



Hermantown City Council Meeting - Monday, November 20, 2023

Hermantown's upcoming City Council meeting will include both remote access and in-person access to Council Chambers. The remote access will be available through the platform, "Zoom," which allows the public to view and participate in the meeting via phone or computer. Interested parties can also choose to attend the City Council meetings in person at City Hall.

Remote access to the 6:30 p.m. City Council Meeting via Zoom:

<https://us02web.zoom.us/j/84409952143?pwd=cGdaNzZmU2NYdGxsUDIQVDVxeU9LQT09>

and/or by calling the number (312) 626-6799 and utilizing the meeting ID number of 844 0995 2143 and the passcode of 0260647091.

Public comment may also be submitted in advance of the meeting. Comments, questions, or concerns can be e-mailed to Community Engagement Director, Joe Wicklund, at jwicklund@hermantownmn.com up to 3:30 p.m. the day of the meeting with the e-mail title "City Council Meeting." It is important to note that all comments regarding this meeting are public data.

A few important tips regarding the Zoom platform:

- If your computer does not support audio, you can still watch the meeting on your computer and call in on your phone to hear the meeting
- Everyone has varying levels of comfort regarding remote technology, so grace and understanding are appreciated

The 4:30 p.m. Pre-Agenda Meeting will be available in-person only at City Hall. Public comment is not a factor in the pre-agenda meeting, but the meeting is open and members of the public are invited and welcome to attend to this meeting.



AGENDA

Pre-Agenda Meeting Monday, November 20, 2023 at 4:30 p.m. Council Chambers, City Hall - Hermantown Governmental Services Building

Pre-agenda: The Pre-agenda meeting is a work session between the City Council and City staff to review the upcoming City Council meeting and future meetings. The agenda is the same document as the upcoming City Council meeting, but does not follow the same format as the City Council meeting. It is a time for the City Council and City staff to have discussions about the agenda items, and asking and answering questions. Traditionally it is not a time for public comment on the agenda items, as the public can listen to the conversation and ask questions or provide input at the upcoming City Council meeting.

City Council Meeting Monday, November 20, 2023 at 6:30 p.m. Council Chambers, City Hall - Hermantown Governmental Services Building

Invitation to participate:

The Hermantown City Council welcomes your thoughts, input and opinions to this meeting. The agenda for this meeting contains a brief description of each item to be considered, and the City Council encourages your participation. If you wish to speak on an item contained in the agenda, you will be allowed to address the Council when a motion is on the floor. If you wish to speak on a matter that does not appear on the agenda, you may do so during the public comment period regularly scheduled and set for the beginning of the meeting.

When addressing the City Council, please state your name and address for the record. Please address the City Council as a whole through the Mayor. Comments to individual Council Members or staff are not permitted. Speakers will be limited to three (3) minutes.

Order of discussion

1. Reading of the resolution title by Mayor
2. Motion/Second
3. Staff Explanation
4. Initial Discussion by City Council
5. Mayor invites public to speak to the motion (3-minute rule)
6. Follow up staff explanation and/or discussion by City Council
7. Call of the vote

**CITY OF HERMANTOWN
AGENDA**

**Pre-Agenda Meeting Monday, November 20, 2023 at 4:30 p.m.
Council Chambers, City Hall - Hermantown Governmental Services Building**

**City Council Meeting Monday, November 20, 2023 at 6:30 p.m.
Council Chambers, City Hall - Hermantown Governmental Services Building**

1. **CALL TO ORDER**

2. **PLEDGE OF ALLEGIANCE**

3. **ROLL CALL**

4. **ANNOUNCEMENTS**

Council Members may make announcements as needed.

5. **PUBLIC HEARING**

Only when necessary. The rule adopted three minutes per person if necessary. Any action required after the public hearing will be taken immediately following the closing of the public hearing.

6. **COMMUNICATIONS**

A. Correspondence 23-165 through 23-168 placed on file

[8](#)

B. **2023-168**

[9](#)

From: Robert Doblak

To: Mayor & City Council

Re: 4858 Hermantown Rd - Water/Sewer Connection Cost

7. **PRESENTATIONS**

A. **2024 Budget Booklet Presentation**

Kevin Orme, Director of Finance & Administration

(Pre-Agenda Only)

B. **Schematic Design Cost Estimate**

John Mulder, City Administrator

(Pre-Agenda Only)

8. **PUBLIC DISCUSSION**

This is the time for individuals to address the Council about any item not on the agenda. The time limit is three minutes per person.

