2310-4401
Total 34925 TWIN CITY GARAGE DOOR-GARAGE DOOR STORE:					625.00	
VESTIS GROUP INC						

Invoice Number	Sequence Number	Description	Type	Invoice Date	Invoice Amount	GL Account Number
221						
250018631	1	CONCESSIONS - LINENS	Invoice	10/09/2025	52.60	221-4-5430-4219
221						
2500798047	1	CONCESSIONS - MOPS/LINENS/NAP	Invoice	10/02/2025	22.86	221-4-5430-4219
221						
2500798048	1	LOBBY RUGS	Invoice	10/02/2025	23.31	221-4-5400-4219
221						
2500804011	1	CONCESSIONS - MOPS/LINENS	Invoice	10/09/2025	22.86	221-4-5430-4219
Total 52462 VESTIS GROUP INC:					121.63	
VIKING COCA-COLA CO						
603						
3773303	1	POP/MISC	Invoice	10/03/2025	403.60	603-4-9151-4255
603						
3773370	1	POP	Invoice	10/10/2025	668.40	603-4-9111-4255
Total 35725 VIKING COCA-COLA CO:					1,072.00	
VINOCOPIA						
603						
382393-IN	1	LIQUOR	Invoice	10/08/2025	203.00	603-4-9111-4251
603						
382393-IN	2	FREIGHT	Invoice	10/08/2025	2.50	603-4-9111-4332
603						
382505-IN	1	LIQUOR	Invoice	10/08/2025	75.13	603-4-9111-4251
603						
382505-IN	2	FREIGHT	Invoice	10/08/2025	2.50	603-4-9111-4332
603						
382515-IN	1	LIQUOR	Invoice	10/08/2025	75.13	603-4-9151-4251
603						
382515-IN	2	FREIGHT	Invoice	10/08/2025	2.50	603-4-9151-4332
603						
382516-IN	1	LIQUOR	Invoice	10/08/2025	75.00	603-4-9151-4251
603						
382516-IN	2	FREIGHT	Invoice	10/08/2025	2.50	603-4-9151-4332
Total 35763 VINOCOPIA:					438.26	
WAL-MART COMMUNITY CARD						
221						
10-7-25 WALMART	1	CONCESSIONS-FTCENTER	Invoice	10/07/2025	79.61	221-4-5430-4259
221						
10-7-25 WALMART	2	CONCESSIONS-FTCENTER	Invoice	10/07/2025	25.40	221-4-5430-4259
221						
10-7-25 WALMART	3	CONCESSIONS-FTCENTER	Invoice	10/07/2025	100.78	221-4-5430-4259
221						
10-7-25 WALMART	4	CONCESSIONS-FTCENTER	Invoice	10/07/2025	6.64	221-4-5430-4259
221						
10-7-25 WALMART	5	SUPPLIES-CONC-FTCENTER	Invoice	10/07/2025	20.64	221-4-5430-4219
101						
10-7-25 WALMART	6	SUPPLIES-SR CENTER	Invoice	10/07/2025	58.42	101-4-5510-4219
Total 35945 WAL-MART COMMUNITY CARD:					291.49	
WASTE MANAGEMENT CORP SVCS						

Invoice Number	Sequence Number	Description	Type	Invoice Date	Invoice Amount	GL Account Number
602						
110229-0500-1	1	BIO SOLIDS HAULING-SEP 25	Invoice	10/01/2025	49,549.86	602-4-9020-4409
605						
50032-1706-3	1	GARBAGE TIPPING FEES 9/4-9/30/25	Invoice	10/01/2025	25,567.69	605-4-9210-4384
Total 36033 WASTE MANAGEMENT CORP SVCS:					75,117.55	
WATER LABORATORIES						
607						
10658	1	WATER TESTING- SEPTEMBER PHO	Invoice	10/01/2025	146.20	607-4-9310-4409
Total 36050 WATER LABORATORIES:					146.20	
WINE MERCHANTS						
603						
7537201	1	WINE	Invoice	10/08/2025	680.00	603-4-9111-4253
603						
7537201	2	FREIGHT	Invoice	10/08/2025	11.31	603-4-9111-4332
603						
7537202	1	WINE	Invoice	10/08/2025	128.00	603-4-9111-4253
603						
7537202	2	FREIGHT	Invoice	10/08/2025	1.74	603-4-9111-4332
Total 36425 WINE MERCHANTS:					821.05	
WRUCK SEWER & PORTABLE RENTAL						
101						
I30319	1	PORTABLE RENTALS	Invoice	10/07/2025	30.00	101-4-5110-4415
101						
I30320	1	PUMP AND WASH STATION RENTAL	Invoice	10/07/2025	190.00	101-4-5110-4415
101						
I30321	1	PORTABLE RENTALS - SEPT	Invoice	10/07/2025	2,457.62	101-4-5110-4415
Total 13814 WRUCK SEWER & PORTABLE RENTAL:					2,677.62	
Total :					732,940.92	
Grand Totals:					732,940.92	

Summary by General Ledger Account Number

GL Account Number	Debit	Credit	Net
101-3-0000-3211	4,767.00	.00	4,767.00
101-3-0000-3233	1,431.80	.00	1,431.80
101-4-1120-4201	93.54	.00	93.54
101-4-1120-4226	117.04	.00	117.04
101-4-1210-4201	132.79	.00	132.79
101-4-1220-4319	399.64	.00	399.64
101-4-1350-4219	181.69	.00	181.69
101-4-1350-4319	2,566.15	.00	2,566.15
101-4-1350-4404	1,830.00	.00	1,830.00
101-4-1400-4304	18,931.98	.00	18,931.98
101-4-1600-4219	1,131.04	.00	1,131.04

Summary by General Ledger Account Number

GL Account Number	Debit	Credit	Net
101-4-1600-4401	639.24	.00	639.24
101-4-2110-4319	1,165.00	.00	1,165.00
101-4-2110-4404	11,546.00	.00	11,546.00
101-4-2110-4433	875.00	.00	875.00
101-4-2120-4219	51.26	.00	51.26
101-4-2120-4221	1,734.29	.00	1,734.29
101-4-2120-4331	250.00	.00	250.00
101-4-2130-4217	62.05	.00	62.05
101-4-2130-4219	55.48	.00	55.48
101-4-2130-4433	113.00	.00	113.00
101-4-2150-4217	11.99	.00	11.99
101-4-2150-4409	450.54	.00	450.54
101-4-2190-4219	676.50	.00	676.50
101-4-2190-4389	64.15	.00	64.15
101-4-2190-4401	1,458.46	.00	1,458.46
101-4-2310-4219	857.37	.00	857.37
101-4-2310-4389	408.40	.00	408.40
101-4-2310-4401	625.00	.00	625.00
101-4-2320-4217	34.85	.00	34.85
101-4-2320-4219	677.04	.00	677.04
101-4-2320-4331	1,040.50	.00	1,040.50
101-4-2320-4404	150.00	.00	150.00
101-4-2330-4389	138.09	.00	138.09
101-4-2410-4201	173.25	.00	173.25
101-4-3120-4219	2,657.85	.00	2,657.85
101-4-3120-4221	48.96	.00	48.96
101-4-3120-4389	408.96	.00	408.96
101-4-3150-4219	1,115.16	.00	1,115.16
101-4-5110-4219	3,539.95	.00	3,539.95
101-4-5110-4221	277.10	.00	277.10
101-4-5110-4389	5,192.55	.00	5,192.55
101-4-5110-4401	489.80	.00	489.80
101-4-5110-4404	2,500.80	.00	2,500.80
101-4-5110-4409	2,645.00	.00	2,645.00
101-4-5110-4415	2,677.62	.00	2,677.62
101-4-5210-4219	146.99	.00	146.99
101-4-5210-4401	60.00	.00	60.00
101-4-5220-4219	866.30	173.96-	692.34
101-4-5220-4409	112.00	.00	112.00
101-4-5230-4219	305.32	145.99-	159.33
101-4-5510-4219	125.06	.00	125.06
101-4-5510-4409	328.00	.00	328.00
211-4-5600-4219	1,151.19	.00	1,151.19
211-4-5600-4389	101.16	.00	101.16
211-4-5600-4405	2,490.00	.00	2,490.00
221-4-5400-4219	2,800.04	.00	2,800.04
221-4-5400-4401	162.00	.00	162.00
221-4-5410-4409	18.50	.00	18.50
221-4-5430-4219	2,212.17	17.84-	2,194.33
221-4-5430-4251	264.00	.00	264.00
221-4-5430-4252	374.75	.00	374.75
221-4-5430-4259	926.73	.00	926.73
225-4-5110-4319	6,803.32	.00	6,803.32
228-4-7000-4319	630.00	.00	630.00
290-4-2110-4219	8,464.00	.00	8,464.00

Summary by General Ledger Account Number

GL Account Number	Debit	Credit	Net
290-4-2330-4219	23,000.00	.00	23,000.00
290-4-2350-4219	722.19	.00	722.19
291-4-2340-4331	6,652.25	.00	6,652.25
291-4-7000-4109	1,278.25	.00	1,278.25
292-4-2310-4319	196,807.33	.00	196,807.33
292-4-2310-4401	14,470.62	.00	14,470.62
296-4-7000-4409	2,267.30	.00	2,267.30
406-4-8030-4319	7,460.00	.00	7,460.00
411-4-1350-4219	687.99	338.00-	349.99
467-4-7000-4319	70.00	.00	70.00
602-4-9010-4319	596.37	.00	596.37
602-4-9020-4219	15,676.69	61.99-	15,614.70
602-4-9020-4319	5,000.00	.00	5,000.00
602-4-9020-4404	26,363.60	.00	26,363.60
602-4-9020-4409	49,549.86	.00	49,549.86
602-4-9020-4417	318.21	.00	318.21
602-4-9050-4219	34.99	.00	34.99
602-4-9050-4389	1,798.30	.00	1,798.30
602-4-9050-4404	2,400.00	.00	2,400.00
603-4-9111-4251	47,846.04	.00	47,846.04
603-4-9111-4252	68,774.87	436.80-	68,338.07
603-4-9111-4253	14,953.89	31.33-	14,922.56
603-4-9111-4255	3,943.20	.00	3,943.20
603-4-9111-4256	2,492.40	64.00-	2,428.40
603-4-9111-4332	1,151.85	.00	1,151.85
603-4-9112-4217	301.60	.00	301.60
603-4-9112-4219	97.71	.00	97.71
603-4-9112-4319	7,169.00	.00	7,169.00
603-4-9112-4389	150.00	.00	150.00
603-4-9112-4404	1,269.50	.00	1,269.50
603-4-9151-4251	19,189.82	145.83-	19,043.99
603-4-9151-4252	38,558.54	1,326.51-	37,232.03
603-4-9151-4253	4,586.58	.00	4,586.58
603-4-9151-4255	2,594.92	51.51-	2,543.41
603-4-9151-4256	437.00	3.03-	433.97
603-4-9151-4332	376.42	3.67-	372.75
603-4-9152-4219	84.08	.00	84.08
603-4-9152-4404	94.04	.00	94.04
604-4-9410-4219	59.00	.00	59.00
604-4-9410-4319	3,531.00	.00	3,531.00
605-4-9210-4319	2,594.70	.00	2,594.70
605-4-9210-4384	25,567.69	.00	25,567.69
607-4-9310-4319	871.86	.00	871.86
607-4-9310-4409	25,203.90	.00	25,203.90
999-1000	3,952.41	.00	3,952.41
Grand Totals:	735,741.38	2,800.46-	732,940.92

Summary by General Ledger Posting Period

GL Posting Period	Debit	Credit	Net
00/00	735,741.38	2,800.46-	732,940.92
Grand Totals:	735,741.38	2,800.46-	732,940.92

Report Criteria:

Invoice Detail.GL account (3 Characters) = {<>} "920"

Invoice Detail.GL account (3 Characters) = {<>} "910"

Invoice Detail.Created by = {<>} "jdengerud"

CITY OF ELK RIVER

Report Criteria:

Report type: Invoice detail
Vendor: Vendor number = {<>} 13164 {AND} {<>} 13165 {AND} {<>} 14623 {AND} {<>} 33029 {AND} {<>} 10051
Check Type = {<>} "Adjustment"
Bank: Bank number = 1
[Report] Invoice GL Account = {<>} "1012040"

GL Period	Check Issue Date	Check Number	Vendor Number	Payee	Invoice Number	Invoice GL Account	Discount Taken	Invoice Amount	Check Amount	Bank Number
130963										
10/25	10/13/2025	130963	13051	ELK RIVER YOUTH LACROSSE	9-29-25 REFU	221-3-0000-3475	.00	165.00	165.00	1
Total 130963:									165.00	
130964										
10/25	10/13/2025	130964	14365	IDEAL SERVICE, INC	13705	602-4-9020-4404	.00	1,505.50	1,505.50	1
Total 130964:									1,505.50	
130965										
10/25	10/13/2025	130965	11156	MIDWAY FORD	138606	410-4-5110-4560	.00	53,789.35	53,789.35	1
Total 130965:									53,789.35	
130966										
10/25	10/13/2025	130966	11156	MIDWAY FORD	904490	101-4-2120-4221	.00	31.26	31.26	1
10/25	10/13/2025	130966	11156	MIDWAY FORD	905023	101-4-3150-4221	.00	268.69	268.69	1
Total 130966:									299.95	
130967										
10/25	10/13/2025	130967	10138	A T & T MOBILITY	X10032025	602-4-9010-4321	.00	4,197.12	4,197.12	1
Total 130967:									4,197.12	
130968										
10/25	10/13/2025	130968	10168	ADVANCE AUTO PARTS	631352586685	101-4-2120-4221	.00	134.99	134.99	1
10/25	10/13/2025	130968	10168	ADVANCE AUTO PARTS	631352696742	101-4-3150-4221	.00	48.97	48.97	1
Total 130968:									183.96	

M = Manual Check, V = Void Check

GL	Check Period	Check Issue Date	Check Number	Vendor Number	Payee	Invoice Number	Invoice GL Account	Discount Taken	Invoice Amount	Check Amount	Bank Number
130969	10/25	10/13/2025	130969	14662	ARVIG	3097643 - 09/	602-4-9010-4321	.00	96.40	96.40	1
	Total 130969:										
								.00		96.40	
130970	10/25	10/13/2025	130970	52380	ATLAS STAFFING, INC	699686	101-4-1210-4409	.00	1,288.00	1,288.00	1
	Total 130970:										
								.00		1,288.00	
130971	10/25	10/13/2025	130971	13845	CENTERPOINT ENERGY	14577-3 AUG	603-4-9152-4389	.00	12,236.91	12,236.91	1
	Total 130971:										
								.00		12,236.91	
130972	10/25	10/13/2025	130972	14303	COBORN'S INC	20230260005	101-4-1110-4440	.00	150.00	150.00	1
	Total 130972:										
								.00		150.00	
130973	10/25	10/13/2025	130973	14425	COLLINS BROTHERS TOWING	119193	101-4-2130-4319	.00	165.00	165.00	1
	Total 130973:										
								.00		165.00	
130974	10/25	10/13/2025	130974	15573	CULLIGAN	101X4064940	602-4-9020-4219	.00	41.00	41.00	1
10/25	10/13/2025	130974	130974	15573	CULLIGAN	101X4068580	602-4-9020-4219	.00	20.50	20.50	1
	Total 130974:										
								.00		61.50	
130975	10/25	10/13/2025	130975	14038	JEFFREY W. JACOBS	ELK RIVER	101-4-1400-4304	.00	1,425.00	1,425.00	1
	Total 130975:										
								.00		1,425.00	
130976	10/25	10/13/2025	130976	12332	MARCO TECHNOLOGIES LLC	565325123	603-4-9152-4404	.00	3,708.19	3,708.19	1

M = Manual Check, V = Void Check

Check Register - By Bank- Excludes P/R
Check Issue Dates: 10/8/2025 - 10/15/2025

CITY OF ELK RIVER

GL	Check Period	Check Issue Date	Check Number	Vendor Number	Payee	Invoice Number	Invoice GL Account	Discount Taken	Invoice Amount	Check Amount	Bank Number
	Total 130976:										
								.00		3,708.19	
130977	10/25	10/13/2025	130977	52338	NAPA OF ELK RIVER, LLC	309725	101-4-1600-4219	.00	61.60	61.60	1
	Total 130977:										
								.00		61.60	
130978	10/25	10/13/2025	130978	29665	PHILLIPS WINE & SPIRITS CO	5052288	221-4-5430-4255	.00	83.40	83.40	1
	Total 130978:										
								.00		83.40	
130979	10/25	10/13/2025	130979	12551	SYSO MINNESOTA INC	147A2258M	221-4-5430-4219	.00	28.72	28.72	1
10/25	10/13/2025		130979	12551	SYSO MINNESOTA INC	647172821	221-4-5430-4259	.00	1,781.04	1,781.04	1
	Total 130979:										
								.00		1,809.76	
1008731	10/25	10/15/2025	1008731	15451	CROW RIVER FARM EQUIPMENT	213626	101-4-5110-4219	.00	105.74	105.74	1
	Total 1008731:										
								.00		105.74	
1008732	10/25	10/15/2025	1008732	52382	METRO PRODUCTS LLC	188232	101-4-5110-4219	.00	202.34	202.34	1
	Total 1008732:										
								.00		202.34	
1008733	10/25	10/15/2025	1008733	10407	REPUBLIC SERVICES #899	899-00485067	603-4-9152-4389	.00	3,684.55	3,684.55	1
10/25	10/15/2025		1008733	10407	REPUBLIC SERVICES #899	899-00485186	605-4-9210-4409	.00	102,102.12	102,102.12	1
	Total 1008733:										
								.00		105,786.67	
1008734	10/25	10/15/2025	1008734	14562	SUSAN MONTAGUE	9302025 SEP	101-4-5510-4409	.00	150.00	150.00	1

M = Manual Check, V = Void Check

GL Period	Check Issue Date	Check Number	Vendor Number	Payee	Invoice Number	GL Account	Discount Taken	Invoice Amount	Check Amount	Bank Number
Total 1008734:										
									150.00	
Grand Totals:										
									187,471.39	

Summary by General Ledger Account Number

GL Account	Debit	Credit	Proof
101-2020	.00	14,760.28-	14,760.28-
101-4-1110-4440	150.00	.00	150.00
101-4-1210-4321	38.23	.00	38.23
101-4-1210-4409	1,288.00	.00	1,288.00
101-4-1350-4321	99.86	.00	99.86
101-4-1350-4404	2,114.82	.00	2,114.82
101-4-1400-4304	1,425.00	.00	1,425.00
101-4-1600-4219	61.60	.00	61.60
101-4-1600-4321	209.61	.00	209.61
101-4-1600-4389	1,896.06	.00	1,896.06
101-4-2110-4321	3,172.87	.00	3,172.87
101-4-2120-4221	166.25	.00	166.25
101-4-2130-4319	165.00	.00	165.00
101-4-2190-4389	505.57	.00	505.57
101-4-2310-4321	631.66	.00	631.66
101-4-2310-4389	403.81	.00	403.81
101-4-3120-4219	67.45	.00	67.45
101-4-3120-4389	1,143.15	.00	1,143.15
101-4-3150-4219	67.45	.00	67.45
101-4-3150-4221	317.66	.00	317.66
101-4-5110-4219	173.18	.00	173.18
101-4-5110-4389	513.05	.00	513.05
101-4-5510-4409	150.00	.00	150.00
211-2020	.00	64.47-	64.47-
211-4-5600-4389	64.47	.00	64.47
221-2020	.00	12,976.40-	12,976.40-
221-3-0000-3475	165.00	.00	165.00
221-4-5400-4389	10,260.07	.00	10,260.07

M = Manual Check V = Void Check

GL Account	Debit	Credit	Proof
221-4-5400-4415	658.17	.00	658.17
221-4-5430-4219	259.70	.00	259.70
221-4-5430-4255	83.40	.00	83.40
221-4-5430-4259	1,550.06	.00	1,550.06
228-2020	.00	288.25-	288.25-
228-4-7000-4389	288.25	.00	288.25
410-2020	.00	53,789.35-	53,789.35-
410-4-5110-4560	53,789.35	.00	53,789.35
602-2020	.00	2,789.30-	2,789.30-
602-4-9010-4321	141.29	.00	141.29
602-4-9010-4404	510.02	.00	510.02
602-4-9020-4219	61.50	.00	61.50
602-4-9020-4384	276.59	.00	276.59
602-4-9020-4389	294.40	.00	294.40
602-4-9020-4404	1,505.50	.00	1,505.50
603-2020	.00	701.22-	701.22-
603-4-9112-4389	137.52	.00	137.52
603-4-9112-4404	212.59	.00	212.59
603-4-9152-4389	138.52	.00	138.52
603-4-9152-4404	212.59	.00	212.59
605-2020	.00	102,102.12-	102,102.12-
605-4-9210-4409	102,102.12	.00	102,102.12
Grand Totals:	187,471.39	187,471.39-	.00

Dated: _____

Mayor: _____

City Council: _____

City Recorder: _____

Report Criteria:

Report type: Invoice detail

Vendor: Vendor number = {<>} 13164 {AND} {<>} 13165 {AND} {<>} 14623 {AND} {<>} 33029 {AND} {<>} 10051

Check Type = {<>} "Adjustment"

Bank Bank number = 1

[Report] Invoice GL Account = {<>} "1012040"



Request for Action

To
City Council

Item Number
4.2

Meeting Date
October 20, 2025

Prepared By
Joe Stremcha, Business Services Director/Assistant
City Administrator

Item Description
Agreement 25-29: Construction Manager at Risk
with Terra Construction for Fire Station #1

Reviewed by
Cal Portner
Tina Allard

Action Requested

Approve, by motion, Agreement 25-XX, the Construction Manager at Risk agreement with Terra Construction for Fire Station No. 1.

Background/Discussion

The following documents comprise the Agreement:

- 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
- AIA Document A201™–2017, General Conditions of the Contract for Construction

Financial Impact

Agreement highlights Include:

- Preconstruction Phase Services: \$10,000.
- Construction Manager's Fee: \$1.5% of the Cost of the Work

The following exhibits become more applicable once bids are received, and we establish a guaranteed maximum price amount to include in these documents:

- AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- AIA Document A133™–2019, Exhibit B, Insurance and Bonds

Mission/Policy/Goal

Responsible for every dollar - good stewards.

Attachments

The Elk River Vision

A welcoming community with revolutionary and spirited resourcefulness, exceptional service, and community engagement that encourages and inspires prosperity



1. Elk River Fire Station #1 A133 Contract
2. Elk River Fire Station #1 A201 Contract
3. A133-2019 Exhibit A-Elk River Fire Station #1
4. A133-2019 Exhibit B-Elk River Fire Station #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

AGREEMENT made as of the 22nd day of September in the year 2025
(In words, indicate day, month, and year.)

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

City of Elk River, a Minnesota municipal corporation
13065 Orono Parkway
Elk River, MN 55330

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

Terra General Contactors, LLC d/b/a Terra Construction
21025 Commerce Boulevard, Suite 1000
Rogers, MN 55374

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

Elk River Fire Station #1

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

CNH Architects
7300 147th St. W
Suite 504
Apple Valley, MN 55124

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

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

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

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

TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 GENERAL PROVISIONS
- 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 4 OWNER'S RESPONSIBILITIES
- 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 7 COST OF THE WORK FOR CONSTRUCTION PHASE
- 8 DISCOUNTS, REBATES, AND REFUNDS
- 9 SUBCONTRACTS AND OTHER AGREEMENTS
- 10 ACCOUNTING RECORDS
- 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 12 DISPUTE RESOLUTION
- 13 TERMINATION OR SUSPENSION
- 14 MISCELLANEOUS PROVISIONS
- 15 SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B INSURANCE AND BONDS

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.)

As described on Page 2 of the Construction Manager Request for Proposal

§ 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 Owner will provide geotechnical reports, site boundaries, topographic surveys, availability of public and private utilities and services.

§ 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.)

TBD

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

.1 Design phase milestone dates, if any:

Design Development – Completed September 2025
Construction Documents – Completed December 2025

.2 Construction commencement date:

Spring 2026

.3 Substantial Completion date or dates:

TBD

.4 Other milestone dates:

§ 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.)

N/A

§ 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.)

N/A

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:

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

Joe Stremcha
Assistant City Administrator
City of Elk River
13065 Orono Parkway
Elk River, MN 55330
Phone: (763) 635-1022
Email: jstremcha@elkrivernm.gov

§ 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.)

Quinn Hutson
CNH Architects
7300 147th Street West Street

Suite 504
Apple Valley, MN 55124
Phone: (952) 997-4583
Email: qhutson@cnharch.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:
- .2 Civil Engineer:
- .3 Other, if any:
(List any other consultants retained by the Owner, such as a Project or Program Manager.)

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

Quinn Hutson
CNH Architects
7300 147th Street W
Suite 504
Apple Valley, MN 55124
Phone: (952) 997-4583
Email: qhutson@cnharch.com

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

Terra General Contractors, LLC d/b/a Terra Construction
21025 Commerce Blvd, Ste 1000
Rogers, MN 55374
Attn: Tom Brown
Phone: (763) 463-0220
Email: tbrown@terragc.com

§ 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.)

In accordance with Minn. Stat. § 471.463, subd. 5(b)

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

N/A

§ 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.

§ 1.4 The Owner wishes to avoid cost and schedule impacts to the greatest extent possible. As such, the Owner acknowledges that the procurement of certain scopes of Work may need to commence prior to the execution of the Guaranteed Maximum Price Amendment. Upon mutual agreement, the Owner and Construction Manager may enter into a limited notice to proceed authorizing the early release of certain scopes of Work as necessary to maintain the Project schedule and limit cost impacts. In the event the Owner and Construction Manager execute a limited notice to proceed, the Construction Manager will proceed with executing such early released Work identified in the limited notice to proceed. Any Work authorized pursuant to this Section 1.4 or a limited notice to proceed will be paid for by Owner in accordance with the terms of this Agreement and incorporated into the Guaranteed Maximum Price Amendment.

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 ensure that the prime contractors and their subcontractors and suppliers provide at all times an adequate supply of workers, equipment and materials. The Construction Manager shall manage the prime contractorsto 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. Notwithstanding any language to the contrary in this Agreement or in AIA A201 General Conditions, as modified, the Construction Manager shall not perform any of the Work with its own forces or with affiliated entities except as allowed pursuant to Minn. Stat. § 471.463, subd. 5(b).

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

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 written protocols for the development, use, transmission, reliance, and exchange of digital data, including building information models for the Project.

§ 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. Subject to written disclaimer or qualification from the Owner as to accuracy, 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[Not used]

§ 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. All contracts for the Work shall be publicly bid in accordance with Minnesota Statutes, Sections 471.345 and 471.463, subd. 5(b).

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

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

§ 3.1.12 Procurement

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

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 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.)

N/A

§ 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.

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

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 [intentionally deleted]

§ 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. Subject to written disclaimer or qualification from the Owner as to accuracy, the Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

§ 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, as modified, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

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.)

\$10,000.00

§ 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
Project Executive	\$160 - \$185
Preconstruction Manager	\$160 - \$185
Senior Project Manager	\$125 - \$145
Project Manager	\$110 - \$135
Project Superintendent	\$110 - \$135
Administrative Assistant	\$95 - \$105
Assistant Project Manager	\$95 - \$105
Project Engineer	\$95 - \$105
Cost Estimator	\$125 - \$160
Safety Officer	\$110 - \$135
Schedule Administrator	\$110 - \$135
Quality Control Manager	\$110 - \$135

Hourly rates will incur a 5% increase in January of each forthcoming calendar year.

§ 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 eight (8) 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 forty-five (45) 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.)

6 %

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.)

The Construction Manager's Fee shall be one and five-tenths percent (1.5%) of the Cost of the Work. The Construction Manager's Fee shall be invoiced as a stipulated sum based on the Guaranteed Maximum Price as stated in the Guaranteed Maximum Price Amendment.

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

For changes in the Work, the Construction Manager's Fee shall be one and five-tenths percent (1.5%) of the increases in the Cost of the Work, as reflected in the approved change order. There shall be no decrease in the Construction Manager's Fee for deductive change orders.

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

N/A

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

§ 6.1.6 Liquidated damages, if any:

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

N/A

§ 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.)

N/A

§ 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. In addition to Construction Manager's Fee, General Conditions and Contingency, the Guaranteed Maximum Price will be determined based upon public bids for prime contracts, which will be awarded in accordance with Minn. Stat. Sec. 471.463, Subd. 5(b). To the extent the total cost of constructions is less than the Guaranteed Maximum Price, the Owner shall receive 100% of all such savings. The Guaranteed Maximum Price ("GMP") will be established after receipt of bids for the construction Project. An Addendum to this contract will be issued at the time of establishing the GMP that will modify this contract.

§ 6.3 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.)

Project Executive
Preconstruction Manager
Senior Project Manager
Project Manager
Project Superintendent
Assistant Superintendent
Administrative Assistant
Assistant Project Manager
Project Engineer
Scheduler
Cost Estimator
Safety Officer
Schedule Administrator
Quality Control Manager

§ 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. Construction Manager payment obligations to subcontractors shall be governed by the Municipal Prompt Payment Act, Minnesota Statutes Section 471.425, specifically including the requirement that the Construction Manager pay Subcontractors within ten (10) days of receipt of payment from Owner.

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

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

§ 7.5.5 Reasonable 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 [intentionally deleted]

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

§ 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.
- .10 Legal, mediation or arbitration costs, however incurred;
- .11 Costs resulting from theft or vandalism of items that are not part of the Work or used in performing the Work;
- .12 Drug testing for new hires or current employees, incentive or bonus programs (including safety), accounting and EEO and targeted business compliance staff, or seminars;
- .13 Off-site file storage;
- .14 Management of warranty work;
- .15 Any overtime premium or shift differential expense to be incurred by Construction Manager for hourly workers shall require Owner's advance written approval before the incremental cost of the overtime premium or shift differential will be considered a reimbursable cost. If Construction Manager is required to work overtime as a result of an inexcusable delay or other coordination problems caused by Construction Manager or anyone the Construction Manager is responsible for, the overtime premium and/or shift differential expense portion of the payroll expense and related labor burden costs will be considered as cost not to be reimbursed;
- .16 Charges for mobile telephone including air time and data charges will not be reimbursed;
- .17 Costs for vacation, holiday, sick, and training time for Construction Manager's supervisory staff.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. In accordance with Minn. Stat. § 471.463, Subd. 5, the Construction Manager shall competitively bid all trade work for the Project from a list of qualified firms. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction

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

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 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. Without limiting the preceding sentence, the detailed records must include a record of all sales taxes paid by subcontractors for materials and supplies used in and equipment incorporated into the Project, together with supporting invoices that show the date of the taxable transaction, a description of the materials, supplies, or equipment on which sales tax was paid, the amount of sales tax paid, and the state to which the taxes were paid. 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:

N/A

§ 11.1.3 Owner payment obligations to Construction Manager and Construction Manager payment obligation to the prime contractors shall be governed by the Municipal Prompt Payment Act, Minnesota Statutes, Section 471.425, specifically including subdivision 4a requiring the Construction Manager to pay subcontractors within 10 days of receipt of 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, as modified, 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.)

5%

The Owner and Construction Manager must comply with Minnesota Statutes Section 15.72 and Minnesota Statutes Section 337.10 regarding retainage payments.

§ 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.)

N/A

§ 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.)

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

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

§ 11.1.8.3 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.)

N/A

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

§ 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.)

6% per annum simple interest

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.

§ 12.2 Binding Dispute Resolution

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

(Check the appropriate box.)

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

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

ARTICLE 13 TERMINATION OR SUSPENSION

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

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

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

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

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 5.1.

§ 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 agreed between the Owner and Construction Manager, as follows:

A pro rated portion of Construction Manager's Fee based on Work completed, plus payments necessary to pay to reimburse Contractor for costs of the Work completed through the date of termination and not previously paid for, plus costs incurred by Construction Manager made necessary by the termination.

§ 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.

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

§ 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 One million and no/100 dollars (\$ 1,000,000.00) for each occurrence and Two million and no/100 dollars (\$ 2,000,000.00) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than One million and no/100 dollars (\$ 1,000,000.00) 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 One million and no/100 dollars (\$ 1,000,000.00) each accident, One million and no/100 dollars (\$ 1,000,000.00) each employee, and One million and no/100 dollars (\$ 1,000,000.00) 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 One million and no/100 dollars (\$ 1,000,000.00) per claim and One million and no/100 dollars (\$ 1,000,000.00) 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
N/A	

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

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance 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.

§ 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.

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

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with a building information modeling exhibit, if completed, or as otherwise set forth below:

§ 14.5 Other provisions:

§ 14.5.1 **Non-Discrimination.** Construction Manager shall ensure that no person shall on the grounds of race, color, religions, sex, sexual orientation, gender identity, handicap, familial status, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any scope of work carried out by Construction Manager or any Subcontractors of any tier. The Construction Manager agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this Agreement.

§ 14.5.2 **Affirmative Action.** Owner's Affirmative Action Plan shall be made available to the Construction Manager. The Construction Manager must comply with the Owner's Affirmative Action requirements and procedures. The Construction Manager shall furnish an affirmative action plan information and/or reports if requested by the Owner. The Construction Manager's furnishing of the information and a plan in compliance with this paragraph is a condition precedent to the Construction Manager's right to receive payment for its Work.

§ 14.5.3 The Construction Manager, its Subcontractors and the Owner must comply with the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes, Ch. 13, as it applies to all data provided by the Owner in accordance with this Contract and as it applies to all data, created, collected, received, stored, used, maintained, or disseminate by the Construction Manager in accordance with this Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by the Construction Manager, its

Subcontractors or the Owner. In the event the Construction Manager or its Subcontractors receive a request to release the data referred to in this clause, the Construction Manager must immediately notify the Owner. The Owner will give the Construction Manager instructions concerning the release of the data to the requesting party before the data is released.

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

§ 14.5.5 Electronic Signatures and Records. Construction Manager and Owner agree that an electronic signature or an electronic record of a signature shall be as enforceable as an original signature page and will not be denied legal effect. This electronic signature provision will survive termination of this Agreement and applies to this Agreement and all documents generated in connection with this Agreement. »

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

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

See Construction Manager's Proposal and RFP on file with Owner

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

OWNER *(Signature)*

BY: John Dietz, Mayor

(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

(Printed name and title)

OWNER *(Signature)*

BY: Tina Allard, City Clerk

(Printed name and title)



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

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 13:34:51 CDT on 10/16/2025.

Changes to original AIA text

PAGE 1

PAGE 3

PAGE 4

PAGE 5

§ 1.4 The Owner wishes to avoid cost and schedule impacts to the greatest extent possible. As such, the Owner acknowledges that the procurement of certain scopes of Work may need to commence prior to the execution of the Guaranteed Maximum Price Amendment. Upon mutual agreement, the Owner and Construction Manager may enter into a limited notice to proceed authorizing the early release of certain scopes of Work as necessary to maintain the Project schedule and limit cost impacts. In the event the Owner and Construction Manager execute a limited notice to proceed, the Construction Manager will proceed with executing such early released Work identified in the limited notice to proceed. Any Work authorized pursuant to this Section 1.4 or a limited notice to proceed will be paid for by Owner in accordance with the terms of this Agreement and incorporated into the Guaranteed Maximum Price Amendment.

PAGE 6

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~~ensure that the prime contractors and their subcontractors and suppliers provide at all times an adequate supply of workers, equipment and materials; ~~and to. The Construction Manager shall manage the prime contractorsto~~ 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.

§ 2.3.1 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. Notwithstanding any language to the contrary in this Agreement or in AIA A201 General Conditions, as modified, the Construction Manager shall not perform any of the Work with its own forces or with affiliated entities except as allowed pursuant to Minn. Stat. § 471.463, subd. 5(b).

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

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.

PAGE 7

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 Subject to written disclaimer or qualification from the Owner as to accuracy, 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.

§ 3.1.10 ~~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.~~ [Not used]

§ 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. All contracts for the Work shall be publicly bid in accordance with Minnesota Statutes, Sections 471.345 and 471.463, subd. 5(b).

PAGE 8

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.

PAGE 9

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

PAGE 10

~~§ 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. [intentionally deleted]~~

§ 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 Subject to written disclaimer or qualification from the Owner as to accuracy, the~~ Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall ~~render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. have the extent and limitation on~~ authority as set forth in Section 2.1.1 of the A201-2017, as modified. Except as otherwise provided in Section 4.2.1 of A201-2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

PAGE 11

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, as modified, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

Individual or Position	Rate
<u>Project Executive</u>	<u>\$160 - \$185</u>
<u>Preconstruction Manager</u>	<u>\$160 - \$185</u>
<u>Senior Project Manager</u>	<u>\$125 - \$145</u>
<u>Project Manager</u>	<u>\$110 - \$135</u>
<u>Project Superintendent</u>	<u>\$110 - \$135</u>
<u>Administrative Assistant</u>	<u>\$95 - \$105</u>
<u>Assistant Project Manager</u>	<u>\$95 - \$105</u>
<u>Project Engineer</u>	<u>\$95 - \$105</u>
<u>Cost Estimator</u>	<u>\$125 - \$160</u>
<u>Safety Officer</u>	<u>\$110 - \$135</u>
<u>Schedule Administrator</u>	<u>\$110 - \$135</u>
<u>Quality Control Manager</u>	<u>\$110 - \$135</u>
<u>Hourly rates will incur a 5% increase in January of each forthcoming calendar year.</u>	

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within ~~eight~~

(8) 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.

PAGE 12

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~~ In addition to Construction Manager's Fee, General Conditions and Contingency, the Guaranteed Maximum Price will be exceeded shall be paid by the Construction Manager without reimbursement by the Owner determined based upon public bids for prime contracts, which will be awarded in accordance with Minn. Stat. Sec. 471.463, Subd. 5(b). To the extent the total cost of constructions is less than the Guaranteed Maximum Price, the Owner shall receive 100% of all such savings. The Guaranteed Maximum Price ("GMP") will be established after receipt of bids for the construction Project. An Addendum to this contract will be issued at the time of establishing the GMP that will modify this contract.

PAGE 14

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement. Construction Manager payment obligations to subcontractors shall be governed by the Municipal Prompt Payment Act, Minnesota Statutes Section 471.425, specifically including the requirement that the Construction Manager pay Subcontractors within ten (10) days of receipt of payment from Owner.

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

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

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

PAGE 15

§ 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. [intentionally deleted]~~

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

PAGE 16

.10 Legal, mediation or arbitration costs, however incurred;

.11 Costs resulting from theft or vandalism of items that are not part of the Work or used in performing the Work;

.12 Drug testing for new hires or current employees, incentive or bonus programs (including safety), accounting and EEO and targeted business compliance staff, or seminars;

- .13 Off-site file storage;
- .14 Management of warranty work;
- .15 Any overtime premium or shift differential expense to be incurred by Construction Manager for hourly workers shall require Owner's advance written approval before the incremental cost of the overtime premium or shift differential will be considered a reimbursable cost. If Construction Manager is required to work overtime as a result of an inexcusable delay or other coordination problems caused by Construction Manager or anyone the Construction Manager is responsible for, the overtime premium and/or shift differential expense portion of the payroll expense and related labor burden costs will be considered as cost not to be reimbursed;
- .16 Charges for mobile telephone including air time and data charges will not be reimbursed;
- .17 Costs for vacation, holiday, sick, and training time for Construction Manager's supervisory staff.

PAGE 17

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. In accordance with Minn. Stat. § 471.463, Subd. 5, the Construction Manager shall competitively bid all trade work for the Project from a list of qualified firms. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

The 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. Without limiting the preceding sentence, the detailed records must include a record of all sales taxes paid by subcontractors for materials and supplies used in and equipment incorporated into the Project, together with supporting invoices that show the date of the taxable transaction, a description of the materials, supplies, or equipment on which sales tax was paid, the amount of sales tax paid, and the state to which the taxes were paid. 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.

PAGE 18

~~§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than () days after the Architect receives the Application for Payment.~~ Owner payment obligations to Construction Manager and Construction Manager payment obligation to the prime contractors shall be governed by the Municipal Prompt Payment Act, Minnesota Statutes, Section 471.425, specifically including subdivision 4a requiring the Construction Manager to pay subcontractors

within 10 days of receipt of payment.

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

PAGE 20

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

PAGE 21

6% per annum simple interest

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

PAGE 23

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 agreed between the Owner and Construction Manager, 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.)

A pro rated portion of Construction Manager's Fee based on Work completed, plus payments necessary to pay to reimburse Contractor for costs of the Work completed through the date of termination and not previously paid for, plus costs incurred by Construction Manager made necessary by the termination.

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

PAGE 24

§ 14.3.1.1 Commercial General Liability with policy limits of not less than One million and no/100 dollars (\$ - 1,000,000.00) for each occurrence and ~~-\$ Two million and no/100 dollars~~ (\$ 2,000,000.00) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than ~~-\$ One million and no/100 dollars~~ (\$ 1,000,000.00) per accident for

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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.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than ~~-(\$ One million and no/100 dollars (\$ 1,000,000.00) each accident, -(\$ One million and no/100 dollars (\$ 1,000,000.00) each employee, and -(\$ One million and no/100 dollars (\$ 1,000,000.00) 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 ~~-(\$ One million and no/100 dollars (\$ 1,000,000.00) per claim and -(\$ One million and no/100 dollars (\$ 1,000,000.00) in the aggregate.~~

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

PAGE 25

(If other than in accordance with a building information modeling exhibit, 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 Other provisions:

§ 14.5 Other provisions:

- .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, as modified
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, as modified, if executed
- .3 AIA Document A133™-2019, Exhibit B, Insurance and Bonds, as modified
- .5 ~~Building Information Modeling Exhibit, if completed:~~
- .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:~~
as modified
- .5 [intentionally deleted]

PAGE 26

.6 [intentionally deleted]

Variable Information

PAGE 1

AGREEMENT made as of the 22nd day of September in the year 2025

City of Elk River, a Minnesota municipal corporation

13065 Orono Parkway

Elk River, MN 55330

Terra General Contractors, LLC d/b/a Terra Construction

21025 Commerce Boulevard, Suite 1000

Rogers, MN 55374

Elk River Fire Station #1

CNH Architects

7300 147th St. W

Suite 504

Apple Valley, MN 55124

PAGE 2

As described on Page 2 of the Construction Manager Request for Proposal

The Owner will provide geotechnical reports, site boundaries, topographic surveys, availability of public and private utilities and services.

PAGE 3

TBD

Design Development – Completed September 2025

Construction Documents – Completed December 2025

Spring 2026

TBD

N/A

N/A

N/A

Joe Stremcha
Assistant City Administrator

City of Elk River

13065 Orono Parkway

PAGE 4

Elk River, MN 55330

Phone: (763) 635-1022

Email: jstremcha@elkrivermn.gov

Quinn Hutson

CNH Architects

7300 147th Street West Street

Suite 504

Apple Valley, MN 55124

Phone: (952) 997-4583

Email: qhutson@cnharch.com

Quinn Hutson

CNH Architects

7300 147th Street W

Suite 504

Apple Valley, MN 55124

Phone: (952) 997-4583

Email: qhutson@cnharch.com

Terra General Contractors, LLC d/b/a Terra Construction

21025 Commerce Blvd, Ste 1000

PAGE 5

Rogers, MN 55374

Attn: Tom Brown

Phone: (763) 463-0220

Email: tbrown@terragc.com

In accordance with Minn. Stat. § 471.463, subd. 5(b)

N/A

PAGE 8

N/A

PAGE 11

\$10,000.00

Individual or Position	Rate
<u>Project Executive</u>	<u>\$160 - \$185</u>
<u>Preconstruction Manager</u>	<u>\$160 - \$185</u>
<u>Senior Project Manager</u>	<u>\$125 - \$145</u>
<u>Project Manager</u>	<u>\$110 - \$135</u>
<u>Project Superintendent</u>	<u>\$110 - \$135</u>
<u>Administrative Assistant</u>	<u>\$95 - \$105</u>
<u>Assistant Project Manager</u>	<u>\$95 - \$105</u>
<u>Project Engineer</u>	<u>\$95 - \$105</u>
<u>Cost Estimator</u>	<u>\$125 - \$160</u>
<u>Safety Officer</u>	<u>\$110 - \$135</u>
<u>Schedule Administrator</u>	<u>\$110 - \$135</u>
<u>Quality Control Manager</u>	<u>\$110 - \$135</u>
<u>Hourly rates will incur a 5% increase in January of each forthcoming calendar year.</u>	

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within ~~eight~~ (8) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid forty-five (45) 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.

PAGE 12

6 %

The Construction Manager's Fee shall be one and five-tenths percent (1.5%) of the Cost of the Work. The Construction Manager's Fee shall be invoiced as a stipulated sum based on the Guaranteed Maximum Price as stated in the Guaranteed Maximum Price Amendment.

For changes in the Work, the Construction Manager's Fee shall be one and five-tenths percent (1.5%) of the increases in the Cost of the Work, as reflected in the approved change order. There shall be no decrease in the Construction Manager's Fee for deductive change orders.

N/A

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

N/A

N/A

PAGE 13

Project Executive

Preconstruction Manager

Senior Project Manager

Project Manager

Project Superintendent

Assistant Superintendent

Administrative Assistant

Assistant Project Manager

Project Engineer

Scheduler

Cost Estimator

PAGE 14

Safety Officer

Schedule Administrator

Quality Control Manager

PAGE 18

N/A

PAGE 19

5%

The Owner and Construction Manager must comply with Minnesota Statutes Section 15.72 and Minnesota Statutes Section 337.10 regarding retainage payments.

N/A

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

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

PAGE 20

N/A

PAGE 21

6% per annum simple interest

[X] Litigation in a court of competent jurisdiction

PAGE 24

§ 14.3.1.1 Commercial General Liability with policy limits of not less than One million and no/100 dollars (\$ - 1,000,000.00) for each occurrence and ~~Two million and no/100 dollars (\$ 2,000,000.00)~~ in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than ~~One million and no/100 dollars (\$ 1,000,000.00)~~ 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.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than ~~One million and no/100 dollars (\$ 1,000,000.00)~~ each accident, ~~One million and no/100 dollars (\$ 1,000,000.00)~~ each employee, and ~~One million and no/100 dollars (\$ 1,000,000.00)~~ 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 ~~One million and no/100 dollars (\$ 1,000,000.00)~~ per claim and ~~One million and no/100 dollars (\$ 1,000,000.00)~~ in the aggregate.

Coverage
N/A

Limits

PAGE 25

§ 14.5.1 Non-Discrimination. Construction Manager shall ensure that no person shall on the grounds of race, color, religions, sex, sexual orientation, gender identity, handicap, familial status, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any scope of work carried out by Construction Manager or any Subcontractors of any tier. The Construction Manager agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this Agreement.

§ 14.5.2 Affirmative Action. Owner's Affirmative Action Plan shall be made available to the Construction Manager. The Construction Manager must comply with the Owner's Affirmative Action requirements and procedures. The

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Construction Manager shall furnish an affirmative action plan information and/or reports if requested by the Owner. The Construction Manager's furnishing of the information and a plan in compliance with this paragraph is a condition precedent to the Construction Manager's right to receive payment for its Work.

§ 14.5.3 The Construction Manager, its Subcontractors and the Owner must comply with the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes, Ch. 13, as it applies to all data provided by the Owner in accordance with this Contract and as it applies to all data, created, collected, received, stored, used, maintained, or disseminate by the Construction Manager in accordance with this Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by the Construction Manager, its Subcontractors or the Owner. In the event the Construction Manager or its Subcontractors receive a request to release the data referred to in this clause, the Construction Manager must immediately notify the Owner. The Owner will give the Construction Manager instructions concerning the release of the data to the requesting party before the data is released.

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

§ 14.5.5 Electronic Signatures and Records. Construction Manager and Owner agree that an electronic signature or an electronic record of a signature shall be as enforceable as an original signature page and will not be denied legal effect. This electronic signature provision will survive termination of this Agreement and applies to this Agreement and all documents generated in connection with this Agreement. »

PAGE 26

See Construction Manager's Proposal and RFP on file with Owner

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:34:51 CDT on 10/16/2025 under Order No. 20250122412 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ - 2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

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General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Elk River Fire Station No. 1

THE OWNER:

(Name, legal status and address)

City Elk River, a Minnesota municipal corporation
13065 Orono Parkway
Elk River, MN 55330

THE ARCHITECT:

(Name, legal status and address)

CNH Architects
7300 147th St. W
Suite 405
Apple Valley, MN 55124

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS**
- 2 OWNER**
- 3 CONTRACTOR**
- 4 ARCHITECT**
- 5 SUBCONTRACTORS**
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**
- 7 CHANGES IN THE WORK**
- 8 TIME**
- 9 PAYMENTS AND COMPLETION**
- 10 PROTECTION OF PERSONS AND PROPERTY**
- 11 INSURANCE AND BONDS**
- 12 UNCOVERING AND CORRECTION OF WORK**
- 13 MISCELLANEOUS PROVISIONS**

ADDITIONS AND DELETIONS:

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

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™–2017, Guide for Supplementary Conditions.

14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES



INDEX

(Topics and numbers in bold are Section headings.)

Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3

Access to Work

3.16, 6.2.1, 12.1

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

Addenda

1.1.1

Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.4**

Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.6**

Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

Allowances

3.8

Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10

Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10.1, 4.2.7, 9.3.2, 13.4.1

Arbitration

8.3.1, 15.3.2, **15.4**

ARCHITECT

4

Architect, Definition of

4.1.1

Architect, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2, 9.5.4, 9.6.4, 15.1.4, 15.2

Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1, 13.4.2, 15.2

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.4

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work

5.2

Basic Definitions

1.1

Bidding Requirements

1.1.1

Binding Dispute Resolution

8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1

Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

Bonds, Performance, and Payment

7.3.4.4, 9.6.7, 9.10.3, 11.1.2, 11.1.3, 11.5

Building Information Models Use and Reliance

1.8

Building Permit

3.7.1

Capitalization

1.3

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Certificates for Payment

4.2.1, 4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4

Certificates of Inspection, Testing or Approval

13.4.4

Certificates of Insurance

9.10.2

Change Orders

1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2

Change Orders, Definition of

7.2.1

CHANGES IN THE WORK

2.2.2, 3.11, 4.2.8, **7**, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.5

Claims, Definition of

15.1.1

Claims, Notice of

1.6.2, 15.1.3

CLAIMS AND DISPUTES

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4

Claims and Timely Assertion of Claims

15.4.1

Claims for Additional Cost

3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, **15.1.5**

Claims for Additional Time

3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, **15.1.6**

Concealed or Unknown Conditions, Claims for

3.7.4

Claims for Damages

3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3, 11.3.2, 14.2.4, 15.1.7

Claims Subject to Arbitration

15.4.1

Cleaning Up

3.15, 6.3

Commencement of the Work, Conditions Relating to

2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, **15.1.5**

Commencement of the Work, Definition of

8.1.2

Communications

3.9.1, **4.2.4**

Completion, Conditions Relating to

3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 14.1.2, 15.1.2

COMPLETION, PAYMENTS AND

9

Completion, Substantial

3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 15.1.2

Compliance with Laws

2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2, 15.4.4.2

Consolidation or Joinder

15.4.4

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

1.1.4, **6**

Construction Change Directive, Definition of

7.3.1

Construction Change Directives

1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, **7.3**, 9.3.1.1

Construction Schedules, Contractor's

3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Contingent Assignment of Subcontracts

5.4, 14.2.2.2

Continuing Contract Performance

15.1.4

Contract, Definition of

1.1.2

CONTRACT, TERMINATION OR SUSPENSION OF THE

5.4.1.1, 5.4.2, 11.5, **14**

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to

3.7.1, 3.10, 5.2, 6.1

Contract Documents, Copies Furnished and Use of

1.5.2, 2.3.6, 5.3

Contract Documents, Definition of

1.1.1

Contract Sum

2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4, **9.1**, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2, 12.3, 14.2.4, 14.3.2, 15.1.4.2, **15.1.5**, **15.2.5**

Contract Sum, Definition of

9.1

Contract Time

1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5, 7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1, 8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2, 14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5

Contract Time, Definition of

8.1.1

CONTRACTOR

3

Contractor, Definition of

3.1, **6.1.2**

Contractor's Construction and Submittal Schedules

3.10, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2

Contractor's Employees

2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.3, 14.1, 14.2.1.1

Contractor's Liability Insurance

11.1

Contractor's Relationship with Separate Contractors and Owner's Forces

3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4

Contractor's Relationship with Subcontractors

1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2, 9.6.7, 9.10.2, 11.2, 11.3, 11.4

Contractor's Relationship with the Architect

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.4, 15.1.3, 15.2.1

Contractor's Representations

3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

Contractor's Responsibility for Those Performing the Work

3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8

Contractor's Review of Contract Documents

3.2

Contractor's Right to Stop the Work

2.2.2, 9.7

Contractor's Right to Terminate the Contract

14.1

Contractor's Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3

Contractor's Superintendent

3.9, 10.2.6

Contractor's Supervision and Construction Procedures

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4

Coordination and Correlation

1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

Copies Furnished of Drawings and Specifications

1.5, 2.3.6, 3.11

Copyrights

1.5, **3.17**

Correction of Work

2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**, 12.3, 15.1.3.1, 15.1.3.2, 15.2.1

Correlation and Intent of the Contract Documents

1.2

Cost, Definition of

7.3.4

Costs

2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.2, 12.1.2, 12.2.1, 12.2.4, 13.4, 14

Cutting and Patching

3.14, 6.2.5

Damage to Construction of Owner or Separate Contractors

3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damage to the Work

3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damages, Claims for

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2, 11.3, 14.2.4, 15.1.7

Damages for Delay

6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2

Date of Commencement of the Work, Definition of

8.1.2

Date of Substantial Completion, Definition of

8.1.3

Day, Definition of

8.1.4

Decisions of the Architect

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2, 14.2.2, 14.2.4, 15.1, 15.2

Decisions to Withhold Certification

9.4.1, **9.5**, 9.7, 14.1.1.3

Defective or Nonconforming Work, Acceptance, Rejection and Correction of

2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1

Definitions

1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1

Delays and Extensions of Time

3.2, **3.7.4**, 5.2.3, 7.2.1, 7.3.1, **7.4**, **8.3**, 9.5.1, **9.7**, 10.3.2, **10.4**, 14.3.2, **15.1.6**, 15.2.5

Digital Data Use and Transmission

1.7

Disputes

6.3, 7.3.9, 15.1, 15.2

Documents and Samples at the Site

3.11

Drawings, Definition of

1.1.5

Drawings and Specifications, Use and Ownership of
3.11

Effective Date of Insurance
8.2.2

Emergencies

10.4, 14.1.1.2, 15.1.5

Employees, Contractor's

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.3, 14.1, 14.2.1.1

Equipment, Labor, or Materials

1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2,
10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Execution and Progress of the Work

1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1, 9.9.1,
10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4

Extensions of Time

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2, 10.4, 14.3, 15.1.6, **15.2.5**

Failure of Payment

9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Faulty Work

(See Defective or Nonconforming Work)

Final Completion and Final Payment

4.2.1, 4.2.9, 9.8.2, **9.10**, 12.3, 14.2.4, 14.4.3

Financial Arrangements, Owner's

2.2.1, 13.2.2, 14.1.1.4

GENERAL PROVISIONS

1

Governing Law

13.1

Guarantees (See Warranty)

Hazardous Materials and Substances

10.2.4, **10.3**

Identification of Subcontractors and Suppliers

5.2.1

Indemnification

3.17, **3.18**, 9.6.8, 9.10.2, 10.3.3, 11.3

Information and Services Required of the Owner

2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5, 9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4,
15.1.4

Initial Decision

15.2

Initial Decision Maker, Definition of

1.1.8

Initial Decision Maker, Decisions

14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Initial Decision Maker, Extent of Authority

14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Injury or Damage to Person or Property

10.2.8, 10.4

Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 12.2.1, 13.4

Instructions to Bidders

1.1.1

Instructions to the Contractor

3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2

Instruments of Service, Definition of

1.1.7

Insurance

6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5, **11**

Insurance, Notice of Cancellation or Expiration

11.1.4, 11.2.3

Insurance, Contractor's Liability

11.1

Insurance, Effective Date of

8.2.2, 14.4.2

Insurance, Owner's Liability

11.2

Insurance, Property

10.2.5, 11.2, 11.4, 11.5

Insurance, Stored Materials

9.3.2

INSURANCE AND BONDS

11

Insurance Companies, Consent to Partial Occupancy

9.9.1

Insured loss, Adjustment and Settlement of

11.5

Intent of the Contract Documents

1.2.1, 4.2.7, 4.2.12, 4.2.13

Interest

13.5

Interpretation

1.1.8, 1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written

4.2.11, 4.2.12

Judgment on Final Award

15.4.2

Labor and Materials, Equipment

1.1.3, 1.1.6, **3.4**, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes

8.3.1

Laws and Regulations

1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8, 15.4

Liens

2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of

12.2.5, 15.1.2, 15.4.1.1

Limitations of Liability

3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6, 4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3, 11.3, 12.2.5, 13.3.1

Limitations of Time

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7, 5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15, 15.1.2, 15.1.3, 15.1.5

Materials, Hazardous

10.2.4, **10.3**

Materials, Labor, Equipment and

1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

Means, Methods, Techniques, Sequences and Procedures of Construction

3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien

2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Mediation

8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1, 15.4.1.1

Minor Changes in the Work

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, **7.4**

MISCELLANEOUS PROVISIONS

13

Modifications, Definition of

1.1.1

Modifications to the Contract

1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2

Mutual Responsibility

6.2

Nonconforming Work, Acceptance of

9.6.6, 9.9.3, **12.3**

Nonconforming Work, Rejection and Correction of

2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2

Notice

1.6, 1.6.1, 1.6.2, 2.1.2, 2.2.2., 2.2.3, 2.2.4, 2.5, 3.2.4, 3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4, 8.2.2, 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1, 13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5, 15.1.6, 15.4.1

Notice of Cancellation or Expiration of Insurance

11.1.4, 11.2.3

Notice of Claims

1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, **15.1.3**, 15.1.5, 15.1.6, 15.2.8, 15.3.2, 15.4.1

Notice of Testing and Inspections

13.4.1, 13.4.2

Observations, Contractor's

3.2, 3.7.4

Occupancy

2.3.1, 9.6.6, 9.8

Orders, Written

1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2, 14.3.1

OWNER

2

Owner, Definition of

2.1.1

Owner, Evidence of Financial Arrangements

2.2, 13.2.2, 14.1.1.4

Owner, Information and Services Required of the

2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4

Owner's Authority

1.5, 2.1.1, 2.3.32.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4, 15.2.7

Owner's Insurance

11.2

Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

Owner's Right to Carry Out the Work

2.5, 14.2.2

Owner's Right to Clean Up

6.3

Owner's Right to Perform Construction and to Award Separate Contracts

6.1

Owner's Right to Stop the Work

2.4

Owner's Right to Suspend the Work

14.3

Owner's Right to Terminate the Contract

14.2, 14.4

Ownership and Use of Drawings, Specifications and Other Instruments of Service

1.1.1, 1.1.6, 1.1.7, **1.5**, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12, 5.3

Partial Occupancy or Use

9.6.6, **9.9**

Patching, Cutting and

3.14, 6.2.5

Patents

3.17

Payment, Applications for

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3

Payment, Certificates for

4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4

Payment, Failure of

9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Payment, Final

4.2.1, 4.2.9, **9.10**, 12.3, 14.2.4, 14.4.3

Payment Bond, Performance Bond and

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

Payments, Progress

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

PAYMENTS AND COMPLETION

9

Payments to Subcontractors

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

PCB

10.3.1

Performance Bond and Payment Bond

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

Permits, Fees, Notices and Compliance with Laws

2.3.1, **3.7**, 3.13, 7.3.4.4, 10.2.2

PERSONS AND PROPERTY, PROTECTION OF

10

Polychlorinated Biphenyl

10.3.1

Product Data, Definition of

3.12.2

Product Data and Samples, Shop Drawings

3.11, **3.12**, 4.2.7

Progress and Completion

4.2.2, **8.2**, 9.8, 9.9.1, 14.1.4, 15.1.4

Progress Payments

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

Project, Definition of

1.1.4

Project Representatives

4.2.10

Property Insurance

10.2.5, **11.2**

Proposal Requirements

1.1.1

PROTECTION OF PERSONS AND PROPERTY

10

Regulations and Laws

1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8, 15.4

Rejection of Work

4.2.6, 12.2.1

Releases and Waivers of Liens

9.3.1, 9.10.2

Representations

3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1

Representatives

2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1

Responsibility for Those Performing the Work

3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10

Retainage

9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

Review of Contract Documents and Field Conditions by Contractor

3.2, 3.12.7, 6.1.3

Review of Contractor's Submittals by Owner and Architect

3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

Review of Shop Drawings, Product Data and Samples by Contractor

3.12

Rights and Remedies

1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2, 12.2.4,

13.3, 14, 15.4

Royalties, Patents and Copyrights

3.17

Rules and Notices for Arbitration

15.4.1

Safety of Persons and Property

10.2, 10.4

Safety Precautions and Programs

3.3.1, 4.2.2, 4.2.7, 5.3, 10.1, 10.2, 10.4

Samples, Definition of

3.12.3

Samples, Shop Drawings, Product Data and

3.11, 3.12, 4.2.7

Samples at the Site, Documents and

3.11

Schedule of Values

9.2, 9.3.1

Schedules, Construction

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Separate Contracts and Contractors

1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2

Separate Contractors, Definition of

6.1.1

Shop Drawings, Definition of

3.12.1

Shop Drawings, Product Data and Samples

3.11, 3.12, 4.2.7

Site, Use of

3.13, 6.1.1, 6.2.1

Site Inspections

3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4

Site Visits, Architect's

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Special Inspections and Testing

4.2.6, 12.2.1, 13.4

Specifications, Definition of

1.1.6

Specifications

1.1.1, **1.1.6**, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14

Statute of Limitations

15.1.2, 15.4.1.1

Stopping the Work

2.2.2, 2.4, 9.7, 10.3, 14.1

Stored Materials

6.2.1, 9.3.2, 10.2.1.2, 10.2.4

Subcontractor, Definition of

5.1.1

SUBCONTRACTORS

5

Subcontractors, Work by

1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7

Subcontractual Relations

5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1

Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3

Submittal Schedule

3.10.2, 3.12.5, 4.2.7

Subrogation, Waivers of

6.1.1, **11.3**

Substances, Hazardous

10.3

Substantial Completion

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 12.2, 15.1.2

Substantial Completion, Definition of

9.8.1

Substitution of Subcontractors

5.2.3, 5.2.4

Substitution of Architect

2.3.3

Substitutions of Materials

3.4.2, 3.5, 7.3.8

Sub-subcontractor, Definition of

5.1.2

Subsurface Conditions

3.7.4

Successors and Assigns

13.2

Superintendent

3.9, 10.2.6

Supervision and Construction Procedures

1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4

Suppliers

1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6, 9.10.5, 14.2.1

Surety

5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2, 15.2.7

Surety, Consent of
9.8.5, 9.10.2, 9.10.3

Surveys
1.1.7, 2.3.4

Suspension by the Owner for Convenience
14.3

Suspension of the Work
3.7.5, 5.4.2, 14.3

Suspension or Termination of the Contract
5.4.1.1, 14

Taxes

3.6, 3.8.2.1, 7.3.4.4

Termination by the Contractor
14.1, 15.1.7

Termination by the Owner for Cause
5.4.1.1, **14.2**, 15.1.7

Termination by the Owner for Convenience
14.4

Termination of the Architect
2.3.3

Termination of the Contractor Employment
14.2.2

TERMINATION OR SUSPENSION OF THE CONTRACT

14

Tests and Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 12.2.1, **13.4**

TIME

8

Time, Delays and Extensions of

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

Time Limits

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15.1.2, 15.1.3, 15.4

Time Limits on Claims

3.7.4, 10.2.8, 15.1.2, 15.1.3

Title to Work

9.3.2, 9.3.3

UNCOVERING AND CORRECTION OF WORK

12

Uncovering of Work

12.1

Unforeseen Conditions, Concealed or Unknown

3.7.4, 8.3.1, 10.3

Unit Prices

7.3.3.2, 9.1.2

Use of Documents

1.1.1, 1.5, 2.3.6, 3.12.6, 5.3

Use of Site

3.13, 6.1.1, 6.2.1

Values, Schedule of

9.2, 9.3.1

Waiver of Claims by the Architect

13.3.2

Waiver of Claims by the Contractor

9.10.5, 13.3.2, **15.1.7**

Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, **15.1.7**

Waiver of Consequential Damages

14.2.4, 15.1.7

Waiver of Liens

9.3, 9.10.2, 9.10.4

Waivers of Subrogation

6.1.1, **11.3**

Warranty

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2, 15.1.2

Weather Delays

8.3, 15.1.6.2

Work, Definition of

1.1.3

Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3, 13.2, 13.3.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

Written Orders

1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the Architect. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The Contract Documents are to be read and interpreted as a whole. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work and to require Contractor to provide the highest quality and greatest quantity consistent with the Contract Documents. If there are inconsistencies within or among part of the Contract Documents or between the Contract Documents and applicable standards, codes or ordinances, the Contractor shall provide the better quality or greater quantity of Work or comply with the more stringent requirements; either or all

in accordance with the Architect's interpretation. The terms and conditions of this subparagraph 1.2.1 shall not relieve the Contractor of any of its obligations as set forth in Article 3.

- .1 Before ordering any materials or doing any Work, the Contractor shall verify measurements at the Project site and shall be responsible for the correctness of such measurements. No extra charges or compensation will be allowed on account of differences between actual dimensions and the dimensions indicated on the Drawings. Any difference that may be found shall be submitted to the Architect for resolution before proceeding with the Work.
- .2 If a minor change in the Work is necessary due to actual field conditions, the Contractor shall submit detailed drawings of such departure to the Architect for approval by the Architect before making the change.

The Owner shall not be required to make any adjustment to either the Contract Sum or Contract Time because of any failure by the Contractor to comply with the requirements of this Subparagraph 1.2.1. Actual or alleged conflicts or inconsistencies between the Drawings and Specifications or other Contract Documents shall be brought to the Architect's and Architect's attention in writing, prior to performing the affected Work. The Architect's and Construction Manager's directions, as communicated through the Architect, shall be followed by the Contractor.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

- .1 If there is an inconsistency in the quality and/or quantity of Work required by the Contract Documents, either the greater quality and/or quantity of Work indicated shall be provided in accordance with the engineer/architect's interpretation without change in the contract sum.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8,

solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 Work is to proceed as a no-lien Project in accordance with the laws of the State of Minnesota regarding public projects. Contractor shall provide to the Owner both a Labor and Material Payment Bond and a Performance Bond each in the amount of the Contract Price prior to the commencement of Work as required by Minnesota Statutes 574.26. The Contractor, for itself and for all who claim through the Contractor, acknowledges and agrees: (i) that because it is a public project, no lien shall attach to the real estate on which the Project is located or to any improvements no existing or to be constructed thereon in favor of the Contractor or any Subcontractor, mechanic, journeyman, laborer, material vendor, lessor of tools or equipment or any other party who may furnish work, materials, equipment, services, tools or machinery for the design or construction of improvements on the land. The Contractor shall also provide written notice of the no-lien status of this Project to all of its Subcontractors, material suppliers, equipment lessors and others that provide labor, material, equipment and/or services for the Project. Contractor shall defend, indemnify and hold the Owner and Architect harmless from any suit, lien, damages, losses or expenses, including reasonable attorneys' fees.

§ 2.2 Evidence of the Owner's Financial Arrangements [deleted intentionally]

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements,

assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner has retained an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 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 Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, and fails within a 10-day period after receipt of written notice from the owners to commence and continue correction of such work, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by

tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 The Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless the Contractor recognized such error, inconsistency, omission, difference, or nonconformity and knowingly failed to report it.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or

permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 10 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall

immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement

of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 The indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by Contractor, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the

Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Owner's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Owner may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Subcontractors will similarly make copies of applicable

portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially

completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.3: The following fees apply to Changes in the Work:

- a. A 10 percent maximum on overhead and profit for the direct cost of Work performed by a Contractor or Subcontractor;
- a. A 5 percent maximum overhead and profit on indirect costs of a Contractor's Subcontractors;
- a. The total mark-up shall not exceed 20 percent and all mark-ups are subject to the Architect approval.
- a. On Work deleted from the Contract, credit to the Owner shall be the Architect approved net cost plus 1/2 of the overhead and profit percentage noted above.

In the case of an increase or decrease in the contract sum, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data, showing adjustments on the basis of reasonable expenditures and savings of those performing the Work attributable to the change.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work and stating a proposed basis for the change prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for

Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Owner may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Owner's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Owner and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Owner's order for a minor change without prior notice to the Owner that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work or the sequencing of work (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (2) by fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control and not reasonably anticipatable; or (3) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended by Change Order without notice to sureties, for such reasonable time as the Architect may determine. A time extension shall be the Contractor's sole remedy and compensation for all such delays and changes in sequencing.

§ 8.3.2 [intentionally deleted]

§ 8.3.3 This Section 8.3 precludes recovery of damages for delay by Contractor if the Contractor is delayed at any time in the progress of the Work or the sequencing of work by an act or neglect of the Owner or the Architect or of any employee of either or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by

fires, unusual delays in deliveries, unavoidable casualties or other causes beyond the Contractor's or a Subcontractor's or suppliers control and not reasonably anticipatable, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order without notice to sureties, for such reasonable time as the Architect may determine. A time extension shall be the Contractor's sole remedy and compensation for all such delays and changes in sequencing.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay. As required by Minnesota Statutes, § 471.425, subd. 4a, the Construction Manager must pay all Subcontractors, less any retainage, within ten (10) calendar days of the Construction Manager's receipt of payment from the Owner for undisputed services provided by the Subcontractor(s) and must pay interest at the rate of one and one-half percent (1.5%) per month or any part of a month to the Subcontractor(s) on any undisputed amount not paid on time to the Subcontractor(s).

§ 9.3.1.3 Owner shall make 95% progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment during performance of the Work. Upon final completion of the Work, Owner shall pay the remainder of the Contract Price. Minn. Stat. § 290.92 requires that the City of Elk River obtain a Withholding Affidavit for Contractors, Form IC-134, before making final payments to Contractors. This form needs to be submitted by the Contractor to the Minnesota Department of Revenue for approval. The form is used to receive certification from the state that the vendor has complied with the requirement to withhold and remit state withholding taxes for employee salaries paid

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be

conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its option, issue joint checks to the Contractor and to any Subcontractor or materials or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material of equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 Prompt Payment to Subcontractors. In accordance with Minnesota law, the Contractor shall include, in all subcontracts and other agreements with its subcontractors and suppliers, a provision which requires the Contractor to pay any of its subcontractors and suppliers within 10 days of the Contractor's receipt of payment from the Owner, for undisputed services or supplies provided by the subcontractor or supplier. The provision shall also include the requirement that the Contractor shall pay interest of one and one-half percent (1.5%) per month or any part of a month to the subcontractor or supplier on any undisputed amount not paid on time to the subcontractor or supplier. The provision shall further provide that the minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10, for an unpaid balance of less than \$100, the Contractor shall pay the actual penalty due to the subcontractor or supplier, and a subcontractor or supplier who prevails in a civil action to collect interest penalties from the Contractor shall be awarded its costs and disbursements, including attorneys' fees, incurred in bringing the action.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's

fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has

reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Liability Insurance

§ 11.1.1 The Contractor shall purchase and maintain commercial general liability insurance as required to protect the Contractor, Architect and Owner from claims set forth below which may arise out of, result from, or are in any manner connected with, the execution of the work provided for in this Contract, or occur or result from the use by the Contractor, its agents or employees, of materials, equipment, instrumentalities or other property, whether the same be owned by the Contractor, or third parties, whether such claims arise during Contract performance or subsequent to completion of operations under this Contract and whether operations be by the Contractor or by anyone directly or indirectly employed by Contractor, or by anyone for whose acts Contractor may be liable, and whether such claims are claims for which the Contractor may be, or may be claimed to be, liable.. Insurance shall be purchased from a company licensed to do business in the state where the Project is located, and shall be written for not less than the limits of liability specified below or required by law, whichever is greater. A certificate of insurance on a form acceptable to the Owner which verifies the existence of this insurance coverage must be provided to the Owner before work under this contract is begun. The Owner shall be named as an additional insured on a primary and noncontributory basis. The types of claims, required coverages and minimum limits of liability are as follows:

- A. Claims under Worker's Compensation, disability benefit and other similar employee benefit acts; claims for damages because of bodily injury, occupational sickness or disease or death of employees. Insurance coverages shall include:
Statutory Workers' Compensation, including Employer's Liability with a minimum limit of \$100,000.00 for each employee.

- B. Claims for damages because of bodily injury, occupational sickness or disease, or death, by any person other than employees, claims for personal injuries which are sustained (1) by any person as a result of an act or omission directly or indirectly related to the employment of such person by the Contractor, or (2) any other person; claims for damages other than to the Work itself, because of injury to or destruction of tangible property including loss of use resulting therefor. Insurance coverages shall include:
- Premise – Operations
 - Products-Completed Operations
 - Blanket Contractual – Such insurance and endorsements as will insure the obligations under the provisions of Subsection 11.1.5 of this Document.
 - Broad Form Property Damage
 - Personal Injury
 - Blanket Explosion, Collapse and Underground Property Damage
 - Operations of Independent Contractors
- | | | |
|----------------|---|----------------|
| Policy Limits: | General Aggregate | \$2,000,000.00 |
| | Products/Completed Operations Aggregate | \$1,000,000.00 |
| | Personal Injury | \$1,000,000.00 |
| | Each Occurrence | \$1,000,000.00 |
- C. Claims for damages because of bodily injury or death of any person, or any property damage arising out of the ownership or use of any motor vehicle. Insurance coverage shall include:
- Business Auto Liability insurance including owned, hired and non-owned vehicles with limits of \$1,000,000.00
 - Combined Single Limit for each accident for bodily injury and death, or property damage.
- D. The coverage limits required by Paragraphs (B) and (C) above may be achieved by the use of an Umbrella Excess Liability Policy.
- The limits of liability specified shall be considered minimum requirements.

All aforesaid insurance policies shall be underwritten with responsible insurance carriers, with Best's Ratings of not less than A and X and otherwise satisfactory to Owner and licensed to provide insurance in the state in which the Project is located. .

§ 11.1.2 Performance Bond and Payment Bond. The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§11.1.2.1. The bond value requirements are as follows:

- a. Provide bonds on a standard surety bond form.
- a. Provide a 100 percent Performance Bond.
- a. Provide a 100 percent Payment Bond.
- a. Deliver bonds within 3 days after execution of the Contract.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

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

§ 11.2.2. The Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.2.3 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.4 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 [intentionally deleted]

§ 11.3.2.[intentionally deleted]

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance as will insure the Owner against loss of use of the Owner's property due to fire or hazards, however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to

requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor 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 13.2.2, 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.

§ 13.2.2 The Owner may, without consent of the Contractor, 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 Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1

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§ 14.1.2

§ 14.1.3

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and

- construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for the Contractor for Work properly executed; along with reasonable overhead and profit for the completed Work.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified

by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

1. damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
2. damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.3 Mediation

Additions and Deletions Report for AIA® Document A201® – 2017

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

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Changes to original AIA text

PAGE 3

8.3.1, 15.3.2, ~~15.4-~~

PAGE 7

~~3.14~~, 6.2.5-

PAGE 15

PAGE 16

The Initial Decision Maker is the ~~person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Architect~~The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2.1 The Contract Documents are to be read and interpreted as a whole. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor and to require Contractor to provide the highest quality and greatest quantity consistent with the Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. If there are inconsistencies within or among part of the Contract Documents or between the Contract Documents and applicable standards, codes or ordinances, the Contractor shall provide the better quality or greater quantity of Work or comply with the more stringent requirements; either or all in accordance with the Architect's interpretation. The terms and conditions of this subparagraph 1.2.1 shall not relieve the Contractor of any of its obligations as set forth in Article 3.

PAGE 17

.1 Before ordering any materials or doing any Work, the Contractor shall verify measurements at the Project site and shall be responsible for the correctness of such measurements. No extra charges or compensation will be allowed on account of differences between actual dimensions and the dimensions indicated on the Drawings. Any difference that may be found shall be submitted to the Architect for resolution before proceeding with the Work.

.2 If a minor change in the Work is necessary due to actual field conditions, the Contractor

shall submit detailed drawings of such departure to the Architect for approval by the Architect before making the change.

The Owner shall not be required to make any adjustment to either the Contract Sum or Contract Time because of any failure by the Contractor to comply with the requirements of this Subparagraph 1.2.1. Actual or alleged conflicts or inconsistencies between the Drawings and Specifications or other Contract Documents shall be brought to the Architect's and Architect's attention in writing, prior to performing the affected Work. The Architect's and Construction Manager's directions, as communicated through the Architect, shall be followed by the Contractor.

- .1 If there is an inconsistency in the quality and/or quantity of Work required by the Contract Documents, either the greater quality and/or quantity of Work indicated shall be provided in accordance with the engineer/architect's interpretation without change in the contract sum.

PAGE 18

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information. Work is to proceed as a no-lien Project in accordance with the laws of the State of Minnesota regarding public projects. Contractor shall provide to the Owner both a Labor and Material Payment Bond and a Performance Bond each in the amount of the Contract Price prior to the commencement of Work as required by Minnesota Statutes 574.26. The Contractor, for itself and for all who claim through the Contractor, acknowledges and agrees: (i) that because it is a public project, no lien shall attach to the real estate on which the Project is located or to any improvements no existing or to be constructed thereon in favor of the Contractor or any Subcontractor, mechanic, journeyman, laborer, material vendor, lessor of tools or equipment or any other party who may furnish work, materials, equipment, services, tools or machinery for the design or construction of improvements on the land. The Contractor shall also provide written notice of the no-lien status of this Project to all of its Subcontractors, material suppliers, equipment lessors and others that provide labor, material, equipment and/or services for the Project. Contractor shall defend, indemnify and hold the Owner and Architect harmless from any

PAGE 19

§ 2.2 Evidence of the Owner's Financial Arrangements [deleted intentionally]

§ 2.3.2 The Owner ~~shall retain~~has retained an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor ~~to whom the Contractor has no reasonable objection and~~ whose status under the Contract Documents shall be that of the Architect.

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, and fails within a 10-day period after receipt of written notice from the owners to commence and continue correction of such work, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

PAGE 20

§ 3.2.2 ~~Because the Contract Documents are complementary, the~~The Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless the Contractor recognized such error, inconsistency, omission, difference, or nonconformity and knowingly failed to report it.

PAGE 21

§ 3.4.2 ~~Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the~~The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

PAGE 22

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical

conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 1410 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. ~~If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.~~

PAGE 25

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 ~~In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the~~ The indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 4.1.3 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by Contractor, and will not be liable for results of interpretations or decisions rendered in good faith.

PAGE 27

§ 4.2.13 ~~The Architect's~~ Owner's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the ~~Architect~~ Owner may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order

shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

PAGE 29

§ 7.2.3: The following fees apply to Changes in the Work:

- a. A 10 percent maximum on overhead and profit for the direct cost of Work performed by a Contractor or Subcontractor;
- a. A 5 percent maximum overhead and profit on indirect costs of a Contractor's Subcontractors;
- a. The total mark-up shall not exceed 20 percent and all mark-ups are subject to the Architect approval.
- a. On Work deleted from the Contract, credit to the Owner shall be the Architect approved net cost plus 1/2 of the overhead and profit percentage noted above.

In the case of an increase or decrease in the contract sum, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data, showing adjustments on the basis of reasonable expenditures and savings of those performing the Work attributable to the change.

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work and stating a proposed basis for the change prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

PAGE 30

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for

those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, ~~subject to the right of either party to disagree and assert a Claim in accordance with Article 15.~~

PAGE 31

The ~~Architect~~Owner may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The ~~Architect's~~Owner's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the ~~Architect~~Owner and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the ~~Architect's~~Owner's order for a minor change without prior notice to the ~~Architect~~Owner that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work ~~by or the sequencing of work~~ (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; ~~(3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5 and not reasonably anticipatable; or~~ (3) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended by Change Order without notice to sureties, for such reasonable time as the Architect may determine. A time extension shall be the Contractor's sole remedy and compensation for all such delays and changes in sequencing.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15. ~~[intentionally deleted]~~

§ 8.3.3 This Section ~~8.3 does not preclude~~precludes recovery of damages for delay by ~~either party under other provisions of the Contract Documents~~Contractor if the Contractor is delayed at any time in the progress of the Work or the sequencing of work by an act or neglect of the Owner or the Architect or of any employee of either or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by fires, unusual delays in deliveries, unavoidable casualties or other causes beyond the Contractor's or a Subcontractor's or suppliers control and not reasonably anticipatable, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order without notice to sureties, for such reasonable time as the Architect may determine. A time extension shall be the Contractor's sole remedy and compensation for all such delays and changes in sequencing.

PAGE 32

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay. As required by Minnesota Statutes, § 471.425, subd. 4a, the Construction Manager must pay all Subcontractors, less any retainage, within ten (10) calendar days of the Construction Manager's receipt of payment from the Owner for undisputed services provided by the Subcontractor(s) and must pay interest at the rate of one and one-half percent (1.5%) per month or any part of a month to the Subcontractor(s) on any undisputed amount not paid on time to the Subcontractor(s).

§ 9.3.1.3 Owner shall make 95% progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment during performance of the Work. Upon final completion of the Work, Owner shall pay the remainder of the Contract Price. Minn. Stat. § 290.92 requires that the City of Elk River obtain a Withholding Affidavit for Contractors, Form IC-134, before making final payments to Contractors. This form needs to be submitted by the Contractor to the Minnesota Department of Revenue for approval. The form is used to receive certification from the state that the vendor has complied with the requirement to withhold and remit state withholding taxes for employee salaries paid

§ 9.5.3 WhenIf the reasons for withholding certification are removed, certification will be made for amounts previously withheldArchitect withholds certification for payment under Section 9.5.1.3, the Owner may, at its option, issue joint checks to the Contractor and to any Subcontractor or materials or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material of equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6.2 ThePrompt Payment to Subcontractors. In accordance with Minnesota law, the Contractor shall pay each Subcontractor, no later than seven days afterinclude, in all subcontracts and other agreements with its subcontractors and suppliers, a provision which requires the Contractor to pay any of its subcontractors and suppliers within 10 days of the Contractor's receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar mannerfor undisputed services or supplies provided by the subcontractor or supplier. The provision shall also include the requirement that the Contractor shall pay interest of one and one-half percent (1.5%) per month or any part of a month to the subcontractor or supplier on any undisputed amount not paid on time to the subcontractor or supplier. The provision shall further provide that the minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10, for an unpaid balance of less than \$100, the Contractor shall pay the actual penalty due to the subcontractor or supplier, and a subcontractor or supplier who prevails in a civil action to collect interest penalties from the Contractor shall be awarded its costs and disbursements, including attorneys' fees, incurred in bringing the action.

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect ~~or awarded by binding dispute resolution~~, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from
.1 — liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
.2 — failure of the Work to comply with the requirements of the Contract Documents;
.3 — terms of special warranties required by the Contract Documents; or
.4 — audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 11.1 Contractor's Liability Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain commercial general liability insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documentsas required to protect the Contractor, Architect and Owner from claims set forth below which may arise out of, result from, or are in any manner connected with, the execution of the work provided for in this Contract, or occur or result from the

use by the Contractor, its agents or employees, of materials, equipment, instrumentalities or other property, whether the same be owned by the Contractor, or third parties, whether such claims arise during Contract performance or subsequent to completion of operations under this Contract and whether operations be by the Contractor or by anyone directly or indirectly employed by Contractor, or by anyone for whose acts Contractor may be liable, and whether such claims are claims for which the Contractor may be, or may be claimed to be, liable.. Insurance shall be purchased from a company licensed to do business in the state where the Project is located, and shall be written for not less than the limits of liability specified below or required by law, whichever is greater. A certificate of insurance on a form acceptable to the Owner which verifies the existence of this insurance coverage must be provided to the Owner before work under this contract is begun. The Owner shall be named as an additional insured on a primary and noncontributory basis. The types of claims, required coverages and minimum limits of liability are as follows:

- A. Claims under Worker's Compensation, disability benefit and other similar employee benefit acts; claims for damages because of bodily injury, occupational sickness or disease or death of employees. Insurance coverages shall include:
- Statutory Workers' Compensation, including Employer's Liability with a minimum limit of \$100,000.00 for each employee.
- B. Claims for damages because of bodily injury, occupational sickness or disease, or death, by any person other than employees, claims for personal injuries which are sustained (1) by any person as a result of an act or omission directly or indirectly related to the employment of such person by the Contractor, or (2) any other person; claims for damages other than to the Work itself, because of injury to or destruction of tangible property including loss of use resulting therefor. Insurance coverages shall include:

Premise – Operations

Products-Completed Operations

Blanket Contractual – Such insurance and endorsements as will insure the obligations under the provisions of Subsection 11.1.5 of this Document.

§ 11.1.2 Broad Form Property Damage

Personal Injury

Blanket Explosion, Collapse and Underground Property Damage

Operations of Independent Contractors

<u>Policy Limits:</u>	<u>General Aggregate</u>	<u>\$2,000,000.00</u>
	<u>Products/Completed Operations Aggregate</u>	<u>\$1,000,000.00</u>
	<u>Personal Injury</u>	<u>\$1,000,000.00</u>
	<u>Each Occurrence</u>	<u>\$1,000,000.00</u>

- C. Claims for damages because of bodily injury or death of any person, or any property damage arising out of the ownership or use of any motor vehicle. Insurance coverage shall include:

PAGE 39

Business Auto Liability insurance including owned, hired and non-owned vehicles with limits of \$1,000,000.00

Combined Single Limit for each accident for bodily injury and death, or property damage.

D. The coverage limits required by Paragraphs (B) and (C) above may be achieved by the use of an Umbrella Excess Liability Policy.

The limits of liability specified shall be considered minimum requirements.

All aforesaid insurance policies shall be underwritten with responsible insurance carriers, with Best's Ratings of not less than A and X and otherwise satisfactory to Owner and licensed to provide insurance in the state in which the Project is located. .

§ 11.1.2 Performance Bond and Payment Bond. The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§11.1.2.1. The bond value requirements are as follows:

- a. Provide bonds on a standard surety bond form.
- a. Provide a 100 percent Performance Bond.
- a. Provide a 100 percent Payment Bond.
- a. Deliver bonds within 3 days after execution of the Contract.

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

§ 11.2.2. The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

PAGE 40

§ 11.2.23 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably

adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.34 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

~~§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property. [intentionally deleted]~~

~~§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance. [intentionally deleted]~~

~~The Owner, at the Owner's option, may purchase and maintain insurance that as will protect insure the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused. due to fire or hazards, however caused.~~

PAGE 41

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor ~~and to make a claim for breach of warranty~~. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. ~~If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 14.1.1 ~~The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:~~

- ~~1— Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;~~
- ~~2— An act of government, such as a declaration of national emergency, that requires all Work to be stopped;~~
- ~~3— Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or~~
- ~~4— The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.~~

§ 14.1.2 ~~The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.~~

§ 14.1.2

§ 14.1.3 ~~If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.~~

§ 14.4.3 ~~In case of such termination for the Owner's convenience, the OwnerContractor shall pay be entitled to receive payment for the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreementalong with reasonable overhead and profit for the completed Work.~~

§ 15.2.1 ~~Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker,~~

unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

PAGE 46

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding

dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

PAGE 47

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

3 Mediation

Variable Information

PAGE 1

Elk River Fire Station No. 1

City Elk River, a Minnesota municipal corporation

13065 Orono Parkway

Elk River, MN 55330

CNH Architects

7300 147th St. W

Suite 405

Apple Valley, MN 55124



Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 08:15:19 CDT on 10/16/2025 under Order No. 20250122412 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ - 2017, General Conditions of the Contract for Construction, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

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AIA® Document A133® – 2019 Exhibit A

Guaranteed Maximum Price Amendment

This Amendment dated the _____ day of _____ in the year _____, 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 22nd day of Septemebr in the year 2025 (the “Agreement”)
(In words, indicate day, month, and year.)

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

Northbound (Liquor Store) and Cannabound (Cannabis Store)

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

City of Elk River, a Minnesota municipal corporation
13065 Orono Parkway
Elk River, MN 55330

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

Terra General Contactors, LLC d/b/a Terra Construction
21025 Commerce Boulevard, Suite 1000
Rogers, MN 55374

TABLE OF ARTICLES

- A.1 GUARANTEED MAXIMUM PRICE
- A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

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

ADDITIONS AND DELETIONS:
The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added to or deleted from the original AIA text.

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

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

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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.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed [redacted] (\$ [redacted]), 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.)

§ 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
[redacted]	

§ 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
[redacted]		

§ 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)
[redacted]		

ARTICLE A.2 **DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

§ A.2.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

- ☐ [redacted] The date of execution of this Amendment.
- ☐ [redacted] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of execution of this Amendment.

§ A.2.2 Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The Contract Time shall be measured from the date of commencement of the Work.

§ A.2.3 Substantial Completion

§ A.2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

- ☐ Not later than () calendar days from the date of commencement of the Work.
- ☐ By the following date:

§ A.2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Construction Manager shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date

§ A.2.3.3 If the Construction Manager fails to achieve Substantial Completion as provided in this Section A.2.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.6 of the Agreement.

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

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

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.)

Number	Title	Date

§ A.3.1.4 The Sustainability Plan, if any:
(If the Owner identified a Sustainable Objective in the Owner’s Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner’s and Construction Manager’s roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each

Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages
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Other identifying information:

§ A.3.1.5 Allowances, if any, included in the Guaranteed Maximum Price:
(Identify each allowance.)

Item	Price
------	-------

§ A.3.1.6 Assumptions and clarifications, if any, upon which the Guaranteed Maximum Price is based:
(Identify each assumption and clarification.)

§ A.3.1.7 The Guaranteed Maximum Price is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Amendment.)

ARTICLE A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

§ A.4.1 The Construction Manager shall retain the consultants, contractors, design professionals, and suppliers, identified below:

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

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)

AIA® Document A133® – 2019 Exhibit B

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the 22nd day of September in the year 2025

(In words, indicate day, month and year.)

for the following **PROJECT**:

(Name and location or address)

Northbound (Liquor Store) and Cannabound (Cannabis Store)

THE OWNER:

(Name, legal status, and address)

City of Elk River, a Minnesota municipal corporation

13065 Orono Parkway

Elk River, MN 55330

THE CONSTRUCTION MANAGER:

(Name, legal status, and address)

Terra General Contactors, LLC d/b/a Terra Construction

21025 Commerce Boulevard, Suite 1000

Rogers, MN 55374

TABLE OF ARTICLES

B.1 GENERAL

B.2 OWNER'S INSURANCE

B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

B.4 SPECIAL TERMS AND CONDITIONS

ARTICLE B.1 GENERAL

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

ADDITIONS AND DELETIONS:

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

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

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

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ARTICLE B.2 OWNER’S INSURANCE

§ B.2.1 General

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

§ B.2.2 Liability Insurance

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

§ B.2.3 Required Property Insurance

§ B.2.3.1 Unless this obligation is placed on the Construction Manager pursuant to Section B.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk “all-risks” completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner’s property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

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

Cause of Loss	Sub-Limit

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

Coverage	Sub-Limit

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

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

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

§ B.2.3.3 Insurance for Existing Structures

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

§ B.2.4 Optional Extended Property Insurance.

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

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

- [☐] **§ B.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner’s property, or the inability to conduct normal operations due to a covered cause of loss.
- [☐] **§ B.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.
- [☐] **§ B.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.
- [☐] **§ B.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.
- [☐] **§ B.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.
- [☐] **§ B.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured’s business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.
- [☐] **§ B.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

§ B.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

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

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

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

Coverage

Limits

ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

§ B.3.1 General

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

§ B.3.1.2 Deductibles and Self-Insured Retentions. The Construction Manager shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Construction Manager.

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

§ B.3.2 Construction Manager's Required Insurance Coverage

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

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

§ B.3.2.2 Commercial General Liability

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than [REDACTED] (\$ [REDACTED]) each occurrence, [REDACTED] (\$ [REDACTED]) general aggregate, and [REDACTED] (\$ [REDACTED]) aggregate for products-completed operations hazard, providing coverage for claims including

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

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

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Construction Manager's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ B.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than [REDACTED] (\$ [REDACTED]) 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.

§ B.3.2.4 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section B.3.2.2 and B.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ B.3.2.5 Workers' Compensation at statutory limits.

§ B.3.2.6 Employers' Liability with policy limits not less than [REDACTED] (\$ [REDACTED]) each accident, [REDACTED] (\$ [REDACTED]) each employee, and [REDACTED] (\$ [REDACTED]) policy limit.

§ B.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits

of not less than [] (\$ []) per claim and [] (\$ []) in the aggregate.

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

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

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

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

§ B.3.3 Construction Manager's Other Insurance Coverage

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

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

[]

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

(Select the types of insurance the Construction Manager is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

- [] **§ B.3.3.2.1** Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

(Where the Construction Manager's obligation to provide property insurance differs from the Owner's obligations as described under Section B.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

[]

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

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

[] § B.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an “all-risks” completed value form.

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

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

Coverage	Limits
----------	--------

§ B.3.4 Performance Bond and Payment Bond

The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:
(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Payment Bond	
Performance Bond	

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

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

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



Request for Action

To
City Council

Item Number
4.3

Meeting Date
October 20, 2025

Prepared By
Joe Stremcha, Business Services Director/Assistant
City Administrator

Item Description
Agreement 25-30: Construction Manager at Risk
with Terra Construction for
Northbound/Cannabound.

Reviewed by
Cal Portner
Tina Allard

Action Requested

Approve, by motion, Agreement 25-30, the Construction Manager at Risk agreement with Terra Construction for Northbound and Cannabound.

Background/Discussion

The following documents comprise the Agreement:

- 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
- AIA Document A201™–2017, General Conditions of the Contract for Construction

Financial Impact

Agreement highlights Include:

- Preconstruction Phase Services: \$5,000.
- Construction Manager's Fee: \$1.5% of the Cost of the Work

The following exhibits become more applicable once bids are received, and we establish a guaranteed maximum price amount to include in these documents:

- AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- AIA Document A133™–2019, Exhibit B, Insurance and Bonds

Mission/Policy/Goal

Responsible for every dollar - good stewards.

The Elk River Vision

A welcoming community with revolutionary and spirited resourcefulness, exceptional service, and community engagement that encourages and inspires prosperity



Attachments

1. Elk River Northbound-Cannabound A133 Contract
2. Elk River Northbound-Cannabound A201 Contract
3. A133-2019 Exhibit A-Elk River Northbound Cannabound
4. A133-2019 Exhibit B-Northbound Cannabound

 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 22nd day of September in the year 2025
(In words, indicate day, month, and year.)

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

City of Elk River, a Minnesota municipal corporation
13065 Orono Parkway
Elk River, MN 55330

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

Terra General Contactors, LLC d/b/a Terra Construction
21025 Commerce Boulevard, Suite 1000
Rogers, MN 55374

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

Northbound (Liquor Store) and Cannabound (Cannabis Store)

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

LSE Architects
1401 Glenwood Ave
Minneapolis, MN 55405

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

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

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

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

TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 GENERAL PROVISIONS
- 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 4 OWNER'S RESPONSIBILITIES
- 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 7 COST OF THE WORK FOR CONSTRUCTION PHASE
- 8 DISCOUNTS, REBATES, AND REFUNDS
- 9 SUBCONTRACTS AND OTHER AGREEMENTS
- 10 ACCOUNTING RECORDS
- 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 12 DISPUTE RESOLUTION
- 13 TERMINATION OR SUSPENSION
- 14 MISCELLANEOUS PROVISIONS
- 15 SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B INSURANCE AND BONDS

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.)

As described on Page 2 of the Construction Manager Request for Proposal

§ 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 Owner will provide geotechnical reports, site boundaries, topographic surveys, availability of public and private utilities and services.

§ 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.)

TBD

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

.1 Design phase milestone dates, if any:

Design Development – Completed September 2025
Construction Documents – Completed December 2025

.2 Construction commencement date:

Spring 2026

.3 Substantial Completion date or dates:

TBD

.4 Other milestone dates:

§ 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.)

N/A

§ 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.)

N/A

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:

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

Joe Stremcha
Assistant City Administrator
City of Elk River
13065 Orono Parkway
Elk River, MN 55330
Phone: (763) 635-1022
Email: jstremcha@elkrivernm.gov

§ 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.)

Brian Tempas
LSE Architects
1401 Glenwood Ave

Minneapolis, MN 55405

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

.1 Geotechnical Engineer:

.2 Civil Engineer:

.3 Other, if any:

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

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

Brian Tempas
LSE Architects
1401 Glenwood Ave
Minneapolis, MN 55405
Phone: (612) 343-1010

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

Terra General Contractors, LLC d/b/a Terra Construction
21025 Commerce Blvd, Ste 1000
Rogers, MN 55374
Attn: Tom Brown
Phone: (763) 463-0220
Email: tbrown@terragc.com

§ 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.)

In accordance with Minn. Stat. § 471.463, subd. 5(b)

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

N/A

§ 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.

§ 1.4 The Owner wishes to avoid cost and schedule impacts to the greatest extent possible. As such, the Owner acknowledges that the procurement of certain scopes of Work may need to commence prior to the execution of the Guaranteed Maximum Price Amendment. Upon mutual agreement, the Owner and Construction Manager may enter into a limited notice to proceed authorizing the early release of certain scopes of Work as necessary to maintain the Project schedule and limit cost impacts. In the event the Owner and Construction Manager execute a limited notice to proceed, the Construction Manager will proceed with executing such early released Work identified in the limited notice to proceed. Any Work authorized pursuant to this Section 1.4 or a limited notice to proceed will be paid for by Owner in accordance with the terms of this Agreement and incorporated into the Guaranteed Maximum Price Amendment.

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 ensure that the prime contractors and their subcontractors and suppliers provide at all times an adequate supply of workers, equipment and materials. The Construction Manager shall manage the prime contractors 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. Notwithstanding any language to the contrary in this Agreement or in AIA A201 General Conditions, as modified, the Construction Manager shall not perform any of the Work with its own forces or with affiliated entities except as allowed pursuant to Minn. Stat. § 471.463, subd. 5(b).

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

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 written protocols for the development, use, transmission, reliance, and exchange of digital data, including building information models for the Project.

§ 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. Subject to written disclaimer or qualification from the Owner as to accuracy, 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[Not used]

§ 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. All contracts for the Work shall be publicly bid in accordance with Minnesota Statutes, Sections 471.345 and 471.463, subd. 5(b).

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

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

§ 3.1.12 Procurement

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

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 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.

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

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 [intentionally deleted]

§ 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. Subject to written disclaimer or qualification from the Owner as to accuracy, the

Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

§ 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, as modified, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

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.)

\$5,000.00

§ 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
Project Executive	\$160 - \$185
Preconstruction Manager	\$160 - \$185
Senior Project Manager	\$125 - \$145
Project Manager	\$110 - \$135
Project Superintendent	\$110 - \$135
Administrative Assistant	\$95 - \$105
Assistant Project Manager	\$95 - \$105
Project Engineer	\$95 - \$105
Cost Estimator	\$125 - \$160
Safety Officer	\$110 - \$135
Schedule Administrator	\$110 - \$135
Quality Control Manager	\$110 - \$135
<i>Hourly rates will incur a 5% increase in January of each forthcoming calendar year.</i>	

§ 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 eight (8) 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 forty-five (45) 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.)

6.0 %

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.)

The Construction Manager's Fee shall be one and five-tenths percent (1.5%) of the Cost of the Work The Construction Manager's Fee shall be invoiced as a stipulated sum based on the Guaranteed Maximum Price as stated in the Guaranteed Maximum Price Amendment.

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

For changes in the Work, the Construction Manager's Fee shall be one and five-tenths percent (1.5%) of the increases in the Cost of the Work, as reflected in the approved change order. There shall be no decrease in the Construction Manager's Fee for deductive change orders.

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

Work:

N/A

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

§ 6.1.6 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

N/A

§ 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.)

N/A

§ 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. In addition to Construction Manager's Fee, General Conditions and Contingency, the Guaranteed Maximum Price will be determined based upon public bids for prime contracts, which will be awarded in accordance with Minn. Stat. Sec. 471.463, Subd. 5(b). To the extent the total cost of constructions is less than the Guaranteed Maximum Price, the Owner shall receive 100% of all such savings. The Guaranteed Maximum Price ("GMP") will be established after receipt of bids for the construction Project. An Addendum to this contract will be issued at the time of establishing the GMP that will modify this contract.

§ 6.3 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.)

Project Executive
Preconstruction Manager
Senior Project Manager
Project Manager
Project Superintendent
Assistant Superintendent
Administrative Assistant
Assistant Project Manager
Project Engineer
Scheduler
Cost Estimator
Safety Officer
Schedule Administrator
Quality Control Manager

§ 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. Construction Manager payment obligations to subcontractors shall be governed by the Municipal Prompt Payment Act, Minnesota Statutes Section 471.425, specifically including the requirement that the Construction Manager pay Subcontractors within ten (10) days of receipt of payment from Owner.

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

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

§ 7.5.5 Reasonable 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 [intentionally deleted]

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

§ 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.
 - .10 Legal, mediation or arbitration costs, however incurred;
 - .11 Costs resulting from theft or vandalism of items that are not part of the Work or used in performing the Work;
 - .12 Drug testing for new hires or current employees, incentive or bonus programs (including safety), accounting and EEO and targeted business compliance staff, or seminars;
 - .13 Off-site file storage;
 - .14 Management of warranty work;
 - .15 Any overtime premium or shift differential expense to be incurred by Construction Manager for hourly workers shall require Owner's advance written approval before the incremental cost of the overtime premium or shift differential will be considered a reimbursable cost. If Construction Manager is required to work overtime as a result of an inexcusable delay or other coordination problems caused by Construction Manager or anyone the Construction Manager is responsible for, the overtime premium and/or shift differential expense portion of the payroll expense and related labor burden costs will be considered as cost not to be reimbursed;
 - .16 Charges for mobile telephone including air time and data charges will not be reimbursed;
 - .17 Costs for vacation, holiday, sick, and training time for Construction Manager's supervisory staff.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. In accordance with Minn. Stat. § 471.463, Subd. 5, the Construction Manager shall competitively bid all trade work for the Project from a list of qualified firms. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone

to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 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. Without limiting the preceding sentence, the detailed records must include a record of all sales taxes paid by subcontractors for materials and supplies used in and equipment incorporated into the Project, together with supporting invoices that show the date of the taxable transaction, a description of the materials, supplies, or equipment on which sales tax was paid, the amount of sales tax paid, and the state to which the taxes were paid. 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:

N/A

§ 11.1.3 Owner payment obligations to Construction Manager and Construction Manager payment obligation to the prime contractors shall be governed by the Municipal Prompt Payment Act, Minnesota Statutes, Section 471.425, specifically including subdivision 4a requiring the Construction Manager to pay subcontractors within 10 days of receipt of 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, as modified, 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.)

5%

The Owner and Construction Manager must comply with Minnesota Statutes Section 15.72 and Minnesota Statutes Section 337.10 regarding retainage payments.

§ 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.)

N/A

§ 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.)

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

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

§ 11.1.8.3 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.)

N/A

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

§ 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.)

6% per annum simple interest

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.

§ 12.2 Binding Dispute Resolution

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

(Check the appropriate box.)

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

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

ARTICLE 13 TERMINATION OR SUSPENSION

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

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

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

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

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 5.1.

§ 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 agreed between the Owner and Construction Manager, as follows:

A pro rated portion of Construction Manager's Fee based on Work completed, plus payments necessary to pay to reimburse Contractor for costs of the Work completed through the date of termination and not previously paid for, plus costs incurred by Construction Manager made necessary by the termination.

§ 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.

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

§ 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 One million and no/100 dollars (\$ 1,000,000.00) for each occurrence and Two million and no/100 dollars (\$ 2,000,000.00) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than One million and no/100 dollars (\$ 1,000,000.00) 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 One million and no/100 dollars (\$ 1,000,000.00) each accident, One million and no/100 dollars (\$ 1,000,000.00) each employee, and One million and no/100 dollars (\$ 1,000,000.00) 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 One million and no/100 dollars (\$ 1,000,000.00) per claim and One million and no/100 dollars (\$ 1,000,000.00) 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
N/A	

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

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance 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.

§ 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.

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

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with a building information modeling exhibit, if completed, or as otherwise set forth below:

§ 14.5 Other provisions:

§ 14.5.1 Non-Discrimination. Construction Manager shall ensure that no person shall on the grounds of race, color, religions, sex, sexual orientation, gender identity, handicap, familial status, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any scope of work carried out by Construction Manager or any Subcontractors of any tier. The Construction Manager agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this Agreement.

§ 14.5.2 Affirmative Action. Owner's Affirmative Action Plan shall be made available to the Construction Manager. The Construction Manager must comply with the Owner's Affirmative Action requirements and procedures. The Construction Manager shall furnish an affirmative action plan information and/or reports if requested by the Owner. The Construction Manager's furnishing of the information and a plan in compliance with this paragraph is a condition precedent to the Construction Manager's right to receive payment for its Work.

§ 14.5.3 The Construction Manager, its Subcontractors and the Owner must comply with the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes, Ch. 13, as it applies to all data provided by the Owner in accordance with this Contract and as it applies to all data, created, collected, received, stored, used, maintained, or disseminate by the Construction Manager in accordance with this Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by the Construction Manager, its Subcontractors or the Owner. In the event the Construction Manager or its Subcontractors receive a request to release the data referred to in this clause, the Construction Manager must immediately notify the Owner. The Owner will give the Construction Manager instructions concerning the release of the data to the requesting party before the data is released.

§ 14.5.4 Pursuant to Minn. Stat., § 16C.05, subd. 5, Construction Manager agrees that the books, records, documents and accounting procedures and practices of Construction Manager, that are relevant to the Contract Documents or transaction, are subject to examination by the Owner, the Owner's auditor, and the state auditor for a minimum of six (6) years. Construction Manager shall maintain such records for a minimum of six (6) years after

final payment.

§ 14.5.5 Electronic Signatures and Records. Construction Manager and Owner agree that an electronic signature or an electronic record of a signature shall be as enforceable as an original signature page and will not be denied legal effect. This electronic signature provision will survive termination of this Agreement and applies to this Agreement and all documents generated in connection with this Agreement. »

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

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

See Construction Manager's Proposal and RFP on file with Owner

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

OWNER (Signature)

BY: John Dietz, Mayor

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

(Printed name and title)

OWNER (Signature)

BY: Tina Allard, City Clerk

(Printed name and title)

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

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 13:39:40 CDT on 10/16/2025.

Changes to original AIA text

PAGE 1

PAGE 3

PAGE 4

PAGE 5

§ 1.4 The Owner wishes to avoid cost and schedule impacts to the greatest extent possible. As such, the Owner acknowledges that the procurement of certain scopes of Work may need to commence prior to the execution of the Guaranteed Maximum Price Amendment. Upon mutual agreement, the Owner and Construction Manager may enter into a limited notice to proceed authorizing the early release of certain scopes of Work as necessary to maintain the Project schedule and limit cost impacts. In the event the Owner and Construction Manager execute a limited notice to proceed, the Construction Manager will proceed with executing such early released Work identified in the limited notice to proceed. Any Work authorized pursuant to this Section 1.4 or a limited notice to proceed will be paid for by Owner in accordance with the terms of this Agreement and incorporated into the Guaranteed Maximum Price Amendment.

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 ensure that the prime contractors and their subcontractors and suppliers provide at all times an adequate supply of workers, equipment and materials; and, The Construction Manager shall manage the prime contractors 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.

PAGE 6

§ 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. Notwithstanding any language to the contrary in this Agreement or in AIA A201 General Conditions, as modified, the Construction Manager shall not perform any of the Work with its own forces or with affiliated entities except as allowed pursuant to Minn. Stat. § 471.463, subd. 5(b).

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

PAGE 7

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 Subject to written disclaimer or qualification from the Owner as to accuracy, 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.

~~§ 3.1.10 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. [Not used]~~

§ 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. All contracts for the Work shall be publicly bid in accordance with Minnesota Statutes, Sections 471.345 and 471.463, subd. 5(b).

PAGE 8

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.

PAGE 9

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

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

§ 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 Subject to written disclaimer or qualification from the Owner as to accuracy, the Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall ~~render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager, have the extent and limitation on~~ authority as set forth in Section 2.1.1 of the A201-2017, as modified. Except as otherwise provided in Section 4.2.1 of A201-2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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, as modified, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

Individual or Position	Rate
<u>Project Executive</u>	<u>\$160 - \$185</u>
<u>Preconstruction Manager</u>	<u>\$160 - \$185</u>
<u>Senior Project Manager</u>	<u>\$125 - \$145</u>
<u>Project Manager</u>	<u>\$110 - \$135</u>
<u>Project Superintendent</u>	<u>\$110 - \$135</u>
<u>Administrative Assistant</u>	<u>\$95 - \$105</u>
<u>Assistant Project Manager</u>	<u>\$95 - \$105</u>
<u>Project Engineer</u>	<u>\$95 - \$105</u>
<u>Cost Estimator</u>	<u>\$125 - \$160</u>
<u>Safety Officer</u>	<u>\$110 - \$135</u>
<u>Schedule Administrator</u>	<u>\$110 - \$135</u>
<u>Quality Control Manager</u>	<u>\$110 - \$135</u>
<i>Hourly rates will incur a 5% increase in January of</i>	

each forthcoming calendar year.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within ~~(eight (8))~~ 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.

PAGE 12

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid - ~~(forty-five (45))~~ 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.

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~~ In addition to Construction Manager's Fee, General Conditions and Contingency, the Guaranteed Maximum Price ~~to will be exceeded shall be paid by the Construction Manager without reimbursement by the Owner~~ determined based upon public bids for prime contracts, which will be awarded in accordance with Minn. Stat. Sec. 471.463, Subd. 5(b). To the extent the total cost of constructions is less than the Guaranteed Maximum Price, the Owner shall receive 100% of all such savings. The Guaranteed Maximum Price ("GMP") will be established after receipt of bids for the construction Project. An Addendum to this contract will be issued at the time of establishing the GMP that will modify this contract.

PAGE 14

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement. Construction Manager payment obligations to subcontractors shall be governed by the Municipal Prompt Payment Act, Minnesota Statutes Section 471.425, specifically including the requirement that the Construction Manager pay Subcontractors within ten (10) days of receipt of payment from Owner.

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

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

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

PAGE 15

§ 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.~~ [intentionally deleted]

PAGE 16

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

- .10 Legal, mediation or arbitration costs, however incurred;
- .11 Costs resulting from theft or vandalism of items that are not part of the Work or used in performing the Work;
- .12 Drug testing for new hires or current employees, incentive or bonus programs (including safety), accounting and EEO and targeted business compliance staff, or seminars;
- .13 Off-site file storage;
- .14 Management of warranty work;
- .15 Any overtime premium or shift differential expense to be incurred by Construction Manager for hourly workers shall require Owner's advance written approval before the incremental cost of the overtime premium or shift differential will be considered a reimbursable cost. If Construction Manager is required to work overtime as a result of an inexcusable delay or other coordination problems caused by Construction Manager or anyone the Construction Manager is responsible for, the overtime premium and/or shift differential expense portion of the payroll expense and related labor burden costs will be considered as cost not to be reimbursed;

PAGE 17

- .16 Charges for mobile telephone including air time and data charges will not be reimbursed;
- .17 Costs for vacation, holiday, sick, and training time for Construction Manager's supervisory staff.

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. In accordance with Minn. Stat. § 471.463, Subd. 5, the Construction Manager shall competitively bid all trade work for the Project from a list of qualified firms. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

The 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. Without limiting the preceding sentence, the detailed records must include a record of all sales taxes paid by subcontractors for materials and supplies used in and equipment incorporated into the Project, together with supporting invoices that show the date of the taxable transaction, a description of the materials, supplies, or equipment on which sales tax was paid, the amount of sales tax paid, and the state to which the taxes were paid. 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.

PAGE 18

~~§ 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.

§ 11.1.3 Owner payment obligations to Construction Manager and Construction Manager payment obligation to the prime contractors shall be governed by the Municipal Prompt Payment Act, Minnesota Statutes, Section 471.425, specifically including subdivision 4a requiring the Construction Manager to pay subcontractors within 10 days of receipt of payment. (Federal, state or local laws may require payment within a certain period of time.)

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

PAGE 19

PAGE 21

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

6% per annum simple interest

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

PAGE 23

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 agreed between the Owner and Construction Manager, 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.)

A pro rated portion of Construction Manager's Fee based on Work completed, plus payments necessary to pay to reimburse Contractor for costs of the Work completed through the date of termination and not previously paid for, plus costs incurred by Construction Manager made necessary by the termination.

PAGE 24

§ 14.2.3 Prompt Payment Act subdivision 4a shall apply to payments by Contractor to Subcontractors as set forth in the A201-2017, which provides in pertinent part: each Prime Contractor must pay any subcontractor within ten (10) days of the Prime Contractor's receipt of payment from the municipality for undisputed services provided by the Subcontractor. The Contract must require the Prime Contractor to pay interest of 1-1/2 percent per month or any part of a month to the Subcontractor on any undisputed amount not paid on time to the Subcontractor. The

minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the Prime Contractor shall pay the actual penalty due to the Subcontractor. A Subcontractor who prevails in a civil action to collect interest penalties from a Prime Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than ~~(\$ One million and no/100 dollars (\$ 1,000,000.00)~~ for each occurrence and ~~(\$ Two million and no/100 dollars (\$ 2,000,000.00)~~ in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than ~~(\$ One million and no/100 dollars (\$ 1,000,000.00)~~ 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.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than ~~(\$ One million and no/100 dollars (\$ 1,000,000.00)~~ each accident, ~~(\$ One million and no/100 dollars (\$ 1,000,000.00)~~ each employee, and ~~(\$ One million and no/100 dollars (\$ 1,000,000.00)~~ 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 ~~(\$ One million and no/100 dollars (\$ 1,000,000.00)~~ per claim and ~~(\$ One million and no/100 dollars (\$ 1,000,000.00)~~ in the aggregate.

PAGE 25

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

(If other than in accordance with a building information modeling exhibit, 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~~ Other provisions:

§ 14.5 Other provisions:

- .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, as modified

PAGE 26

- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, as modified, if executed
- .3 AIA Document A133™-2019, Exhibit B, Insurance and Bonds, as modified
- ~~.5 Building Information Modeling Exhibit, if completed:~~
- ~~.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:

.7 — Other documents, if any, listed below:
, as modified

.5 [intentionally deleted]

.6 [intentionally deleted]

.7 Other documents, if any, listed below:

Variable Information

PAGE 1

AGREEMENT made as of the 22nd day of September in the year 2025

City of Elk River, a Minnesota municipal corporation

13065 Orono Parkway

Elk River, MN 55330

Terra General Contactors, LLC d/b/a Terra Construction

21025 Commerce Boulevard, Suite 1000

Rogers, MN 55374

Northbound (Liquor Store) and Cannabound (Cannabis Store)

LSE Architects

1401 Glenwood Ave

Minneapolis, MN 55405

PAGE 2

As described on Page 2 of the Construction Manager Request for Proposal

The Owner will provide geotechnical reports, site boundaries, topographic surveys, availability of public and private utilities and services.

PAGE 3

TBD

Design Development – Completed September 2025

Construction Documents – Completed December 2025

Spring 2026

TBD

N/A

N/A

N/A

Joe Stremcha

Assistant City Administrator

City of Elk River

13065 Orono Parkway

PAGE 4

Elk River, MN 55330

Phone: (763) 635-1022

Email: jstremcha@elkrivernm.gov

Brian Tempas

LSE Architects

1401 Glenwood Ave

Minneapolis, MN 55405

Brian Tempas

LSE Architects

1401 Glenwood Ave

Minneapolis, MN 55405

Phone: (612) 343-1010

Terra General Contractors, LLC d/b/a Terra Construction

21025 Commerce Blvd, Ste 1000

Rogers, MN 55374

PAGE 5

Attn: Tom Brown

Phone: (763) 463-0220

Email: tbrown@terragc.com

In accordance with Minn. Stat. § 471.463, subd. 5(b)

N/A

PAGE 8

N/A

PAGE 11

\$5,000.00

Individual or Position	Rate
<u>Project Executive</u>	<u>\$160 - \$185</u>
<u>Preconstruction Manager</u>	<u>\$160 - \$185</u>
<u>Senior Project Manager</u>	<u>\$125 - \$145</u>
<u>Project Manager</u>	<u>\$110 - \$135</u>
<u>Project Superintendent</u>	<u>\$110 - \$135</u>
<u>Administrative Assistant</u>	<u>\$95 - \$105</u>
<u>Assistant Project Manager</u>	<u>\$95 - \$105</u>
<u>Project Engineer</u>	<u>\$95 - \$105</u>
<u>Cost Estimator</u>	<u>\$125 - \$160</u>
<u>Safety Officer</u>	<u>\$110 - \$135</u>
<u>Schedule Administrator</u>	<u>\$110 - \$135</u>
<u>Quality Control Manager</u>	<u>\$110 - \$135</u>
<u>Hourly rates will incur a 5% increase in January of each forthcoming calendar year.</u>	

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within ~~(eight (8))~~ 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.

PAGE 12

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid - ~~(forty-five (45))~~ 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.

6.0 %

The Construction Manager's Fee shall be one and five-tenths percent (1.5%) of the Cost of the Work. The Construction Manager's Fee shall be invoiced as a stipulated sum based on the Guaranteed Maximum Price as stated in the Guaranteed Maximum Price Amendment.

For changes in the Work, the Construction Manager's Fee shall be one and five-tenths percent (1.5%) of the increases in the Cost of the Work, as reflected in the approved change order. There shall be no decrease in the Construction Manager's Fee for deductive change orders.

N/A

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

N/A

N/A

PAGE 13

Project Executive

Preconstruction Manager

Senior Project Manager

Project Manager

Project Superintendent

PAGE 14

Assistant Superintendent

Administrative Assistant

Assistant Project Manager

Project Engineer

Scheduler

Cost Estimator

Safety Officer

Schedule Administrator

Quality Control Manager

PAGE 18

N/A

PAGE 19

5%

The Owner and Construction Manager must comply with Minnesota Statutes Section 15.72 and Minnesota Statutes Section 337.10 regarding retainage payments.

N/A

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

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

PAGE 20

N/A

PAGE 21

6% per annum simple interest

[X] Litigation in a court of competent jurisdiction

PAGE 24

§ 14.3.1.1 Commercial General Liability with policy limits of not less than ~~(\$ One million and no/100 dollars (\$ 1,000,000.00)~~ for each occurrence and ~~(\$ Two million and no/100 dollars (\$ 2,000,000.00)~~ in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than ~~(\$ One million and no/100 dollars (\$ 1,000,000.00)~~ 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.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than ~~(\$ One million and no/100 dollars (\$ 1,000,000.00)~~ each accident, ~~(\$ One million and no/100 dollars (\$ 1,000,000.00)~~ each employee, and ~~(\$ One million and no/100 dollars (\$ 1,000,000.00)~~ 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 ~~(\$ One million and no/100 dollars (\$ 1,000,000.00)~~ per claim and ~~(\$ One million and no/100 dollars (\$ 1,000,000.00)~~ in the aggregate.

Coverage
N/A

Limits

PAGE 25

§ 14.5.1 Non-Discrimination. Construction Manager shall ensure that no person shall on the grounds of race, color, religions, sex, sexual orientation, gender identity, handicap, familial status, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any scope of work carried out by Construction Manager or any Subcontractors of any tier. The Construction Manager agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this Agreement.

§ 14.5.2 Affirmative Action. Owner's Affirmative Action Plan shall be made available to the Construction Manager. The Construction Manager must comply with the Owner's Affirmative Action requirements and procedures. The Construction Manager shall furnish an affirmative action plan information and/or reports if requested by the Owner. The Construction Manager's furnishing of the information and a plan in compliance with this paragraph is a condition precedent to the Construction Manager's right to receive payment for its Work.

§ 14.5.3 The Construction Manager, its Subcontractors and the Owner must comply with the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes, Ch. 13, as it applies to all data provided by the Owner in accordance with this Contract and as it applies to all data, created, collected, received, stored, used, maintained, or disseminate by the Construction Manager in accordance with this Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by the Construction Manager, its Subcontractors or the Owner. In the event the Construction Manager or its Subcontractors receive a request to release the data referred to in this clause, the Construction Manager must immediately notify the Owner. The Owner will give the Construction Manager instructions concerning the release of the data to the requesting party before the data is released.

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

§ 14.5.5 Electronic Signatures and Records. Construction Manager and Owner agree that an electronic signature or an electronic record of a signature shall be as enforceable as an original signature page and will not be denied legal effect. This electronic signature provision will survive termination of this Agreement and applies to this Agreement and all documents generated in connection with this Agreement. »

PAGE 26

See Construction Manager's Proposal and RFP on file with Owner

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:39:40 CDT on 10/16/2025 under Order No. 20250122412 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ - 2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Northbound (Liquor Store) and Cannabound (Cannabis Store)

THE OWNER:

(Name, legal status and address)

City Elk River, a Minnesota municipal corporation
13065 Orono Parkway
Elk River, MN 55330

THE ARCHITECT:

(Name, legal status and address)

LSE Architects
1401 Glenwood Ave
Minneapolis, MN 55405

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS**
- 2 OWNER**
- 3 CONTRACTOR**
- 4 ARCHITECT**
- 5 SUBCONTRACTORS**
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**
- 7 CHANGES IN THE WORK**
- 8 TIME**
- 9 PAYMENTS AND COMPLETION**
- 10 PROTECTION OF PERSONS AND PROPERTY**
- 11 INSURANCE AND BONDS**
- 12 UNCOVERING AND CORRECTION OF WORK**
- 13 MISCELLANEOUS PROVISIONS**

ADDITIONS AND DELETIONS:

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

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™–2017, Guide for Supplementary Conditions.

14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES



INDEX

(Topics and numbers in bold are Section headings.)

Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3

Access to Work

3.16, 6.2.1, 12.1

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

Addenda

1.1.1

Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.4**

Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.6**

Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

Allowances

3.8

Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10

Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10.1, 4.2.7, 9.3.2, 13.4.1

Arbitration

8.3.1, 15.3.2, **15.4**

ARCHITECT

4

Architect, Definition of

4.1.1

Architect, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2, 9.5.4, 9.6.4, 15.1.4, 15.2

Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1, 13.4.2, 15.2

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.4

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work

5.2

Basic Definitions

1.1

Bidding Requirements

1.1.1

Binding Dispute Resolution

8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1

Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

Bonds, Performance, and Payment

7.3.4.4, 9.6.7, 9.10.3, 11.1.2, 11.1.3, 11.5

Building Information Models Use and Reliance

1.8

Building Permit

3.7.1

Capitalization

1.3

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Certificates for Payment

4.2.1, 4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4

Certificates of Inspection, Testing or Approval

13.4.4

Certificates of Insurance

9.10.2

Change Orders

1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2

Change Orders, Definition of

7.2.1

CHANGES IN THE WORK

2.2.2, 3.11, 4.2.8, **7**, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.5

Claims, Definition of

15.1.1

Claims, Notice of

1.6.2, 15.1.3

CLAIMS AND DISPUTES

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4

Claims and Timely Assertion of Claims

15.4.1

Claims for Additional Cost

3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, **15.1.5**

Claims for Additional Time

3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, **15.1.6**

Concealed or Unknown Conditions, Claims for

3.7.4

Claims for Damages

3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3, 11.3.2, 14.2.4, 15.1.7

Claims Subject to Arbitration

15.4.1

Cleaning Up

3.15, 6.3

Commencement of the Work, Conditions Relating to

2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, **15.1.5**

Commencement of the Work, Definition of

8.1.2

Communications

3.9.1, **4.2.4**

Completion, Conditions Relating to

3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 14.1.2, 15.1.2

COMPLETION, PAYMENTS AND

9

Completion, Substantial

3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 15.1.2

Compliance with Laws

2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2, 15.4.4.2

Consolidation or Joinder

15.4.4

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

1.1.4, **6**

Construction Change Directive, Definition of

7.3.1

Construction Change Directives

1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, **7.3**, 9.3.1.1

Construction Schedules, Contractor's

3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Contingent Assignment of Subcontracts

5.4, 14.2.2.2

Continuing Contract Performance

15.1.4

Contract, Definition of

1.1.2

CONTRACT, TERMINATION OR SUSPENSION OF THE

5.4.1.1, 5.4.2, 11.5, **14**

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to

3.7.1, 3.10, 5.2, 6.1

Contract Documents, Copies Furnished and Use of

1.5.2, 2.3.6, 5.3

Contract Documents, Definition of

1.1.1

Contract Sum

2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4, **9.1**, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2, 12.3, 14.2.4, 14.3.2, 15.1.4.2, **15.1.5**, **15.2.5**

Contract Sum, Definition of

9.1

Contract Time

1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5, 7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1, 8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2, 14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5

Contract Time, Definition of

8.1.1

CONTRACTOR

3

Contractor, Definition of

3.1, **6.1.2**

Contractor's Construction and Submittal Schedules

3.10, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2

Contractor's Employees

2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.3, 14.1, 14.2.1.1

Contractor's Liability Insurance

11.1

Contractor's Relationship with Separate Contractors and Owner's Forces

3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4

Contractor's Relationship with Subcontractors

1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2, 9.6.7, 9.10.2, 11.2, 11.3, 11.4

Contractor's Relationship with the Architect

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.4, 15.1.3, 15.2.1

Contractor's Representations

3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

Contractor's Responsibility for Those Performing the Work

3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8

Contractor's Review of Contract Documents

3.2

Contractor's Right to Stop the Work

2.2.2, 9.7

Contractor's Right to Terminate the Contract

14.1

Contractor's Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3

Contractor's Superintendent

3.9, 10.2.6

Contractor's Supervision and Construction Procedures

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4

Coordination and Correlation

1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

Copies Furnished of Drawings and Specifications

1.5, 2.3.6, 3.11

Copyrights

1.5, **3.17**

Correction of Work

2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**, 12.3, 15.1.3.1, 15.1.3.2, 15.2.1

Correlation and Intent of the Contract Documents

1.2

Cost, Definition of

7.3.4

Costs

2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.2, 12.1.2, 12.2.1, 12.2.4, 13.4, 14

Cutting and Patching

3.14, 6.2.5

Damage to Construction of Owner or Separate Contractors

3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damage to the Work

3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damages, Claims for

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2, 11.3, 14.2.4, 15.1.7

Damages for Delay

6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2

Date of Commencement of the Work, Definition of

8.1.2

Date of Substantial Completion, Definition of

8.1.3

Day, Definition of

8.1.4

Decisions of the Architect

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2, 14.2.2, 14.2.4, 15.1, 15.2

Decisions to Withhold Certification

9.4.1, **9.5**, 9.7, 14.1.1.3

Defective or Nonconforming Work, Acceptance, Rejection and Correction of

2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1

Definitions

1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1

Delays and Extensions of Time

3.2, **3.7.4**, 5.2.3, 7.2.1, 7.3.1, **7.4**, **8.3**, 9.5.1, **9.7**, 10.3.2, **10.4**, 14.3.2, **15.1.6**, 15.2.5

Digital Data Use and Transmission

1.7

Disputes

6.3, 7.3.9, 15.1, 15.2

Documents and Samples at the Site

3.11

Drawings, Definition of

1.1.5

Drawings and Specifications, Use and Ownership of
3.11

Effective Date of Insurance
8.2.2

Emergencies

10.4, 14.1.1.2, 15.1.5

Employees, Contractor's

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.3, 14.1, 14.2.1.1

Equipment, Labor, or Materials

1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2,
10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Execution and Progress of the Work

1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1, 9.9.1,
10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4

Extensions of Time

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2, 10.4, 14.3, 15.1.6, **15.2.5**

Failure of Payment

9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Faulty Work

(See Defective or Nonconforming Work)

Final Completion and Final Payment

4.2.1, 4.2.9, 9.8.2, **9.10**, 12.3, 14.2.4, 14.4.3

Financial Arrangements, Owner's

2.2.1, 13.2.2, 14.1.1.4

GENERAL PROVISIONS

1

Governing Law

13.1

Guarantees (See Warranty)

Hazardous Materials and Substances

10.2.4, **10.3**

Identification of Subcontractors and Suppliers

5.2.1

Indemnification

3.17, **3.18**, 9.6.8, 9.10.2, 10.3.3, 11.3

Information and Services Required of the Owner

2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5, 9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4,
15.1.4

Initial Decision

15.2

Initial Decision Maker, Definition of

1.1.8

Initial Decision Maker, Decisions

14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Initial Decision Maker, Extent of Authority

14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Injury or Damage to Person or Property

10.2.8, 10.4

Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 12.2.1, 13.4

Instructions to Bidders

1.1.1

Instructions to the Contractor

3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2

Instruments of Service, Definition of

1.1.7

Insurance

6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5, **11**

Insurance, Notice of Cancellation or Expiration

11.1.4, 11.2.3

Insurance, Contractor's Liability

11.1

Insurance, Effective Date of

8.2.2, 14.4.2

Insurance, Owner's Liability

11.2

Insurance, Property

10.2.5, 11.2, 11.4, 11.5

Insurance, Stored Materials

9.3.2

INSURANCE AND BONDS

11

Insurance Companies, Consent to Partial Occupancy

9.9.1

Insured loss, Adjustment and Settlement of

11.5

Intent of the Contract Documents

1.2.1, 4.2.7, 4.2.12, 4.2.13

Interest

13.5

Interpretation

1.1.8, 1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written

4.2.11, 4.2.12

Judgment on Final Award

15.4.2

Labor and Materials, Equipment

1.1.3, 1.1.6, **3.4**, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes

8.3.1

Laws and Regulations

1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8, 15.4

Liens

2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of

12.2.5, 15.1.2, 15.4.1.1

Limitations of Liability

3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6, 4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3, 11.3, 12.2.5, 13.3.1

Limitations of Time

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7, 5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15, 15.1.2, 15.1.3, 15.1.5

Materials, Hazardous

10.2.4, **10.3**

Materials, Labor, Equipment and

1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

Means, Methods, Techniques, Sequences and Procedures of Construction

3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien

2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Mediation

8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1, 15.4.1.1

Minor Changes in the Work

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, **7.4**

MISCELLANEOUS PROVISIONS

13

Modifications, Definition of

1.1.1

Modifications to the Contract

1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2

Mutual Responsibility

6.2

Nonconforming Work, Acceptance of

9.6.6, 9.9.3, **12.3**

Nonconforming Work, Rejection and Correction of

2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2

Notice

1.6, 1.6.1, 1.6.2, 2.1.2, 2.2.2., 2.2.3, 2.2.4, 2.5, 3.2.4, 3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4, 8.2.2, 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1, 13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5, 15.1.6, 15.4.1

Notice of Cancellation or Expiration of Insurance

11.1.4, 11.2.3

Notice of Claims

1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, **15.1.3**, 15.1.5, 15.1.6, 15.2.8, 15.3.2, 15.4.1

Notice of Testing and Inspections

13.4.1, 13.4.2

Observations, Contractor's

3.2, 3.7.4

Occupancy

2.3.1, 9.6.6, 9.8

Orders, Written

1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2, 14.3.1

OWNER

2

Owner, Definition of

2.1.1

Owner, Evidence of Financial Arrangements

2.2, 13.2.2, 14.1.1.4

Owner, Information and Services Required of the

2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4

Owner's Authority

1.5, 2.1.1, 2.3.32.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4, 15.2.7

Owner's Insurance

11.2

Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

Owner's Right to Carry Out the Work

2.5, 14.2.2

Owner's Right to Clean Up

6.3

Owner's Right to Perform Construction and to Award Separate Contracts

6.1

Owner's Right to Stop the Work

2.4

Owner's Right to Suspend the Work

14.3

Owner's Right to Terminate the Contract

14.2, 14.4

Ownership and Use of Drawings, Specifications and Other Instruments of Service

1.1.1, 1.1.6, 1.1.7, **1.5**, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12, 5.3

Partial Occupancy or Use

9.6.6, **9.9**

Patching, Cutting and

3.14, 6.2.5

Patents

3.17

Payment, Applications for

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3

Payment, Certificates for

4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4

Payment, Failure of

9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Payment, Final

4.2.1, 4.2.9, **9.10**, 12.3, 14.2.4, 14.4.3

Payment Bond, Performance Bond and

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

Payments, Progress

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

PAYMENTS AND COMPLETION

9

Payments to Subcontractors

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

PCB

10.3.1

Performance Bond and Payment Bond

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

Permits, Fees, Notices and Compliance with Laws

2.3.1, **3.7**, 3.13, 7.3.4.4, 10.2.2

PERSONS AND PROPERTY, PROTECTION OF

10

Polychlorinated Biphenyl

10.3.1

Product Data, Definition of

3.12.2

Product Data and Samples, Shop Drawings

3.11, **3.12**, 4.2.7

Progress and Completion

4.2.2, **8.2**, 9.8, 9.9.1, 14.1.4, 15.1.4

Progress Payments

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

Project, Definition of

1.1.4

Project Representatives

4.2.10

Property Insurance

10.2.5, **11.2**

Proposal Requirements

1.1.1

PROTECTION OF PERSONS AND PROPERTY

10

Regulations and Laws

1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8, 15.4

Rejection of Work

4.2.6, 12.2.1

Releases and Waivers of Liens

9.3.1, 9.10.2

Representations

3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1

Representatives

2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1

Responsibility for Those Performing the Work

3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10

Retainage

9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

Review of Contract Documents and Field Conditions by Contractor

3.2, 3.12.7, 6.1.3

Review of Contractor's Submittals by Owner and Architect

3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

Review of Shop Drawings, Product Data and Samples by Contractor

3.12

Rights and Remedies

1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2, 12.2.4, 13.3, 14, 15.4

Royalties, Patents and Copyrights

3.17

Rules and Notices for Arbitration

15.4.1

Safety of Persons and Property

10.2, 10.4

Safety Precautions and Programs

3.3.1, 4.2.2, 4.2.7, 5.3, 10.1, 10.2, 10.4

Samples, Definition of

3.12.3

Samples, Shop Drawings, Product Data and

3.11, 3.12, 4.2.7

Samples at the Site, Documents and

3.11

Schedule of Values

9.2, 9.3.1

Schedules, Construction

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Separate Contracts and Contractors

1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2

Separate Contractors, Definition of

6.1.1

Shop Drawings, Definition of

3.12.1

Shop Drawings, Product Data and Samples

3.11, 3.12, 4.2.7

Site, Use of

3.13, 6.1.1, 6.2.1

Site Inspections

3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4

Site Visits, Architect's

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Special Inspections and Testing

4.2.6, 12.2.1, 13.4

Specifications, Definition of

1.1.6

Specifications

1.1.1, **1.1.6**, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14

Statute of Limitations

15.1.2, 15.4.1.1

Stopping the Work

2.2.2, 2.4, 9.7, 10.3, 14.1

Stored Materials

6.2.1, 9.3.2, 10.2.1.2, 10.2.4

Subcontractor, Definition of

5.1.1

SUBCONTRACTORS

5

Subcontractors, Work by

1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7

Subcontractual Relations

5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1

Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3

Submittal Schedule

3.10.2, 3.12.5, 4.2.7

Subrogation, Waivers of

6.1.1, **11.3**

Substances, Hazardous

10.3

Substantial Completion

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 12.2, 15.1.2

Substantial Completion, Definition of

9.8.1

Substitution of Subcontractors

5.2.3, 5.2.4

Substitution of Architect

2.3.3

Substitutions of Materials

3.4.2, 3.5, 7.3.8

Sub-subcontractor, Definition of

5.1.2

Subsurface Conditions

3.7.4

Successors and Assigns

13.2

Superintendent

3.9, 10.2.6

Supervision and Construction Procedures

1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4

Suppliers

1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6, 9.10.5, 14.2.1

Surety

5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2, 15.2.7

Surety, Consent of
9.8.5, 9.10.2, 9.10.3

Surveys
1.1.7, 2.3.4

Suspension by the Owner for Convenience
14.3

Suspension of the Work
3.7.5, 5.4.2, 14.3

Suspension or Termination of the Contract
5.4.1.1, 14

Taxes

3.6, 3.8.2.1, 7.3.4.4

Termination by the Contractor
14.1, 15.1.7

Termination by the Owner for Cause
5.4.1.1, **14.2**, 15.1.7

Termination by the Owner for Convenience
14.4

Termination of the Architect
2.3.3

Termination of the Contractor Employment
14.2.2

TERMINATION OR SUSPENSION OF THE CONTRACT

14

Tests and Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 12.2.1, **13.4**

TIME

8

Time, Delays and Extensions of

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

Time Limits

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15.1.2, 15.1.3, 15.4

Time Limits on Claims

3.7.4, 10.2.8, 15.1.2, 15.1.3

Title to Work

9.3.2, 9.3.3

UNCOVERING AND CORRECTION OF WORK

12

Uncovering of Work

12.1

Unforeseen Conditions, Concealed or Unknown

3.7.4, 8.3.1, 10.3

Unit Prices

7.3.3.2, 9.1.2

Use of Documents

1.1.1, 1.5, 2.3.6, 3.12.6, 5.3

Use of Site

3.13, 6.1.1, 6.2.1

Values, Schedule of

9.2, 9.3.1

Waiver of Claims by the Architect

13.3.2

Waiver of Claims by the Contractor

9.10.5, 13.3.2, **15.1.7**

Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, **15.1.7**

Waiver of Consequential Damages

14.2.4, 15.1.7

Waiver of Liens

9.3, 9.10.2, 9.10.4

Waivers of Subrogation

6.1.1, **11.3**

Warranty

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2, 15.1.2

Weather Delays

8.3, 15.1.6.2

Work, Definition of

1.1.3

Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3, 13.2, 13.3.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

Written Orders

1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the Architect. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The Contract Documents are to be read and interpreted as a whole. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work and to require Contractor to provide the highest quality and greatest quantity consistent with the Contract Documents. If there are inconsistencies within or among part of the Contract Documents or between the Contract Documents and applicable standards, codes or ordinances, the Contractor shall provide the better quality or greater quantity of Work or comply with the more stringent requirements; either or all

in accordance with the Architect's interpretation. The terms and conditions of this subparagraph 1.2.1 shall not relieve the Contractor of any of its obligations as set forth in Article 3.

- .1 Before ordering any materials or doing any Work, the Contractor shall verify measurements at the Project site and shall be responsible for the correctness of such measurements. No extra charges or compensation will be allowed on account of differences between actual dimensions and the dimensions indicated on the Drawings. Any difference that may be found shall be submitted to the Architect for resolution before proceeding with the Work.
- .2 If a minor change in the Work is necessary due to actual field conditions, the Contractor shall submit detailed drawings of such departure to the Architect for approval by the Architect before making the change.

The Owner shall not be required to make any adjustment to either the Contract Sum or Contract Time because of any failure by the Contractor to comply with the requirements of this Subparagraph 1.2.1. Actual or alleged conflicts or inconsistencies between the Drawings and Specifications or other Contract Documents shall be brought to the Architect's and Architect's attention in writing, prior to performing the affected Work. The Architect's and Construction Manager's directions, as communicated through the Architect, shall be followed by the Contractor.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

- .1 If there is an inconsistency in the quality and/or quantity of Work required by the Contract Documents, either the greater quality and/or quantity of Work indicated shall be provided in accordance with the engineer/architect's interpretation without change in the contract sum.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8,

solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 Work is to proceed as a no-lien Project in accordance with the laws of the State of Minnesota regarding public projects. Contractor shall provide to the Owner both a Labor and Material Payment Bond and a Performance Bond each in the amount of the Contract Price prior to the commencement of Work as required by Minnesota Statutes 574.26. The Contractor, for itself and for all who claim through the Contractor, acknowledges and agrees: (i) that because it is a public project, no lien shall attach to the real estate on which the Project is located or to any improvements no existing or to be constructed thereon in favor of the Contractor or any Subcontractor, mechanic, journeyman, laborer, material vendor, lessor of tools or equipment or any other party who may furnish work, materials, equipment, services, tools or machinery for the design or construction of improvements on the land. The Contractor shall also provide written notice of the no-lien status of this Project to all of its Subcontractors, material suppliers, equipment lessors and others that provide labor, material, equipment and/or services for the Project. Contractor shall defend, indemnify and hold the Owner and Architect harmless from any suit, lien, damages, losses or expenses, including reasonable attorneys' fees.

§ 2.2 Evidence of the Owner's Financial Arrangements [deleted intentionally]

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner has retained an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 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 Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, and fails within a 10-day period after receipt of written notice from the owners to commence and continue correction of such work, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 The Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless the Contractor recognized such error, inconsistency, omission, difference, or nonconformity and knowingly failed to report it.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 10 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise

instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of

architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular

manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 The indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by Contractor, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Owner's decisions on matters relating to aesthetic effect will be final if consistent with the intent

expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Owner may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.3: The following fees apply to Changes in the Work:

- a. A 10 percent maximum on overhead and profit for the direct cost of Work performed by a Contractor or Subcontractor;
- a. A 5 percent maximum overhead and profit on indirect costs of a Contractor's Subcontractors;
- a. The total mark-up shall not exceed 20 percent and all mark-ups are subject to the Architect approval.
- a. On Work deleted from the Contract, credit to the Owner shall be the Architect approved net cost plus 1/2 of the overhead and profit percentage noted above.

In the case of an increase or decrease in the contract sum, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data, showing adjustments on the basis of reasonable expenditures and savings of those performing the Work attributable to the change.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work and stating a proposed basis for the change prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted

accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the

adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Owner may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Owner's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Owner and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Owner's order for a minor change without prior notice to the Owner that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work or the sequencing of work (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (2) by fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control and not reasonably anticipatable; or (3) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended by Change Order without notice to sureties, for such reasonable time as the Architect may determine. A time extension shall be the Contractor's sole remedy and compensation for all such delays and changes in sequencing.

§ 8.3.2 [intentionally deleted]

§ 8.3.3 This Section 8.3 precludes recovery of damages for delay by Contractor if the Contractor is delayed at any time in the progress of the Work or the sequencing of work by an act or neglect of the Owner or the Architect or of any employee of either or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by fires, unusual delays in deliveries, unavoidable casualties or other causes beyond the Contractor's or a Subcontractor's or suppliers control and not reasonably anticipatable, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order without notice to sureties, for such reasonable time as the Architect may determine. A time extension shall be the Contractor's sole remedy and compensation for all such delays and changes in sequencing.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay. As required by Minnesota Statutes, § 471.425, subd. 4a, the Construction Manager must pay all Subcontractors, less any retainage, within ten (10) calendar days of the Construction Manager's receipt of payment from the Owner for undisputed services provided by the Subcontractor(s) and must pay interest at the rate of one and one-half percent (1.5%) per month or any part of a month to the Subcontractor(s) on any undisputed amount not paid on time to the Subcontractor(s).

§ 9.3.1.3 Owner shall make 95% progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment during performance of the Work. Upon final completion of the Work, Owner shall pay the remainder of the Contract Price. Minn. Stat. § 290.92 requires that the City of Elk River obtain a Withholding Affidavit for Contractors, Form IC-134, before making final payments to Contractors. This form needs to be submitted by the Contractor to the Minnesota Department of Revenue for approval. The form is used to receive certification from the state that the vendor has complied with the requirement to withhold and remit state withholding taxes for employee salaries paid

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application

for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its option, issue joint checks to the Contractor and to any Subcontractor or materials or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material of equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such

payment on the next Certificate for Payment.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 Prompt Payment to Subcontractors. In accordance with Minnesota law, the Contractor shall include, in all subcontracts and other agreements with its subcontractors and suppliers, a provision which requires the Contractor to pay any of its subcontractors and suppliers within 10 days of the Contractor's receipt of payment from the Owner, for undisputed services or supplies provided by the subcontractor or supplier. The provision shall also include the requirement that the Contractor shall pay interest of one and one-half percent (1.5%) per month or any part of a month to the subcontractor or supplier on any undisputed amount not paid on time to the subcontractor or supplier. The provision shall further provide that the minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10, for an unpaid balance of less than \$100, the Contractor shall pay the actual penalty due to the subcontractor or supplier, and a subcontractor or supplier who prevails in a civil action to collect interest penalties from the Contractor shall be awarded its costs and disbursements, including attorneys' fees, incurred in bringing the action.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days

after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances,

codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor,

Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1 Contractor's Liability Insurance

§ 11.1.1 The Contractor shall purchase and maintain commercial general liability insurance as required to protect the Contractor, Architect and Owner from claims set forth below which may arise out of, result from, or are in any manner connected with, the execution of the work provided for in this Contract, or occur or result from the use by the Contractor, its agents or employees, of materials, equipment, instrumentalities or other property, whether the same be owned by the Contractor, or third parties, whether such claims arise during Contract performance or subsequent to completion of operations under this Contract and whether operations be by the Contractor or by anyone directly or indirectly employed by Contractor, or by anyone for whose acts Contractor may be liable, and whether such claims are claims for which the Contractor may be, or may be claimed to be, liable.. Insurance shall be purchased from a company licensed to do business in the state where the Project is located, and shall be written for not less than the limits of liability specified below or required by law, whichever is greater. A certificate of insurance on a form acceptable to the Owner which verifies the existence of this insurance coverage must be provided to the Owner before work under this contract is begun. The Owner shall be named as an additional insured on a primary and noncontributory basis. The types of claims, required coverages and minimum limits of liability are as follows:

- A. Claims under Worker's Compensation, disability benefit and other similar employee benefit acts; claims for damages because of bodily injury, occupational sickness or disease or death of employees. Insurance coverages shall include:
Statutory Workers' Compensation, including Employer's Liability with a minimum limit of \$100,000.00 for each employee.
- B. Claims for damages because of bodily injury, occupational sickness or disease, or death, by any person other than employees, claims for personal injuries which are sustained (1) by any person as a result of an act or omission directly or indirectly related to the employment of such person by the Contractor, or (2) any other person; claims for damages other than to the Work itself, because of injury to or destruction of tangible property including loss of use resulting therefor. Insurance coverages shall include:
Premise – Operations
Products-Completed Operations

Blanket Contractual – Such insurance and endorsements as will insure the obligations under the provisions of Subsection 11.1.5 of this Document.

Broad Form Property Damage

Personal Injury

Blanket Explosion, Collapse and Underground Property Damage

Operations of Independent Contractors

Policy Limits:	General Aggregate	\$2,000,000.00
	Products/Completed Operations Aggregate	\$1,000,000.00
	Personal Injury	\$1,000,000.00
	Each Occurrence	\$1,000,000.00

- C. Claims for damages because of bodily injury or death of any person, or any property damage arising out of the ownership or use of any motor vehicle. Insurance coverage shall include:
Business Auto Liability insurance including owned, hired and non-owned vehicles with limits of \$1,000,000.00
Combined Single Limit for each accident for bodily injury and death, or property damage.
- D. The coverage limits required by Paragraphs (B) and (C) above may be achieved by the use of an Umbrella Excess Liability Policy.
The limits of liability specified shall be considered minimum requirements.

All aforesaid insurance policies shall be underwritten with responsible insurance carriers, with Best's Ratings of not less than A and X and otherwise satisfactory to Owner and licensed to provide insurance in the state in which the Project is located.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§11.1.2.1. The bond value requirements are as follows:

- a. Provide bonds on a standard surety bond form.
- a. Provide a 100 percent Performance Bond.
- a. Provide a 100 percent Payment Bond.
- a. Deliver bonds within 3 days after execution of the Contract.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

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

§ 11.2.2 The Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are

beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsehood, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.2.3 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.4 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 [intentionally deleted]

§ 11.3.2 [intentionally deleted]

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance as will insure the Owner against loss of use of the Owner's property due to fire or hazards, however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from

receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor 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 13.2.2, 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.

§ 13.2.2 The Owner may, without consent of the Contractor, 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 Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1

§ 14.1.2

§ 14.1.3

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for the Contractor for Work properly executed; along with reasonable overhead and profit for the completed Work.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is

not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.3 Mediation

Additions and Deletions Report for AIA® Document A201® – 2017

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

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Changes to original AIA text

PAGE 3

8.3.1, 15.3.2, ~~15.4-~~

PAGE 7

~~3.14~~, 6.2.5-

PAGE 15

PAGE 16

The Initial Decision Maker is the ~~person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2~~Architect. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2.1 The Contract Documents are to be read and interpreted as a whole. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor and to require Contractor to provide the highest quality and greatest quantity consistent with the Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. If there are inconsistencies within or among part of the Contract Documents or between the Contract Documents and applicable standards, codes or ordinances, the Contractor shall provide the better quality or greater quantity of Work or comply with the more stringent requirements; either or all in accordance with the Architect's interpretation. The terms and conditions of this subparagraph 1.2.1 shall not relieve the Contractor of any of its obligations as set forth in Article 3.