9. **MOTIONS**

10. **CONSENT AGENDA**

All items on the Consent Agenda are items which are considered routine by the City Council and

will be approved by one motion via voice vote. There will be no discussion of these items unless a Council Member or citizen requests, in which event the item will be removed from the Consent Agenda and considered at the end of the Consent Agenda.

- A. **Minutes** - Approval or correction of November 6, 2023 City Council Continuation Minutes [15](#)

- B. **Accounts Payable** - Approve general city warrants from November 1, 2023 through November 15, 2023 in the amount of \$619,235.45 [20](#)

11. **ORDINANCES**

12. **RESOLUTIONS**

Roll call will be taken only on items required by law and items requiring 4/5's votes, all others can be done by voice vote.

- A. **2023-157 Resolution Adopting An Assessment Against The Mercier Parcel (395-0010-02821) For Road Improvement District No. 534 ("Project 534")** [26](#)

(motion, roll call)

- B. **2023-158 Resolution Adopting An Assessment Against The Jobin Parcel (395-0010-02822) For Road Improvement District No. 534 ("Project 534")** [30](#)

(motion, roll call)

- C. **2023-159 Resolution Adopting An Assessment Against The Volk Parcel (395-0070-00102) For Road Improvement District No. 534 ("Project 534")** [34](#)

(motion, roll call)

- D. **2023-160 Resolution Adopting An Assessment Against The Olson Parcel (395-0070-00106) For Road Improvement District No. 534 ("Project 534")** [38](#)

(motion, roll call)

- E. **2023-161 Resolution Adopting An Assessment Against The Gilbert Parcel (395-0070-00108) For Road Improvement District No. 534 ("Project 534")** [42](#)

(motion, roll call)

- F. **2023-162 Resolution Adopting An Assessment Against The Postal Parcel (395-0070-00437) For Road Improvement District No. 534 ("Project 534")** [46](#)

(motion, roll call)

- G. **2023-163 Resolution Adopting An Assessment Against The Frick Parcel (395-0070-00890) For Road Improvement District No. 534 ("Project 534")** [50](#)

(motion, roll call)

- H. **2023-164 Resolution Adopting An Assessment Against The Schulze Parcel (395-0070-00980) For Road Improvement District No. 534 (“Project 534”)** [54](#)
(motion, roll call)
- I. **2023-165 Resolution Not Adopting An Assessment Against The Hokanson Parcel (395-0115-00010) For Road Improvement District No. 534 (“Project 534”)** [57](#)
(motion, roll call)
- J. **2023-166 Resolution Adopting An Assessment Against The Hanson Parcel (395-0070-00962) For Road Improvement District No. 534 (“Project 534”)** [59](#)
(motion, roll call)
- K. **2023-167 Resolution Adopting Assessment Roll For Road Improvement District No. 534 (Ugstad Road)** [63](#)
(motion, roll call)
- L. **2023-168 Resolution Approving Application Of Assessment Roll Number 534A-27 For Deferral Of Assessment Against The Property For The Construction Of Road Improvement District No. 534 (“Hardship Deferral”)** [69](#)
(motion, roll call)
- M. **2023-169 Resolution Approving Application Of Assessment Roll Number 537A-44 For Deferral Of Assessment Against The Property For The Construction Of Road Improvement District No. 534 (“Hardship Deferral”)** [73](#)
(motion, roll call)
- N. **2023-170 Resolution Approving Change Order Number 17 For Road Improvement Project 534 (Ugstad & Arrowhead Roads)** [78](#)
(motion, roll call)
- O. **2023-171 Resolution Approving Pay Request Number 6 For Road Improvement District 534 To Ulland Brothers, Inc. In The Amount Of \$98,514.43** [90](#)
(motion, roll call)
- P. **2023-172 Resolution Adopting Assessment Roll For Road Improvement District No. 538 (Richard Avenue And Lindgren Road)** [96](#)
(motion, roll call)
- Q. **2023-173 Resolution Repealing \$48,000 Assessment From The Resolution Number 2020-68** [101](#)

(motion, roll call)

- R. **2023-174 Resolution Approving Pay Request Number 5 For Road Improvement District 538 To Ulland Brothers, Inc. In the Amount Of \$487,504.57** [103](#)

(motion, roll call)

- S. **2023-175 Resolution Approving The Change Order For The Capacity Increase To Hermantown Arena Chiller** [107](#)

(motion, roll call)

- T. **2023-176 Resolution Authorizing And Directing The Mayor And City Clerk To Execute And Deliver A CMAR Contract Between The City Of Hermantown And Kraus-Anderson Construction Company** [118](#)