PAGE 17

.1 Before ordering any materials or doing any Work, the Contractor shall verify measurements at the Project site and shall be responsible for the correctness of such measurements. No extra charges or compensation will be allowed on account of differences between actual dimensions and the dimensions indicated on the Drawings. Any difference that may be found shall be submitted to the Architect for resolution before proceeding with the Work.

.2 If a minor change in the Work is necessary due to actual field conditions, the Contractor

shall submit detailed drawings of such departure to the Architect for approval by the Architect before making the change.

The Owner shall not be required to make any adjustment to either the Contract Sum or Contract Time because of any failure by the Contractor to comply with the requirements of this Subparagraph 1.2.1. Actual or alleged conflicts or inconsistencies between the Drawings and Specifications or other Contract Documents shall be brought to the Architect's and Architect's attention in writing, prior to performing the affected Work. The Architect's and Construction Manager's directions, as communicated through the Architect, shall be followed by the Contractor.

- .1 If there is an inconsistency in the quality and/or quantity of Work required by the Contract Documents, either the greater quality and/or quantity of Work indicated shall be provided in accordance with the engineer/architect's interpretation without change in the contract sum.

PAGE 18

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information. Work is to proceed as a no-lien Project in accordance with the laws of the State of Minnesota regarding public projects. Contractor shall provide to the Owner both a Labor and Material Payment Bond and a Performance Bond each in the amount of the Contract Price prior to the commencement of Work as required by Minnesota Statutes 574.26. The Contractor, for itself and for all who claim through the Contractor, acknowledges and agrees: (i) that because it is a public project, no lien shall attach to the real estate on which the Project is located or to any improvements no existing or to be constructed thereon in favor of the Contractor or any Subcontractor, mechanic, journeyman, laborer, material vendor, lessor of tools or equipment or any other party who may furnish work, materials, equipment, services, tools or machinery for the design or construction of improvements on the land. The Contractor shall also provide written notice of the no-lien status of this Project to all of its Subcontractors, material suppliers, equipment lessors and others that provide labor, material, equipment and/or services for the Project. Contractor shall defend, indemnify and hold the Owner and Architect harmless from any

PAGE 19

§ 2.2 Evidence of the Owner's Financial Arrangements [deleted intentionally]

§ 2.3.2 The Owner ~~shall retain~~has retained an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor ~~to whom the Contractor has no reasonable objection and~~ whose status under the Contract Documents shall be that of the Architect.

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, and fails within a 10-day period after receipt of written notice from the owners to commence and continue correction of such work, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

PAGE 20

§ 3.2.2 ~~Because the Contract Documents are complementary, the~~The Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless the Contractor recognized such error, inconsistency, omission, difference, or nonconformity and knowingly failed to report it.

PAGE 21

§ 3.4.2 ~~Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the~~The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

PAGE 22

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 1410 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. ~~If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.~~

PAGE 25

~~§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the~~ The indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 4.1.3 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by Contractor, and will not be liable for results of interpretations or decisions rendered in good faith.

PAGE 27

~~§ 4.2.13 The Architect's~~ Owner's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect ~~Owner~~ may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

PAGE 28

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

PAGE 29

§ 7.3 Construction Change Directives

§ 7.2.3: The following fees apply to Changes in the Work:

- a. A 10 percent maximum on overhead and profit for the direct cost of Work performed by a Contractor or Subcontractor;
- a. A 5 percent maximum overhead and profit on indirect costs of a Contractor's Subcontractors;
- a. The total mark-up shall not exceed 20 percent and all mark-ups are subject to the Architect approval.
- a. On Work deleted from the Contract, credit to the Owner shall be the Architect approved net cost plus 1/2 of the overhead and profit percentage noted above.

In the case of an increase or decrease in the contract sum, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data, showing adjustments on the basis of reasonable expenditures and savings of those performing the Work attributable to the change.

§ 7.3 Construction Change Directives

PAGE 30

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work and stating a proposed basis for the change prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, ~~subject to the right of either party to disagree and assert a Claim in accordance with Article 15.~~

The ~~Architect~~Owner may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The ~~Architect's~~Owner's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the ~~Architect~~Owner and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the ~~Architect's~~Owner's order for a minor change without prior notice to the ~~Architect~~Owner that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work ~~by or the sequencing of work~~ (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; ~~(3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5 and not reasonably anticipatable; or (3) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended by Change Order without notice to sureties, for such reasonable time as the Architect may determine. A time extension shall be the Contractor's sole remedy and compensation for all such delays and changes in sequencing.~~

§ 8.3.2 ~~Claims relating to time shall be made in accordance with applicable provisions of Article 15.~~~~[intentionally deleted]~~

§ 8.3.3 This Section-8.3 ~~does not preclude~~~~precludes~~ recovery of damages for delay by either party under other provisions of the Contract Documents~~Contractor~~ if the Contractor is delayed at any time in the progress of the Work or the sequencing of work by an act or neglect of the Owner or the Architect or of any employee of either or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by fires, unusual delays in deliveries, unavoidable casualties or other causes beyond the Contractor's or a Subcontractor's or suppliers control and not reasonably anticipatable, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order without notice to sureties, for such reasonable time as the Architect may determine. A time extension shall be the Contractor's sole remedy and compensation for all such delays and changes in sequencing.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay. As required by Minnesota Statutes, § 471.425, subd. 4a, the Construction Manager must pay all Subcontractors, less any retainage, within ten (10) calendar days of the Construction Manager's receipt of payment from the Owner for undisputed services provided by the Subcontractor(s) and must pay interest at the rate of one and one-half percent (1.5%) per month or any part of a month to the Subcontractor(s) on any undisputed amount not paid on time to the Subcontractor(s).

§ 9.3.1.3 Owner shall make 95% progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment during performance of the Work. Upon final completion of the Work, Owner shall pay the remainder of the Contract Price. Minn. Stat. § 290.92 requires that the City of Elk River obtain a Withholding

Affidavit for Contractors, Form IC-134, before making final payments to Contractors. This form needs to be submitted by the Contractor to the Minnesota Department of Revenue for approval. The form is used to receive certification from the state that the vendor has complied with the requirement to withhold and remit state withholding taxes for employee salaries paid

PAGE 33

§ 9.5.3 WhenIf the reasons for withholding certification are removed, certification will be made for amounts previously withheldArchitect withholds certification for payment under Section 9.5.1.3, the Owner may, at its option, issue joint checks to the Contractor and to any Subcontractor or materials or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material of equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

PAGE 34

§ 9.6.2 ThePrompt Payment to Subcontractors. In accordance with Minnesota law, the Contractor shall pay each Subcontractor, no later than seven days afterinclude, in all subcontracts and other agreements with its subcontractors and suppliers, a provision which requires the Contractor to pay any of its subcontractors and suppliers within 10 days of the Contractor's receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar mannerfor undisputed services or supplies provided by the subcontractor or supplier. The provision shall also include the requirement that the Contractor shall pay interest of one and one-half percent (1.5%) per month or any part of a month to the subcontractor or supplier on any undisputed amount not paid on time to the subcontractor or supplier. The provision shall further provide that the minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10, for an unpaid balance of less than \$100, the Contractor shall pay the actual penalty due to the subcontractor or supplier, and a subcontractor or supplier who prevails in a civil action to collect interest penalties from the Contractor shall be awarded its costs and disbursements, including attorneys' fees, incurred in bringing the action.

PAGE 35

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

PAGE 36

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 — liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 — failure of the Work to comply with the requirements of the Contract Documents;
- .3 — terms of special warranties required by the Contract Documents; or
- .4 — audits performed by the Owner, if permitted by the Contract Documents, after final payment.

PAGE 38

§ 11.1 Contractor's Liability Insurance

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§ 11.1.1 The Contractor shall purchase and maintain commercial general liability insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents as required to protect the Contractor, Architect and Owner from claims set forth below which may arise out of, result from, or are in any manner connected with, the execution of the work provided for in this Contract, or occur or result from the use by the Contractor, its agents or employees, of materials, equipment, instrumentalities or other property, whether the same be owned by the Contractor, or third parties, whether such claims arise during Contract performance or subsequent to completion of operations under this Contract and whether operations be by the Contractor or by anyone directly or indirectly employed by Contractor, or by anyone for whose acts Contractor may be liable, and whether such claims are claims for which the Contractor may be, or may be claimed to be, liable.. Insurance shall be purchased from a company licensed to do business in the state where the Project is located, and shall be written for not less than the limits of liability specified below or required by law, whichever is greater. A certificate of insurance on a form acceptable to the Owner which verifies the existence of this insurance coverage must be provided to the Owner before work under this contract is begun. The Owner shall be named as an additional insured on a primary and noncontributory basis. The types of claims, required coverages and minimum limits of liability are as follows:

- A.** Claims under Worker's Compensation, disability benefit and other similar employee benefit acts; claims for damages because of bodily injury, occupational sickness or disease or death of employees. Insurance coverages shall include:

Statutory Workers' Compensation, including Employer's Liability with a minimum limit of \$100,000.00 for each employee.

- B.** Claims for damages because of bodily injury, occupational sickness or disease, or death, by any person other than employees, claims for personal injuries which are sustained (1) by any person as a result of an act or omission directly or indirectly related to the employment of such person by the Contractor, or (2) any other person; claims for damages other than to the Work itself, because of injury to or destruction of tangible property including loss of use resulting therefor. Insurance coverages shall include:

Premise – Operations

Products-Completed Operations

Blanket Contractual – Such insurance and endorsements as will insure the obligations under the provisions of Subsection 11.1.5 of this Document.

Broad Form Property Damage

PAGE 39

Personal Injury

Blanket Explosion, Collapse and Underground Property Damage

Operations of Independent Contractors

<u>Policy Limits:</u>	<u>General Aggregate</u>	<u>\$2,000,000.00</u>
	<u>Products/Completed Operations Aggregate</u>	<u>\$1,000,000.00</u>
	<u>Personal Injury</u>	<u>\$1,000,000.00</u>
	<u>Each Occurrence</u>	<u>\$1,000,000.00</u>

C. Claims for damages because of bodily injury or death of any person, or any property damage arising out of the ownership or use of any motor vehicle. Insurance coverage shall include:

Business Auto Liability insurance including owned, hired and non-owned vehicles with limits of \$1,000,000.00

Combined Single Limit for each accident for bodily injury and death, or property damage.

D. The coverage limits required by Paragraphs (B) and (C) above may be achieved by the use of an Umbrella Excess Liability Policy.

The limits of liability specified shall be considered minimum requirements.

All aforesaid insurance policies shall be underwritten with responsible insurance carriers, with Best's Ratings of not less than A and X and otherwise satisfactory to Owner and licensed to provide insurance in the state in which the Project is located.

§11.1.2.1. The bond value requirements are as follows:

- a. Provide bonds on a standard surety bond form.
- a. Provide a 100 percent Performance Bond.
- a. Provide a 100 percent Payment Bond.
- a. Deliver bonds within 3 days after execution of the Contract.

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

§ 11.2.2 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

PAGE 40

§ 11.2.23 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required

property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.34 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property. [intentionally deleted]

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance. [intentionally deleted]

PAGE 41

The Owner, at the Owner's option, may purchase and maintain insurance ~~that~~ as will protect ~~insure~~ the Owner against loss of use of the Owner's property, ~~or the inability to conduct normal operations, due to fire or other causes of loss.~~ The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, ~~due to fire or other hazards~~ due to fire or hazards, however caused.

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has

previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor ~~and to make a claim for breach of warranty~~. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

PAGE 42

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. ~~If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~

PAGE 43

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an ~~independent testing laboratory or entity~~ acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

~~**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:~~

- ~~.1— Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;~~
- ~~.2— An act of government, such as a declaration of national emergency, that requires all Work to be stopped;~~
- ~~.3— Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or~~
- ~~.4— The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.~~

§ 14.1.1

§ 14.1.2

~~**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.~~

PAGE 45

§ 14.4.3 In case of such termination for the Owner's convenience, the ~~Owner~~Contractor shall pay be entitled to receive payment for the Contractor for Work properly executed; ~~costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement along with reasonable overhead and profit for the completed Work.~~

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.3 Mediation

Variable Information

PAGE 1

Northbound (Liquor Store) and Cannabound (Cannabis Store)

City Elk River, a Minnesota municipal corporation

13065 Orono Parkway

Elk River, MN 55330

LSE Architects

1401 Glenwood Ave

Minneapolis, MN 55405



Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:42:25 CDT on 10/16/2025 under Order No. 20250122412 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ - 2017, General Conditions of the Contract for Construction, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

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AIA® Document A133® – 2019 Exhibit A

Guaranteed Maximum Price Amendment

This Amendment dated the _____ day of _____ in the year _____, 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 22nd day of September in the year 2025 (the “Agreement”)
(In words, indicate day, month, and year.)

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

Northbound (Liquor Store) and Cannabound (Cannabis Store)

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

City of Elk River, a Minnesota municipal corporation
13065 Orono Parkway
Elk River, MN 55330

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

Terra General Contractors, LLC d/b/a Terra Construction
21025 Commerce Boulevard, Suite 1000
Rogers, MN 55374

TABLE OF ARTICLES

- A.1 GUARANTEED MAXIMUM PRICE
- A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

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

ADDITIONS AND DELETIONS:
The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added to or deleted from the original AIA text.

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

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

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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.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed [redacted] (\$ [redacted]), 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.)

[redacted]

§ 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
[redacted]	

§ 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
[redacted]		

§ 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)
[redacted]		

ARTICLE A.2 **DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

§ A.2.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

- ☐ [redacted] The date of execution of this Amendment.
- ☐ [redacted] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)
- [redacted]

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of execution of this Amendment.

§ A.2.2 Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The Contract Time shall be measured from the date of commencement of the Work.

§ A.2.3 Substantial Completion

§ A.2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

- ☐ Not later than () calendar days from the date of commencement of the Work.
- ☐ By the following date:

§ A.2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Construction Manager shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date

§ A.2.3.3 If the Construction Manager fails to achieve Substantial Completion as provided in this Section A.2.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.6 of the Agreement.

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

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

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.)

Number	Title	Date

§ A.3.1.4 The Sustainability Plan, if any:
(If the Owner identified a Sustainable Objective in the Owner’s Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner’s and Construction Manager’s roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each

Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages
-------	------	-------

Other identifying information:

§ A.3.1.5 Allowances, if any, included in the Guaranteed Maximum Price:
(Identify each allowance.)

Item	Price
------	-------

§ A.3.1.6 Assumptions and clarifications, if any, upon which the Guaranteed Maximum Price is based:
(Identify each assumption and clarification.)

§ A.3.1.7 The Guaranteed Maximum Price is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Amendment.)

ARTICLE A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

§ A.4.1 The Construction Manager shall retain the consultants, contractors, design professionals, and suppliers, identified below:
(List name, discipline, address, and other information.)

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)

AIA® Document A133® – 2019 Exhibit B

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the 22nd day of September in the year 2025

(In words, indicate day, month and year.)

for the following **PROJECT**:

(Name and location or address)

Northbound (Liquor Store) and Cannabound (Cannabis Store)



THE OWNER:

(Name, legal status, and address)

City of Elk River, a Minnesota municipal corporation

13065 Orono Parkway

Elk River, MN 55330



THE CONSTRUCTION MANAGER:

(Name, legal status, and address)

Terra General Contactors, LLC d/b/a Terra Construction

21025 Commerce Boulevard, Suite 1000

Rogers, MN 55374



TABLE OF ARTICLES

B.1 GENERAL

B.2 OWNER'S INSURANCE

B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

B.4 SPECIAL TERMS AND CONDITIONS

ARTICLE B.1 GENERAL

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

ADDITIONS AND DELETIONS:

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

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

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



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ARTICLE B.2 OWNER’S INSURANCE

§ B.2.1 General

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

§ B.2.2 Liability Insurance

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

§ B.2.3 Required Property Insurance

§ B.2.3.1 Unless this obligation is placed on the Construction Manager pursuant to Section B.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk “all-risks” completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner’s property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

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

Cause of Loss	Sub-Limit

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

Coverage	Sub-Limit

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

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

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

§ B.2.3.3 Insurance for Existing Structures

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

§ B.2.4 Optional Extended Property Insurance.

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

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

- [☐] **§ B.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner’s property, or the inability to conduct normal operations due to a covered cause of loss.
- [☐] **§ B.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.
- [☐] **§ B.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.
- [☐] **§ B.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.
- [☐] **§ B.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.
- [☐] **§ B.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured’s business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.
- [☐] **§ B.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

§ B.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

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

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

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

Coverage	Limits
☐	☐

ARTICLE B.3 CONSTRUCTION MANAGER’S INSURANCE AND BONDS

§ B.3.1 General

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

§ B.3.1.2 Deductibles and Self-Insured Retentions. The Construction Manager shall disclose to the Owner any deductible or self- insured retentions applicable to any insurance required to be provided by the Construction Manager.

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

§ B.3.2 Construction Manager’s Required Insurance Coverage

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

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

☐

§ B.3.2.2 Commercial General Liability

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than [REDACTED] (\$ [REDACTED]) each occurrence, [REDACTED] (\$ [REDACTED]) general aggregate, and [REDACTED] (\$ [REDACTED]) aggregate for products-completed operations hazard, providing coverage for claims including

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

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

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Construction Manager's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ B.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than [REDACTED] (\$ [REDACTED]) 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.

§ B.3.2.4 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section B.3.2.2 and B.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ B.3.2.5 Workers' Compensation at statutory limits.

§ B.3.2.6 Employers' Liability with policy limits not less than [REDACTED] (\$ [REDACTED]) each accident, [REDACTED] (\$ [REDACTED]) each employee, and [REDACTED] (\$ [REDACTED]) policy limit.

§ B.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits

of not less than [] (\$ []) per claim and [] (\$ []) in the aggregate.

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

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

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

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

§ B.3.3 Construction Manager's Other Insurance Coverage

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

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

[]

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

(Select the types of insurance the Construction Manager is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

- [] **§ B.3.3.2.1** Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

(Where the Construction Manager's obligation to provide property insurance differs from the Owner's obligations as described under Section B.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

[]

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

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

[] § B.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an “all-risks” completed value form.

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

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

Coverage

Limits

§ B.3.4 Performance Bond and Payment Bond

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

(Specify type and penal sum of bonds.)

Type

Penal Sum (\$0.00)

Payment Bond

Performance Bond

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

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

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



Request for Action

To
City Council

Item Number
4.4

Meeting Date
October 20, 2025

Prepared By
Joe Stremcha, Business Services Director/Assistant
City Administrator

Item Description
Agreement 25-28: Lease of Lion John Weicht Park
Basketball Courts for Outdoor Ice with Elk River
Youth Hockey.

Reviewed by
Cal Portner
Tina Allard

Action Requested
Approve, by motion, Agreement 25-28, the Lion John Weicht Park lease agreement with the Elk River Youth Hockey Association (ERYHA).

Background/Discussion
ERYHA has agreed to renew a lease agreement for Lion John Weicht Park basketball courts to install their outdoor ice rink. ERYHA will pay \$2,500 over the term of their agreement (November 15, 2025, to April 15, 2026).

Rent shall be \$500 per calendar month and due by the first day of each month. November and April shall be paid at the prorated rate of \$250 for each of those two months, with November rent being due on November 14, 2025. The full rent shall be due for each calendar month during the term of the lease, including November, December, January, February, March, and April, making the total annual cost of rent \$2,500.

Financial Impact
\$2,500 in additional park rental revenue.

Mission/Policy/Goal
Work with citizens to achieve goals.

Attachments
I. ERYHA Lease Agreement 25-26

The Elk River Vision

A welcoming community with revolutionary and spirited resourcefulness, exceptional service, and community engagement that encourages and inspires prosperity

LEASE AGREEMENT

By and Between

CITY OF ELK RIVER, MINNESOTA
("LANDLORD")

and

ELK RIVER YOUTH HOCKEY ASSOCIATION
("TENANT")

LEASE AGREEMENT

This **LEASE AGREEMENT** (“Lease”) is made and effective as of December 16, 2024, by and between the **CITY OF ELK RIVER**, a Minnesota municipal corporation (hereinafter referred to as the “Landlord”) and **ELK RIVER YOUTH HOCKEY ASSOCIATION** (hereinafter referred to as the “Tenant”).

The Landlord and Tenant hereby agree as follows:

ARTICLE 1 – LEASED PREMISES

Subject to the terms, covenants and conditions of this Lease, Landlord does hereby lease and let unto Tenant, and Tenant does hereby lease and take from Landlord, a portion of property owned by Landlord located at 1104 Lions Park Drive Northwest, Elk River, MN (the “Property”), in the space identified on **Exhibit A** attached hereto and incorporated herein, (hereinafter referred to as the “Leased Premises”). Tenant agrees to take and does take the Leased Premises in its “as is” condition.

ARTICLE 2 – TERM OF LEASE

A. The term of this Lease shall be from November 15, 2025, through April 15, 2026, (hereafter referred to as the “Initial Term”) upon the rentals and subject to the conditions set forth in this Lease, including **Exhibit A** attached hereto.

B. Landlord shall have the right to terminate this Lease for any reason upon 30 days’ written notice to Tenant. The notice to terminate shall state the date upon which the Lease is terminated, and the Leased Premises must be vacated. Tenant shall vacate the Leased Premises on or before that date. Failure by Tenant to vacate the Leased Premises on or before the termination date shall entitle Landlord to enter the Leased Premises, remove all property of Tenant and cause the Leased Premises to be put into the condition and state of repair required by this Lease. Tenant, on demand, shall pay the Landlord’s costs thereof.

ARTICLE 3 - USE

A. The Leased Premises shall be used by the Tenant solely for the purposes set forth on **Exhibit A** hereto and for no other purpose without the prior written consent of the Landlord.

B. The Leased Premises shall not be used in violation of any applicable federal, state, or local law, ordinance, rule, or regulation, and Tenant shall comply with the same at its sole cost and expense.

C. Notwithstanding anything to the contrary herein, Tenant shall have the reasonable non-exclusive right to use the Leased Premises with the Landlord, its employees, agents, and invitees, as may from time to time exist, including but not limited to the parking facilities, sidewalks, driveways, access ways, walkways, and landscaped areas and the Landlord shall have the full control, management, and direction of the Property. Landlord reserves the right at any time and from time-to-time to reduce, increase, enclose or otherwise change the size, location, layout, and nature of the Property, including Leased Premises.

D. Tenant covenants and agrees that Tenant shall not handle, use, store or dispose of any flammables, explosives, hazardous or toxic wastes or materials (as may be defined by Federal or State Law), on or about the Leased Premises or the Property, without Landlord's prior written consent (which consent may be withheld or denied for any or no reason).

E. Tenant shall not perform any act or carry on any practice that may damage the Leased Premises or any other part of the Property.

F. Tenant shall keep the Leased Premises safe, clean and in as good condition and repair as they were in at the time Tenant took possession of same, reasonable wear and tear excepted.

G. Tenant agrees that it and its guests, employees, contractors, invitees, and all others connected with the Tenant's operations at the Leased Premises shall abide by all reasonable rules and regulations from time to time established by the Landlord by written notice to the Tenant with respect to the property.

H. Tenant shall keep all trash, refuse, and the like in covered metal or plastic cans, which cans shall be kept within the Leased Premises at all times, unless an exterior storage area is specifically designated for Tenant's use by Landlord in which event the Tenant shall deposit all trash, refuse and the like in the exterior storage area.

I. Tenant shall ensure that the Leased Premises are secure at all times, including against unauthorized users.

J. If Tenant shall fail to keep and preserve the Leased Premises in the state of condition required by the provisions of this Lease, Landlord may at its option put or cause the same to be put into the condition and state of repair agreed upon, and in such case the Tenant, on demand, shall pay the cost thereof.

ARTICLE 4 – RENT

Tenant agrees to pay to Landlord as rent (hereinafter called "Rent") for the Leased Premises the amounts shown on **Exhibit A** attached hereto.

ARTICLE 5 - NON-LIABILITY OF LANDLORD

Landlord shall not be liable for personal injury, death, or any damage from any cause about the Leased Premises or the Property except if caused by Landlord's gross negligence or willful misconduct.

ARTICLE 6 - INSPECTION

The Landlord, its employees or agents shall have the right without any diminution of rent or other charges payable hereunder by Tenant to enter the Leased Premises at all reasonable times for the purpose of inspection, cleaning, repairing, testing, altering or improving the same or said property, but nothing contained in this Article shall be construed so as to impose any obligation on the Landlord to make any repairs, alterations or improvements.

ARTICLE 7 –ALTERATIONS

Tenant will not make any alterations, repairs, additions, or improvements in or to the Leased Premises without the prior written consent of the Landlord.

ARTICLE 8 - ASSIGNMENT AND SUBLETTING

Tenant agrees that Tenant does not have the right to assign, sublet, license, or encumber this Lease, the Leased Premises, or any part thereof, whether by voluntary act, operation of law, or otherwise, without the specific prior written consent of Landlord in each instance.

ARTICLE 9 - LOSS BY CASUALTY

If any part of the Property is damaged or destroyed by fire or other casualty, Landlord or Tenant shall have the right to terminate this Lease, provided it gives written notice thereof to the other party within ninety (90) days after such damage or destruction.

ARTICLE 10 - WAIVER OF SUBROGATION

Landlord and Tenant hereby release the other from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for any loss or damage to property caused by fire or any of the extended coverage or supplementary contract casualties, even if such fire or other casualty shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible; provided however, that this release shall be applicable and in force and effect only with respect to loss or damage occurring during such times as the releasing party's policies shall contain a clause or endorsement to the effect that any such release would not adversely affect or impair said policies or prejudice the right of the releasing party to recover thereunder. Landlord and Tenant agree that they will request their insurance carriers to include in their policies such a clause or endorsement. If extra cost shall be charged therefor, each party shall advise the other of the amount of the extra cost, and the other party, at its election, may pay the same, but shall not be obligated to do so.

ARTICLE 11 - SURRENDER

On the last day of the Term of this Lease or on the sooner termination thereof in accordance with the terms hereof, Tenant shall peaceably surrender the Leased Premises in good condition and repair.

ARTICLE 12 - HOLDING OVER

Tenant will, at the expiration of this Lease, whether by lapse of time or termination, give up immediate possession to Landlord. If Tenant fails to give up possession the Landlord may pursue all remedies available to it for recovering possession of Leased Premises.

ARTICLE 13 - INDEMNITY, INSURANCE AND SECURITY

A. Tenant will keep in force at its own expense for so long as this Lease remains in effect public liability insurance with respect to the Leased Premises in which Landlord shall be named as an additional insured, in companies and in form acceptable to Landlord with a minimum

combined limit of liability of Three Million Dollars (\$3,000,000). Said insurance shall also provide for contractual liability coverage by endorsement. Tenant will further deposit with Landlord the policy or policies of such insurance or certificates thereof, or other acceptable evidence that such insurance is in effect, which evidence shall provide that Landlord shall be notified in writing thirty (30) days prior to cancellation, material change, or failure to renew the insurance. Tenant further covenants and agrees to indemnify and hold Landlord and Landlord's manager of the Property harmless for any claim, loss, or damage, suffered by Landlord, Landlord's manager or Landlord's other tenants caused by any act or omission by Tenant or Tenant's members; or Tenant's failure to comply with any and all governmental laws, rules, ordinances or regulations applicable to the use of the Leased Premises and its occupancy.

B. Tenant shall be responsible for the security and safeguarding of the Leased Premises and all property kept, stored, or maintained in the Leased Premises. Tenant shall maintain in force throughout the Term, insurance upon all contents of the Leased Premises, including that owned by others and Tenant's equipment and any alterations, additions, fixtures, or improvements in the Leased Premises acknowledged by Landlord to be the Tenant's.

ARTICLE 14 - NOTICES

All notices from Tenant to Landlord required or permitted by any provisions of this Lease shall be directed to Landlord postage prepaid, certified or registered mail, at 13065 Orono Parkway, Elk River, MN 55330.

All notices from Landlord to Tenant required or permitted by any provision of this Lease shall be directed to Tenant, postage prepaid, certified or registered mail, at the Leased Premises and at:

ARTICLE 15 - APPLICABLE LAW

This Lease shall be construed under the laws of the State of Minnesota.

IN WITNESS WHEREOF, this Lease has been duly executed by the parties hereto as of the day and year indicated above.

LANDLORD:

CITY OF ELK RIVER

By: _____
John J. Dietz, Its Mayor

And: _____
Tina Allard, City Clerk

TENANT:
ELK RIVER YOUTH HOCKEY ASSOCIATION

By: _____
Name: _____
Its: _____

EXHIBIT A

Leased Areas and Rent:

1. The Leased Premises shall be the basketball court and adjacent green space on the southwest corner of Lions John Weicht Park.
2. The term of this lease is from November 15, 2025, through April 15, 2026.
3. During this term, ERYHA will have exclusive use of the basketball court and adjacent green space on the southwest corner of Lions John Weicht Park.
4. This area is bordered on the west by a trail.
5. This area will be used by ERYHA exclusively for the purpose of locating a temporary hockey rink and warming house.
6. The temporary hockey rink shall be purchased and owned by ERYHA.
7. The temporary hockey rink shall be constructed and maintained solely by ERYHA.
8. ERYHA may utilize city electricity for lighting of the rink.
9. Electric heating for any structure or water is prohibited.
10. All costs associated with the rink, maintenance, and additional utilities will be the responsibility of ERYHA.
11. The rink will be removed in full at the conclusion of the ice season. The area must be returned to its original condition by April 16, 2026.
12. All costs associated with returning the area to its original condition will be the responsibility of ERYHA.
13. Off-season storage of the rink and all associated items is the sole responsibility of ERYHA.
14. Rent shall be \$500 per calendar month and due by the first day of each month. November and April shall be paid at the pro-rated rate of \$250 for each of those two months, with November rent being due on November 14, 2025. The full rent shall be due for each calendar month during the term of the lease, including November, December, January, February, March, and April, making the total annual cost of rent \$2500.
15. Water for the rink will be provided to ERYHA by ERMU with costs paid directly to ERMU.
16. All snow removal, flooding, and maintenance, for the ice surface and rink will be the sole responsibility of ERYHA.
17. ERYHA will follow all municipal, county, state, and federal laws, rules, and regulations.
18. The rink shall only be used exclusively for ERYHA events. It shall not be leased or utilized by a third-party user.
19. Monitoring and policing the use of the rink is the responsibility of ERYHA.
20. City of Elk River staff will not participate in any rink maintenance functions.
21. City of Elk River staff will not be involved in monitoring or managing the temporary rink.
22. ERYHA will be solely responsible for providing information about the rink to the public. This includes an informational phone number, information on the ERYHA webpage, and an informational pamphlet addressing rink inquiries must be prominently posted on the arena dasher boards and structures.
23. Any snow and shavings from the ice rink are not to be deposited or stored on public trails.



Request for Action

To
City Council

Item Number
4.5

Meeting Date
October 20, 2025

Prepared By
Justin Femrite, Public Works Director/Chief Engineer

Item Description
Agreement 25-26: Professional Services for
Preparation of a Significant Industrial User
Agreement

Reviewed by
Justin Femrite
Cal Portner
Tina Allard

Action Requested

Approve, by motion, Agreement 25-26 with AE2S for professional engineering services associated with the preparation of a significant industrial user agreement.

Background/Discussion

One of our sewer customers has exceeded the threshold for water consumption, triggering the need to establish a Significant Industrial User Agreement with them in accordance with MPCA rules. The attached agreement details the work tasks that are expected to be completed as part of the process.

Financial Impact

The not-to-exceed amount for professional services is \$31,800, which will be paid from the Wastewater Fund and expected to be recovered through the fees established in the final Significant Industrial User Agreement with said customer.

Mission/Policy/Goal

Meet changing needs - Agile

Attachments

- I. P05181-2025-002_AE2S_City of Elk River_Elk River Jonny Pop IU Development - signed

The Elk River Vision

A welcoming community with revolutionary and spirited resourcefulness, exceptional service, and community engagement that encourages and inspires prosperity





September 25, 2025

City of Elk River
Justin Femrite
13065 Orono Parkway NW
Elk River, MN 55330

**RE: Letter Agreement between Client and AE2S
Jonny Pop IU Agreement Development - Elk River, MN
P05181-2025-002**

Dear Justin Femrite,

Advanced Engineering and Environmental Services, LLC (AE2S) proposes to render engineering services regarding Elk River Jonny Pop Significant Industrial User (SIU) Agreement Development located in Elk River, MN (Assignment) to City of Elk River (CLIENT).

This Agreement, including Exhibit A, sets forth the terms and conditions under which the CLIENT and AE2S shall be governed regarding the Assignment.

Scope of Basic Services

AE2S will perform the following tasks:

- Kick off meeting and site visit.
- Coordinate with City to identify Pollutants of Concern (POC), including review of up to ten (10) Industrial User's cleaning chemical Safety Data Sheets.
- Estimate allowable SIU POC loadings to the WWTF and define load allocation to Industrial User.
- Propose local limits based upon allowable loading to the City's WWTF to prevent interference or pass-through of the City's WWTF.
- Development of IU agreement, including.
 1. Agreement authorization language.
 2. Monitoring and reporting requirements.
 3. Local limits for SIU.
 4. Rates and surcharges.
 5. Spill and slug discharge reporting requirements.
 6. Enforcement provisions.
 7. General conditions.
- Provide a spill and slug template for City and Jonny Pop to define a notification procedure.
- Assistance with completing Minnesota Pollution Control Agency Pretreatment Notification of a Significant Industrial User form.
- Conduct one (1) in-person meeting with the City and Jonny Pop to discuss the following:
 1. Identified POCs.
 2. Recommended monitoring of the POCs.
 3. Proposed local limits for Jonny Pop.
 4. Spill and slug load notifications to the City.

5. Discuss future documentation required by the MPCA, including:
 1. Wastewater Pretreatment Annual Report.
 2. SIU Information Form.
 3. Monitoring of Significant Industrial User Form.

Exceptions

- Only standard pollutants of concern will be addressed, limited to BOD, TSS, pH, Total Phosphorus, and Fats, Oils, and Grease.
- Design of monitoring and flow metering equipment is not included.
- Study will not include development of an Enforcement Response Plan.
- WWTF user rate study is not included.

Additional Services

Services resulting from significant changes in the general scope, extent, or character of the Assignment are not included as a part of the Scope of Basic Services. If authorized in writing by the CLIENT, AE2S will provide services beyond the scope of this Agreement on an hourly basis in accordance with the Hourly Fee Schedule attached as Exhibit B.

CLIENT'S Responsibilities

CLIENT shall do the following in a timely manner, so as not to delay the services of AE2S

1. Designate a person to act as CLIENT's representative with respect to the services to be rendered under this Agreement. Such person shall have authority to transmit instructions, receive information, and interpret and define CLIENT's policies and decisions with respect to services for the Assignment.
2. Provide relevant information regarding requirements for the Assignment. AE2S shall be entitled to use and rely upon all information provided by CLIENT or others in performing AE2S's services under this Agreement.
3. Provide access to the relevant site sufficient for AE2S to perform its services under this Agreement.
4. CLIENT shall, so long as AE2S is not in default, promptly pay AE2S for such services as have been performed satisfactorily hereunder in accordance with the fee terms set forth herein.

CLIENT shall bear all costs incident to compliance with its responsibilities pursuant to this section.

Fees

AE2S shall render services under this Agreement on an hourly basis in accordance with the Hourly Fee Schedule attached as Exhibit B not to exceed \$31,800 without written authorization from CLIENT, plus reimbursement for all project related expenses.

Performance Schedule

AE2S shall use commercially reasonable efforts to complete Basic Services within a reasonable time period.

Contract Documents

This Agreement includes the following documents, incorporated herein by reference:

1. Exhibit A - Terms and Conditions;
2. Exhibit B - Hourly Fee and Expense Schedule;
3. All other attached Exhibits referenced in this Agreement;
4. Any drawings or specifications provided by the CLIENT in writing; and
5. Any duly executed written amendments.

There are no contract documents other than this Agreement and those documents listed above.

If this Agreement sets forth your understanding of our agreement, including the scope of work desired, fees, terms, and conditions, please sign in the space provided and return a copy to AE2S. Thank you for the opportunity to assist in this project and we look forward to working with you.

Sincerely,


Jayme Klecker (Oct 6, 2025 08:50:18 CDT)

Jayme Klecker, PE

AE2S

Client

Accepted this ____ day of ____, 2025.

By: 
Justin Klabo (Oct 6, 2025 09:03:11 CDT)

By: _____

Name: Justin Klabo

Name: (Print): Tina Allard

Title: Operations Manager

Title: City Clerk

Standard Terms and Conditions

The Agreement is supplemented to include the following terms and conditions:

1. Standard of Care

a. The standard of care for all professional services performed or furnished by AE2S under this Agreement will be the care and skill ordinarily used by members of AE2S's profession practicing under similar circumstances at the same time and in the same locality. AE2S makes no warranties, express or implied, under this Agreement or otherwise, in connection with AE2S's services.

b. CLIENT shall be responsible for, and AE2S may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by CLIENT to AE2S pursuant to this Agreement. AE2S may use such requirements, reports, data, and information in performing or furnishing services under this Agreement.

2. Payments to AE2S

Invoices will be prepared in accordance with AE2S's standard invoicing practices and will be submitted to CLIENT by AE2S monthly, unless otherwise agreed. Invoices are due and payable within 30 days. If CLIENT fails to make any payment due AE2S for services and expenses within 30 days, the amounts due AE2S will be increased at the rate of 1.75% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, AE2S may, after giving seven days written notice to CLIENT, suspend services under this Agreement until AE2S has been paid in full all amounts due for services, expenses, and other related charges. All payments shall be made in United States Dollars. Engineer's compensation is exclusive of any applicable sales or use taxes imposed by any governmental authority on Engineer's compensation under this Agreement. Owner shall reimburse Engineer for the cost of such sales or use taxes. Engineer's invoices shall state all such applicable sales or use taxes, if any.

3. Insurance

AE2S will maintain insurance coverage for Workers' Compensation, Professional Liability, General Liability, and Automobile Liability and will provide certificates of insurance to CLIENT upon request.

4. Exclusion of Special, Incidental, Indirect, and Consequential Damages

To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, AE2S and AE2S's officers, directors, partners, employees, agents, and Consultants, or any of them, shall not be liable to CLIENT or anyone claiming by, through, or under CLIENT for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from, or in any way related to the Assignment or this Agreement, from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract or warranties, express or implied, of AE2S or AE2S's officers, directors, partners, employees, agents, or AE2S's Consultants, or any of them.

5. Limit of Liability

To the fullest extent permitted by law, notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of AE2S and AE2S's officers, directors, partners, employees, agents, and AE2S's Consultants, and any of them, to CLIENT and anyone claiming by, through, or under CLIENT for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of AE2S or AE2S's officers, directors, partners, employees, agents, or AE2S's Consultants, or any of them, shall not exceed total compensation received by AE2S as part of this Agreement.

6. Termination of Contract

Either party may at any time, upon seven days prior written notice to the other party, terminate this Agreement. Upon such termination, CLIENT shall pay to AE2S all amounts owing to AE2S under this Agreement, for all work performed up to the effective date of termination, plus reasonable termination costs.

7. Access

CLIENT shall arrange for safe access to and make all provisions for AE2S and AE2S's Consultants to enter upon public and private property as required for AE2S to perform services under this Agreement.

8. Hazardous Environmental Conditions

It is acknowledged by both parties that AE2S's scope of services does not include any services related to a "Hazardous Environmental Condition," i.e. the presence at the site of asbestos, PCBs, petroleum, hazardous waste, or radioactive materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Assignment. In the event AE2S or any other party encounters a Hazardous Environmental Condition, AE2S may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Assignment affected thereby until CLIENT: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the site is in full compliance with applicable laws and regulations. CLIENT acknowledges that AE2S is performing professional services for CLIENT and that AE2S is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the site in connection with AE2S's activities under this Agreement.

9. Patents

AE2S shall not conduct patent searches in connection with its services under this Agreement and assumes no responsibility for any patent or copyright infringement arising therefrom. Nothing in this Agreement shall be construed as a warranty or representation that anything made, used, or sold arising out of the services performed under this Agreement will be free from infringement of patents or copyrights.

10. Ownership and Reuse of Documents

All documents prepared or furnished by AE2S pursuant to this Agreement are instruments of service, and AE2S shall retain an ownership and property interest therein. Reuse of any such documents by CLIENT shall be at CLIENT's sole risk.

11. Use of Electronic Media

a. Copies of Documents that may be relied upon by CLIENT are limited to the printed copies (also known as hard copies) that are signed or sealed by the AE2S. Files in electronic media format of text, data, graphics, or of other types that are furnished by AE2S to CLIENT are only for convenience of CLIENT. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

b. When transferring documents in electronic media format, AE2S makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by AE2S at the beginning of this Assignment.

c. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

d. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform

acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. AE2S shall not be responsible to maintain documents stored in electronic media format after acceptance by CLIENT.

12. **Contractors**
AE2S shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall AE2S have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at a project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work. AE2S neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between CLIENT and such contractor. AE2S shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except AE2S's own employees) at a project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by AE2S.
13. **Force Majeure**
AE2S shall not be liable for any loss or damage due to failure or delay in rendering any service called for under this Agreement resulting from any cause beyond AE2S's reasonable control.
14. **No Third Party Beneficiaries**
All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of CLIENT and AE2S and not for the benefit of any other party. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either CLIENT or AE2S. AE2S's services under this Agreement are being performed solely for CLIENT's benefit, and no other entity shall have any claim against AE2S because of this Agreement or the performance or nonperformance of services hereunder.
15. **Assignment**
Neither party shall assign its rights, interests or obligations under this Agreement without the express written consent of the other party.
16. **Binding Effect**
This Agreement shall bind, and the benefits thereof shall inure to the respective parties hereto, their legal representatives, executors, administrators, successors, and assigns.
17. **Severability and Waiver of Provisions**
Any provision or part of the Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon CLIENT and AE2S, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
18. **Survival**
All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.
19. **Headings**
The headings used in this Agreement are for general reference only and do not have special significance.

20. **Controlling Law**
This Agreement is to be governed by the law of the State of Minnesota without regard to its conflicts of laws principles.
21. **Notices**
Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address shown herein and given personally, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
22. **Executed in Counterparts**
This Agreement may be executed in counterparts, each of which together will constitute one and the same instrument. Delivery of an executed counterpart of this Agreement shall constitute effective delivery of this Agreement. Each party agrees that the delivery of the Agreement by facsimile or electronic mail shall have the same force and effect as delivery of original signature and that each party may use such facsimile or electronic mail signatures as evidence of the execution and delivery of the Agreement by the parties to the same extent that an original signature could be used.

This is EXHIBIT B, consisting of 2 pages, referred to in and part of the Agreement between CLIENT and AE2S dated September 25, 2025.

Hourly Fee and Expense Schedule

Reimbursable Expenses and Standard Hourly rates in effect on the date of the Agreement are set forth below. Rates are subject to annual adjustment effective January 1.

Labor Rates*

Administrative 1	\$70.00	I&C Assistant 1	\$108.00
Administrative 2	\$85.00	I&C Assistant 2	\$134.00
Administrative 3	\$99.00	I&C 1	\$160.00
		I&C 2	\$189.00
Communications Specialist 1	\$113.00	I&C 3	\$213.00
Communications Specialist 2	\$132.00	I&C 4	\$226.00
Communications Specialist 3	\$152.00	I&C 5	\$237.00
Communications Specialist 4	\$183.00		
Communications Specialist 5	\$202.00	IT 1	\$140.00
		IT 2	\$189.00
Construction Services 1	\$135.00	IT 3	\$232.00
Construction Services 2	\$165.00		
Construction Services 3	\$183.00	Land Surveyor Assistant	\$103.00
Construction Services 4	\$203.00	Land Surveyor 1	\$124.00
Construction Services 5	\$224.00	Land Surveyor 2	\$150.00
		Land Surveyor 3	\$169.00
Engineering Assistant 1	\$91.00	Land Surveyor 4	\$186.00
Engineering Assistant 2	\$107.00	Land Surveyor 5	\$205.00
Engineering Assistant 3	\$135.00		
Engineer 1	\$146.00	Operations Specialist 1	\$108.00
Engineer 2	\$175.00	Operations Specialist 2	\$135.00
Engineer 3	\$205.00	Operations Specialist 3	\$167.00
Engineer 4	\$237.00	Operations Specialist 4	\$191.00
Engineer 5	\$254.00	Operations Specialist 5	\$214.00
Engineer 6	\$269.00		
		Project Coordinator 1	\$125.00
Engineering Technician 1	\$90.00	Project Coordinator 2	\$140.00
Engineering Technician 2	\$113.00	Project Coordinator 3	\$156.00
Engineering Technician 3	\$136.00	Project Coordinator 4	\$172.00
Engineering Technician 4	\$152.00	Project Coordinator 5	\$194.00
Engineering Technician 5	\$174.00		
		Project Manager 1	\$221.00
Financial Analyst 1	\$121.00	Project Manager 2	\$242.00
Financial Analyst 2	\$137.00	Project Manager 3	\$259.00
Financial Analyst 3	\$165.00	Project Manager 4	\$274.00
Financial Analyst 4	\$180.00	Project Manager 5	\$293.00
Financial Analyst 5	\$201.00	Project Manager 6	\$307.00
GIS Specialist 1	\$113.00	Sr. Designer 1	\$192.00
GIS Specialist 2	\$137.00	Sr. Designer 2	\$213.00
GIS Specialist 3	\$162.00	Sr. Designer 3	\$229.00
GIS Specialist 4	\$181.00		
GIS Specialist 5	\$202.00	Sr. Financial Analyst 1	\$227.00
		Sr. Financial Analyst 2	\$248.00
		Sr. Financial Analyst 3	\$269.00
		Technical Expert 1	\$348.00
		Technical Expert 2	Negotiable

Reimbursable Expense Rates

Transportation	\$0.75/mile
Survey Vehicle	\$0.95/mile
Laser Printouts/Photocopies	\$0.30/copy
Plotter Printouts	\$1.00/s.f.
UAS - Photo/Video Grade	\$100.00/day
UAS – Survey	\$50.00/hour
Total Station – Robotic	\$35.00/hour
Mapping GPS	\$25.00/hour
Fast Static/RTK GPS	\$50.00/hour
All-Terrain Vehicle/Boat	\$100.00/day
Cellular Modem	\$75.00/month
Web Hosting	\$26.00/month
Legal Services Reimbursement	\$291.00/hour
Outside Services	cost * 1.15
Geotechnical Services	cost * 1.30
Out of Pocket Expenses	cost * 1.15
Rental Car	cost * 1.20
Project Specific Equipment	Negotiable

* Position titles are for labor rate grade purposes only.

These rates are subject to adjustment each year on January 1.

P05181-2025-002_AE2S_City of Elk River_Elk River Jonny Pop IU Development

Final Audit Report

2025-10-06

Created:	2025-10-06 (Central Daylight Time)
By:	Evisort evisort@ae2s.com (evisort@ae2s.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAW3_fbQ4EVZAUfLbHv3nw8V5sxsLkyiqr

"P05181-2025-002_AE2S_City of Elk River_Elk River Jonny Pop IU Development" History

-  Document created by Evisort evisort@ae2s.com (evisort@ae2s.com)
2025-10-06 - 8:45:27 AM CDT
-  Document emailed to Jayme Klecker (Jayme.Klecker@AE2S.com) for signature
2025-10-06 - 8:49:37 AM CDT
-  Email viewed by Jayme Klecker (Jayme.Klecker@AE2S.com)
2025-10-06 - 8:50:02 AM CDT
-  Document e-signed by Jayme Klecker (Jayme.Klecker@AE2S.com)
Signature Date: 2025-10-06 - 8:50:18 AM CDT - Time Source: server
-  Document emailed to Justin Klabo (Justin.Klabo@AE2S.com) for signature
2025-10-06 - 8:50:20 AM CDT
-  Email viewed by Justin Klabo (Justin.Klabo@AE2S.com)
2025-10-06 - 9:02:43 AM CDT
-  Document e-signed by Justin Klabo (Justin.Klabo@AE2S.com)
Signature Date: 2025-10-06 - 9:03:11 AM CDT - Time Source: server
-  Agreement completed.
2025-10-06 - 9:03:11 AM CDT



Request for Action

To
City Council

Item Number
4.6

Meeting Date
October 20, 2025

Prepared By
Mitchell Litfin, Street and Park Superintendent

Item Description
Agreement 25-27: Use Agreement with Minnesota Youth Ski League for Woodland Trails Shed Space

Reviewed by
Justin Femrite
Cal Portner
Tina Allard

Action Requested

Approve, by motion, the City of Elk River and Minnesota Youth Ski League (MYSL) Use Agreement 25-27 for Woodland Trails Regional Park Shed Space.

Background/Discussion

The Minnesota Youth Ski League (MYSL) has requested continued use of the designated storage space within the Woodland Trails Regional Park shed for storage of equipment related to their youth ski programs. This arrangement supports the league's seasonal operations and helps ensure accessibility and organization of its resources throughout the year.

In order to formalize the agreement and protect the city's liability, MYSL has submitted a Certificate of Liability Insurance naming the city as an additional insured. This certificate meets the city's insurance requirements for third-party use of municipal facilities and ensures adequate coverage in the event of injury, damage, or other liability incidents related to the league's use of the space. A formal use agreement has also been drafted outlining the terms and conditions under which MYSL USA may access and utilize the shed space.

Financial Impact

The financial cost of accepting this use agreement would be the ongoing maintenance of the shed space, including the construction of any necessary repairs, operational expenses, and long-term upkeep required to preserve its value and usability.

Mission/Policy/Goal

Work with citizens to achieve goals.