(motion, roll call)

- U. **2023-177 Resolution Authorizing The Disposal Of Surplus City Property** [247](#)

(motion, roll call)

- V. **2023-178 Resolution Approving Change Order Number 1 For Road Improvement District 451 To Veit In The Amount Of \$39,839.25** [250](#)

(motion, roll call)

- W. **2023-179 Resolution Approving Pay Request Number 4 For Sewer Improvement District 451 To Veit In The Amount Of \$325,314.81** [257](#)

(motion, roll call)

- X. **2023-180 Resolution Adopting Assessment Roll For Delinquent Utility Charges For 2023** [261](#)

(motion, roll call)

- Y. **2023-181 Resolution Authorizing And Directing The Mayor And City Clerk To Execute And Deliver A Commercial Purchase Agreement With BMAX Inc.** [263](#)

(motion, roll call)

13. **CLOSED SESSION**

- A. Motion to close the meeting of the Hermantown City Council pursuant to Minnesota Statutes § Section 13D.05 Subd. 3 (b) to consider an offer or counter offer for the sale of real property for economic development

(motion, roll call)

14. **RECESS**

2023 CORRESPONDENCE

<u>DATE</u>	<u>LOG #</u>	<u>FROM</u>	<u>TO</u>	<u>REGARDING</u>	<u>FILED</u>	<u>FILE</u>	<u>To City Council</u>
11/7/2023	23-165	John Mulder, City Administrator	Drew Kreidler, 4957 Morris Thomas Rd.	Assessment	11/7/2023		11/20/2023
11/8/2023	23-166	Judy Weber, Trustee, The Richard McNutt 2012 Charitable Trust	Alissa Wentzlaff, City Clerk	Objection to Assessment for Parcel 395-0093-00010	11/3/2023		11/20/2023
11/14/2023	23-167	Karthik Raman, Assistant Attorney General	Hermantown Volunteer Fire Dept.	Notice Under Minn. Stat. § 317A.811	11/14/2023		11/20/2023
11/15/2023	23-168	Robert Dobljar	Wayne Boucher, Mayor & City Council	4858 Hermantown Rd - Water/Sewer Connection Cost			11/20/2023

I am requesting the City Council consider waiving the Water and Sewer Availability Charge of \$2,025 and \$5,000 respectively. In preparing this request I watched the City Council meeting of March 21, 2022. At the 17-18 minute mark of that meeting, discussion was held on resolution 2022-30 about the Sewer Availability Charge that was eventually approved at \$5,000. A questions was raised during that discussion if these fees are disclosed and required to be paid up front at the time the building permit was issued. The video of the meeting has a confirmation from the City staff that that is the case. The contractor for my house confirmed to me that he was not made aware of these additional charges and was not required to pay them at that time. He obtained the building permit earlier in the summer and I received the water and service application on October 5, 2023 via email. It was in that email that my builder and I became aware of the SAC. When my builder spoke with the City there was even an acknowledgement and apology by the City staff for not making these fees known. Additionally, when the plumber ran the water and sewer lines and connected to the water/sewer mains off of Hermantown Road there was no communication about this additional fee. The Section 270 – Fee Schedule for 2023 that I found on the City of Hermantown website requires a call into the City to determine the Water and Sewer Availability Charges, so it's not immediately evident what those fees are. I purchased the land being built on in November 2020 and it has been a multi-year process to get to this point of the building project. Does the \$9,750 assessment fee I paid at that time impact these Availability Charges? This unplanned-for fee does have an impact on my overall project budget this late into the process. As a future resident and homeowner of Hermantown, I respectfully request that a waiver of the Water and Sewer Availability Charges be granted. Thank you for your time and consideration.

From: CH-Lindsay Townsend
Sent: Thursday, November 16, 2023 7:58 AM
To: Alissa Wentzlaff; CH-John Mulder
Subject: FW: 4858 Hermantown Rd - Water/Sewer Connection Cost
Attachments: Doblar - Waiver Request on Water Sewer Availability Charge.pdf

Lindsay Townsend

Utility Billing Clerk

ltownsend@hermantownmn.com

o: 218-729-3609

f: 218-729-3620

City of
Hermantown
Minnesota

5105 Maple Grove Road
Hermantown, MN 55811
hermantownmn.com

From: Robert Doblar <robert.doblar@gmail.com>
Sent: Wednesday, November 15, 2023 6:48 PM
To: CH-Lindsay Townsend <ltownsend@hermantownmn.com>
Subject: Re: 4858 Hermantown Rd - Water/Sewer Connection Cost

Caution: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Lindsay,

I wasn't able to attend the November 6th council meeting, but I'm requesting that my waiver request be added to the agenda for November 20th. I'm attaching a PDF of my appeal/request. Let me know if you need anything else from me or more of what this process will look like.