Attachments

1. MYSL Woodland shed Space user agreement Final Signed
2. MYSL INSURANCE CERT OF LIABILITY

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A welcoming community with revolutionary and spirited resourcefulness, exceptional service, and community engagement that encourages and inspires prosperity



**Use Agreement
for the Use of City of Elk River
Maintenance Building Storage Space at
Woodland Trails Regional Park**

THIS AGREEMENT ("AGREEMENT") made and entered into this 22 day of September, 2025, by and between the **CITY OF ELK RIVER**, a municipal corporation and political subdivision of the State of Minnesota ("CITY") and **MINNESOTA YOUTH SKI LEAGUE**, ("MYSL").

WITNESSETH:

WHEREAS, CITY owns the maintenance building at Woodland Trails Regional Park, 20135 Elk Lake Rd NW, Elk River, MN 55330; and

WHEREAS, MYSL desires to construct a controlled access, segregated storage area ("STORAGE") within the CITY maintenance building, physically isolated from CITY maintenance building equipment storage; and

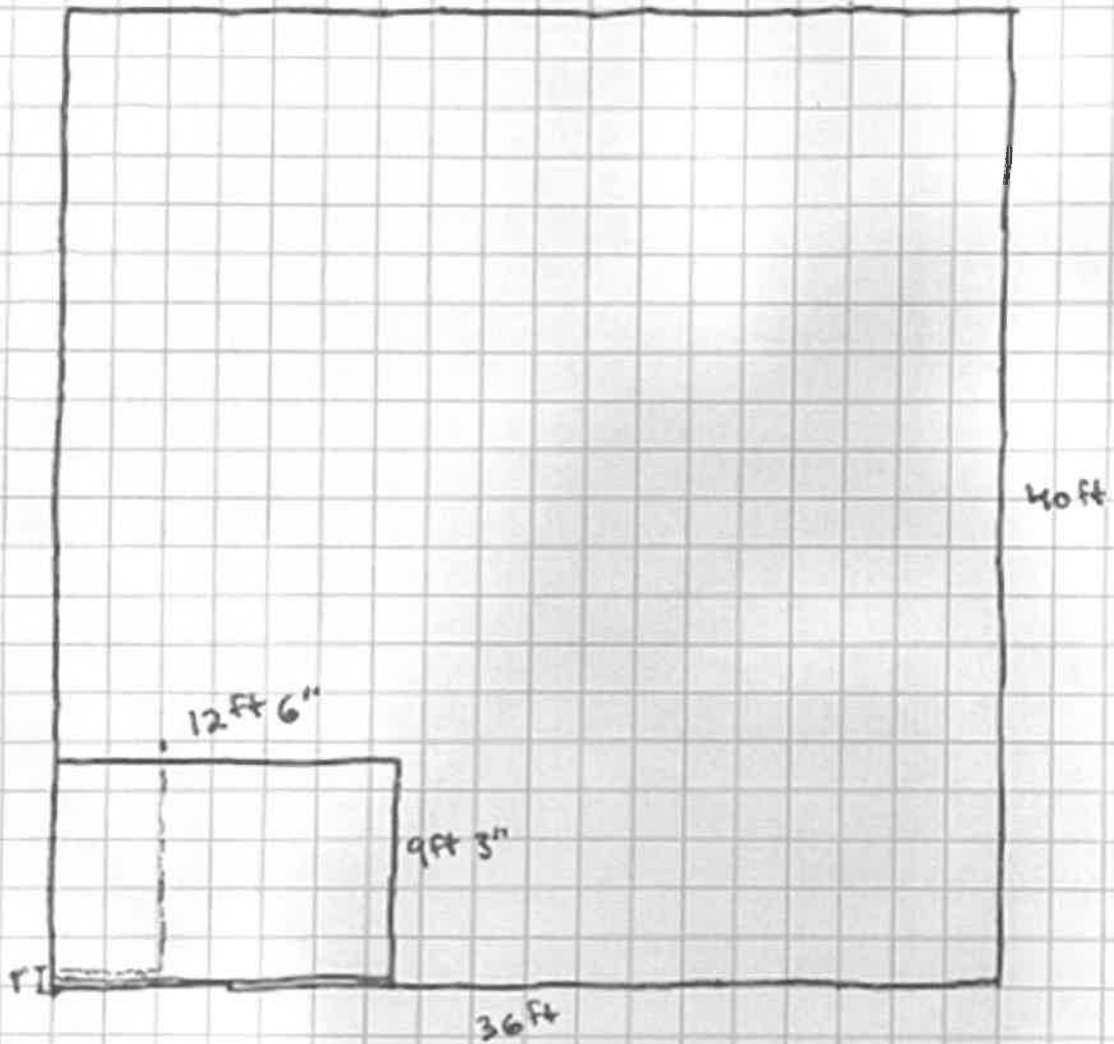
WHEREAS, the CITY and MYSL intend to cooperate with shared use of the maintenance building with STORAGE.

NOW THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

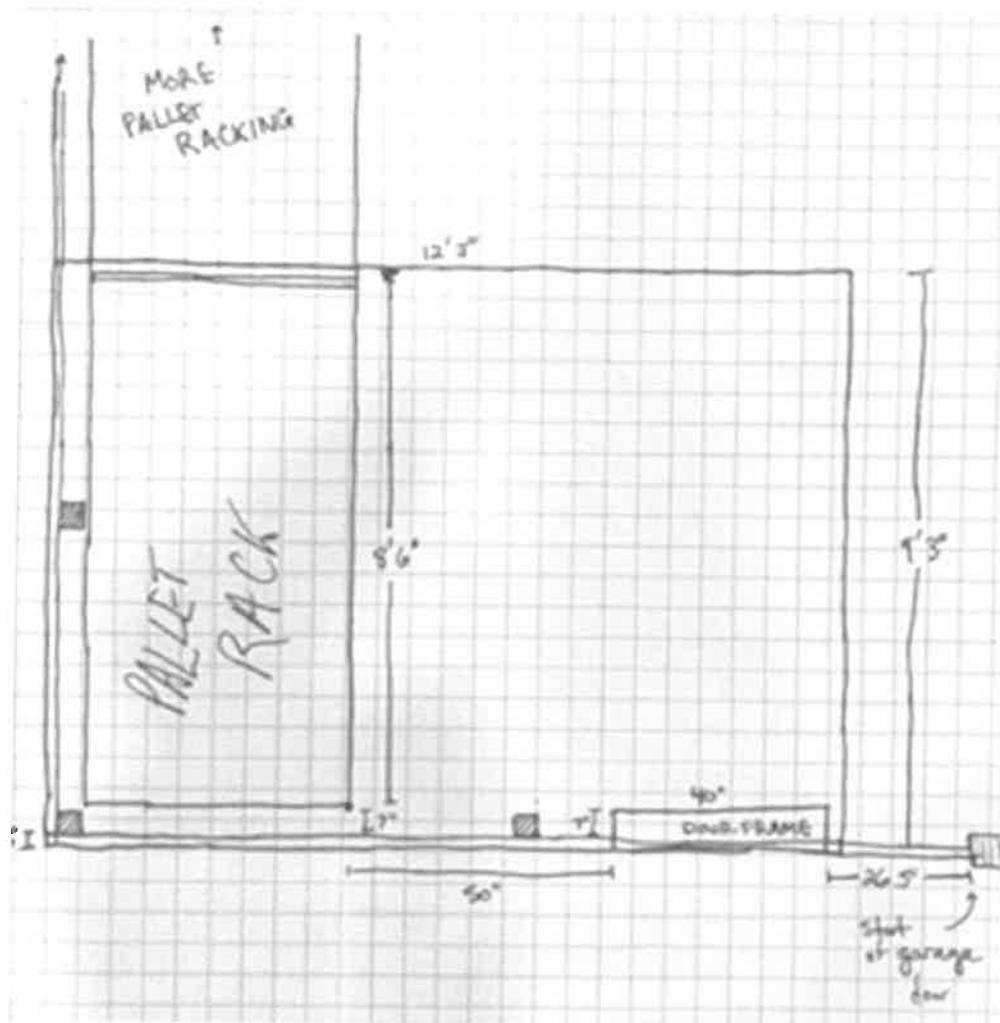
1. CITY will construct STORAGE measuring no more than 13x10 feet inside the CITY maintenance building.
2. MYSL shall have exclusive use of the STORAGE. MYSL may only access the STORAGE during regular business hours of the maintenance building.
3. There shall be no fees associated with MYSL's exclusive use of the STORAGE.
4. MYSL shall be solely responsible for any repairs, replacements, or enhancements to STORAGE, consistent with state and local building, fire, and life safety codes.
5. MYSL shall be solely responsible for the general cleaning and housekeeping of STORAGE.
6. MYSL shall not keep flammable, combustible, corrosive, explosive, poisonous or otherwise dangerous materials in the STORAGE.
7. The CITY will have unfettered access to the STORAGE to ensure unsafe conditions do not exist.
8. Failure by MYSL to correct unsafe conditions upon written request shall result in eviction from STORAGE.

9. The STORAGE construction (walls, doorways, ceiling, lighting, fixtures, etc.) becomes CITY property upon approval of this AGREEMENT.
10. All MYSL property situated on or within the STORAGE shall always remain the property of MYSL and the responsibility of MYSL.
11. CITY is not responsible for the loss of or damage to MYSL property in STORAGE.
12. MYSL will provide to CITY, in writing, detailed plans to construct, demolish, retrofit, enhance, or replace amenities located in STORAGE prior to the commencement of such work, and must receive CITY approval for any such work
13. The use and responsibilities as stated in this AGREEMENT may be changed or amended only by written amendment to this AGREEMENT.
14. The CITY and MYSL mutually agree to provide liability insurance in amounts not less than the statutory limits established under Minn. Stat. Ch. 466 to protect and indemnify each other from any and all claims for injuries and damages occurred or incurred by virtue of the CITY or MYSL use of the facilities identified under this AGREEMENT. Said insurance shall be customarily set by law or industry standards. The CITY and MYSL shall each add the other as an additional insured and provide the other with a certificate of insurance. Said insurance shall not be cancelled without at least thirty (30) days prior written notice to the other party.
15. MYSL shall be responsible for the actions of its employees, agents or contractors performing work or accessing the STORAGE under this AGREEMENT and shall indemnify, defend and hold harmless the CITY for any claims, actions, or damages resulting therefrom. Nothing contained in this AGREEMENT is intended to create an employer/employee relationship between the CITY and MYSL, nor the CITY and employees, agents and contractors of MYSL.
16. Notwithstanding the indemnification provided under Paragraphs 15 of this AGREEMENT, the provisions of the Municipal Tort Claims Act, Minn. Stat. Ch. 466 and other applicable laws govern liability of MYSL and the CITY.
17. Nothing contained in this AGREEMENT shall be interpreted as a waiver of any governmental immunity, defenses, or liability caps contained in state law or elsewhere, nor shall this AGREEMENT be interpreted to provide for the stacking of any liability limits under state law.
18. This AGREEMENT shall remain in full force and effect until it is either cancelled in writing by either party upon sixty (60) days' notice or otherwise terminates by operation of law.
19. MYSL shall provide and update as necessary a point of contact (name, address, phone and email) for the individual responsible and representing MYSL to CITY Public Works Department.

BACK



FRONT



IN WITNESS WHEREOF, the parties hereto have caused this USE AGREEMENT to be executed the day and year first written above.

CITY OF ELK RIVER

MYSL

By: _____
Its: _____

By: John Kallemeyn Jan Mauer
Its: MYSL

By: _____
Its: _____

By: _____
Its: _____

Approved as to Form:

Its: _____



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/1/2025

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Marsh & McLennan Agency LLC
15561 Railroad Street
Hayward WI 54843

CONTACT NAME: Select Certificates (Mpls)

PHONE
(A/C, No, Ext): 763-746-8000

FAX
(A/C, No):

E-MAIL
ADDRESS: SelectProcessing@marshmma.com

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A: West Bend Mutual Insurance Co

15350

INSURER B:

INSURER C:

INSURER D:

INSURER E:

INSURER F:

INSURED
Minnesota Youth Ski League
Amy Cichainowski
PO Box 18659
Minneapolis MN 55418

MINNEYOUTH2

COVERAGES

CERTIFICATE NUMBER: 419888647

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:		0757897	6/1/2025	6/1/2026	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	☒ AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☒ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY		0757897	6/1/2025	6/1/2026	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$		0757897	6/1/2025	6/1/2026	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	☐ Y ☒ N	N/A			PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Physical Abuse and Sexual Molestation Liability Endorsement Form NS0070A 0510

Proof of Insurance Only with respects to operations of the Named Insured.

CERTIFICATE HOLDER

CANCELLATION

City of Elk River
20135 Elk Lake Rd NW
Elk River MN 55330

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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Request for Action

To
City Council

Item Number
4.7

Meeting Date
October 20, 2025

Prepared By
Chris Leeseberg, Senior Planner

Item Description
Resolution 25-60: Finding of Fact for Denial of
Variance (Belde)

Reviewed by
Zack Carlton
Cal Portner
Tina Allard

Action Requested

Adopt, by motion, Resolution 25-60 making Findings of Fact denying the application submitted by Jennifer Belde for a variance to exceed the allowed square footage of accessory structures and accessory dwelling units in the R1a Single Family District at 21131 Vernon Street NW.

Background/Discussion

At the September 15, 2025, Regular City Council meeting, the Council reviewed an application for a Variance (Case No. V 25-13) to exceed the allowed square footage of Accessory Structures and Accessory Dwelling Units in the R1a Single Family District at 21131 Vernon Street NW.

After considering the request and receiving public comments, the Council directed staff to prepare a resolution making Findings of Fact, denying the application based on the request not meeting the standards outlined in City Code Section 30-635. The complete record, including the findings, is attached for review.

If the Council has questions or disagrees with the findings, the item can be pulled from consent and discussed further.

Financial Impact
None

Mission/Policy/Goal
Appropriately govern in an ever-changing environment.

Attachments

1. Resolution Making Finding of Facts for Denial
2. City Council Staff Report 9-15-2025
3. City Council Staff Report 10-6-2025

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City of Elk River City Council

Resolution 25-60

A Resolution of the City Council of the City of Elk River denying the Accessory Structure and Accessory Dwelling Unit size variances at 21131 Vernon Street NW

WHEREAS, Jennifer Belde, (“Applicant”), has applied (“Application”) for a Variance (Case No. V 25-13) to exceed the allowed square footage of Accessory Structures and Accessory Dwelling Units in the R1a Single Family District at 21131 Vernon Street NW, Elk River, MN (“Property”); and

WHEREAS, the record in this matter includes all of the materials submitted to the Board of Adjustments and City Council in connection with the Variance Application; including the staff reports and all attachments thereto, all other written materials submitted to the Board of Adjustments and City Council, and all staff presentations and other testimony taken at the public meetings considering the Application for the Variance, all of which is incorporated in and made a part of the findings of fact and this resolution; and

WHEREAS, the Board of Adjustments held a public hearing on August 26, 2025, to receive testimony and evidence from city staff, the Applicant and any other persons regarding the Application; and

WHEREAS, the Board of Adjustments denied the Application as the request does not satisfy all the standards required for issuance of a variance.

WHEREAS, the Application was automatically appealed to the City Council, who held a public hearing on September 15, 2025, to receive testimony and evidence from city staff, the Applicant and any other persons regarding whether the Application should be approved; and

WHEREAS, the Applicant and all others wishing to speak were given the opportunity to present testimony to the Board of Adjustments and City Council; and

WHEREAS, the City Council, at the conclusion of its September 15, 2024, public hearing on the Applicant’s Application, the city attorney suggested the Council continue this item to get review information regarding the variance as it pertains to the disability criteria.

WHEREAS, the City Council directed staff to work with the city attorney to review information regarding the variance as it pertains to the disability criteria.

WHEREAS, the City Council, on October 6, 2025, reviewed the findings of the city attorney and city staff during general business, and at the conclusion of their review on the



Applicant's Application, directed staff to prepare a resolution making findings of fact denying the Application as the request does not satisfy all standards required for issuance of a variance.

NOW, THEREFORE, the City Council of the City of Elk River makes the following:

FINDINGS

1. The request exceeds the maximum ADU size of 600 square feet outlined in § 30-793 (c) and accessory structure area by 148 square feet outlined in § 30-1 "Accessory Dwelling Unit" (6).
2. The property can be reasonably used without exceeding ordinance limits.
3. The applicant's situation is not unique but is based on garage design and economic preference.
4. Approval would conflict with the intent of the ordinance and weaken consistency with the Comprehensive Plan.
5. The variance, if granted, could alter the essential character of the locality.
6. City Code § 30-635 provides for analysis and findings required to be the grant of a variance. The Application and proposed structures do not meet all required findings in City Code § 30-635(b)(1)-(2) and (c)(1)-(3) as provided below:

City Code § 30-635(b):

(1) The variance is in harmony with the general purpose and intent of the ordinance.

The intent of the ADU ordinance is to ensure accessory dwellings remain subordinate to the principal residence and to preserve neighborhood character. The proposed ADU is approximately 60% larger than allowed, which undermines this intent. The accessory structure limit also exists to avoid oversized outbuildings. Approval would conflict with the ordinance's stated purpose.

(2) The variance is consistent with the City of Elk River comprehensive plan.

While the Comprehensive Plan does support single-family uses, it also relies on zoning standards to ensure orderly and consistent development. The proposed structure, exceeding both ADU and accessory size limits, is inconsistent with those implementing standards. Therefore, the request is not fully aligned with the Comprehensive Plan.

City Code § 30-635(c):

(1) The petitioner proposes to use the property in a reasonable manner not permitted by the zoning ordinance;



Reasonable use of the property exists without a variance. The ordinance allows both an ADU up to 1,000 sq.ft. and accessory structures up to 2,500 sq. ft. Designing and constructing to standardized building dimensions is understandable, but this also can be achieved by reducing the size of the building from 47' to 44' therefore falling within the allowed square footages. The property can accommodate these uses within ordinance limits and exceeding them is not necessary to achieve reasonable use.

(2) The plight of the petitioner is due to circumstances unique to the property not a consequence of the petition's own action or inaction; and

The size of the attached garage is not a unique property condition but a result of the home's design. Variances cannot be granted solely because of personal preference or building economics. Many properties in Elk River have smaller or larger garages; this condition is not unique and does not justify exceeding code standards.

(3) The variance, if granted, will not alter the essential character of the locality.

The proposed structure would be larger than permitted in the zoning district. While indoor storage may improve site appearance, approval of a variance of this scale could alter the character of the neighborhood by introducing accessory dwellings that compete in size with primary residences.

7. Taking into consideration all the testimony and evidence received, including statements from the applicant, staff reports, and the findings of the Board of Adjustments, the City Council finds that the Applicant's proposal goes beyond the intent of the ordinance and would alter the essential character of the locale. The Applicant has not established that they met the requirements for a variance. The variance would not be in the public interest.

DECISION

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ELK RIVER, MINNESOTA, based upon the information received and the above Findings, the City Council of the City of Elk River hereby denies the Variance Application V 25-13 to exceed the allowed square footage of Accessory Structure and Accessory Dwelling Units in the R1a Single Family District at 21131 Vernon Street NW, Elk River, MN, Elk River, MN.

Passed and adopted this 20th day of October 2025.

John J. Dietz, Mayor

ATTEST:



Tina Allard, City Clerk





Request for Action

To
City Council

Item Number
7.2

Meeting Date
September 15, 2025

Prepared By
Chris Leeseberg, Senior Planner

Item Description
Variance: Garage/Accessory Dwelling Unit Size,
Jennifer Belde - 21131 Vernon St NW

Reviewed by
Zack Carlton
Cal Portner
Tina Allard

Action Requested

Direct staff to draft a resolution making findings of fact denying the accessory structure size variances, as the standards for approval, as noted below, are not met. The City Council will consider the resolution on October 20, 2025.

1. The variance is not in harmony with the general purpose and intent of the ordinance, as the proposed ADU exceeds the maximum allowable living area by 600 square feet and the accessory structure exceeds the permitted size by 148 square feet, undermining the ordinance standards intended to ensure ADUs remain subordinate to the principal dwelling and that accessory structures remain consistent with neighborhood character.
2. The variance is not consistent with the Comprehensive Plan, which anticipates orderly residential development supported by zoning standards. Granting the variance would conflict with the implementing ordinances that guide residential scale and character.
3. The property can be reasonably used without the variance, as the zoning ordinance already permits a 1,000 square foot ADU and accessory structures up to 2,500 square feet. A compliant ADU and garage could be constructed without exceeding size limits.
4. The plight of the applicant is not due to circumstances unique to the property, but rather a result of the existing home and garage design, which does not justify exceeding ordinance limits. Economic considerations or design preferences do not constitute practical difficulties.
5. Granting the variance could alter the essential character of the locality, as the size of the proposed ADU may compete in scale with principal dwellings, changing the intended residential character of the R-1a district.

Background/Discussion

The 1.6-acre property, zoned R1-a (Single-Family Residential), is permitted a maximum of 2,500 sq ft. of accessory structure space, including accessory dwelling units (ADU), and a maximum of 1,000 sf of ADUs.

The applicant is proposing a total of 2,648 sq ft. of accessory structures exceeding the maximum allowed by 148 sf, as well as proposing 1,600 sf of ADU exceeding the maximum allowed by 600 sf.

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They are requesting the variances to build a dual-purpose building on their property as they are planning for a father-in-law who retired last year and a disabled sister-in-law to move in with them and provide comfortable accommodations for them.

Board of Adjustments

The Board of Adjustment reviewed the variance request during their August 26, 2025, regular meeting, where they denied the request. City code states that decisions by the Board to deny a variance shall not be final and must be reviewed by the City Council in the same manner as an appeal of a decision by the board.

The Board cited the following findings:

- The request exceeds the maximum ADU size by 600 sf and accessory structure area by 148 sf.
- The property can be reasonably used without exceeding ordinance limits.
- The applicant's situation is not unique but is based on garage design and economic preference.
- Approval would conflict with the intent of the ordinance and weaken consistency with the Comprehensive Plan.
- The variance, if granted, could alter the essential character of the locality.

Staff also clarified questions from the Board and neighbors pertaining to who is allowed to have an ADU, can the ADU be detached, and who can live in them.

Applicable Regulations

(The applicant's responses are italicized with staff's notes after.)

Variances may be granted when the petitioner establishes that the variance satisfies all five of the criteria described below. The variance is:

- I. Is in harmony with the general purpose and intent of the ordinance, and

After reviewing the criteria for Accessory Dwelling units (ADU) in Chapter 30 of the Municipal Code and consulting with Chris Leeseberg, Sr. Planner with the City of Elk River, we feel that our variance requests would improve the appearance of our property and would not permit a structure that appears inconsistent with the Municipal Codes and goals defined therein.

The intent of the ADU ordinance is to ensure accessory dwellings remain subordinate to the principal residence and to preserve neighborhood character. The proposed ADU is approximately 60% larger than allowed, which undermines this intent. The accessory structure limit also exists to avoid oversized outbuildings. Approval would conflict with the ordinance's stated purpose.

2. Is consistent with the City of Elk River comprehensive plan.

When considering if we meet these criteria, I have reviewed the Elk River Comprehensive Plan available online and feel we are in alignment with the plan.

Our property is currently zoned as R-1a and is defined as follows "This district is intended for primarily rural residential with accessory agricultural uses where conditions are suitable". In the Targeted Urban Service Area Expansion portion of the plan beginning on page 26, our property moves to an R-1b, defined as follows, "This district is intended for low density single-family residential development. Subdivisions utilize on-site sewage disposal systems and private water wells. Density in this district is limited to one single-family residence per gross acre."

If our requests for variance are approved, we will continue to be in alignment with the plan and not create an appearance of inconsistency as the city's targeted Urban Service Area Expansion takes shape.

While the Comprehensive Plan does support single-family uses, it also relies on zoning standards to ensure orderly and consistent development. The proposed structure, exceeding both ADU and accessory size limits, is inconsistent with those implementing standards. Therefore, the request is not fully aligned with the Comprehensive Plan.

Variances may be granted when the petitioner establishes that there are practical difficulties in complying with the zoning ordinance. Practical difficulties means that:

3. The petitioner proposes to use the property in a reasonable manner not permitted by the zoning ordinance;

After reviewing both applicable Elk River Municipal Codes and the relevant portions of the City of Elk River comprehensive plan, we feel that both of our requests for variance contained in this narrative, propose to use our property in a reasonable manner.

In relation the ADU portion of our request, while we will exceed the square footage limit for ADUs by approximately 600 square feet, it is a result of efficient use of space and will not be noticeable to neighbors or passersby.

We desire to exceed the physical footprint restrictions by approximately 148 square feet, which adds 3 linear feet to the length of the building. We feel that this small increase to the total size of the structure would not create a building size that would be noticeably different from others in our neighborhood and would at the same time dramatically improve the visual appearance of our property and our ability to store items indoors.

Reasonable use of the property exists without a variance. The ordinance allows both an ADU up to 1,000 sq.ft. and accessory structures up to 2,500 sq. ft. Designing and constructing to standardized building dimensions is understandable, but this also can be achieved by reducing the size of the building from 47' to 44' therefore falling within the allowed square footages. The property can accommodate these uses within ordinance limits and exceeding them is not necessary to achieve reasonable use.

4. The plight of the petitioner is due to circumstances unique to the property not a consequence of the petition's own action or inaction; and

As we considered this criteria, the challenge we have is the unique size and shape of our attached garage. We purchased our home in 2011 and our 2.5 stall attached garage was part of the original owner's build. This restricts our ability to build a more standard sized building and potentially increasing the cost to build.

The size of the attached garage is not a unique property condition but a result of the home's design. Variances cannot be granted solely because of personal preference or building economics. Many properties in Elk River have smaller or larger garages; this condition is not unique and does not justify exceeding code standards.

5. The variance, if granted, will not alter the essential character of the locality.

We have lived in our home for 13 years and 7 months. If approved our property and it's structures would remain consistent with those of our neighbors. However, the external physical appearance of our property would be improved

by allowing us to store all of our vehicles, boats, bobcat, hockey rink and nets indoors.

The proposed structure would be larger than permitted in the zoning district. While indoor storage may improve site appearance, approval of a variance of this scale could alter the character of the neighborhood by introducing accessory dwellings that compete in size with primary residences.

Findings

- The request exceeds the maximum ADU size by 600 sf and accessory structure area by 148 sf.
- The property can be reasonably used without exceeding ordinance limits.
- The applicant's situation is not unique but is based on garage design and economic preference.
- Approval would conflict with the intent of the ordinance and weaken consistency with the Comprehensive Plan.
- The variance, if granted, could alter the essential character of the locality.

Financial Impact

None

Mission/Policy/Goal

Appropriately govern in an ever-changing environment.

Attachments

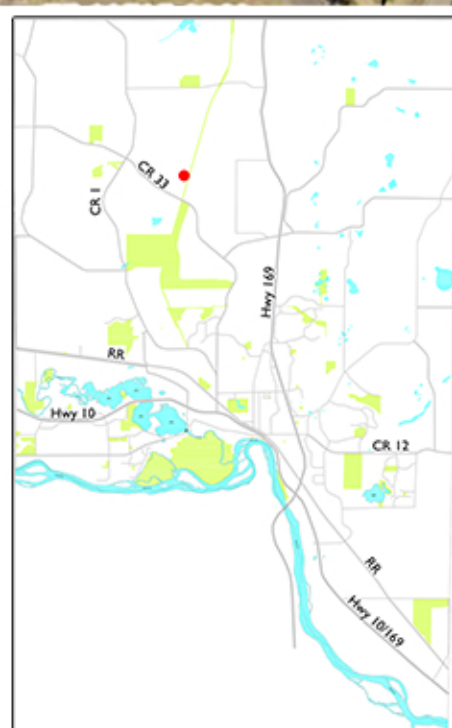
1. Location Map
2. 60 Day Extension Letter
3. Narratives
4. Site Sketch
5. Building Exhibit



Project Location Map

Belde
Variance

Case No: V 25-13





September 9, 2025

Jennifer Belde
21131 Vernon St NW
Elk River, MN 55330

VIA EMAIL: jennifer.belde@hennepin.us

Dear Jennifer Belde,

On July 28, 2025, the city received your Variance application to exceed the allowed square footage for accessory structures and for accessory dwelling units. State Statute requires a decision by the city within 60 days of this application. Statute also allows the city to extend the timeline an additional 60 days if necessary.

Should the City Council deny your application and direct staff to prepare a formal document denying the request, the review period will extend beyond the statutory 60-day limit. Due to the possible denial, the city is extending the 60-day timeline to November 25, 2025.

The City Council, if needed, will act on the findings of fact during their meeting on October 6 or 20, 2025.

Please feel free to contact me if you have any questions.

Sincerely,

Chris Leeseberg, Senior Planner
Ph: 763.635.1033
cleeseberg@ElkRiverMN.gov

We are requesting a variance to build a dual-purpose building on our property that is slightly in conflict with the city of Elk Rivers Municipal Code.

We are planning for my father-in-law who retired last year and my disabled sister-in-law to move in with us. It is super important to us to have family close as they age and be able to provide comfortable accommodations for them once they move.

Our desire is to build a 40' x 50' steel clad building. Of this 40' x 50' structure, 30' x 40' of the footprint would contain garage space. The other 20' x 40' portion of the building's footprint would contain an Accessory Dwelling Unit (ADU). This portion of the footprint would have a first and a second floor to create privacy for our family members as they transition to living with us. Additionally, as they age, we want to make sure that if they need care or have mobility issues, we can comfortably accommodate medical equipment or the use of wheelchairs/walkers throughout the space safely.

There are two specific reasons we are requesting a variance. The first and most important reason we are requesting a variance is to exceed the 1,000 square foot limit of the Elk River Municipal code for an Accessory Dwelling Unit. Our goal is to have 2 floors of available living space for the 20' x 40' portion of the footprint we identified above for the ADU. This would exceed the limit by 600 square feet of living space.

The second reason is that with the approximate dimensions of our attached garage (24' x 27' roughly 648 sq ft, measured on the exterior of the garage) we would only have 1,852 square feet available to build an approximately 47' x 40' structure. As you can imagine this odd measurement could impact cost as we build. One of our goals in building this structure is to have adequate space to store our recreational vehicles, boats, our bobcat and other items that currently are parked in the open.

The small overage in the footprint restrictions would ensure that we are able to protect our property that is now exposed to the elements and to create a cleaner and more attractive appearance to our property and neighborhood, as well as provide comfortable and safe space to care for our family.

Our ask is to be approved for variance to the Elk Rivers Municipal Code Sec. 30-1 in the following ways (listed below in priority order):

- Exceed the 1,000 square feet limit for our planned ADU by approximately 600 square feet.
- Exceed the square footage limit of 2,500 square feet of attached (garage) and detached (sheds) and accessory structures, by approximately 148 square feet in the footprint of our structure.

A variance may be granted by the board only if it finds that:

The variance is in harmony with the general purpose and intent of the ordinance

After reviewing the criteria for Accessory Dwelling units (ADU) in Chapter 30 of the Municipal Code and consulting with Chris Leeseberg, Sr. Planner with the City of Elk River, we feel that our variance requests would improve the appearance of our property and would not permit a structure that appears inconsistent with the Municipal Codes and goals defined therein.

The variance is consistent with the City of Elk River Comprehensive Plan (discuss with city staff if needed)

When considering if we meet these criteria, I have reviewed the Elk River Comprehensive Plan available online and feel we are in alignment with the plan.

Our property is currently zoned as R-1a and is defined as follows “This district is intended for primarily rural residential with accessory agricultural uses where conditions are suitable”. In the Targeted Urban Service Area Expansion portion of the plan beginning on page 26, our property moves to an R-1b, defined as follows, “This district is intended for low density single-family residential development. Subdivisions utilize on-site sewage disposal systems and private water wells. Density in this district is limited to one single-family residence per gross acre.”

If our requests for variance are approved, we will continue to be in alignment with the plan and not create an appearance of inconsistency as the city’s targeted Urban Service Area Expansion takes shape.

Variances may be granted when the petitioner establishes that there are practical difficulties in complying with the zoning ordinance. Practical difficulties means that:

After reviewing both applicable Elk River Municipal Codes and the relevant portions of the City of Elk River comprehensive plan, we feel that both of our requests for variance contained in this narrative, propose to use our property in a reasonable manner.

In relation the ADU portion of our request, while we will exceed the square footage limit for ADUs by approximately 600 square feet, it is a result of efficient use of space and will not be noticeable to neighbors or passersby.

We desire to exceed the physical footprint restrictions by approximately 148 square feet, which adds 3 linear feet to the length of the building. We feel that this small increase to the total size of the structure would not create a building size that would be noticeably different from others in our neighborhood and would at the same time dramatically improve the visual appearance of our property and our ability to store items indoors.

The petitioner proposes to use the property in a reasonable manner not permitted by the zoning ordinance

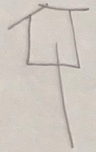
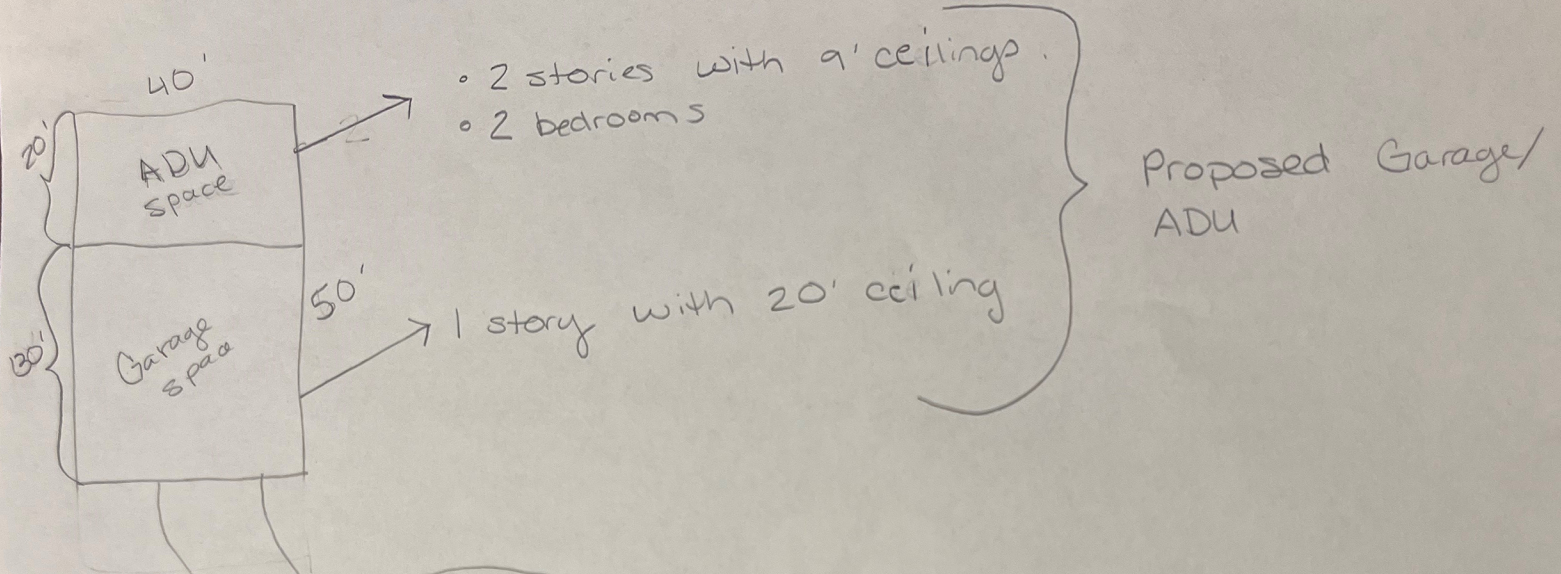
The plight of the petitioner is due to circumstances unique to the property not a consequence of the petition's own action or inaction; and

As we considered this criteria, the challenge we have is the unique size and shape of our attached garage. We purchased our home in 2011 and our 2.5 stall attached garage was part of the original owner's build. This restricts our ability to build a more standard sized building and potentially increasing the cost to build.

The variance, if granted, will not alter the essential character of the locality

We have lived in our home for 13 years and 7 months. If approved our property and it's structures would remain consistent with those of our neighbors. However, the external physical appearance of our property would be improved by allowing us to store all of our vehicles, boats, bobcat, hockey rink and nets indoors.

Woodland Trail



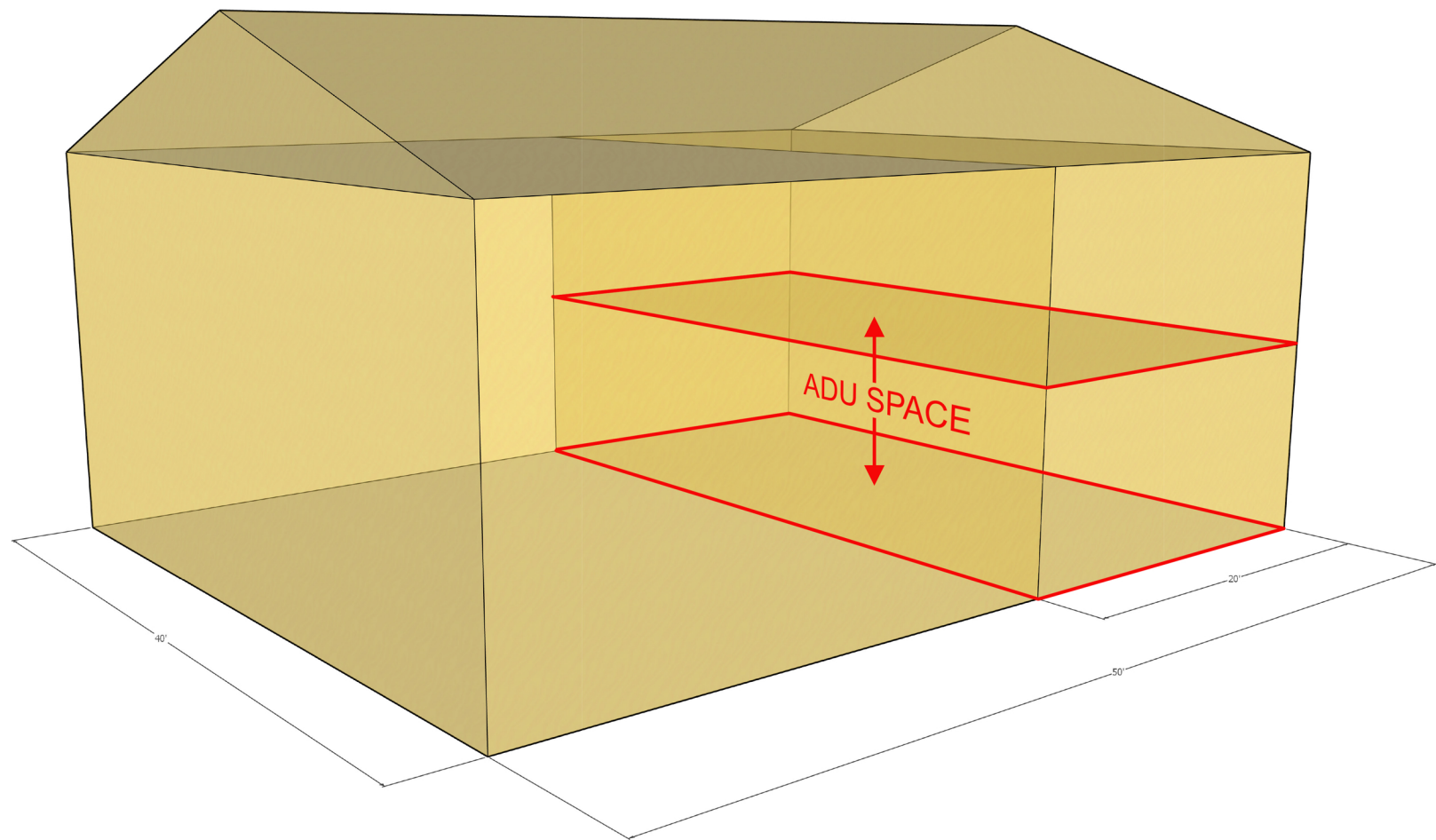
Current
shed to
be removed
before build

Driveway

attached
garage

House

Vernon St NW





Request for Action

To
City Council

Item Number
8.1

Meeting Date
October 6, 2025

Prepared By
Chris Leeseberg, Senior Planner

Item Description
Variance: Garage/Accessory Dwelling Unit Size,
Jennifer Belde - 21131 Vernon St NW

Reviewed by
Zack Carlton
Jared Shepherd
Cal Portner
Tina Allard

Action Requested

Direct staff to draft a resolution stating that findings of fact are made, denying the accessory structure size variances, as the standards for approval, as noted below, are not met. The City Council would consider the resolution on October 20, 2025.

1. The variance is not in harmony with the general purpose and intent of the ordinance, as the proposed ADU exceeds the maximum allowable living area by 600 square feet and the accessory structure exceeds the permitted size by 148 square feet, undermining the ordinance standards intended to ensure ADUs remain subordinate to the principal dwelling and that accessory structures remain consistent with neighborhood character.
2. The variance is not consistent with the Comprehensive Plan, which anticipates orderly residential development supported by zoning standards. Granting the variance would conflict with the implementing ordinances that guide residential scale and character.
3. The property can be reasonably used without the variance, as the zoning ordinance already permits a 1,000 square foot ADU and accessory structures up to 2,500 square feet. A compliant ADU and garage could be constructed without exceeding size limits.
4. The plight of the applicant is not due to circumstances unique to the property, but rather a result of the existing home and garage design, which does not justify exceeding ordinance limits. Economic considerations or design preferences do not constitute practical difficulties.
5. Granting the variance could alter the essential character of the locality, as the size of the proposed ADU may compete in scale with principal dwellings, changing the intended residential character of the R-1a district.

Additionally, direct staff to work with the city attorney and draft an ordinance providing applicants with an opportunity to request variances specifically related to ADA requirements.

Background/Discussion

The 1.6-acre property, zoned R1-a (Single-Family Residential), is permitted a maximum of 2,500 sq ft. of accessory structure space, including accessory dwelling units (ADU), and a maximum of 1,000 sf of ADUs.

The Elk River Vision

A welcoming community with revolutionary and spirited resourcefulness, exceptional service, and community engagement that encourages and inspires prosperity



The applicant is proposing a total of 2,648 sq ft. of accessory structures exceeding the maximum allowed by 148 sf, as well as proposing 1,600 sf of ADU exceeding the maximum allowed by 600 sf.

They are requesting the variances to build a dual-purpose building on their property as they are planning for a father-in-law who retired last year and a disabled sister-in-law to move in with them and provide comfortable accommodations for them.

Board of Adjustments

The Board of Adjustment reviewed the variance request during their August 26, 2025, regular meeting, where they denied the request. City code states that decisions by the Board to deny a variance shall not be final and must be reviewed by the City Council in the same manner as an appeal of a decision by the board.

The Board cited the following findings:

- The request exceeds the maximum ADU size by 600 sf and accessory structure area by 148 sf.
- The property can be reasonably used without exceeding ordinance limits.
- The applicant's situation is not unique but is based on garage design and economic preference.
- Approval would conflict with the intent of the ordinance and weaken consistency with the Comprehensive Plan.
- The variance, if granted, could alter the essential character of the locality.

Staff also clarified questions from the Board and neighbors pertaining to who is allowed to have an ADU, can the ADU be detached, and who can live in them.

September 15, 2025, City Council Meeting

During the council meeting, the city attorney explained that the disability portion of the request was not expressed at the Board of Adjustments, but it was expressed tonight (9-15-2025), and therefore suggested the Council continue this item to get more information regarding the variance as it pertains to the disability criteria. Since the Council discussion on September 15, the city attorney has reviewed the application in greater detail and the additional information related to the ADA request. The attached "V 25-13 Update Letter", sent to the applicant on September 26, 2025, explains the city attorney's recommendation.

Findings

- The request exceeds the maximum ADU size by 600 sf and accessory structure area by 148 sf.
- The property can be reasonably used without exceeding ordinance limits.
- The applicant's situation is not unique but is based on garage design and economic preference.
- Approval would conflict with the intent of the ordinance and weaken consistency with the Comprehensive Plan.
- The variance, if granted, could alter the essential character of the locality.

Additionally, the city attorney recommends that the city create an avenue for an applicant to present evidence for a reasonable accommodation request. City staff requests direction from the City Council to work with the city attorney in creating this process.

Financial Impact

None

Mission/Policy/Goal

Appropriately govern in an ever-changing environment.

Attachments

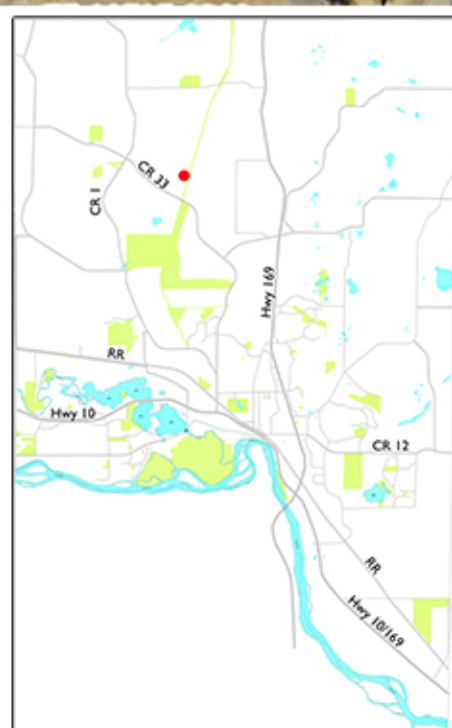
1. Location Map
2. V 25-13 Update Letter
3. 60 Day Extension Letter
4. Narratives
5. Variance Request Submitted 9.15.2025 Handout
6. 7.2 Belde 9-15-2025 Presentation



Project Location Map

Belde Variance

Case No: V 25-13





September 26, 2025

Jennifer Belde
21131 Vernon Street NW
Elk River, MN 55330

Via email to jennifer.belde@hennepin.us

Re: Variance Application – Postponement Update

Dear Jennifer,

Since the council discussion on September 15th, our city attorney has had a chance to review the application along with the additional information related to the ADA request.

In reviewing the narrative and statement submitted with the application, there is not enough information to establish that the size variance is necessary to alleviate a specific burden from a qualifying disability. The applicant stated that as her sister-in-law with a disability ages, a wheelchair may be necessary in the future and that the size increase would be preferable to allow for increased mobility. While it is a reasonable request to accommodate a mobility disability, the applicant has not documented how it would be necessary at this time to allow the specific size increase requested.

The city attorney further recommends that the city should create an avenue for an applicant to present evidence for a reasonable accommodation request. With his recommendation, we will be asking the City Council for direction to create this process within our ordinance.

What does this mean for your current request? The City Council must make a decision to approve or deny your current application. Staff will present the Board of Adjustment's recommendation to deny the request at the October 6th City Council meeting.

Regardless of the outcome of your application, we will also seek council's direction to begin creating the new appeal process for reasonable accommodation requests.

While we do not have specifics about this ordinance/process now, we will keep you informed as the draft progresses.

Sincerely,

Chris Leeseberg
Senior Planner
763.635.1033
cleeseberg@ElkRiverMN.gov

13065 Orono Parkway
Elk River, MN 55330
763.635.1000
ElkRiverMN.gov





September 9, 2025

Jennifer Belde
21131 Vernon St NW
Elk River, MN 55330

VIA EMAIL: jennifer.belde@hennepin.us

Dear Jennifer Belde,

On July 28, 2025, the city received your Variance application to exceed the allowed square footage for accessory structures and for accessory dwelling units. State Statute requires a decision by the city within 60 days of this application. Statute also allows the city to extend the timeline an additional 60 days if necessary.

Should the City Council deny your application and direct staff to prepare a formal document denying the request, the review period will extend beyond the statutory 60-day limit. Due to the possible denial, the city is extending the 60-day timeline to November 25, 2025.

The City Council, if needed, will act on the findings of fact during their meeting on October 6 or 20, 2025.

Please feel free to contact me if you have any questions.

Sincerely,

Chris Leeseberg, Senior Planner
Ph: 763.635.1033
cleeseberg@ElkRiverMN.gov

13065 Orono Parkway
Elk River, MN 55330
Phone: 763.635.1000

www.ElkRiverMN.gov



We are requesting a variance to build a dual-purpose building on our property that is slightly in conflict with the city of Elk Rivers Municipal Code.

We are planning for my father-in-law who retired last year and my disabled sister-in-law to move in with us. It is super important to us to have family close as they age and be able to provide comfortable accommodations for them once they move.

Our desire is to build a 40' x 50' steel clad building. Of this 40' x 50' structure, 30' x 40' of the footprint would contain garage space. The other 20' x 40' portion of the building's footprint would contain an Accessory Dwelling Unit (ADU). This portion of the footprint would have a first and a second floor to create privacy for our family members as they transition to living with us. Additionally, as they age, we want to make sure that if they need care or have mobility issues, we can comfortably accommodate medical equipment or the use of wheelchairs/walkers throughout the space safely.

There are two specific reasons we are requesting a variance. The first and most important reason we are requesting a variance is to exceed the 1,000 square foot limit of the Elk River Municipal code for an Accessory Dwelling Unit. Our goal is to have 2 floors of available living space for the 20' x 40' portion of the footprint we identified above for the ADU. This would exceed the limit by 600 square feet of living space.

The second reason is that with the approximate dimensions of our attached garage (24' x 27' roughly 648 sq ft, measured on the exterior of the garage) we would only have 1,852 square feet available to build an approximately 47' x 40' structure. As you can imagine this odd measurement could impact cost as we build. One of our goals in building this structure is to have adequate space to store our recreational vehicles, boats, our bobcat and other items that currently are parked in the open.

The small overage in the footprint restrictions would ensure that we are able to protect our property that is now exposed to the elements and to create a cleaner and more attractive appearance to our property and neighborhood, as well as provide comfortable and safe space to care for our family.

Our ask is to be approved for variance to the Elk Rivers Municipal Code Sec. 30-1 in the following ways (listed below in priority order):

- Exceed the 1,000 square feet limit for our planned ADU by approximately 600 square feet.
- Exceed the square footage limit of 2,500 square feet of attached (garage) and detached (sheds) and accessory structures, by approximately 148 square feet in the footprint of our structure.

A variance may be granted by the board only if it finds that:

The variance is in harmony with the general purpose and intent of the ordinance

After reviewing the criteria for Accessory Dwelling units (ADU) in Chapter 30 of the Municipal Code and consulting with Chris Leeseberg, Sr. Planner with the City of Elk River, we feel that our variance requests would improve the appearance of our property and would not permit a structure that appears inconsistent with the Municipal Codes and goals defined therein.

The variance is consistent with the City of Elk River Comprehensive Plan (discuss with city staff if needed)

When considering if we meet these criteria, I have reviewed the Elk River Comprehensive Plan available online and feel we are in alignment with the plan.

Our property is currently zoned as R-1a and is defined as follows “This district is intended for primarily rural residential with accessory agricultural uses where conditions are suitable”. In the Targeted Urban Service Area Expansion portion of the plan beginning on page 26, our property moves to an R-1b, defined as follows, “This district is intended for low density single-family residential development. Subdivisions utilize on-site sewage disposal systems and private water wells. Density in this district is limited to one single-family residence per gross acre.”

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The petitioner proposes to use the property in a reasonable manner not permitted by the zoning ordinance

The plight of the petitioner is due to circumstances unique to the property not a consequence of the petition's own action or inaction; and

As we considered this criteria, the challenge we have is the unique size and shape of our attached garage. We purchased our home in 2011 and our 2.5 stall attached garage was part of the original owner's build. This restricts our ability to build a more standard sized building and potentially increasing the cost to build.

The variance, if granted, will not alter the essential character of the locality

We have lived in our home for 13 years and 7 months. If approved our property and it's structures would remain consistent with those of our neighbors. However, the external physical appearance of our property would be improved by allowing us to store all of our vehicles, boats, bobcat, hockey rink and nets indoors.

To whom it may concern,

I would like to introduce my husband and I. We have lived in Elk River for 15 years and in our current home for 13 years and 9 months. We have three children, Leo (14), Gabe (12) and Agnes (11). We are currently preparing for my husband's disabled sister and his recently retired father to move in with us. I am a career public servant and have worked for Hennepin County Community Corrections for nearly 18 years and my husband Josh is a disabled Veteran who has been a stay-at-home dad since 2011.

It is important to us to have our family close and be able to assist them as they age and prepare a home with us that preserves their independence and dignity. My sister-in-law has both physical and cognitive disabilities that have created greater challenges as she ages. She has limited use of her right hand and growing issues with balance. These challenges have been present since birth due to a stroke that happened during delivery. Our goal is to be able to use our space in an efficient manner that allows for the inclusion of wider hallways to accommodate wheelchairs or other mobility equipment, a residential elevator if needed and ample space to prepare our family to be able to remain at home until their passing.

Our desire is to build a 40' x 50' steel clad building. Of this 40' x 50' structure, 30' x 40' of the footprint would contain garage space. The other 20' x 40' portion of the building's footprint would contain an Accessory Dwelling Unit (ADU). This portion of the footprint would have a first and a second floor to create privacy for our family members as they transition to living with us. Additionally, as they age, we want to make sure that if they need care or have mobility issues, we can safely and comfortably accommodate medical equipment or the use of wheelchairs or other mobility equipment throughout the space safely.

There are two specific reasons we are requesting a variance. The first and most important reason we are requesting a variance is to exceed the 1,000 square foot limit of the Elk River Municipal code for an Accessory Dwelling Unit. Our goal is to have 2 floors of available living space for the 20' x 40' portion of the footprint we identified above for the ADU. This would exceed the limit by 600 square feet of living space.

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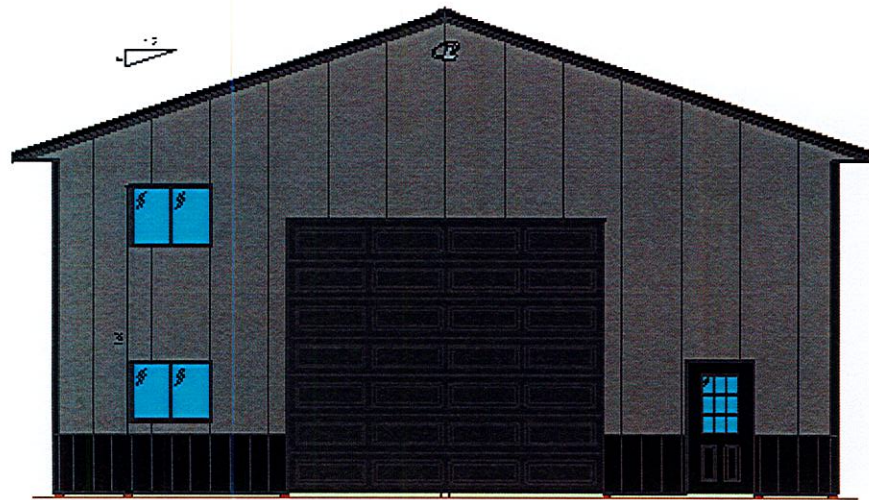
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Our ask is to be approved for variance to the Elk Rivers Municipal Code Sec. 30-1 in the following ways (listed below in priority order);

- Exceed the 1,000 square feet limit for our planned ADU by approximately 600 square feet.
- Exceed the square footage limit of 2,500 square feet of attached (garage) and detached (sheds) and accessory structures, by approximately 148 square feet in the footprint of our structure.

Thank you so much for your time and consideration.

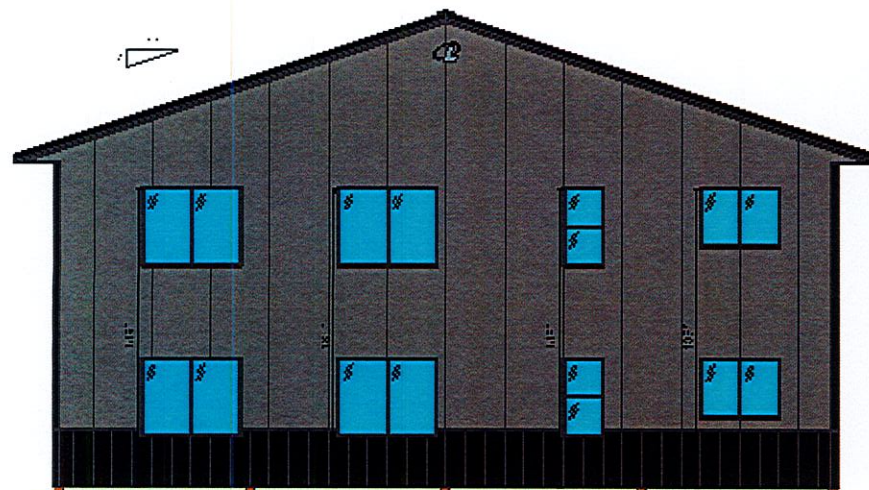
Josh and Jen Belde



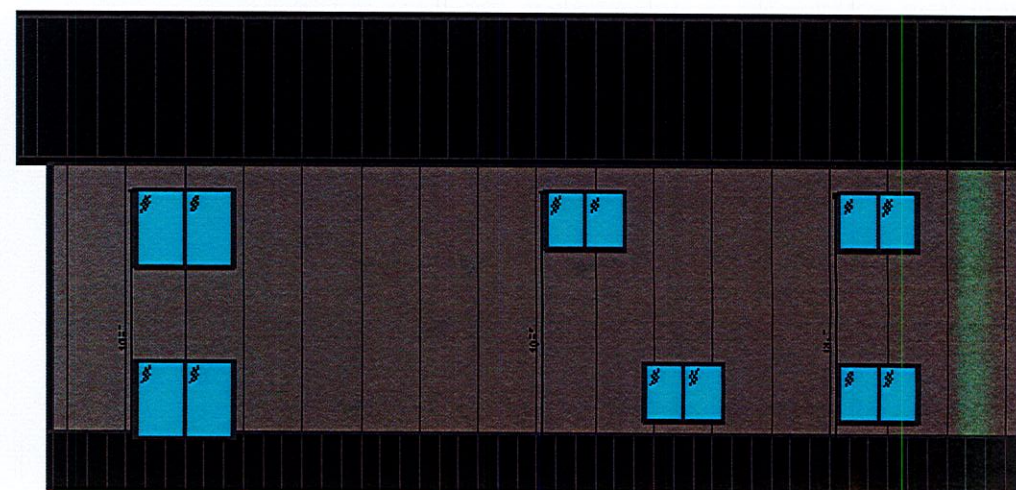
(A2) ENDWALL 1 ELEVATION



(B2) SIDEWALL 1 ELEVATION

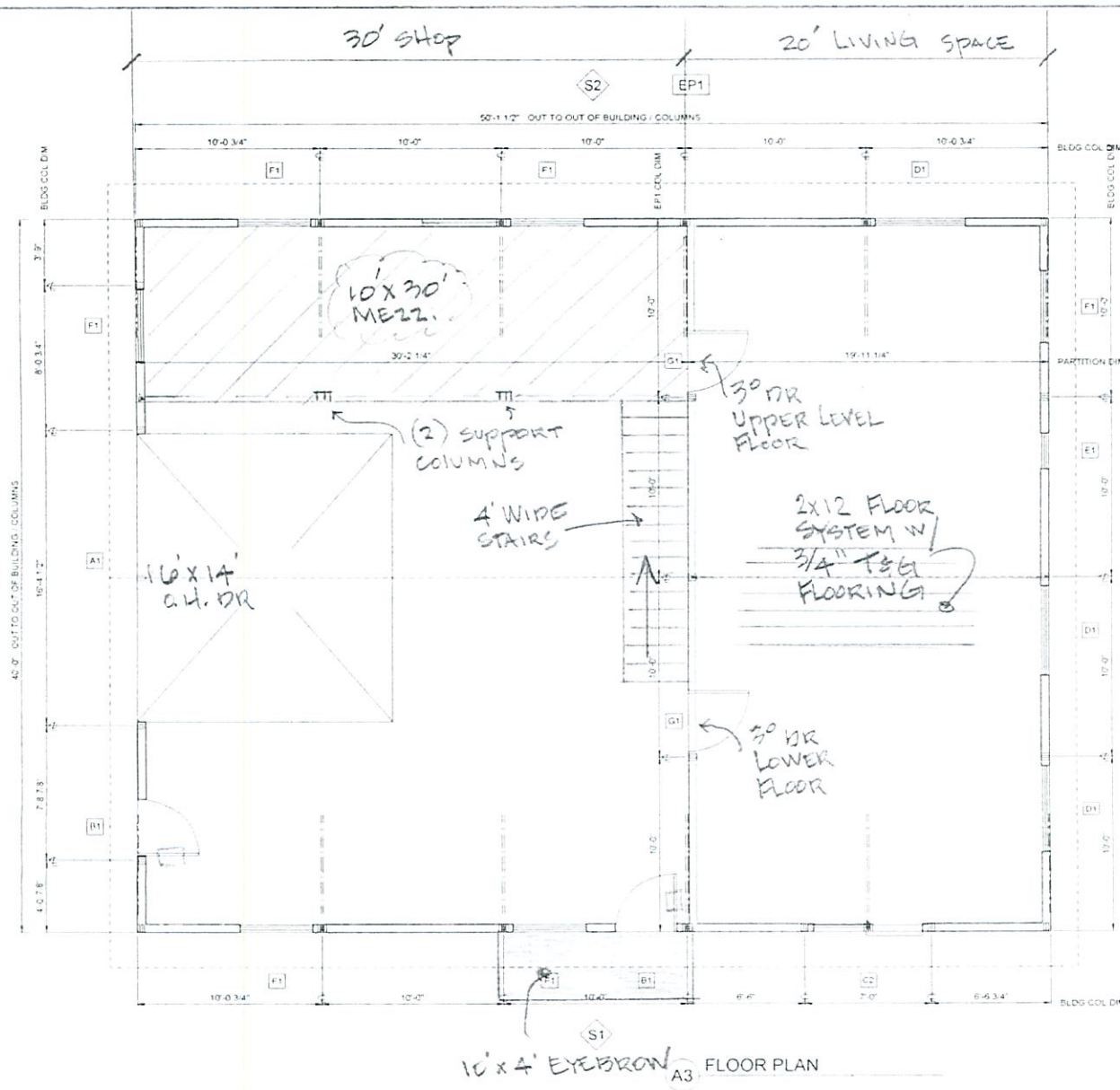


(C2) ENDWALL 2 ELEVATION



(D2) SIDEWALL 2 ELEVATION

	DEALER INFO.	CUSTOMER INFO.	BUILDING DESCRIPTION	Customer Approval	Bldg Direction	PROJ. Q31A-16343-00 PROPOSAL DRAWING Not for construction The information herein is for general information only and does not constitute a contract. No part of this drawing should be used without the written approval of Lester Buildings.
	Ron Foust PO Box 417 Lester Prairie, MN 55354	Jen & Josh Belde 21131 Vernon Str NW Elk River, MN 55330	40'-0" x 50'-1" x 17'-2" Uni-Frame Embedded QP072425	_____ Date	 North	



OPENING SCHEDULE

ID	MODEL	COLOR	NOMINAL	ROUGH	FRAME DET	FINISH DET
A1	OVERHEAD DOOR - FIB		102" x 102"		7	102035
B1	WALK DOOR 100" 2 PANEL & 22" X 36" LITE	BLACK	80" x 80"	40 5/8" x 81 1/8"	KC431	102035
C1	VINYL PATIO DOOR W/ NAIL FIN	CLAY	72" x 80"	72" x 80"	KC431	102035
D1	VINYL PATIO DOOR W/ NAIL FIN	CLAY	72" x 80"	72" x 80"	KC431	102035
E1	VINYL SLIDER THERMAL PANE W/ NAIL FIN	BLACK	60" x 84"	60" x 84"	KB222	102455
F1	VINYL SLIDER THERMAL PANE W/ NAIL FIN	BLACK	24" x 84"	24" x 84"	KB222	102455
G1	VINYL SLIDER THERMAL PANE W/ NAIL FIN	BLACK	48" x 30"	48" x 30"	KB222	102455
H1	WALK DOOR 50" 2 PANEL	BLACK	50" x 80"	40 5/8" x 81 1/8"	KC431	102035



DEALER INFO.

Ron Foust
PO Box 417
Lester Prairie, MN 55354

CUSTOMER INFO.

Jen & Josh Belde
21131 Vernon Str NW
Elk River, MN 55330

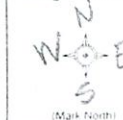
BUILDING DESCRIPTION

40'-0" x 50'-1" x 17'-2"
Uni-Frame Embedded
QP072425

Customer Approval

(Initials)
DATE

Bldg Direction



PROJ 031A-16343-00-00
PROPOSAL DRAWINGS ONLY
Not Intended for Construction Purposes

The information presented in this drawing is based on a preliminary design using the input provided. The final design is subject to Lester Engineering review.

NOT TO SCALE

Item 7.2

Jennifer Belde

Variance



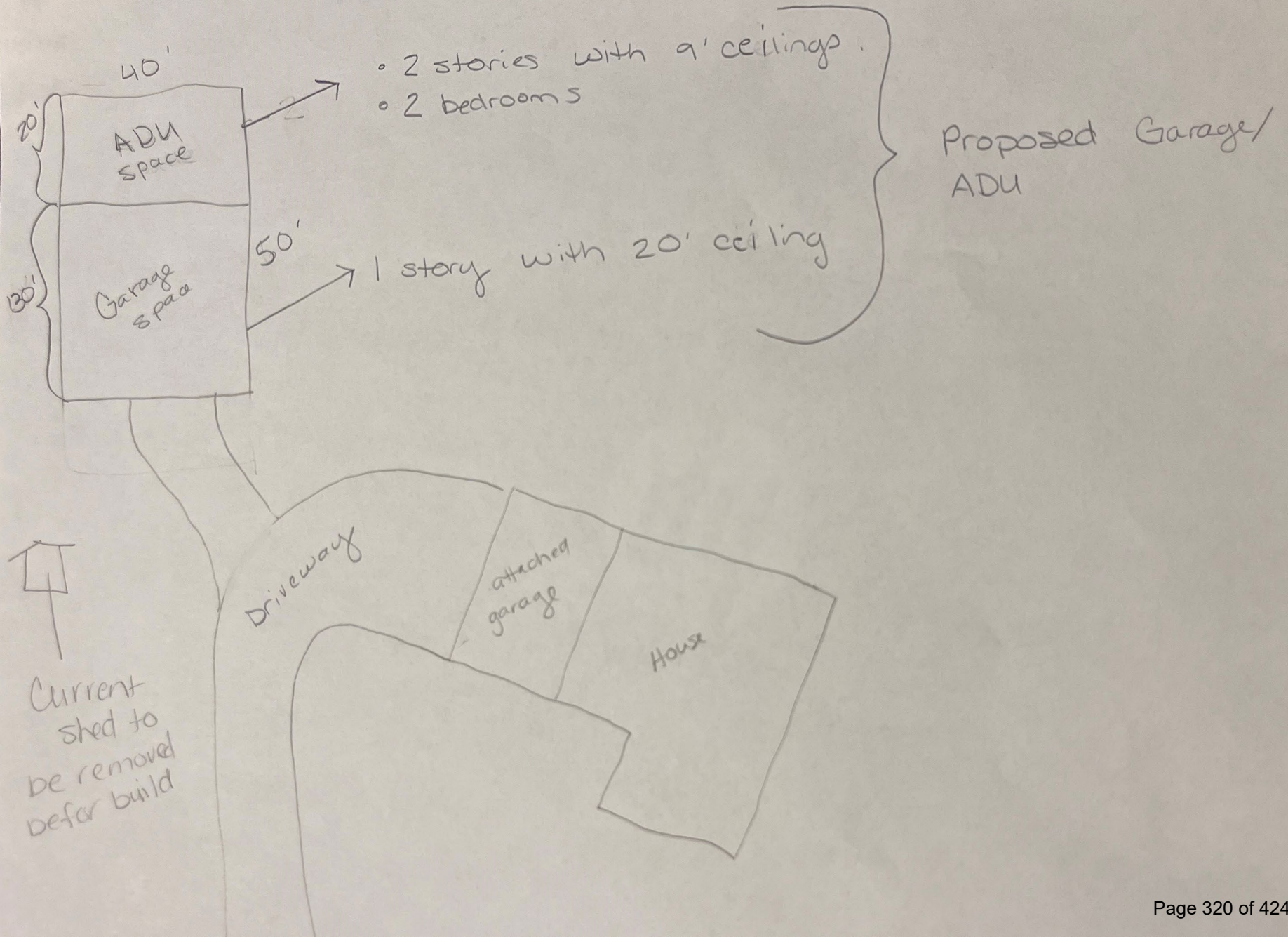
Background

- Board of Adjustments denied the variance
- Zoned R1-a
- 1.6 acres
- Want to construct an accessory structure (pole building) with an Accessory Dwelling Unit (ADU)
- Requesting two variances
 - Exceed allowed ADU size
 - Exceed allowed Accessory Structure size

Square Footage Allowed

	ADU	Accessory Structures
Allowed	1,000	2,500
Proposed	1,600	2,648
Exceeds	600	148

Woodland Trail



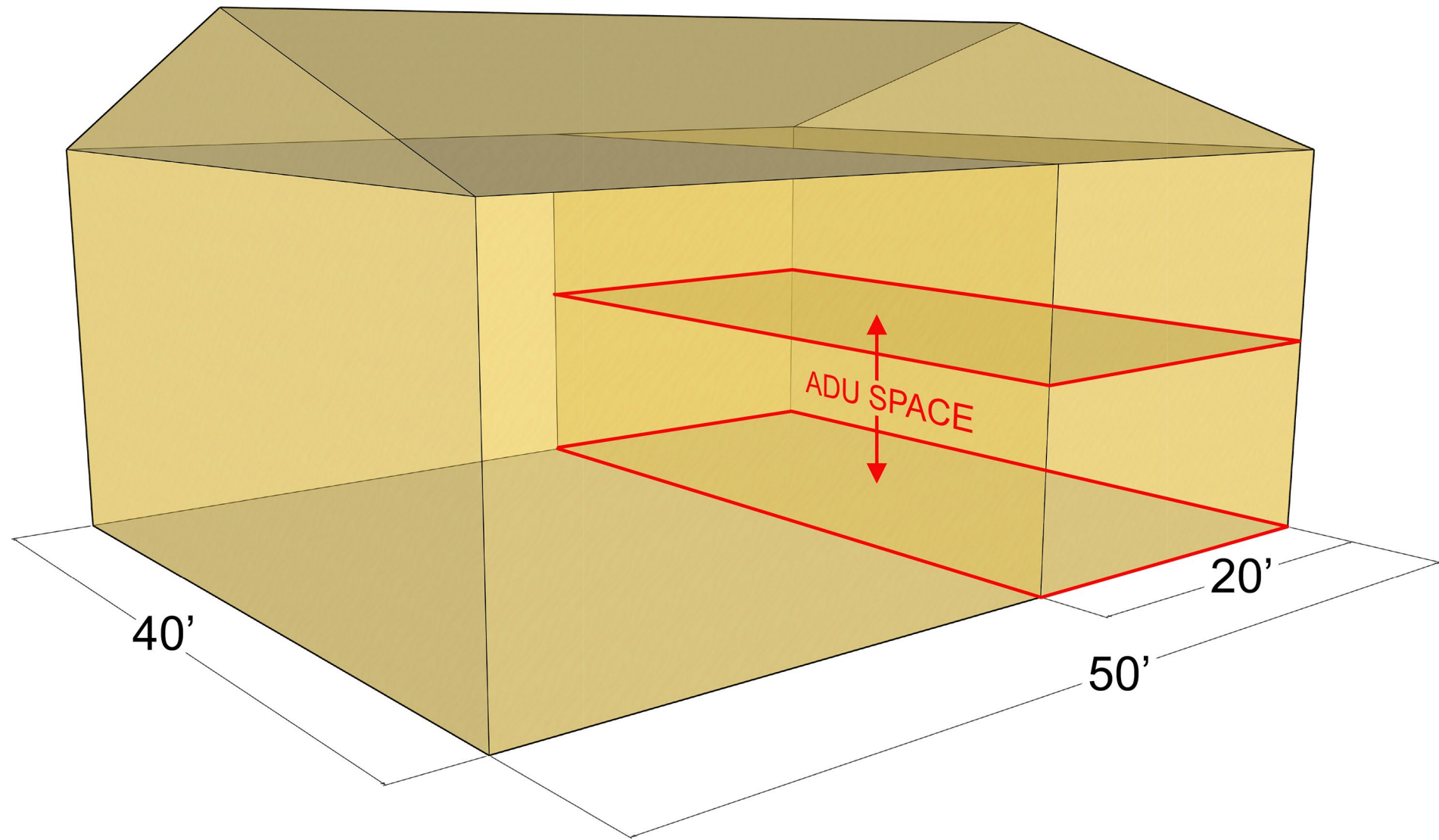


Approximate
Location

75-00505-0330

75-00128-0001

1



21175 VERNON
ST NW

Approximate
Location

21131 VERNON
ST NW

21091 VERNON
ST NW

21091 VERNON
ST NW

12578 212TH
AVE NW

12604 212TH
AVE NW

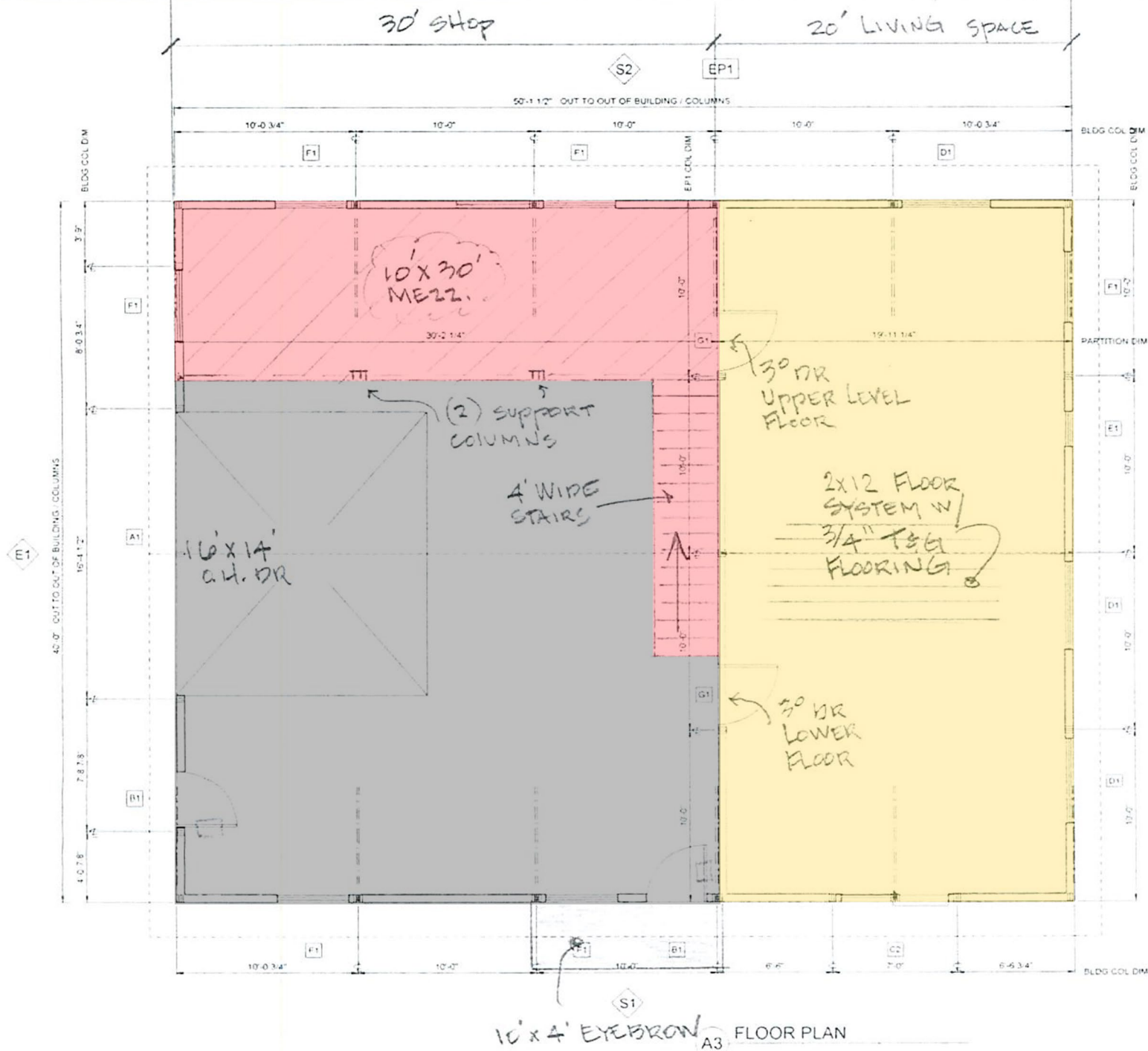
21082 VERNON
ST NW

BOAs Findings for Denial

- Request exceeds the max. ADU size by 600 sq.ft. and accessory structure area by 148 sq.ft.
- Property can be reasonably used without exceeding ordinance limits
- Applicant's situation is not unique but is based on garage design and economic preference
- Approval would conflict with the intent of the ordinance and Comp Plan
- The variance, if granted, could alter the essential character of the locality

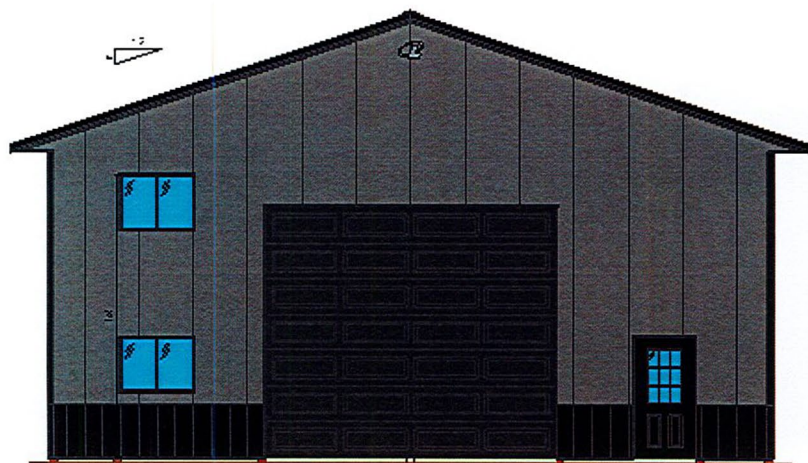
Background

- The applicant provided staff additional information
 - She has copies to share
- Staff emailed it to council early today also

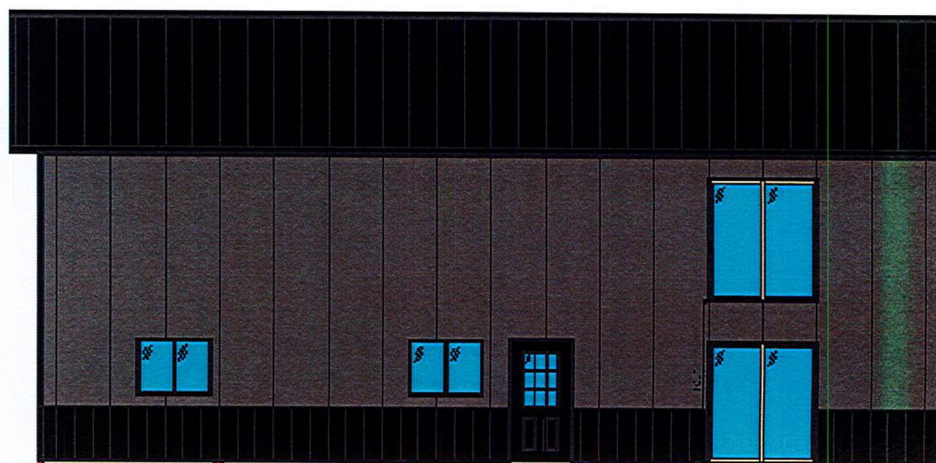


OPENING SCHEDULE

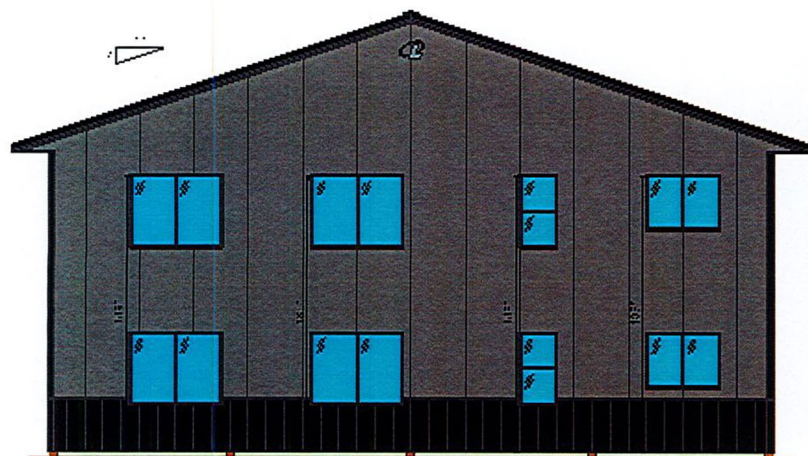
10	MODEL
A1	OVERHEAD DOOR - FBO
B1	WALK DOOR 100" x 72" PANEL 5.2
C1	VINYL PATIO DOOR W/ NAIL
D1	VINYL PATIO DOOR W/ NAIL
E1	VINYL SLIDER THERMAL PAN
F1	VINYL SLIDER THERMAL PAN
G1	WALK DOOR 5100 SOLID



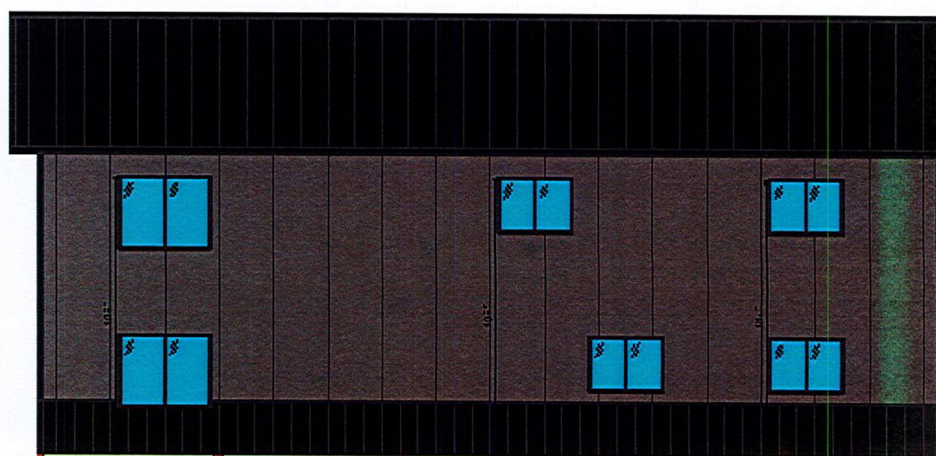
(A2) ENDWALL 1 ELEVATION



(B2) SIDEWALL 1 ELEVATION



(C2) ENDWALL 2 ELEVATION



(D2) SIDEWALL 2 ELEVATION

Action Requested

- Direct staff to draft a resolution making findings of fact denying the accessory structure size variances, as the standards for approval outlined in the memo, are not met



Approximate
Location

75-00505-0330

75-00128-0001

1

21175 VERNON
ST NW

Approximate
Location

21131 VERNON
ST NW

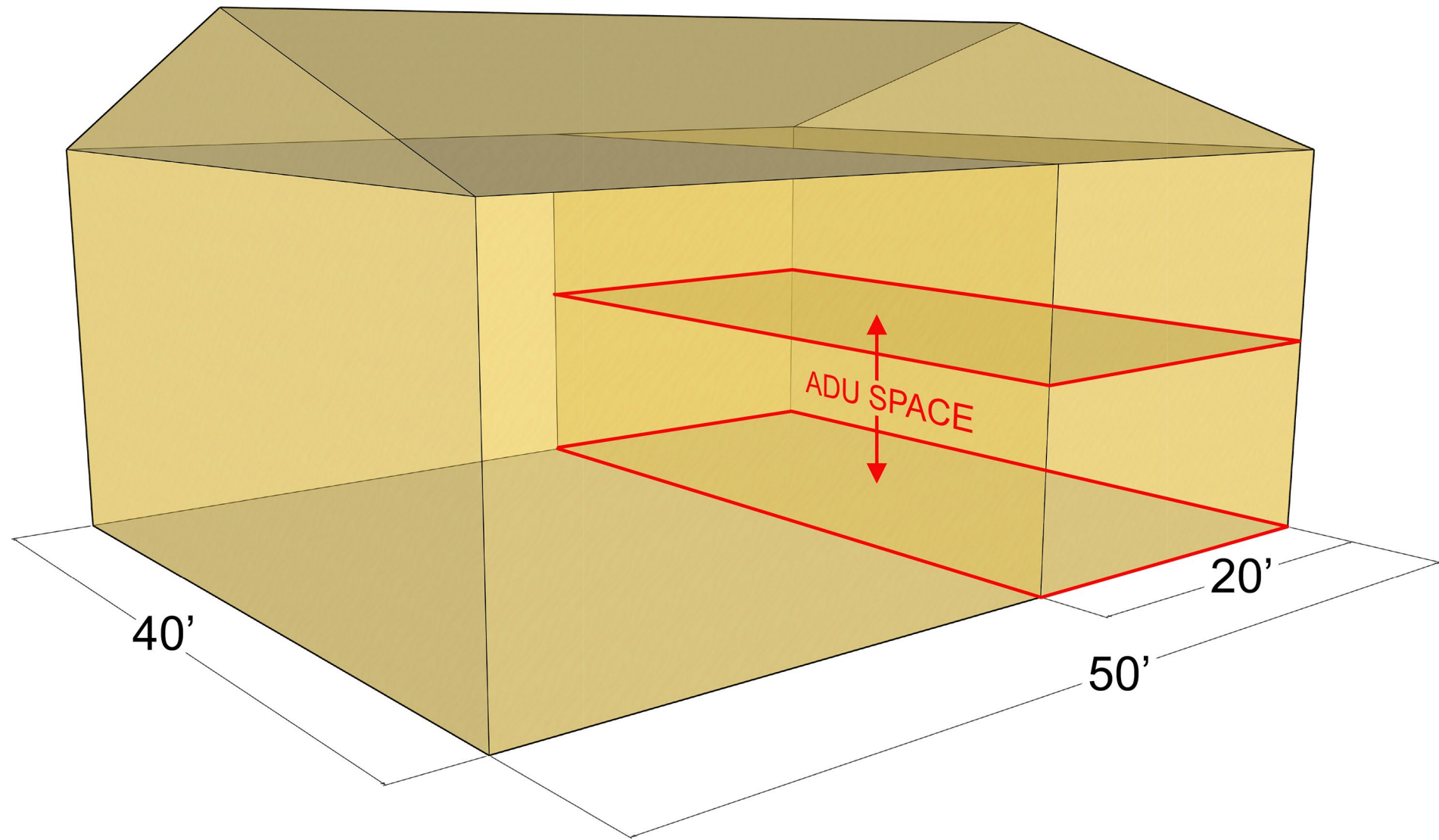
21091 VERNON
ST NW

21091 VERNON
ST NW

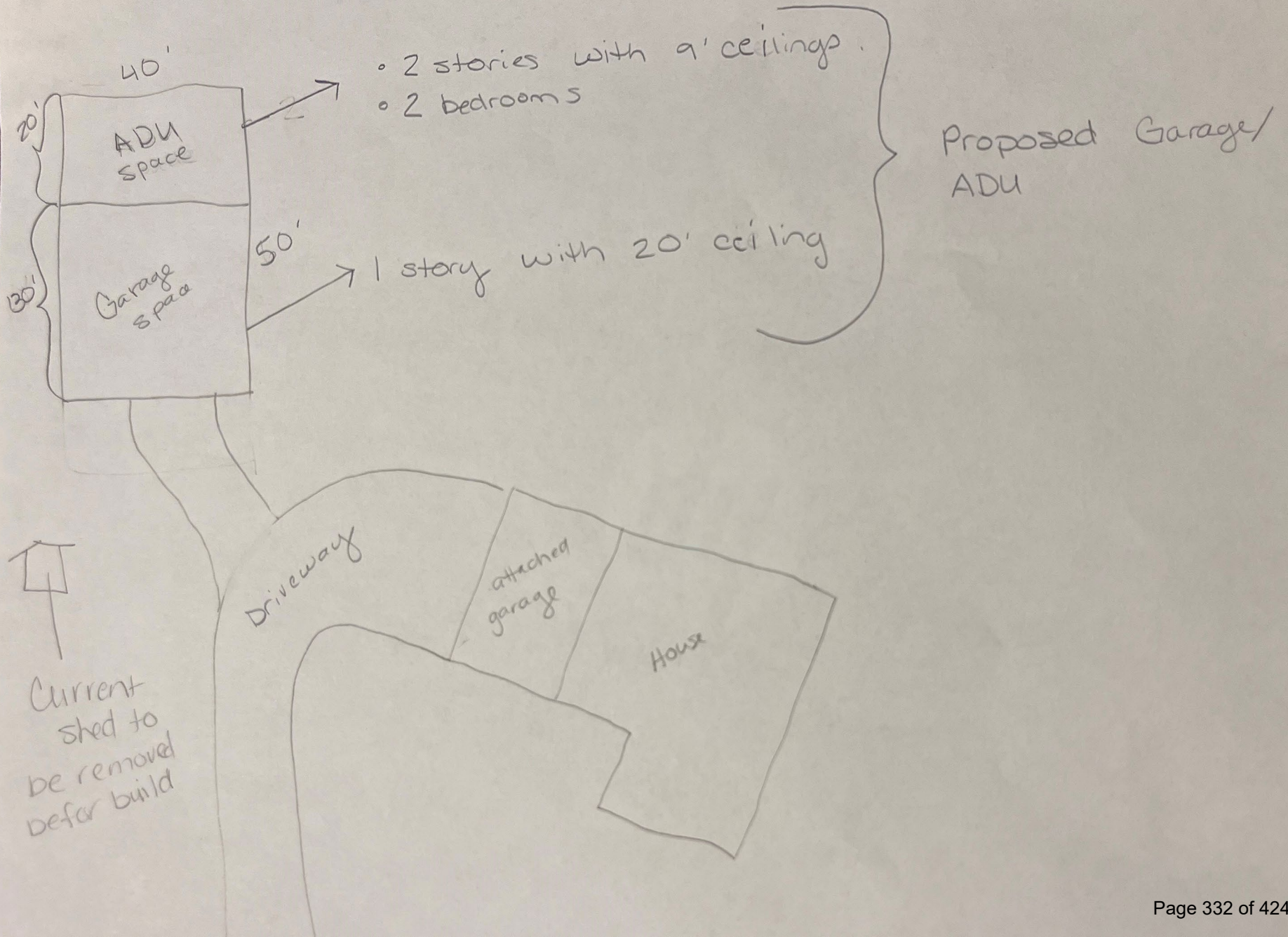
12578 212TH
AVE NW

12604 212TH
AVE NW

21082 VERNON
ST NW



Woodland Trail



Square Footage Allowed

	ADU	Accessory Structures
Allowed	1,000	2,500
Proposed	1,600	2,648
Exceeds	600	148

Applicable Regulations

1. Is in harmony with the general purpose and intent of the ordinance

- Intent is to ensure ADUs remain subordinate to house
- Proposed ADU is approximately 60% larger than allowed
- Accessory structure limit exists to avoid oversized outbuildings
- Approval would conflict with the ordinance's stated purpose

Applicable Regulations

2. Is consistent with the City of Elk River Comprehensive Plan

- While Comp Plan supports single-family uses
 - Relies on zoning to ensure orderly & consistent development
- Exceeding both ADU and Accessory size limits, is inconsistent with plan standards
- The request is not fully aligned with the Comp Plan

Applicable Regulations

3. The petitioner proposes to use the property in a reasonable manner not permitted by the zoning ordinance.

- Reasonable use of the property exists without a variance
- Designing and constructing to standardized building dimensions is understandable
- Can be achieved by reducing dimension
- The property can accommodate these uses within ordinance limits
- Exceeding them is not necessary to achieve reasonable use

Applicable Regulations

4. The plight of the petitioner is due to circumstances unique to the property not a consequence of the petitioner's own action or inaction.

- Attached garage size is not a unique
- Variances cannot be granted solely because of personal preference or building economics
- This condition is not unique and does not justify exceeding code standards

Applicable Regulations

5. The variance, if granted, will not alter the essential character of the locality.

- While indoor storage may improve site appearance a variance of this scale could alter the character of the neighborhood



Request for Action

To
City Council

Item Number
6.1

Meeting Date
October 20, 2025

Prepared By
Jolene Richter, Deputy Clerk

Item Description
City of Elk River Volunteer of the Month

Reviewed by
Cal Portner
Tina Allard

Action Requested

Mayor Dietz will recognize and present a plaque to the October Volunteer of the Month Award recipient.

Background/Discussion

Mayor Dietz established the City of Elk River Volunteer of the Month Award program to recognize Elk River residents for their volunteer contributions and commitment to community service.

Financial Impact
N/A

Mission/Policy/Goal
Elk River Mission

Attachments
None

The Elk River Vision

A welcoming community with revolutionary and spirited resourcefulness, exceptional service, and community engagement that encourages and inspires prosperity



Request for Action

To
Board of Adjustments

Item Number
7.1

Meeting Date
October 20, 2025

Prepared By
Chris Leeseberg, Senior Planner

Item Description
Variance: Setback for Building Expansion, Spikes & Houles Feed, Seed, & Pet Supply - 906 US Highway 10 NW

Reviewed by
Zack Carlton
Cal Portner
Tina Allard

Action Requested

Approve, by motion, the side yard setback variance request of 15 feet for the following reasons:

1. The general purpose and intent of the ordinance are met.
2. The property has a land use guidance of Neighborhood Commercial, and the use is consistent with the Comprehensive Plan.
3. The proposed use is reasonable and is otherwise permitted in the zoning ordinance.
4. The plight of the petitioner is due to circumstances unique to the property, not a consequence of the petitioner's own action or inaction.
5. The variance will not alter the essential character of the locality.

And with the following conditions:

1. A full survey of the property shall be completed for the building permit.
2. The proposed additions shall not be closer than 5 feet to the west property line nor be located in any easement, whichever is greater.

Background/Discussion

The applicant is requesting a variance to the side yard setback requirements in the C-3 Highway Commercial zoning district to allow for an expansion of the existing commercial structure. The Board of Adjustments denied the side yard request at their September 23, 2025, meeting, but did approve the rear yard setback request at the same meeting.

The request was to have a zero-foot setback but since the BOA meeting, where there was discussion on fire access on the site, the applicant is requesting a five (5) foot setback (a 15-foot variance).

The BOA requested additional information from the Fire Department be presented to the City Council regarding access. The Fire Department indicated they would not drive any equipment on the Railroad right-of-way (ROW) nor park anything near the tracks in the ROW. They also shared section 503.1.1 of the Minnesota State Fire Code which states: Buildings and Facilities - Approved fire apparatus access roads shall

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be provided for every facility, building or portion of a building hereafter constructed or moved into or within the jurisdiction. The fire apparatus access road shall comply with the requirements of this section and shall extend to within 150 feet (45,720 mm) of all portions of the facility and all portions of the exterior walls of the first story of the building as measured by an approved route around the exterior of the building or facility.

With the applicant now stating they are requesting a 5-foot setback, the access concerns raised during the BOA meeting have been eased and section 503.I.I has been complied with.

The Building Department indicated the State Building Code allows structures to be built up to the property line. When exterior walls are located near, or at, a property line or another building on the same property, the code uses the following three elements to determine the required fire-resistance rating for those walls:

1. Occupancy or Use of the Building – The intended use or occupancy classification of the structure.
2. Fire Separation Distance – The distance between the exterior wall and the property line or another building on the same property.
3. Type of Construction – The building materials and construction methods used for the structure.

These are key considerations that a licensed architect will evaluate when designing a building for their client.

Staff analysis of the side yard variance now shows compliance with all five (5) of the standards required for approval of a variance.

Applicable Regulations

Variances may be granted when the petitioner establishes that the variance satisfies all five of the criteria described below. The variance is:

1. Is in harmony with the general purpose and intent of the ordinance, and

The proposed variance supports the ordinance's intent by allowing reasonable use of a constrained lot, while improving site function and aesthetics. The existing principal structure has been maintained along the railroad right-of-way for many decades with no concern.

2. Is consistent with the City of Elk River comprehensive plan.

The project aligns with the City's comprehensive plan by enhancing a visible property along Highway 10, reinforcing community identity, and contributing to downtown revitalization.

Variances may be granted when the petitioner establishes that there are practical difficulties in complying with the zoning ordinance. Practical difficulties means that:

3. The petitioner proposes to use the property in a reasonable manner not permitted by the zoning ordinance;

Given site limitations, the rear yard variance allows the applicant to reasonably expand and improve the property in a manner otherwise precluded by strict adherence to setbacks. Again, the existing principal structure has been maintained along the railroad right-of-way for many decades with no concern.

4. The plight of the petitioner is due to circumstances unique to the property not a consequence of the petition's own action or inaction; and

While it can be reasoned a buyer should understand the constraints of a property before they purchase it,

due to the age of the structure, predating current Highway 10 configuration, unique constraints are present which were not caused by the applicant.

5. The variance, if granted, will not alter the essential character of the locality.

The rear yard variance will not alter the essential character of the area as numerous structures share the same rear yard setback non-conformity along the railroad right-of-way.

Financial Impact

None

Mission/Policy/Goal

Ethical, efficient, and responsible.

Attachments

1. V 25-16 Location Map
2. Narratives
3. Photos
4. 7.1 Spikes Presentation



Project Location Map

Spikes Seed

Variance

Case No: V 25-16

Variance Request Narrative

Spike Seed currently employs 13 employees and is open from 8am – 7pm during the week with hours of operation on Saturday 8am-6pm and Sunday 10am-5pm. The current site has 7 parking spaces and the proposed addition does not add any more spaces. We are currently looking to expand our building to add more inside storage and retail space to better serve our customers. This addition adds approximately 4,200sf of building which our company greatly needs in order to keep growing and serving this great community.

There are many existing conditions on our site that require a variance to make this improvement possible. We have a very tight lot between HWY 10 and the railroad tracks. As you can see the existing building does not currently meet the front setback requirements laid out for C-3 zoning (required is 25' and existing is 15'). Due to the constraints of the property there is very little chance for growth without encroaching on these setbacks. The current property has an accessory building placed on the west property line. The proposed expansion would replace this old, less than desirable garage, with a new structure that will tie the entire property together. Our plan is to not only expand the building, but also to improve the existing structure while retaining the historic elements of this unique property. The time has come for this Elk River landmark to be restored to grandeur while keeping its classic look that will tie it into all the new down town improvements. As stated in the City's comprehensive plan these improvements would strengthen Elk River's community identity by improving a facility that every driver on HWY 10 is sure to notice.

If this variance is granted it will have little to no impact on the neighboring properties as there is already an existing structure on the west property line that would be replaced with a more attractive and functional expansion. We have already proven that we are a growing business that needs room for expansion as demonstrated when we started leasing the overflow city parking lot for our garden center and additional parking. As the Elk River community continues to grow and flourish we want to be there to grow and serve this community.

Legal Description of Property
Auditors SUBD. BLK22 Lots 2 and 3 of Auditor's Subdivision of Block 22 of the Village of Elk River, except that part of Lot 2 lying Westerly of the following described line: beginning at the Northeast corner of Lot 4 of Auditor's Subdivision of Block 22 of the Village of Elk River, thence running Northeasterly at a deflection angle of 20 degrees Easterly from the Northerly extension of the East line of said Lot 4 to the railroad right of way and there terminating. Excepting also the railroad right of way and excepting also the highway right of way. Commonly known as: 906 US Highway 10 Northwest, Elk River, Minnesota
The narrative is your opportunity to describe, promote, and sell your proposal to the Board of Adjustment and City Council (if needed) and should explain your request in detail and how the five criteria are met in order to be granted a variance.
I have attached the narrative that answers all of the questions below per the project narrative criteria. I have also attached a couple photos of a project we completed in Forest lake MN that gives you a good idea of what we are looking to do here. Thank you! Variance Request Narrative Spike Seed currently employs 13 employees and is open from 8am – 7pm during the week with hours of operation on Saturday 8am-6pm and Sunday 10am-5pm. The current site has 7 parking spaces and the proposed addition does not add any more spaces. We are currently looking to expand our building to add more inside storage and retail space to better serve our customers. This addition adds approximately 4,200sf of building which our company greatly needs in order to keep growing and serving this great community. There are many existing conditions on our site that require a variance to make this improvement possible. We have a very tight lot between HWY 10 and the railroad tracks. As you can see the existing building does not currently meet the front setback requirements laid out for C-3 zoning (required is 25' and existing is 15'). Due to the constraints of the property there is very little chance for growth without encroaching on these setbacks. The current property has an accessory building placed on the west property line. The proposed expansion would replace this old, less than desirable garage, with a new structure that will tie the entire property together. Our plan is to not only expand the building, but also to improve the existing structure while retaining the

historic elements of this unique property. The time has come for this Elk River landmark to be restored to grandeur while keeping its classic look that will tie it into all the new down town improvements. As stated in the City's comprehensive plan these improvements would strengthen Elk River's community identity by improving a facility that every driver on HWY 10 is sure to notice.

If this variance is granted it will have little to no impact on the neighboring properties as there is already an existing structure on the west property line that would be replaced with a more attractive and functional expansion. We have already proven that we are a growing business that needs room for expansion as demonstrated when we started leasing the overflow city parking lot for our garden center and additional parking. As the Elk River community continues to grow and flourish we want to be there to grow and serve this community.

A variance may be granted by the board only if it finds that:

The variance is in harmony with the general purpose and intent of the ordinance

See attachment

The variance is consistent with the City of Elk River Comprehensive Plan (discuss with city staff if needed)

See attachment

Variances may be granted when the petitioner establishes that there are practical difficulties in complying with the zoning ordinance. Practical difficulties means that:

The petitioner proposes to use the property in a reasonable manner not permitted by the zoning ordinance

See attachment

The plight of the petitioner is due to circumstances unique to the property not a consequence of the petition's own action or inaction; and

See attachment

The variance, if granted, will not alter the essential character of the locality

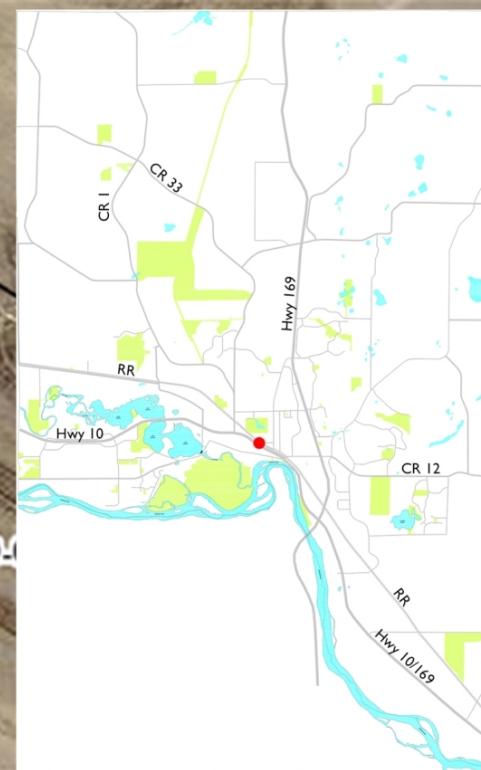
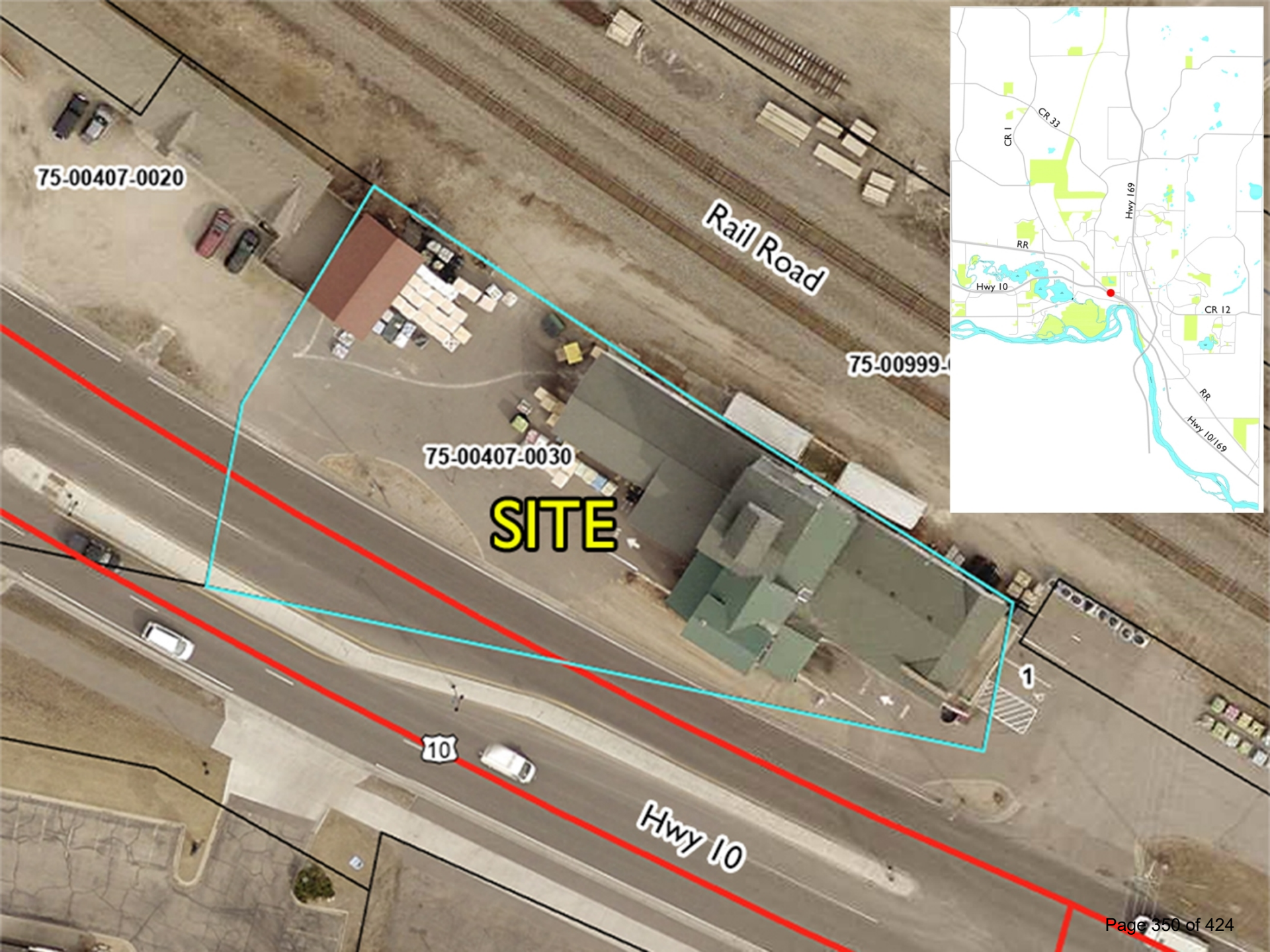
See attachment





Item 7.1

Spikes Setback Variances



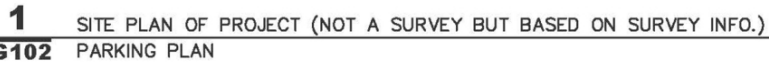


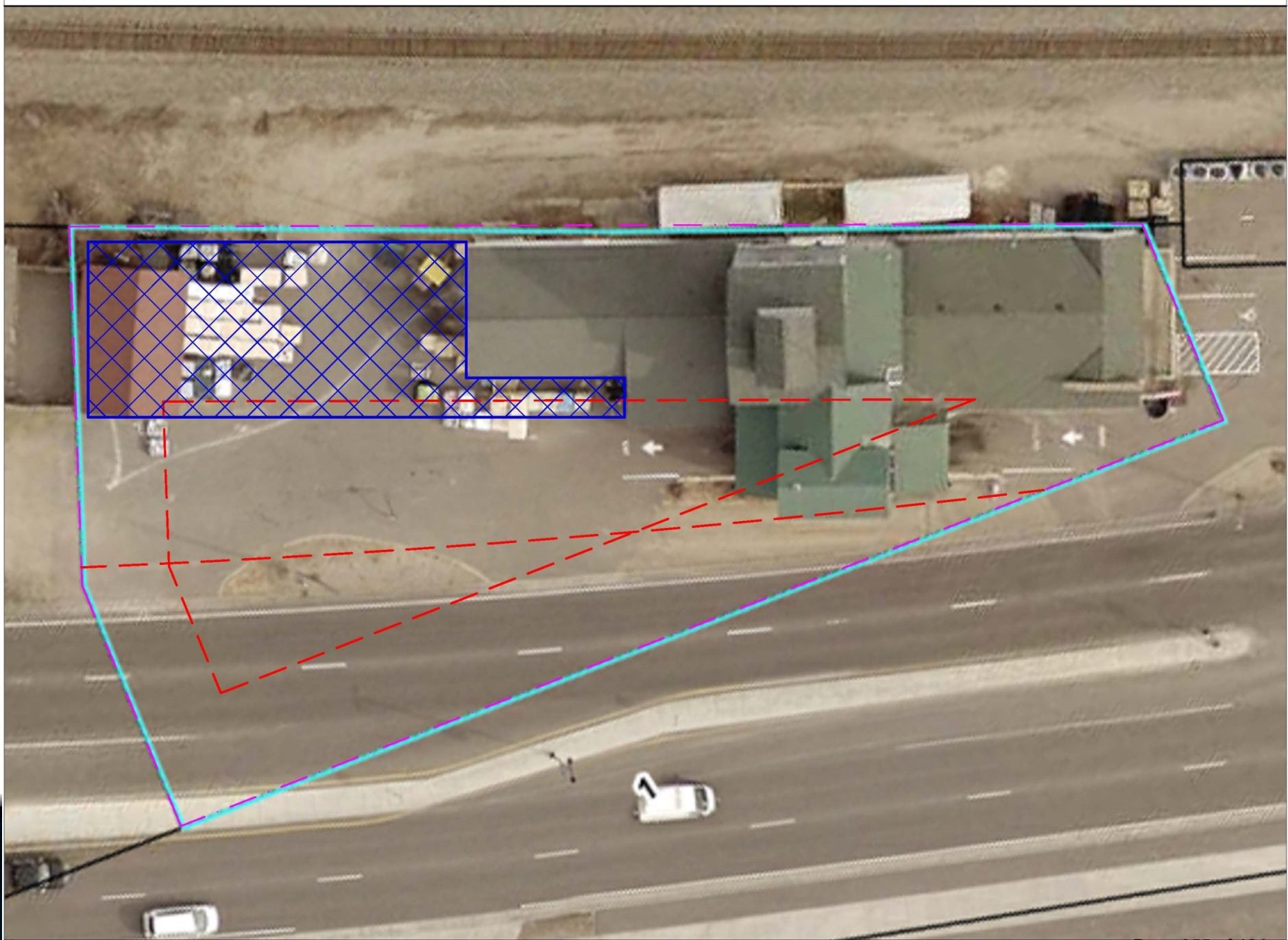


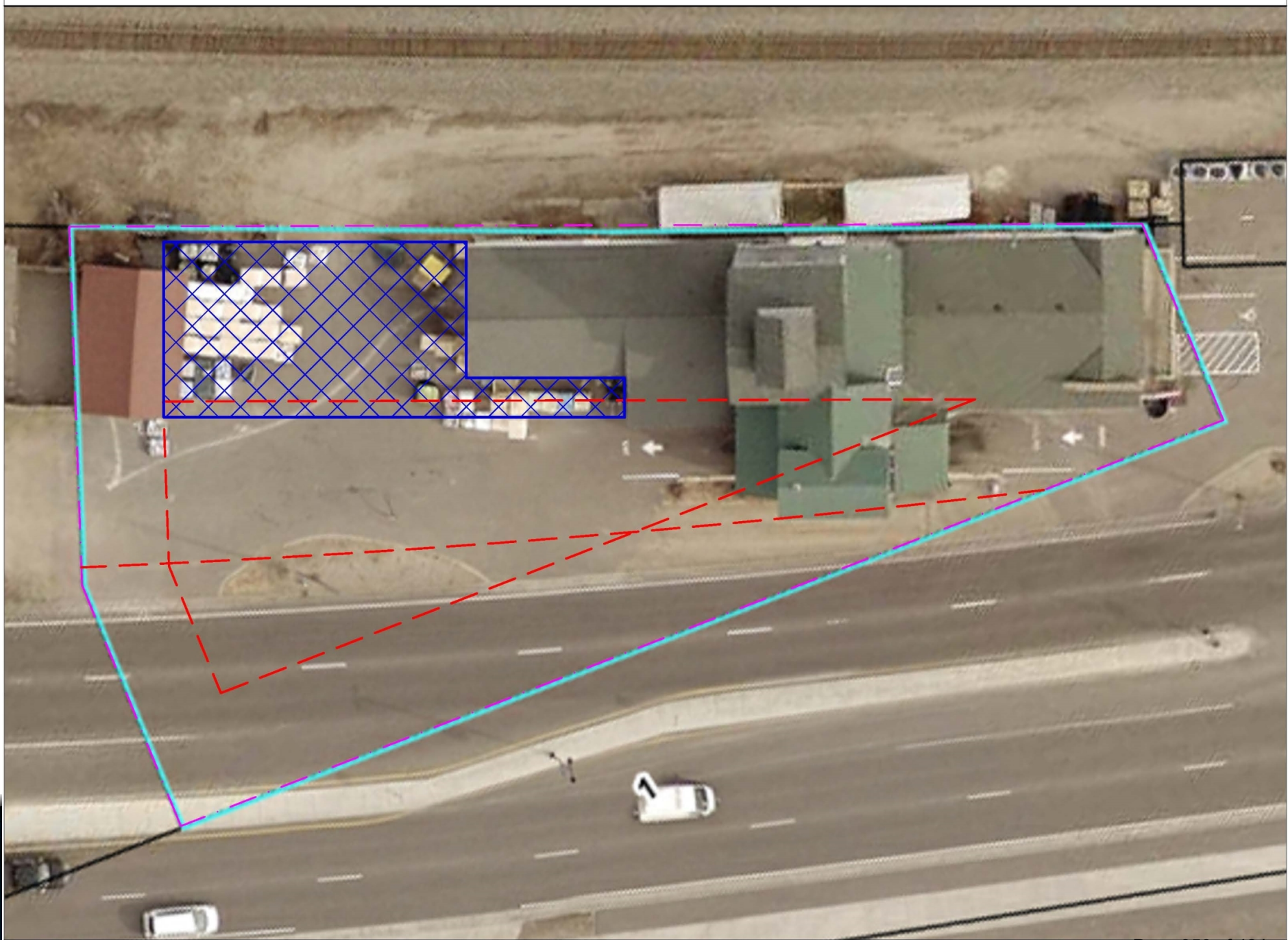
Background

- Constrained between Highway 10 and RR tracks
- Limiting buildable area/growth potential
- The applicant proposes to remove the existing accessory garage
 - Build addition onto main structure

-Centerline of Eastbound Railroad Tracks







Background

- Side Yard Setback variance (20' required)
 - Requesting 0' setback
- Expanding primary structure
- Board of Adjustments denied the side yard setback
 - Mainly due to fire access
 - Approved the rear yard setback

Background

- Since BOA meeting
 - Requesting a 5-foot setback
- This was discussed with Fire and Building Staff
 - Access concerns eased
 - Section 503.1.1 would be complied with

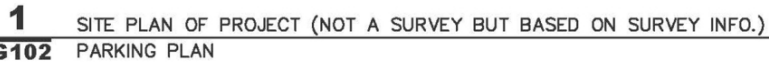
Side Yard Setback Variance Analysis

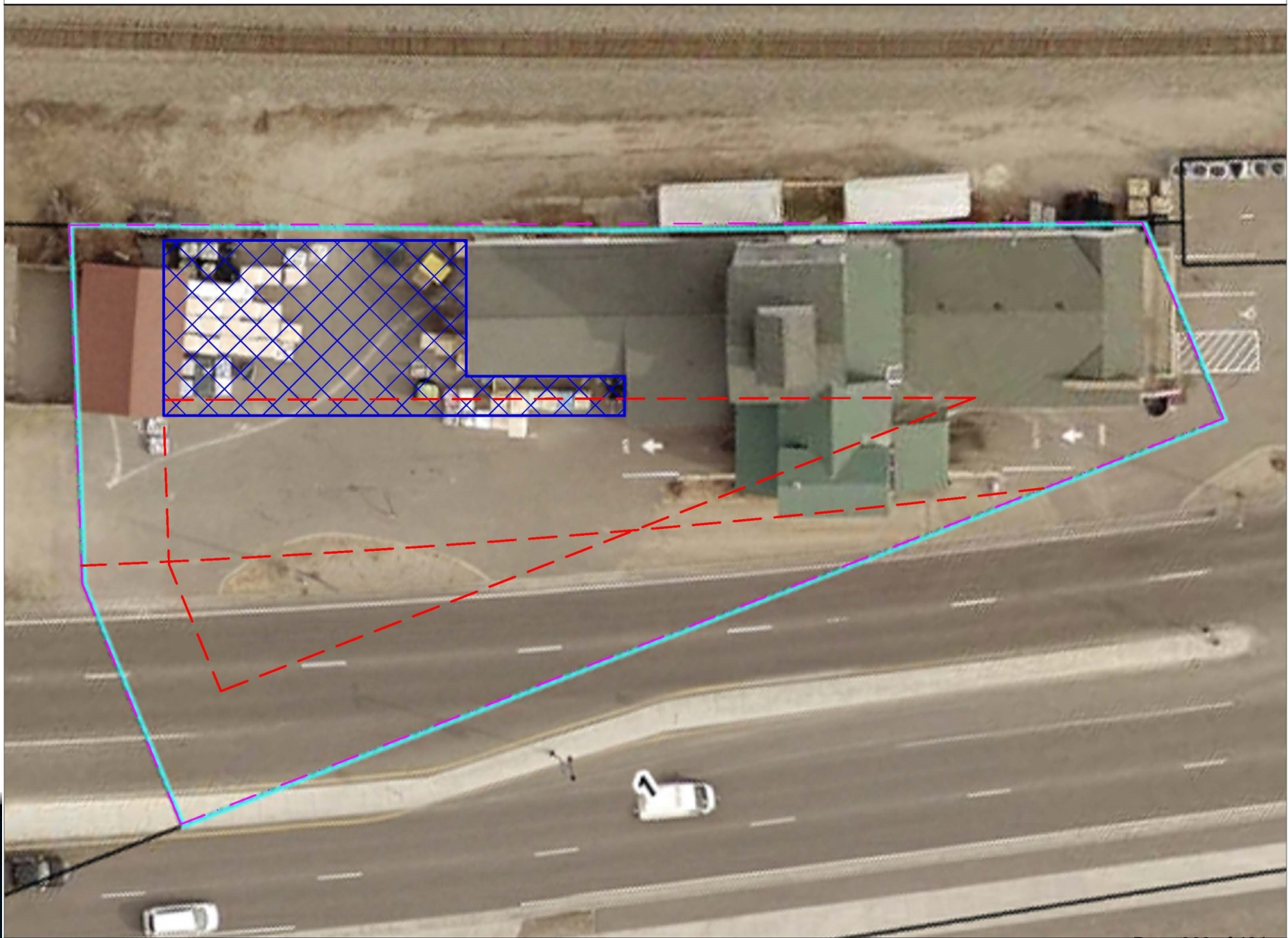
- Staff's analysis of the Side Yard variance shows compliance with all five (5) of the standards required for approval of a variance
- We can discuss individually if you want

Action Requested

- Approve the side yard setback variance of 15 feet for the reasons outlined in the memo
- And with the two conditions outlined

-Centerline of Eastbound Railroad Tracks







Request for Action

To
City Council

Item Number
7.2

Meeting Date
October 20, 2025

Prepared By
Chris Leeseberg, Senior Planner

Item Description
Resolution 25-61: Easement Vacation, Ricky and Edward Buttweiler - 12891 187th Circle NW

Reviewed by
Zack Carlton
Cal Portner
Tina Allard

Action Requested

Adopt, by motion, Resolution 25-61 vacating drainage and utility easements, subject to the condition that the lot line adjustment is completed prior to the vacation being recorded.

Background/Discussion

The two lots at 12891 187th Circle (75-00498-0120 and 75-00498-0110), within the Island View 3rd Addition Plat, share a 5-foot Drainage and Utility Easement along their shared property line. These easements were established to convey drainage and place utilities between two lots, which generally serve only the two parcels.

Ricky and Edward Buttweiler, who own both parcels, are requesting to vacate these easements to facilitate a lot of line adjustment to clean up some setback concerns before a possible sale of the vacant parcel. Approval of the lot line adjustment is administrative and does not require review by the City Council.

Staff have no concern regarding the proposed easement vacation, as its removal presents no public benefit concerns, and new easements will be established along the new property line.

Financial Impact

None

Mission/Policy/Goal

Meet changing needs - agile.

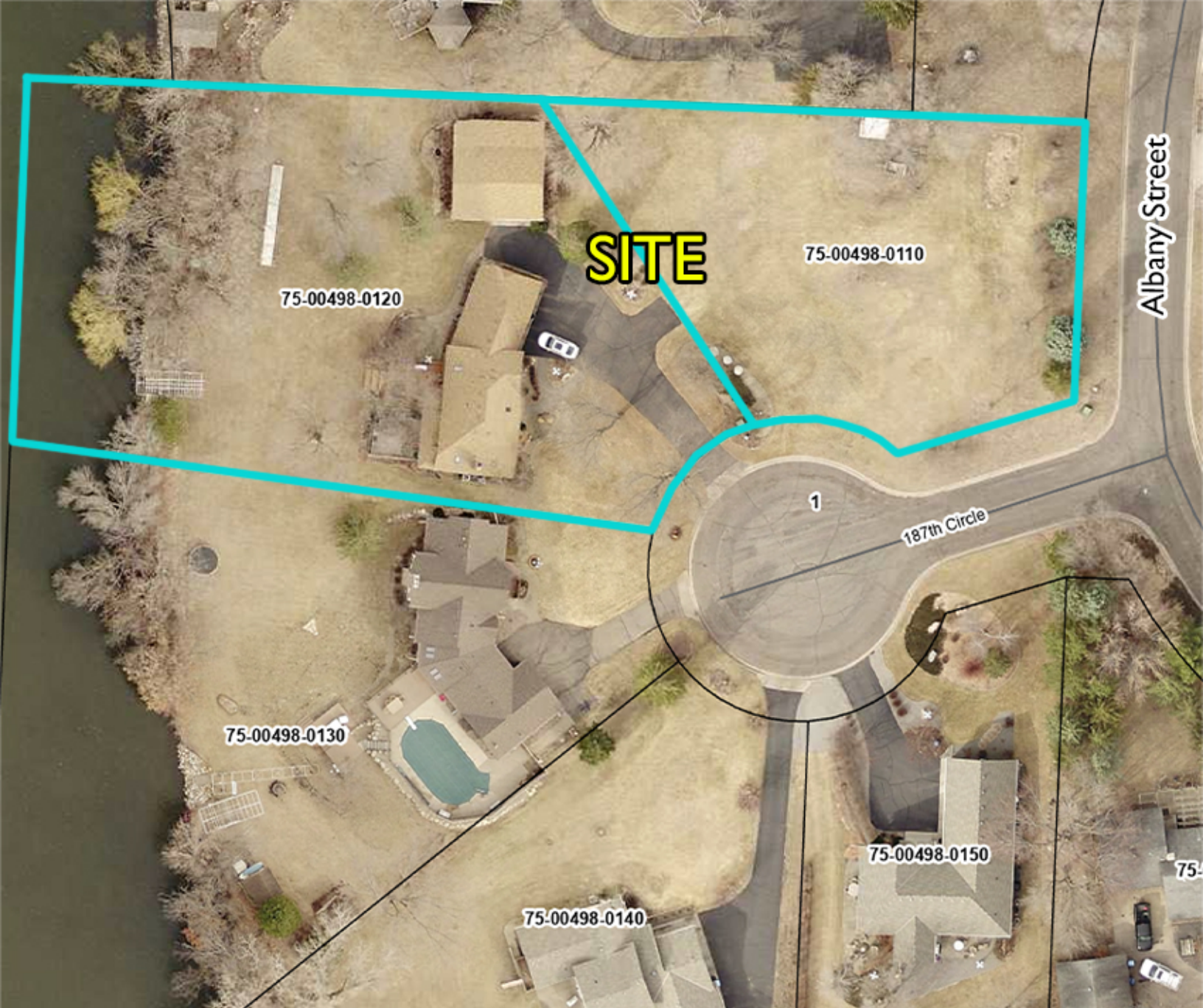
Attachments

1. EV 25-05 Location Map
2. Certificate of Survey
3. Easement Vacation Resolution
4. 7.2 Easement Vacation Presentation

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Project Location Map

Buttweiler

Easement Vacation

Case No: EV 25-05



Existing Property Description for PID: 75-00498-0110:
Lot 1, Block 1, ISLAND VIEW THIRD ADDITION, Sherburne County, Minnesota.

Existing Property Description for PID: 75-00498-0120:
Lot 2, Block 1, ISLAND VIEW THIRD ADDITION, Sherburne County, Minnesota.

Proposed Property Description for PID: 75-00498-0110:
That part of Lot 1, Block 1, ISLAND VIEW THIRD ADDITION, Sherburne County, Minnesota lying easterly of the following described line: Beginning at the Southwest corner of said Lot 1; thence North 11 degrees 42 minutes 59 seconds West, a distance of 130.36 to a point on the north line of said Lot 1 distant 55.33 feet east of the Northwest Corner of said Lot 1, and said line there terminating.

Proposed Property Description for PID: 75-00498-0120:
Lot 2, Block 1, ISLAND VIEW THIRD ADDITION, and That part of Lot 1, Block 1, ISLAND VIEW THIRD ADDITION, Sherburne County, Minnesota lying westerly of the following described line: Beginning at the Southwest corner of said Lot 1; thence North 11 degrees 42 minutes 59 seconds West, a distance of 130.36 to a point on the north line of said Lot 1 distant 55.33 feet east of the Northwest Corner of said Lot 1 and said line there terminating.

Drainage & Utility Easement to be Vacated:

A 5.00 foot wide Drainage and Utility Easement on each side of the line between Lots 1 and 2, Block 1 ISLAND VIEW THIRD ADDITION, Sherburne County, Minnesota lying southerly of the North 15.00 feet of said Lots 1 and 2, Block 1 and lying northerly of the Southerly 10.00 feet of said Lots 1 and 2, Block 1.

Proposed Drainage & Utility Easement:

A 10.00 foot wide Easement in part of Lots 1 and 2, Block 1, ISLAND VIEW THIRD ADDITION, Sherburne County, Minnesota, lying 5.00 feet on each side of the following described line: Beginning at the Southwest corner of said Lot 1; thence North 11 degrees 42 minutes 59 seconds West, a distance of 130.36 to a point on the north line of said Lot 1 distant 55.33 feet east of the Northwest Corner of said Lot 1 and said line there terminating.

Survey Notes:

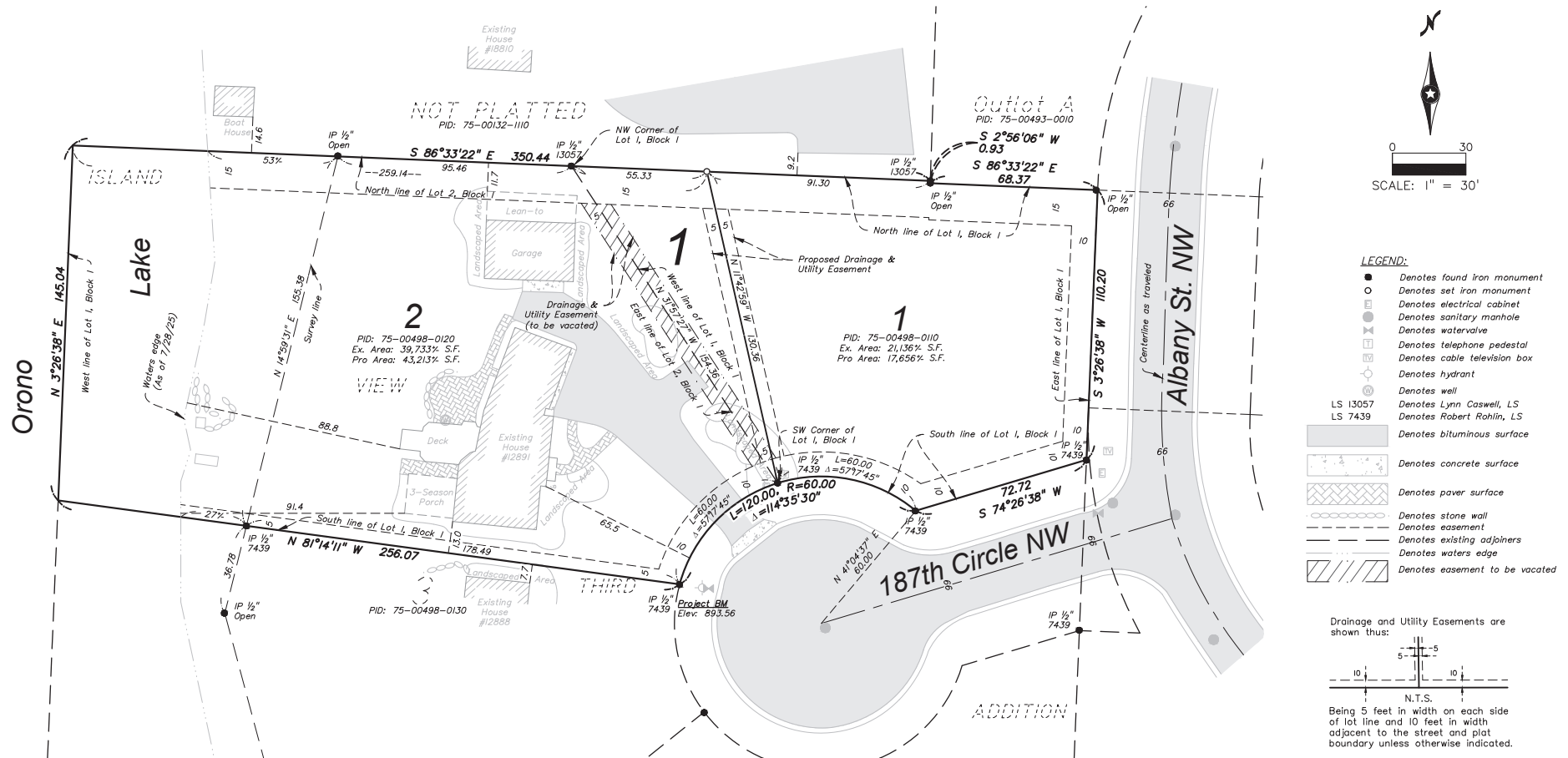
1. This survey was performed without the benefit of a title report. No search for restrictions or easements was made by the surveyor. We reserve the right to update this survey upon receipt of title documentation.
2. Bearings are based on the plat of ISLAND VIEW THIRD ADDITION.
3. ISLAND VIEW THIRD ADDITION was surveyed by Meyer-Rohlin, Inc. and recorded February 15, 1979.
4. The purpose of this survey was adjust the lot line between Lots 1 and 2, Block 1, ISLAND VIEW THIRD ADDITION.

Certificate of Survey

for

Rickie Buttweiller

**Lots 1 and 2, Block 1, ISLAND VIEW THIRD ADDITION
City of Elk River, Sherburne County, Minnesota**



Drainage and Utility Easements are shown thus:
N.T.S.
Being 5 feet in width on each side of lot line and 10 feet in width adjacent to the street and plat boundary unless otherwise indicated.

SHEET NO.

1

1

OF SHEETS

Rickie Buttweiller
L 1&2, B1, ISLAND VIEW THIRD ADDITION
12891 187th Cir. NW, Elk River, MN 55330
City of Elk River, Sherburne County, Minnesota
Certificate of Survey



**BOGART, PEDERSON
& ASSOCIATES, INC.**

LAND SURVEYING
CIVIL ENGINEERING
MAPPING
13076 FIRST STREET, BECKER, MN 55308-9322
TEL: 763-262-8822 FAX: 763-262-8844

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision, and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Signed: *Christopher E. Gray*
Christopher E. Gray
Date: 8/18/25 Lic. No. 64367

DATE: 7/28/25	REV NO.	DATE	DESCRIPTION
DESIGN BY:			
DRAWN BY: CK			
CHECKED BY: CAW			
DWG FILE: 25-0322COS			
FILE NO.: 25-0322.00			



City of Elk River City Council

Resolution 25-61

A Resolution of the City Council of the City of Elk River Granting a Petition to Vacate Drainage and Utility Easements

WHEREAS, pursuant to Minnesota Statutes Section 412.851, after two (2) weeks' published and posted notice of the hearing and after mailing written notice of the hearing at least ten (10) days before the hearing to each property owner affected by the proposed vacation, the Elk River City Council has conducted a hearing to consider the vacation of the easement legally described on the attached Exhibit "A" ("Easement"); and

WHEREAS, a public hearing on said petition was held on October 20, 2025, before the City Council of the City of Elk River after published and posted notice had been given, and all persons interested were given an opportunity to be heard at the public hearing; and

WHEREAS, vacation of the drainage and utility easements is appropriate as the property line between the two parcels will be adjusted and easements separating the two parcels are no longer required, and

WHEREAS, new drainage and utility easements will be established with the documents establishing the new parcel boundaries.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Elk River, Minnesota, as follows:

1. The petition to vacate the drainage and utility easements, as described in Exhibit A, is hereby granted, based upon the following Findings of Fact:
 - A. The Council finds the drainage and utility easements described in Exhibit A is no longer a benefit to the public as the parcel boundary is being adjusted and new easements will be established along the new property line.
2. Vacation of the drainage and utility easements described in Exhibit A shall be effective at the time of recording of the necessary documents.

Passed and adopted this 20th day of October 2025.

John J. Dietz, Mayor

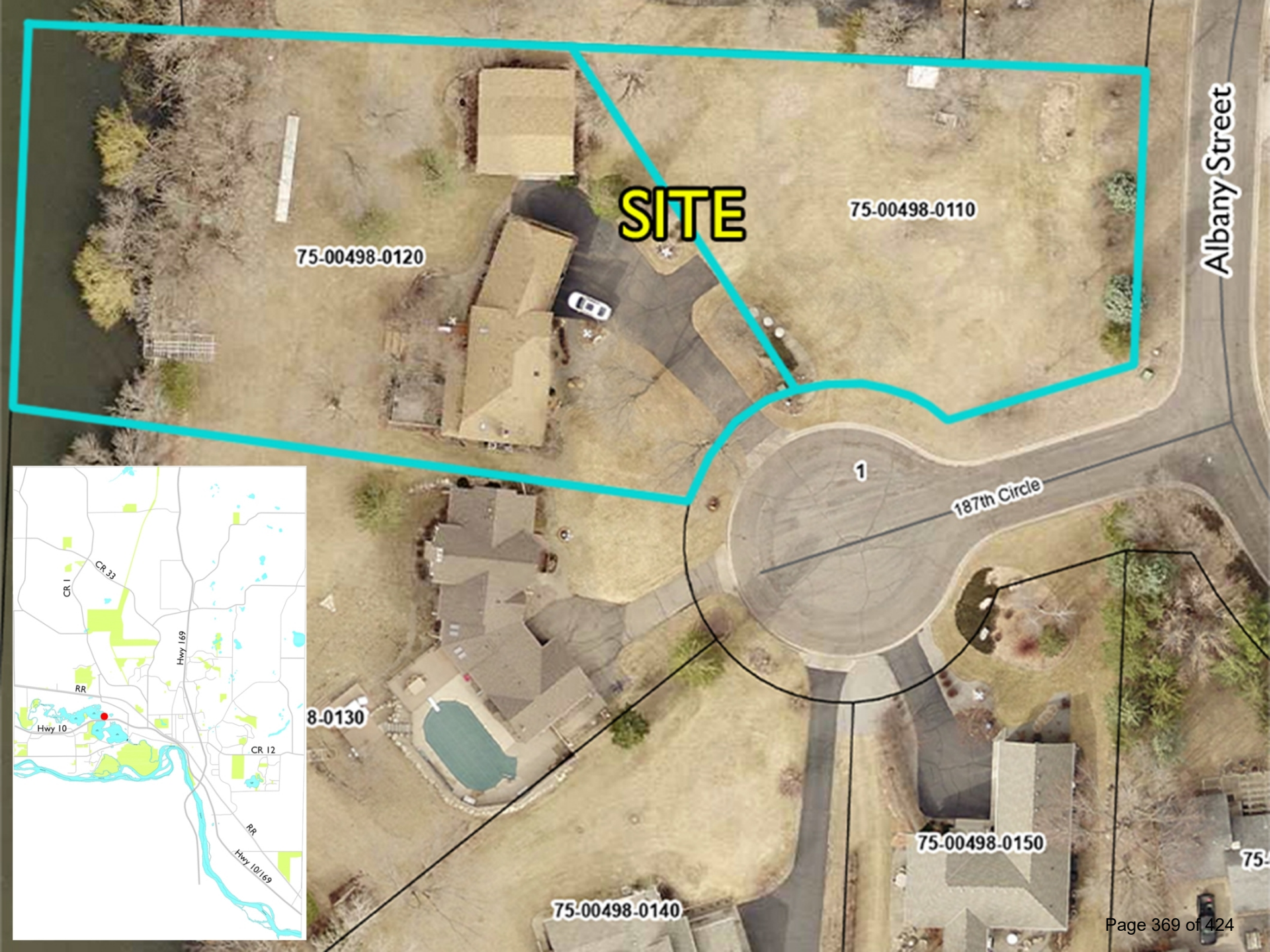
ATTEST:

Tina Allard, City Clerk



Item 7.2

Buttweiler Easement Vacation



Albany Street

SITE

75-00498-0110

75-00498-0120

187th Circle

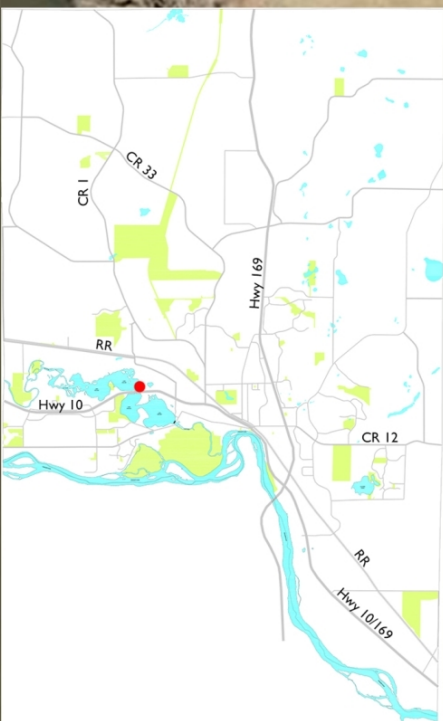
1

8-0130

75-00498-0150

75-00498-0140

75-



Background

- Applicant owns both parcels
- Share a 5-foot Drainage and Utility Easement along their shared property line
- Established to convey drainage and place utilities between 2 lots
- Staff have no concern regarding the proposed easement vacation, as its removal presents no public benefit concerns, and new easements will be established along the new property line

Action Requested

- Adopt, by motion, Resolution 25-61 vacating drainage and utility easements, subject to the condition that the lot line adjustment is completed prior to the vacation being recorded



Request for Action

To
City Council

Item Number
7.3

Meeting Date
October 20, 2025

Prepared By
Zack Carlton, Community Development Director

Item Description
Resolutions 25-62 and 25-63: Approving Easement
Vacation and Final Plat of Prairie Haven

Reviewed by
Cal Portner
Tina Allard

Action Requested

Adopt, by motion, Resolution 25-62 vacating a portion of the roadway easement for 192 1/2 Ave NW.

Adopt, by motion, Resolution 25-63 approving the final plat of Prairie Haven, subject to the following conditions:

1. The resolution vacating a portion of 192 1/2 Ave NW is recorded immediately before the plat.
2. The applicant shall pay park dedication for two lots before releasing the final plat for approval.

Background/Discussion

The applicant, Gavin Hemmer, recently received approval of the preliminary plat for Prairie Haven and is now seeking approval of the final plat to complete the subdivision process.

However, before the subdivision can be approved, the excess right-of-way for 192nd 1/2 Avenue NW must be vacated. The existing roadway easement is well beyond the typical width of 33 feet from the centerline of the road. The street is constructed, and the project does not propose to relocate the connection with Ogden Street NW. As the roadway will not move, the excess roadway easement is not necessary, and the applicant has requested to vacate the excess easement area. The plat includes the typical 33-feet or right-of-way as measured at the centerline.

The proposed area to be vacated does not serve a public purpose, and staff recommend vacation of the area depicted in the attached exhibit.

The proposed final plat is consistent with the preliminary plat and with the proposed easement vacation to address the excess roadway easement concerns and satisfies all city standards for plat approval. The plat creates two new buildable lots requiring the payment of park dedication for two lots.

Financial Impact

None

Mission/Policy/Goal

Support the growth and development of the community.

The Elk River Vision

A welcoming community with revolutionary and spirited resourcefulness, exceptional service, and community engagement that encourages and inspires prosperity

Attachments

1. Location Map
2. Easement Vacation Overlay
3. Prairie Haven Preliminary Plat
4. Prairie Haven Final Plat
5. Easement Vacation Resolution
6. Final Plat Resolution
7. 7.3 Prairie Haven EV+P Presentation

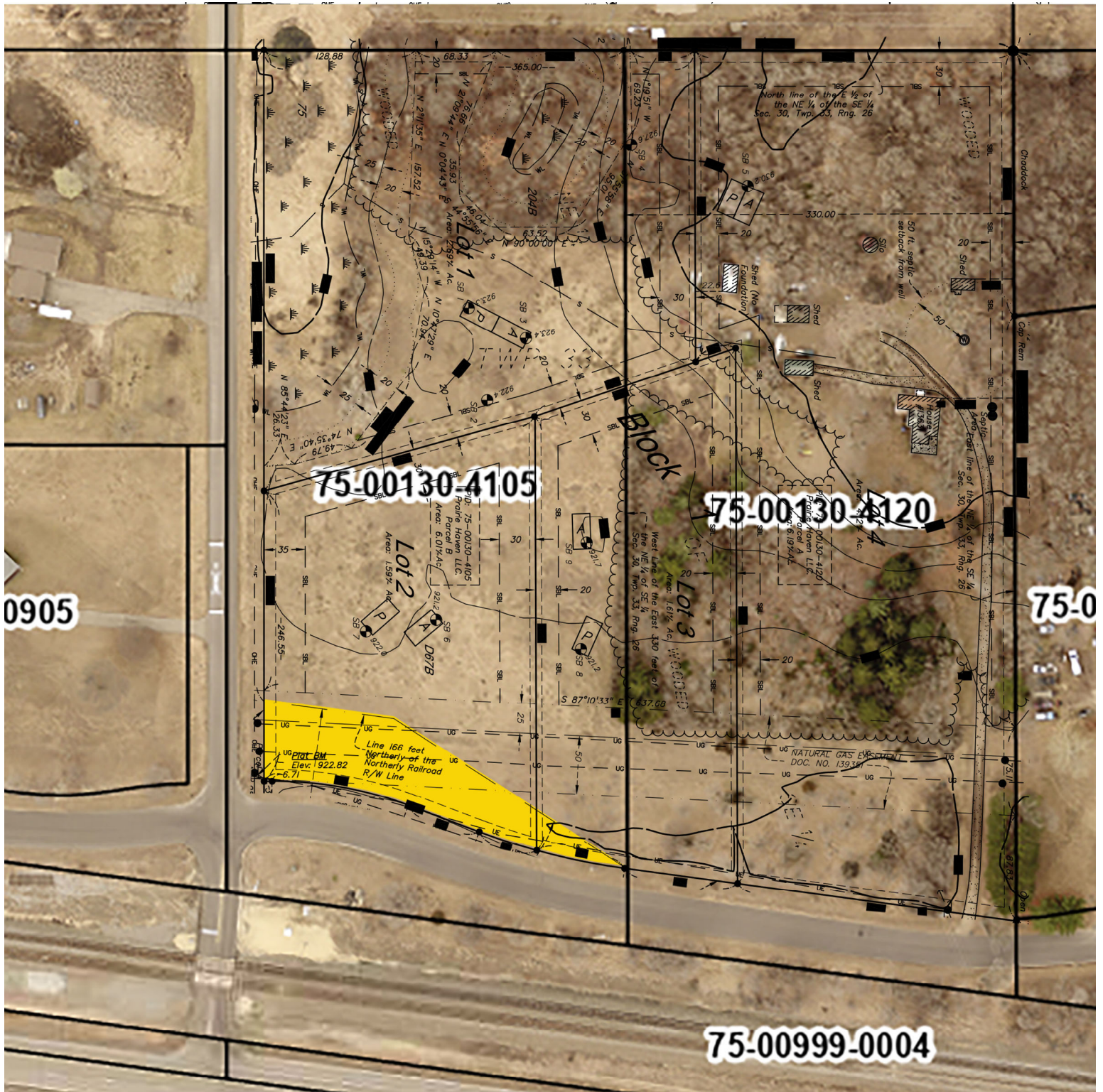


Project Location Map

Gavin Hemmer

Easement Vacation

Case No: EV 25-06



SOIL BORING LOG		Don Bogart - MPCA Cert. No. 4094	
Soil Boring #	Elevation	Mottling	Elev. of Mottled Soil
Soil Boring 1	923.3	17"	921.9
Soil Boring 2	922.4	23"	921.0
Soil Boring 3	923.4	18"	921.9
Soil Boring 4	927.6	25"	925.5
Soil Boring 5	930.2	24"	928.2
Soil Boring 6	921.2	14"	920.0
Soil Boring 7	922.0	16"	920.7
Soil Boring 8	921.2	20"	919.5
Soil Boring 9	921.7	23"	919.8

I hereby certify that a boundary survey has been completed for the preliminary plat of PRAIRIE HAVEN, Sherburne County, Minnesota.

Richard Thompson
Date: 7/18/25 Lic. No. 62953

Property Description Per Warranty Doc. No. 984217:
Parcel A: The East 330 feet of that part of the Northeast Quarter of the Southeast Quarter lying North of the center line of County Road No. 35, in Section 30, Township 33, Range 26, Sherburne County, Minnesota.

EXCEPTING THEREFROM the railroad right of way.

That part of the East Half of the Northeast Quarter of the Southeast Quarter, Section 30, Township 33, Range 26, Sherburne County, Minnesota, lying West of the East 330 feet thereof, and lying North of the center line of County Road No. 35.

EXCEPTING THEREFROM the railroad right of way.

Road Easement Description Per Out Claim Deed Doc. No. 984216:

Parcel A: Open Avenue right of way
The West 33 feet of that part of the East Half of the Northeast Quarter of the Southeast Quarter lying North of the center line of County Road No. 35, in Section 30, Township 33, Range 26, Sherburne County, Minnesota, lying West of the East 330 feet thereof, and lying North of the center line of County Road No. 35.

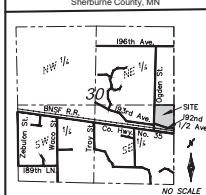
Parcel B: All that part of the East Half of the Northeast Quarter of the Southeast Quarter of Section 30, Township 33, Range 26 lying Eastern of the above-described Parcel A, Northern of the Northern railroad right of way and lying Southern of the following described line:
Beginning at a point on the East line of the Southeast Quarter of Section 30 a distance of 66 feet North of the Northern railroad right-of-way, thence Westerly parallel with the Northern railroad right-of-way to point on the West line of the East 330 feet of the Southeast Quarter of said Section 30, a distance of 66 feet Northern of said railroad right-of-way, thence Northerly to a point on the line parallel with the railroad right-of-way a distance of 166 feet Northern (as measured parallel with the East line of said Southeast Quarter) of said railroad and 100 feet (as measured along said parallel line) distant East from the East line of the above-described Parcel A; thence Westerly along said parallel line to the East line of the above-described Parcel A and then terminating.

Reserving, however, to the Grantor a permanent easement for public roadway and utility purposes over, under and across and through the entirety of Parcels A and B described above.

LEGEND:	
○	Denotes found metal disk
△	Denotes set nail
●	Denotes gas marker
○	Denotes fiber optic marker
○	Denotes sanitary manhole
○	Denotes sign
○	Denotes power pole
○	Denotes guy wire
○	Denotes telephone pedestal
○	Denotes electric meter
○	Denotes fiber optic vault
○	Denotes soil boring
○	Denotes light pole
○	Denotes well
○	Denotes wetland
○	Denotes proposed Primary & Alternate septic sites
LS 24992	Denotes Raymond G. Prash, LS
LS 15233	Denotes Dennis V. Taylor, LS
LS 13057	Denotes Lynn P. Caswell, LS
○	Denotes bituminous surface
○	Denotes concrete surface
○	Denotes gravel surface
○	Denotes overhead electric
○	Denotes underground gas line
○	Denotes tree line
○	Denotes easement
○	Denotes natural gas easement
○	Denotes right of way
○	Denotes major contour
○	Denotes minor contour
○	Denotes existing adjoiners
○	Denotes wetland
○	Denotes building setback line
○	Denotes soil type boundary
○	Denotes soils classification type
○	Denotes railroad tracks
○	Denotes wetland setbacks

VICINITY MAP

Sec. 30, Twp. 33, Rng. 26
Sherburne County, MN



Preliminary Plat of PRAIRIE HAVEN

Survey Notes:

- Subject property is NOT part of the shorland district or within a flood plain district as mapped by FEMA.
- Contours were created using MNDNR MN Topo Lidsar (NAVD 88) and field located information.
- Soil borings were approved by Don Bogart, MPCA Lic. No. 4094 of Bogart, Pederson & Associates on 6/13/25.
- Wellhead delineation completed by Robert Hennington from Bogart Pederson & Associates, BPO# No. 5428. Notice of Decision was granted on 7/10/2025.
- Wellhead is used as evidence for lot size to be smaller than the 2.5 Acre minimum for the zoning district. They wish to adhere to the 1 acre minimum of dry contiguous area for the proposed lots.
- The underground utilities shown herein have been located from observed evidence together with evidence from plans and markings by utility companies and other appropriate sources. The surveyor makes no guarantees that the underground utilities shown comply with all utility companies regarding to the locate request in the area, either in service or abandoned. The surveyor further does not warrant that the underground utilities shown are in the exact location indicated, although they do certify that they are located as accurately as possible from information available.
- Gopher State One Ticket No. 251363268 dated 5/23/2025.
- Soil locations are referenced from open source information provided by the USDA Web Soil Survey.
- Driveways that would cross over Natural Gas Pipelines may need additional approvals and have to adhere to special rules. For more information, please contact Northern Natural Gas (402) 398-7592.
- Reference Title Commitment No. 1086897 by Home Security Abstract & Title Company/Chicago Title Insurance Company, issued May 18, 2025.
- Reference City of Elk River Resolution No. 25-27 which conveyed by Out Claim Deed Doc. No. 984216 the underlying fee title to the area defined in Doc. No. 984216 while still reserving an easement for public roadway and utility purposes.

SOILS CHART

Map symbol & soil name	Hydrologic Group	Water table depth (ft)
75: Bluffton loam, depression, 0 to 1 percent slopes	B/D	0
204B: Cushy fine sandy loam, 2 to 8 percent slopes	B	43-73
D67B: Hubbard loamy sand, 1 to 6 percent slopes	A	>80

* Data from USDA Web Soil Survey

SCHEDULE OF DRY CONTIGUOUS AREAS FOR LOTS

Block	Lot	Total Lot Area (Ac)	Contiguous Upland Area (Ac)
1	1	2.70%	1.22%
1	2	1.59%	1.00%
1	3	1.61%	1.00%
1	4	4.12%	3.02%
R/W		2.18%	
Total		12.20%	

Note: For the purpose of this plat, contiguous upland area is defined by areas excluding wetland buffer/setback area, natural gas line easement and proposed drainage and utility easements.

Bearings are based on the Sherburne County coordinate system (NAD83 8663). For the purpose of this survey, the East line of the NE 1/4 of the SE 1/4 is assumed to bear South 0°12'27" East.

- Denotes found iron monument
- Denotes 8 inch by 14 inch iron monument with a plastic plug stamped R.L.S. 62594 to be set within one year of platting date
- Denotes wet 8 inch by 14 inch iron monument with a plastic plug stamped R.L.S. 62553
- Denotes found cast iron monument
- Denotes found cast iron monument

REFERENCE BENCHMARK: "ZERLON"
Elevation = 920.29 feet (NAVD 88)

PROJECT BENCHMARK:
Spike in power pole in the NE quadrant of Ogden St. NW and 192nd St. Ave.
Elevation = 922.62 feet (NAVD 88)

OWNER/DEVELOPER:
Gavin Hemmer
Prairie Haven LLC,
1376 First Street
Becker, MN 55004-9322
Elk River, MN 55330

SURVEYORS & ENGINEERS:
Bogart, Pederson & Associates, Inc.
Prairie Haven LLC,
1376 First Street
Becker, MN 55004-9322
763-262-8822

TOTAL AREA: 12.20% Acres

EXISTING ZONING: R-1A Single Family Residential
*Seeking Variance for Lot 2 to Residential

PROPOSED ZONING: R-1A Single Family Residential

EXISTING MINIMUMS:
160' Width
2.5 Acre
30' Setback

PROPOSED MINIMUMS:
160' Width
1.0 Acre
1.0 Acre Upland

DENOTES BUILDING SETBACKS:
35' Front
30' Side
45' Wetland buffer and setback
20' Side

Drainage and Utility Easements are shown thus:

N.T.S.
Being 10 feet in width and adjoining right-of-way lines and plot boundary lines, also being 5 feet in width and adjoining lot lines, unless otherwise indicated, as shown on plat.

DATE: 6/10/25
FIELD DATE: June 2nd, 2025
BK/PG: 71-105/pg. 74 and 76
DRAWN BY: CK
CHECKED BY: RT
DWG FILE: 25-0186.00 Prelim
FILE NO: 25-0186.00

REVISIONS:
1-6/10/25-Edits of easements & lots per client and city comments
2-9/10/25-Edits on County R/W
3-9/17/25-Edit Distance on south line

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Signed:
Richard M. Thompson
Date: 7/18/25 Lic. No. 62953

BOGART, PEDERSON & ASSOCIATES, INC.
LAND SURVEYING
ENGINEERING
MAPING
NEW RIVER VIEW MOBILE, MN 55038-9322
TEL: 763-262-8822 FAX: 763-262-8844

PRELIMINARY PLAT
for
Gavin Hemmer
PRAIRIE HAVEN
City of Elk River
Sherburne County, MN

BOGART, PEDERSON & ASSOCIATES, INC.

KNOW ALL PERSONS BY THESE PRESENTS: That Prairie Haven LLC, a Minnesota limited liability company, owner of the following described property situated in the County of Sherburne, State of Minnesota, to wit:

Parcel A: The East 330 feet of that part of the Northeast Quarter of the Southeast Quarter lying North of the center line of County Road No. 35, in Section 30, Township 33, Range 26, Sherburne County, Minnesota.

EXCEPTING THEREFROM the railroad right of way.

That part of the East Half of the Northeast Quarter of the Southeast Quarter, Section 30, Township 33, Range 26, Sherburne County, Minnesota, lying West of the East 330 feet thereof, and lying North of the center line of County Road No. 35.

EXCEPTING THEREFROM the railroad right of way.

Have caused the same to be surveyed and platted as PRAIRIE HAVEN and do hereby donate and dedicate to the public for public use forever the avenues and streets and also dedicating to the public for public use forever the easements as shown on this plat for drainage and utility purposes only.

In witness whereof said Prairie Haven, LLC, a Minnesota limited liability company, has caused these presents to be signed by its proper officer this _____ day of _____, 20____.

Signed: Prairie Haven, LLC

_____, Chief Manager
Gavin Hemmer

STATE OF MINNESOTA COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by Chief Manager of Prairie Haven, LLC, a Minnesota limited liability company.

(Signature) _____ Notary Public, _____ County, Minnesota

(Printed Name) _____ My Commission Expires _____

I hereby certify that this plat was prepared by me or under my direct supervision; that I am duly Licensed Land Surveyor in the State of Minnesota; that this plat is a correct representation of the boundary survey; that all mathematical data and labels are correctly designated on the plat; that monuments depicted on the plat have been correctly set; that all water boundaries and wet lands, as defined in Minnesota Statutes 500.01, Subd. 5, as of the date of this certificate are shown and labeled on this plat; and all public ways are shown and labeled on this plat.

Richard M. Thompson, Land Surveyor
Minnesota License No. 62953

STATE OF MINNESOTA COUNTY OF _____

The foregoing surveyor's certificate was acknowledged before me this _____ day of _____, 20____, by Richard M. Thompson, Land Surveyor, Minnesota License Number 62953.

(Signature) _____ Notary Public, _____ County, Minnesota

(Printed Name) _____ My Commission Expires _____

Approved and accepted by the City Council of the City of Elk River, Sherburne County, Minnesota at a meeting held the _____ day of _____, 20____.

_____, Mayor _____, Attest:
_____, City Clerk

Pursuant to Sherburne County Ordinance Number 006, I hereby certify that this plat has been checked and approved as to compliance with Chapter 505, Minnesota Statutes this _____ day of _____, 20____.

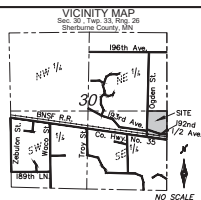
Sherburne County Surveyor

I hereby certify taxes payable in the year _____ on lands herein described are paid in full, and there are no delinquent taxes, and that transfer was entered this _____ day of _____, 20____.

Sherburne County Auditor/Treasurer

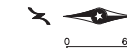
I hereby certify that this instrument was filed in the Office of the County Recorder for record on this _____ day of _____, 20____ at _____ o'clock _____ M. and was duly recorded as Document No. _____.

Sherburne County Recorder



PRAIRIE HAVEN

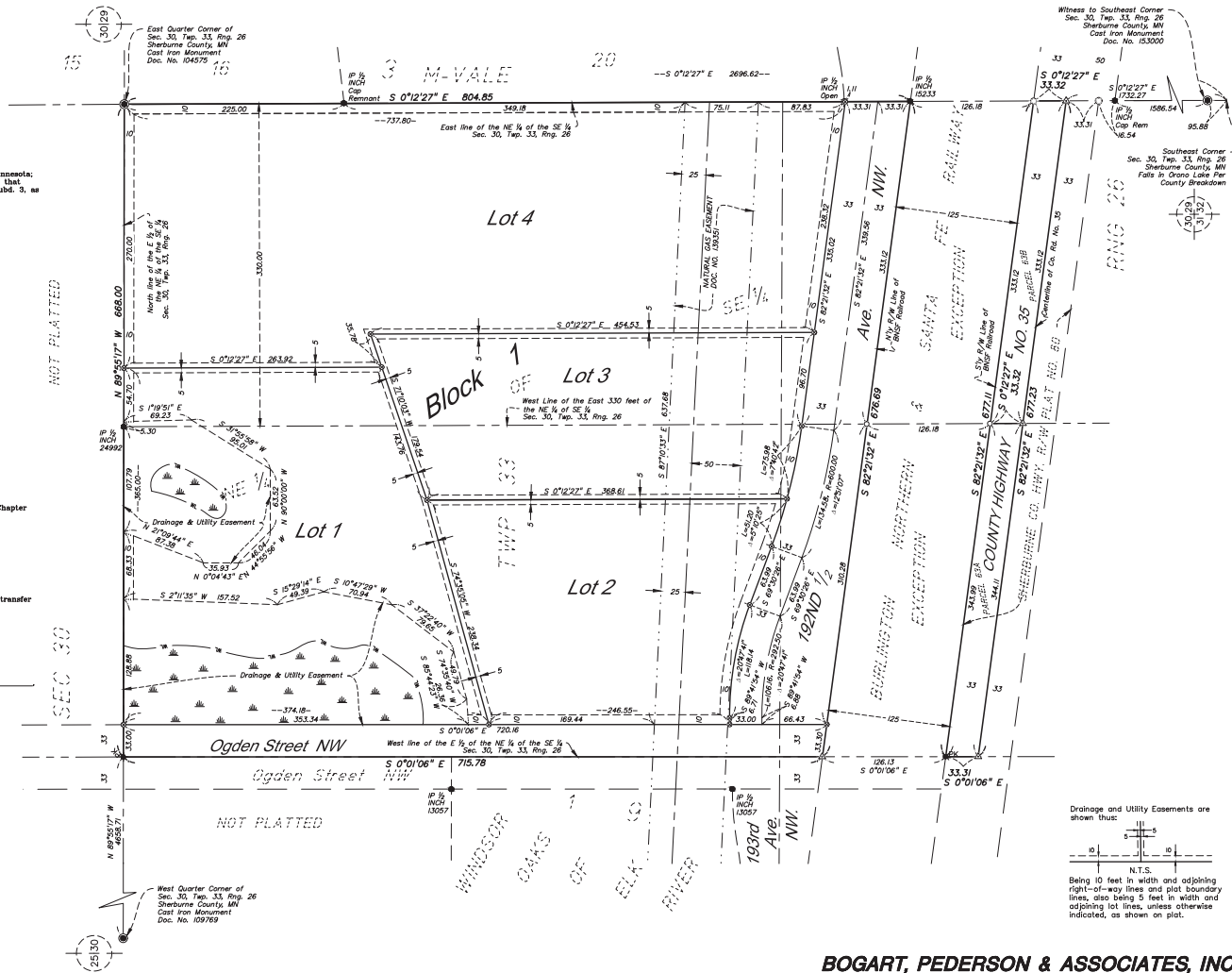
CITY OF ELK RIVER
SHERBURNE COUNTY, MN



Bearings are based on the Sherburne County coordinate system (NAD83 860d). For the purpose of this survey, the East line of the NE 1/4 of the SE 1/4 is assumed to bear South 0 degrees 2 minutes 27 seconds East.

LEGEND:

- Denotes found iron monument
- Denotes 1/4 inch by 1/4 inch iron monument with a plastic plug stamped R.L.S. 02583 to be set within one year of platting date
- Denotes set 1/4 inch by 1/4 inch iron monument with a plastic plug stamped R.L.S. 02583
- Denotes found cast iron monument
- Denotes wellhead
- Denotes found PK nail
- Denotes natural gas easement
- Denotes right of way
- Denotes existing easements
- WL Denotes wetland
- Denotes easement



Drainage and Utility Easements are shown thus:
N.T.S.
Being 10 feet in width and adjoining right-of-way lines and plot boundary lines, also being 5 feet in width and adjoining lot lines, unless otherwise indicated, as shown on plat.

BOGART, PEDERSON & ASSOCIATES, INC.



City of Elk River City Council

Resolution 25-62

A Resolution of the City Council of the City of Elk River Granting a Petition to Vacate a Roadway Easement

WHEREAS, pursuant to Minnesota Statutes Section 412.851, after two (2) weeks' published and posted notice of the hearing and after mailing written notice of the hearing at least ten (10) days before the hearing to each property owner affected by the proposed vacation, the Elk River City Council has conducted a hearing to consider the vacation of the easement legally described on the attached Exhibit "A" ("Easement"); and

WHEREAS, a public hearing on said petition was held on October 20, 2025, before the City Council of the City of Elk River after published and posted notice had been given, and all persons interested were given an opportunity to be heard at the public hearing; and

WHEREAS, vacation of the roadway easement is appropriate as the requested area to be vacated is larger than what is required for the existing street, and

WHEREAS, the plat of Prairie Haven will dedicate right-of-way consistent with city standards.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Elk River, Minnesota, as follows:

1. The petition to vacate the roadway easement, as described in Exhibit A, is hereby granted, based upon the following Findings of Fact:
 - A. The Council finds the easement described in Exhibit A is no longer a benefit to the public as the plat of Prairie Haven will dedicate right-of-way for 192 ½ Avenue NW.
2. Vacation of the drainage and utility easements described in Exhibit A shall be effective at the time of recording of the necessary documents.



Passed and adopted this 20th day of October 2025.

John J. Dietz, Mayor

ATTEST:

Tina Allard, City Clerk



Exhibit A

Road Easement Description Per Quit Claim Deed Doc. No. 984216:

Parcel A: Ogden Avenue right of way

The West 33 feet of that part of the East Half of the Northeast Quarter of the Southeast Quarter of Section 30, Township 33, Range 26, lying Northerly of the Northerly railroad right-of-way and lying southerly of a line 166 feet northerly and parallel to the northerly right of way, said described land being commonly known as Ogden Avenue.

Parcel B:

All that part of the East Half of the Northeast Quarter of the Southeast Quarter of Section 30, Township 33, Range 26 lying Easterly of the above-described Parcel A, Northerly of the Northerly railroad right of way and lying southerly of the following described line:

Beginning at a point on the East line of the Southeast Quarter of Section 30 a distance of 66 feet North of the Northerly railroad right-of-way; thence Westerly parallel with the Northerly railroad right-of-way to point on the West line of the East 300 feet of the Southeast Quarter of said Section 30, a distance of 66 feet Northerly of said railroad right-of-way; thence Northwesterly to a point on a line parallel with the railroad right-of-way a distance of 166 feet Northerly (as measured parallel with the East line of said Southeast Quarter) of said railroad and 110 feet (as measured along said parallel line) distant East from the East line of the above-described Parcel A; thence Westerly along said parallel line to the East line of the above-described Parcel A and there terminating.

Reserving, however, to the Grantor a permanent easement for public roadway and utility purposes over, under and across and through the entirety of Parcels A and B described above.



Resolution 25-63

A Resolution of the City of Elk River Granting Final Plat Approval for Prairie Haven Case No. P 25-23

WHEREAS, application has been made for final plat approval, pursuant to Section 30-374 of the Elk River City Code of Ordinances of the property legally described on attached Exhibit A and hereinafter referred to as “the Property”; and

WHEREAS, the preliminary plat of the Property was approved by the City Council on September 15, 2025; and

WHEREAS, the proposed final plat is consistent with the preliminary plat as approved by the City Council; and

WHEREAS, the proposed final plat complies with each of the conditions set forth by the City Council in its approval of the preliminary plat of the Property.

NOW, THEREFORE, BE IT RESOLVED

1. It is hereby determined by the City Council for the City of Elk River as follows:
 - A. The proposed subdivision is consistent with the Chapter of 30 of the City Code of Ordinances and conforms with all of its requirements.
 - B. The proposed subdivision is consistent with all applicable general and specialized city, county, and regional plans including, but not limited to, the City’s Comprehensive Plan.
 - C. The physical characteristics of the site, including, but not limited to, topography, soils, vegetation, susceptibility to erosion and siltation, susceptibility to flooding, and drainage are suitable for the type and density of development and uses contemplated.
 - D. The proposed subdivision makes adequate provision for water supply, storm drainage, sewage transportation, erosion control and all other services, facilities and improvements otherwise required herein.



- E. The proposed subdivision will not cause substantial environmental damage.
 - F. The proposed subdivision will not conflict with easements of record or with easements established by judgment of a court.
 - G. The proposed subdivision will not have an undue or adverse impact on the reasonable development of neighboring land.
- 2. Final plat approval is hereby granted for the Property, subject to the conditions set forth in attached Exhibit B.
 - 3. The officers of the City are hereby authorized, once the conditions set forth in Exhibit B are met and complied with, to sign the final plat for the Property and to issue a certified copy of this Resolution giving final approval of the plat.
 - 4. The owner of the Property is authorized to record the final plat as required by law and shall file proof of said recording with the City. No building permits will be issued for the Property until the final plat is recorded.
 - 5. This final plat approval shall expire two years from the date of this resolution if the final plat is not recorded within that time.

Passed and adopted this 20th day of October 2025.

John J. Dietz, Mayor

ATTEST:

Tina Allard, City Clerk



EXHIBIT A
LEGAL DESCRIPTION

Parcel A:

The East 330 feet of that part of the Northeast Quarter of the Southeast Quarter lying North of the center line of County Road No. 35, in Section 30, Township 33, Range 26, Sherburne County, Minnesota.
EXCEPTING THEREFROM the railroad right of way.

That part of the East Half of the Northeast Quarter of the Southeast Quarter, Section 30, Township 33, Range 26, Sherburne County, Minnesota, lying West of the East 330 feet thereof, and lying North of the center line of County Road No. 35.
EXCEPTING THEREFROM the railroad right of way.



EXHIBIT B
CONDITIONS OF APPROVAL

1. The resolution to vacate a portion of 192 1/2 Ave NW is recorded immediately before the plat.
2. The applicant shall pay park dedication for two lots prior to releasing the final plat for approval.



Item 7.3

Easement (street) Vacation Prairie Haven Final Plat

75-00130-1405

75-00130-1406

75-00517

Ogden Street

75-00130-4106

75-005

75-00130-4105

75-00130-4120

75-00707-0905

75-00517-0340

193rd Avenue

SITE

75-00999-0004

1 192nd Avenue

Background

- Applicant receive PP approval
- However, excess ROW must be vacated before FP can be approved
- Existing ROW is well beyond typical 33 feet
- 192 ½ Ave and Ogden connection are not proposed to be relocated
 - Excess ROW not required

30-4106

75-00707-0905

75-00130-4105

75-00130-4120

75-00517-0340

75-00999-0004

1



Recommendation

- The proposed area to be vacated does not serve a public purpose, and staff recommend vacation of the area depicted in the attached exhibit

Background

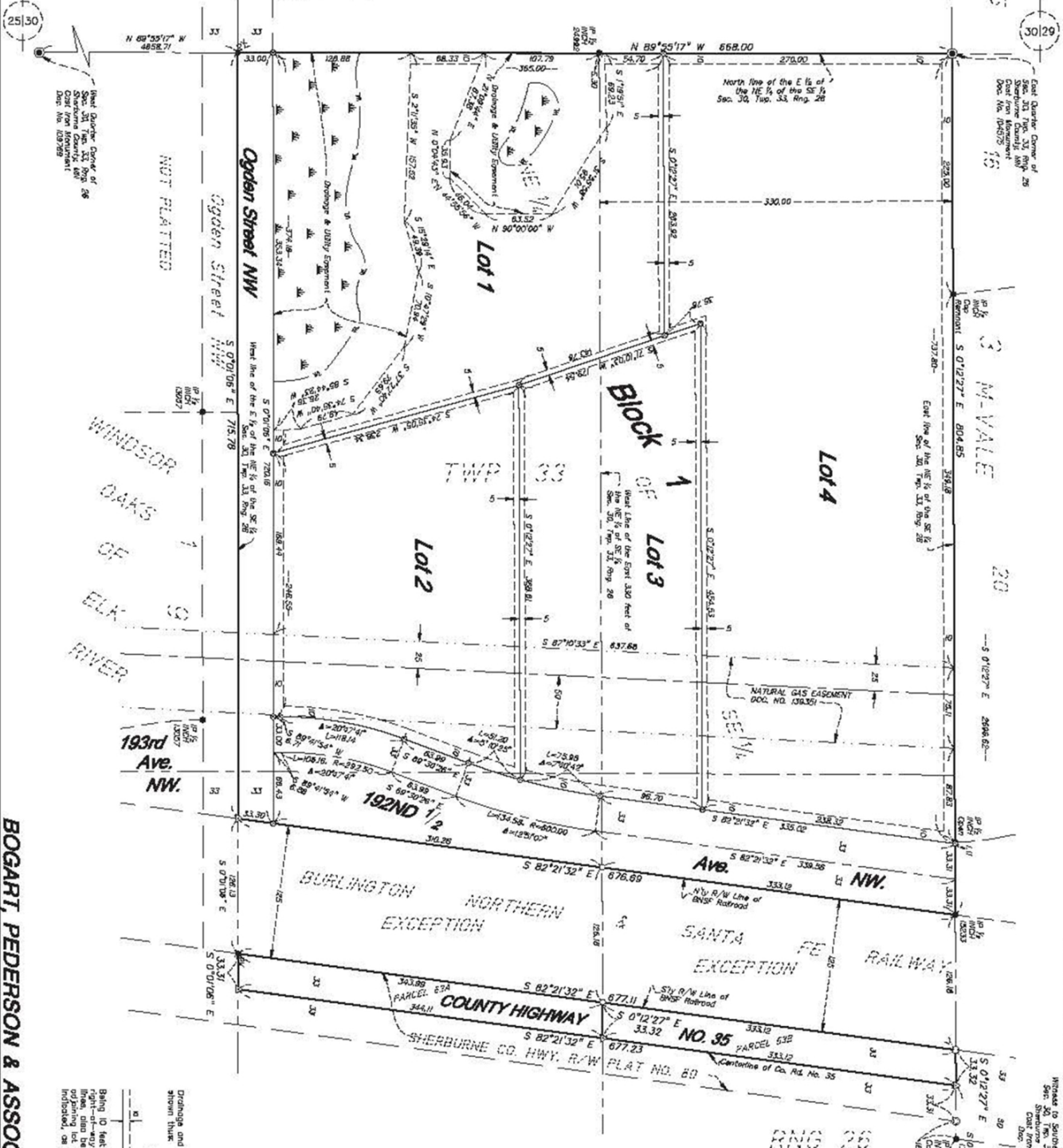
- The proposed final plat is consistent with the preliminary plat
- Proposed easement vacation to address the excess roadway easement concerns
- Plat satisfies all city standards for approval
- 2 new buildable lots requiring the payment of park dedication

for child and also dedicating to the public for

day of _____, 20__

SCALE: 1" = 60'

Beltrange are based on the Sterburne County coordinate system (NAD83 8604). For the purposes of this survey, the East line of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ is assumed to bear South 0 degrees 12 minutes 27 seconds East.

[illegible]

Action Requested

- Adopt, by motion, Resolution 25-62 vacating a portion of the roadway easement for 192 1/2 Ave NW
- Adopt, by motion, Resolution 25-63 approving the final plat of Prairie Haven, subject to the following conditions:
 1. The resolution vacating a portion of 192 1/2 Ave NW is recorded immediately before the plat
 2. The applicant shall pay park dedication for two lots before releasing the final plat for approval



Request for Action

To
City Council

Item Number
7.4

Meeting Date
October 20, 2025

Prepared By
Zack Carlton, Community Development Director

Item Description
Twin Lakes Road Apartment PUD, Pat Briggs -
17379 Twin Lakes Road NW

Reviewed by
Cal Portner
Tina Allard

Action Requested
No action is required as the applicant withdrew their application.

Background/Discussion
The applicant is refining his development proposal for the site and will resubmit at a later date. He has withdrawn the current applications, Case Nos. LU 25-02, ZC 25-02, and OA 25-08.

No public hearing is necessary, and no further action is required.

Financial Impact
None

Mission/Policy/Goal
Appropriately govern in an ever-changing environment.

Attachments
None

The Elk River Vision

A welcoming community with revolutionary and spirited resourcefulness, exceptional service, and community engagement that encourages and inspires prosperity



Request for Action

To
City Council

Item Number
8.1

Meeting Date
October 20, 2025

Prepared By
Chris Leeseberg, Senior Planner

Item Description
Northstar Trucking Deadline Extension

Reviewed by
Zack Carlton
Cal Portner
Tina Allard

Action Requested

Provide staff direction on one of the following options to proceed with the Conditional Use Permit (CU 24-21):

1. Extend the deadline to a specified date to allow additional time to satisfy the conditions of approval.
2. Decline to extend the deadline and direct staff to initiate the Conditional Use Permit revocation process.

Background/Discussion

Staff have had ongoing monthly communications with Mr. Nikolay Babkin and the City of Ramsey, as both municipalities approved his Conditional Use Permit in March 2025. As part of that approval, 11 conditions were included that need to be completed by November 1, 2025. To date, none have been satisfied as the City of Ramsey does not allow site work to begin until the Lower Rum River Watershed Management Organization (LRRWMO) approves the project plans. The council action letter outlining the conditions of approval is attached.

While staff have no concerns with the submitted plans, we have advised the applicant that no improvements or construction may proceed until both municipalities have granted final approval. The bulk of the site improvements are located in Ramsey.

Mr. Babkin is requesting an extension of the November 1, 2025, deadline, providing additional time to finalize approvals with the city of Ramsey and the LRRWMO. He has requested an extension to June 1, 2026.

The Council may extend the deadline to a specified date, providing additional time to satisfy the conditions of approval, or decline to extend the deadline, and direct staff to initiate the Conditional Use Permit revocation process if the conditions of approval have not been satisfied by November 1st.

Financial Impact
None

The Elk River Vision

A welcoming community with revolutionary and spirited resourcefulness, exceptional service, and community engagement that encourages and inspires prosperity

Mission/Policy/Goal

Ethical, efficient, and responsible.

Attachments

1. Location Map
2. Extension Request
3. CU 24-21 CC Action Letter
4. 8.I Northstar Trucking 10-20-2025 Presentation



Project Location Map

Northstar Trucking

Zone Change
Conditional Use Permit

Case No: ZC 24-05, CU 24-21



Hello City Council Members,

Northstar Truck and RV Parking LLC is requesting to get an extension for the project taking place at 15861 Jarvis St, Elk River 55330. Our deadline was November 1st, 2025 and we have been working with the city of Ramsey to try to get all of the permits approved for the stormwater and Lower Rum River Watershed requests. Our goal was to complete everything by Nov 1st but we did not expect the permits to take this long. In the meantime we have put up the fence on the north side of the property and removed unlicensed vehicles from our property. We have put the utility shed up but have not placed it in its current permanent spot just yet because the electrician needs to show us where the best place for that would be and for the city of Elk River to guide us through that as well. We have not been able to do much work on the property because the city of Ramsey said we cannot proceed until they approve our documents. We wish we could have had this completed all by now but unfortunately with working with two cities that has been a challenge. We would like to extend the project final date to June 1, 2026. With the winter months ahead of us we are hoping the permits will be approved and work will continue with the asphalt once the ground is no longer frozen in the spring time. We would greatly appreciate you approving this extension and we will continue to work hard to meet all requirements.

Thank you for your time.

Nikolay Babkin (Owner)



March 19, 2025

Nikolay Babkin
Northstar Truck & RV Parking LLC
15861 Jarvis St. NW
Elk River, MN 55330

VIA EMAIL: northstarparkingmn@gmail.com

RE: Planning Commission Action Case No. CU 24-21

Dear Mr. Babkin:

On March 17, 2025, the City Council reviewed your application for a Conditional Use Permit for Outdoor Storage of Vehicles and Equipment, for PID 75-00013-4405 and approved the request with the following conditions:

1. Outdoor storage shall be allowed for only the following vehicles:
 - a. Properly licensed, registered, and operable;
 - b. Semi-trucks, semi-trailers, and other delivery trucks;
 - c. Motor vehicles;
 - d. Recreational vehicles, campers, motor homes, and fifth-wheel trailers;
 - e. Trailers;
 - f. Boats;
 - g. Light and heavy equipment;
 - h. Enclosed shipping containers; and
 - i. Cars and trucks.
2. Vehicle Wrecking Yards and Salvage Yards, as defined by the City of Ramsey, and Salvage Yards, as defined by the City of Elk River shall not be permitted.
3. Outdoor storage of products, equipment, materials, supplies, debris, or any vehicles not properly licensed, registered, or operable, is not permitted, except for snow removal equipment and supplies for the site in conformance with the applicable municipality's regulations.

4. If any violations of condition #3 are documented more than once in a calendar year, in either jurisdiction, the Conditional Use Permit will be brought to the City Council for direction on revocation.
5. Motor vehicle, trailer, and boat sales is prohibited.
6. Car dealer overflow parking is prohibited.
7. Approvals from the City of Ramsey, PUD Ordinance, Site Plan Review Resolution, and Development Agreement, shall be recorded and copies provided by **November 1, 2025**.
8. Schedule a site visit with the Building Official and Fire Marshal to review and complete any required code updates by **November 1, 2025**.
9. All driving and parking areas shall be paved with an approved surface (bituminous, Class 5, or concrete) by **November 1, 2025**.
10. Stripe the parking lot as shown on the city site plan dated March 17, 2025, by **November 1, 2025**.
11. Drive lanes need to maintain a minimum of 24-foot width throughout the site.
12. All driving areas and outdoor storage/parking areas shall be bound by B612 concrete curb and gutter by **November 1, 2025**.
13. A reinforced concrete strip, a minimum of one (1) foot wide and centered on the property line, must be installed and maintained along the city/county border to clarify any relevant jurisdictional issues by **November 1, 2025**.
14. Site lighting shall comply with Section 30-937 by **November 1, 2025**.
15. Update submitted plans as needed to demonstrate compliance with state and local stormwater management requirements across both parcels/jurisdictions by **November 1, 2025**.
16. Submit documentation showing compliance with all Minnesota Pollution Control standards by **November 1, 2025**.
17. A 6-foot-tall, 100% opaque privacy fence shall be installed along the north property lines by **November 1, 2025**.
18. A temporary guard shack no larger than 200 sq. ft. shall be allowed in Elk River, until **November 1, 2025**. The location shall be approved by city staff.
19. This Conditional Use Permit (CU 24-21) must be recorded by **November 1, 2025**, or the operation on the property must cease.
20. A 200 sq. ft. guard shack/office shall be allowed in Elk River, and will require all necessary commercial building permits and meet the required setbacks.

21. There shall be no repair or maintenance of any vehicles, trailers, or boats on the site.
22. The idling of a truck tractor or other business equipment in excess of 15 minutes is prohibited from April 16 through October 31, and idling in excess of 30 minutes is prohibited from November 1 through April 15.
23. In the event a gate is installed, access to the property must include key boxes for both Elk River and Ramsey Fire Departments.
24. In the event either parcel is owned separately, or one municipality revokes their approval, each parcel will need to conform to each jurisdiction's ordinance and codes individually, including, but not limited to, stormwater ponds, setbacks, screening, curbing, and landscaping.
25. An amendment to this Conditional Use Permit will be required for future expansions/additions not shown on the city site plan dated March 17, 2025.
26. Conditional Use Permit, case number CU 23-16, shall become void.

If you have any questions regarding the meeting or the conditions listed above, please let me know. When conditions are complete, the CUP document will be recorded at Sherburne County and the recorded copy uploaded into CitizenServe portal.

Sincerely,



Chris Leeseberg
Senior Planner

Ph: 763.635.1033

cleeseberg@ElkRiverMN.gov

Item 8.1

Northstar Trucking Extension

Background

- March 2025 CUP approved
 - ER & Ramsey ongoing monthly communications
- 11 conditions of approval
 - None have been satisfied
- Site work cannot begin until Lower Rum River Watershed Management Organization (LRRWMO) approves
 - Bulk of site improvements are in Ramsey
- As it is a joint project
 - No improvements or construction may proceed until both municipalities have granted final approval

Request

- To provide additional time to finalize approvals with the city of Ramsey and the LRRWMO
- Applicant is requesting an extension to June 1, 2026

Background

- In conversations this afternoon with city attorney
- As there are specific dates outlined in the conditions
 - He recommends that the applicant amend their CUP
 - Not a typical extension of 2-year completion requirement

Action

- If the council is agreeable to an extension and pending Ramseys decision next week (28th) to extend
 - Applicant apply for an amendment by Oct 27
 - Waive the fee?
- If the council is not agreeable to an extension
 - Provide staff direction to begin revocation process for the November 15 CC meeting



Request for Action

To
City Council

Item Number
8.2

Meeting Date
October 20, 2025

Prepared By
Joseph Hale, Environmental Services and Projects
Specialist

Item Description
Yard Waste Transfer Site Rules, Fees, and
Ordinance 25-14 Amendment

Reviewed by
Justin Femrite
Cal Portner
Tina Allard

Action Requested

1. Adopt, by motion, the Yard Waste Transfer Site Rules and Fees.
2. Adopt, by motion, Ordinance 25-14 amending City Code Sections 58-31 and 58-39 regarding yard waste.

Background/Discussion

In August 2025, a Council Work Session was held to discuss the future operations of the yard waste transfer site located at Elk River Public Works. At the work session, staff were given the directive to assume all administrative and operational duties related to the site starting in 2026. This direction was given due to upcoming changes in Sherburne County that would increase the city's operational costs and prohibit access to commercial users. By providing services solely to Elk River residents and commercial landscape businesses within the city limits, staff anticipates avoiding an increase in operating costs and an opportunity to better serve residents. After the work session, staff completed the following tasks in preparation for the site changes:

- Finalized the Yard Waste Transfer Site Rules and Fees document.
- Completed a proposed ordinance amendment to the solid waste ordinances related to the site.
- Worked with the Communications Department to develop a new web page and tutorial video.
- Developed an application process for access cards using the Citizenserve licensing portal.
- Completed an application required by Sherburne County to operate as a solid waste facility.

Financial Impact

The proposed fees are intended to break even from any costs associated with the site. Therefore, there would be no financial impact.

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Mission/Policy/Goal

Appropriately govern in an ever-changing environment.

Attachments

1. Final Draft- Yard Waste Ordinance Ammendment Notice 10-9-25
2. Final Draft- 2026 Yard Waste Site Rules
3. 8.2 Yard Waste Transfer Site Presentation



Proposed Ordinance Notice 10 20 25

Ordinance 25 - 14

An Ordinance Amending Chapter 58, Article II, Division I, Sec. 58-31 and Sec. 58-39, Yard Waste Transfer Facility Regulations of the City of Elk River, Minnesota, City Code

The City Council of the City of Elk River does hereby ordain as follows:

SECTION 1. That § Sec. 58-39, Yard Waste Transfer Facility Regulations of the City of Elk River Code of Ordinances shall be amended to read as follows:

Sec. 58-39. ~~Compost~~ Yard Waste transfer facility regulations.

- (a) *Acceptable materials.* The city will only accept ~~yard waste and clean wood less than six inches in diameter at the city's Compost Transfer Facility.~~ grass, leaves, weeds, and clean wood at the city's Yard Waste Transfer Facility.
- (b) *Unacceptable materials.* The city will not accept the following items or similar items at the city's ~~Compost~~ Yard Waste Transfer Facility:
- ~~Stumps;~~ Sod, dirt, gravel, soil, rocks;
 - ~~Root balls;~~ Tree stumps, root masses, shrub root balls;
 - ~~Logs or branches greater than six inches in diameter;~~ Wood chips- regardless of being treated or not;
 - ~~Materials from outside of Sherburne County;~~ Construction lumber, pallets, or treated wood;
or
 - ~~Non-organic materials, including but not limited to, rocks, concrete, or plastics;~~ Masonry block, cement, concrete;
 - ~~Mixed municipal solid waste or solid waste;~~ Household waste;
 - Hazardous substances or chemicals;
 - Landscape fabric, edging, plastic bags, pots;
 - Ashes, coals, or any other type of fire waste;

Last Updated January 2024



- Dead animals; and
- Manure.

(c) *Prohibition.* No person shall illegally dump at the city's ~~Compost~~ Yard Waste Transfer Facility.

(d) Fees.

(1) Users falling under the commercial user definition will be required to submit a security deposit, annual fee, and will be charged per load based on the current fee schedule.

(2) Users falling under the residential user definition will be charged a one-time annual fee based on the current fee schedule.

~~(d) *Penalties.*~~

~~(1) Any person violating this section shall be subject to the following penalties:~~

~~a. Revocation of their Compost Transfer Facility access pass for a period of one year or until payment of the fine, whichever is shorter.~~

~~b. Guilty of a misdemeanor and upon conviction shall be subject to the penalties for a misdemeanor as prescribed by state law.~~

~~(2) Upon a second violation of this section, a person's site access pass will be revoked for a period of one year regardless of payment of the fine and the person shall be issued a trespass notice for a period of one year.~~

~~(b) Violation of trespass notice. Any person found in the city's Compost Transfer Facility during the one-year period following issuance of a trespass notice will be issued a citation for trespassing on public property and receive a one-year extension of revocation of their site access pass.~~

(c) Penalties.

(1) Any person violating this section shall be guilty of a misdemeanor and upon conviction shall be subject to the penalties for a misdemeanor as prescribed by state law.

(2) In addition to misdemeanor penalties, any person violating this section shall be subject to the following penalties:

a. For a first violation of this section, revocation of their Yard Waste Transfer Facility access pass for a period of one year.

b. For a second violation of this section, permanent suspension of their Yard Waste Transfer Facility access pass, along with a trespass notice barring the person from being present at the Yard Waste Transfer Facility for any purpose.

(b) *Violation of trespass notice.* Any person found in the city's Yard Waste Transfer Facility during the duration of a trespass notice will be issued a citation for trespassing on public property, which shall be subject to the penalties for a misdemeanor as prescribed by state law.

SECTION 2. That **§ 58-31, Definitions** of the City of Elk River Code of Ordinances shall be amended to read as follows:

Residential user means any person who maintains a City of Elk River address and utilizes the Yard Waste Transfer Site exclusively for the yard waste needs that are generated from that address.

Commercial user means any user who receives payment for the hauling of yard waste material to the Yard Waste Transfer Facility for disposal and/or is disposing of material from a property that was not generated from their own Elk River primary residency.

Source separated organics (SSO) means food scraps and soiled paper but not yard waste or inorganic materials such as recyclables and mixed municipal ~~washes~~ wastes.

Passed and adopted by the City Council of the City of Elk River this 20th day of October, 2025.

John J. Dietz, Mayor

ATTEST:

Tina Allard, City Clerk



2026 City of Elk River Yard Waste Site Rules and Fees

The City of Elk River operates a yard waste disposal site located at 19000 Proctor Road. This facility is open exclusively to residents of the City of Elk River and businesses with headquarters registered in the city. Users of the yard waste site must apply for an access card using the City's permitting portal ([Link](#)). By applying for the access card, users agree to the following rules and conditions.

Card usage:

All users must scan their assigned card at the gate prior to disposal. Residents will pay a one-time annual fee, which will cover their disposal costs for the year.

Commercial users will be required to submit a security deposit at the time of application, which will be held by the city until the user requests cancellation of their card, and a refund of the deposit. Commercial users will also be charged a per-load fee, as established by the current fee schedule.

At the time of application, users must register their vehicle and trailer and will be expected to use their registered equipment at each visit.

Fee Schedule:

Card Type	Annual Fee	Security Deposit	Per Load Fee
Residential	\$25	NA	NA*
Commercial	\$1000 Per Unit	\$2500	\$40

*The annual fee for residents assumes approximately 50 visits per year. Abuse of the card through excessive use may be grounds to review an individual's eligibility for the residential rate.

Site Rules:

Hours of operation

Season	Weekday (Mon-Fri)	Weekend (Sat-Sun)
Summer (Memorial Day -Labor Day)	8am-7pm	7am-8pm
Fall/ Winter (Labor Day – Memorial Day)	9am- 4pm	9am- 4pm

Acceptable Materials- The materials allowed for disposal will be limited to grass clippings, leaves, weeds, branches, and logs. All materials should be loose and not bundled. Anything used to secure materials during transport (i.e. rope, twine, etc.) must not be discarded along with yard waste.

2026 City of Elk River Yard Waste Site Rules and Fees

Unauthorized materials- If an item is not explicitly listed above, it will NOT be accepted for disposal. The list below is not fully inclusive but reflects some common items that will NOT be accepted at the site.

- Sod, dirt, gravel, soil, rocks;
- Tree stumps, root masses, shrub root balls;
- Wood chips- regardless of being treated or not;
- Construction lumber, pallets, or treated wood;
- Masonry block, cement, concrete;
- Hazardous substances or chemicals;
- Landscape fabric, edging, plastic bags, pots;
- Ashes, coals, or any other type of fire waste;
- Municipal household waste;
- Dead animals; and
- Manure

Note: the onsite dumpster is only to be used to discard disposable items used for the transport of yard waste material (i.e. bags, rope, straps).

Vehicle Restrictions: No vehicles over 19,500 GVW shall be allowed within the yard waste site.

Equipment Use: The use of equipment will not be permitted on the yard waste premises. This includes both electric and gas-powered chainsaws, and vehicles such as bobcats, 4-wheelers, or side by sides.

Penalties: Any violation of the site rules may result in a 1-year revocation of the annual pass, enforcement of any relevant city ordinances, and forfeiture of any security deposit. Any subsequent violation of the site rules will result in a permanent revocation of the access pass.

Site Security: The yard waste facility is monitored 24/7 with security cameras. Footage will be used as evidence to pursue any violations of the site rules.

Item 8.2- Yard Waste Transfer Site Updates

Item 8.2

- Requesting approval of the Yard Waste Transfer Site Rules and Fees document.
- Approve Ordinance amendment of Chapter 58, Article II, Division I, Sec. 58-31 and Sec. 58-39.
- Provide updates on efforts related to the program changes.



Background

- A work session was held in August to discuss future operations at the site.
- It was determined that the city would move towards a program independent of Sherburne County to mitigate potential cost increases.
- The city program would also allow for residents and Elk River commercial yard service providers.

Yard Waste Transfer Site Rules and Fees

- Establishes allowable and prohibited items, hours of operations, and fees.
- Hours determined to maximize resident's access while maintaining security (i.e. available light to review cameras)
- Fees were determined following a review of other municipalities.
- Proposed fees would minimize cost to residents and generate more revenue from commercial users.

Proposed Ordinance Amendments

- Updated to be consistent with rules document.
- Provides definition of residential vs. commercial user.
- Corrected a spelling error for an existing definition.
- Received one public comment suggesting definitions for the terms “clean wood” and “weeds”.
- Staff believe the listed prohibited items will sufficiently cover any unacceptable plant materials without those definitions.

Updates and Next Steps

- New webpage and informational video is ready to launch.
- Application for access cards has been developed using Citizenserve portal.
- Sherburne County Solid Waste application permit application is progress. To be submitted following approval of item 8.2.

Yard Waste Site

The City of Elk River operates a yard waste disposal site for residents and businesses located within Elk River. Site users must apply for an annual pass online.

Periodic site closures will occur for maintenance. Closures will be posted on this webpage and the city's other communication channels.

Locations and Hours

The Yard Waste Disposal Site is located at 19000 Proctor Road.

Hours of Operation

Season	Weekday (Monday - Friday)	Weekend (Saturday - Sunday)
Fall/Winter (Labor Day - Memorial Day)	9:00 a.m. - 4:00 p.m.	9:00 a.m. - 4:00 p.m.
Summer (Memorial Day - Labor Day)	8:00 a.m. - 7:00 p.m.	7:00 a.m. - 8:00 p.m.

**BUY OR RENEW
YARD WASTE PASS**





Request for Action

To
City Council

Item Number
10.1

Meeting Date
October 20, 2025

Prepared By
Joe Stremcha, Business Services Director/Assistant
City Administrator

Item Description
Community Event Center Commission

Reviewed by
Joe Stremcha
Cal Portner
Tina Allard

Action Requested

Consider ordinance amendments as recommended by the Community Event Center Commission.

Background/Discussion

Motion by Commissioner Beyer and seconded by Vice Chair Walker to recommend the following ordinance changes to City Council:

- Remove section 4 (3) - developing an annual report on the outcomes and activities of the facility to the City Council, as this will now be completed by staff.
- Remove section 4 (4) - no longer review facility rental rates and recommend a fee schedule to the City Council for incorporation into the annual budget.
- Revise section 4 (5) to: The Commission shall recommend a preliminary budget that balances facility revenue and expenses. The budget will include projected revenue, expenses, transfers, and capital improvements and shall be completed no later than June 30 of each year.

Financial Impact
None.

Mission/Policy/Goal
Work with citizens to achieve goals.

Attachments
I. Community Event Center Commission Ordinance

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Ordinance 25-09

An Ordinance Amending Chapter 2, Division 4, Multipurpose Facility Advisory Commission of the City of Elk River, Minnesota, City Code

The City Council of the City of Elk River does hereby ordain as follows:

SECTION 1. That §2-250. Established of the City of Elk River Code of Ordinances shall be amended as follows:

There is hereby continued, as heretofore created, a community event center commission.

SECTION 2. That §2-251. Membership of the City of Elk River Code of Ordinances shall be amended as follows:

The commission shall consist of five members appointed by the council to include:

- (1) A city resident and member in good standing of the Elk River senior center.
- (2) A sitting member of the city council.
- (3) Three at-large residents of the community with preference given to city residents, but residency by itself shall not be disqualified.

Up to two representatives do not need to be residents of the City of Elk River, but at least one of them must own a business or work (full-time) within the city limits while serving on the commission at any one time.

SECTION 3. That §2- 252. Purpose of the City of Elk River Code of Ordinances shall be amended as follows:

The commission shall set goals and expectations for the community use and enjoyment of the community event center. The commission shall seek community input regarding the use and development of the facility and make recommendations to the city council to protect and preserve the facility as an asset to the community. The commission shall recommend an operational budget and capital plan that meets or exceeds the goals, values, and vision of the facility.

SECTION 4. That §2- 253. Powers and Duties of the City of Elk River Code of Ordinances shall be amended as follows:

The community event center commission authority shall include, but not be limited to, the study and recommendation to the city council on the following:

- (1) Review the value and mission statement annually and amend as so desired.
- (2) Serves as a conduit to the public to gain feedback on the effectiveness of the facility and services provided. Holds at least one annual public hearing to receive community comments regarding the operation, use, and future development of the facility.
- (3) Develop an annual report on the outcomes and activities of the facility to the city council.

- (4) The commission shall review facility rental rates annually and recommend a fee schedule to the city council for incorporation into the annual budget.
- (5) The commission shall recommend a budget that balances facility revenue and expenses. The budget will include projected revenue, expenses, transfers, and capital improvements. The budget shall be completed no later than November 1 of each year.
- (6) The commission shall annually provide a draft capital improvement plan to the city council that includes capital replacements, repairs, and additions. The plan shall project improvements over a rolling ten-year period. The capital plan shall be completed no later than November 1 of each year.
- (7) The commission shall review and recommend operational policies for the facility and review all policies at a minimum every two years.

SECTION 5. That §2- 254. Meetings of the City of Elk River Code of Ordinances shall be amended as follows:

The commission shall meet regularly at such time and place as established per their bylaws. The sitting council member is excluded from holding chair or vice chair positions.

SECTION 6. That this ordinance shall take effect upon adoption and be published as provided by law.

Passed and adopted by the City Council of the City of Elk River this 19th day of May, 2025.



John J. Dietz, Mayor

ATTEST:



Tina Allard, City Clerk