Thank you,

Robert

On Mon, Oct 16, 2023 at 8:58 AM CH-Lindsay Townsend <ltownsend@hermantownmn.com> wrote:

I just spoke with our City Clerk and she mentioned that the agenda for the November 6th meeting goes out to Council on November 1st. We would need your letter/email by then. Just wanted to give you a heads up on that.

Thank you,

Lindsay Townsend

Utility Billing Clerk

ltownsend@hermantownmn.com

o: 218-729-3609

f: 218-729-3620



5105 Maple Grove Road
Hermantown, MN 55811
hermantownmn.com

From: CH-Lindsay Townsend
Sent: Monday, October 16, 2023 8:42 AM
To: 'Robert Doblal' <robert.doblal@gmail.com>
Subject: RE: 4858 Hermantown Rd - Water/Sewer Connection Cost

Good morning Robert,

Yes you are right, the first City Council meeting in November will be on November 6th at 6:30pm at City Hall.

This fee was approved at the March 21, 2022 Council meeting. All City Council meeting agendas/minutes & videos are located on the city website under the "Government" tab and then select "City Council Meetings". Here is a link: <https://hermantownmn.com/government/city-council-meetings/agendas-minutes/>

Here is a link to this specific meeting agenda: <https://hermantownmn.com/wp-content/uploads/2022/03/2022-03-21-Agenda-Packet-OCRd2.pdf>

Pages 24 thru 29

Here is a link to view the video recording of this meeting: <https://www.youtube.com/watch?v=DR6UA7ReF2s>

Here is a link to the minutes from this meeting: <https://hermantownmn.com/wp-content/uploads/2022/03/2022-03-21-minutes.pdf>

In the minutes it recaps that council changed the original fee amount of \$10,000 down to \$5,000, and approved the \$5,000 Sewer Availability Fee through resolution 2022-30

I attached a PDF of the completed resolution as well.

Let me know if you have any other questions.

Take care,

Lindsay Townsend

Utility Billing Clerk

ltownsend@hermantownmn.com

o: 218-729-3609

f: 218-729-3620

City of
Hermantown
Minnesota

5105 Maple Grove Road
Hermantown, MN 55811
hermantownmn.com

From: Robert Doblak <robert.doblak@gmail.com>
Sent: Monday, October 16, 2023 7:49 AM
To: CH-Lindsay Townsend <ltownsend@hermantownmn.com>
Subject: Re: 4858 Hermantown Rd - Water/Sewer Connection Cost

Caution: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Lindsay,

I will submit something for the first November council meeting, that would be the sixth correct? Can you tell me where that fee is detailed on the city website? And do you know that was approved?

Thank you,

Robert

On Wed, Oct 11, 2023, 8:11 AM CH-Lindsay Townsend <ltownsend@hermantownmn.com> wrote:

Good morning Robert,

The \$5,000 sewer availability fee was put in place by City Council. City Council meets every 1st and 3rd Monday of the month. You may write a letter or email addressing the council and our City Clerk will include that with the agenda packet for the next meeting after receiving your letter. You would then want to attend the meeting and discuss with council your concerns. If you would like to do this you can email me and I can get your letter to our City Clerk.

The water meter at your new home would not be installed then until this is resolved with City Council. Please let me know if you have any other questions and I will do my best to assist.

Thank you,

From: Robert Doblak <robert.doblak@gmail.com>
Sent: Wednesday, October 11, 2023 7:04 AM
To: CH-Lindsay Townsend <ltownsend@hermantownmn.com>
Subject: Re: 4858 Hermantown Rd - Water/Sewer Connection Cost

Caution: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Lindsay,

The extra 5,000 fee is unexpected and significantly impacts my overall construction budget. Is there a way I could appeal for a waiver of that fee to a committee or board?

Thank you,

Robert

On Thu, Oct 5, 2023, 10:32 AM CH-Lindsay Townsend <ltownsend@hermantownmn.com> wrote:

Hello Robert,

I have attached the water & sewer service applications that we will need filled out and signed. I have also included a cost sheet for the fees due for the connection. Applications can be emailed back to me or dropped off at City Hall. For the connection fees there will need to be two separate checks, but both checks can be returned to City Hall as well. These will need to be complete before Public Works will install and program the water meter.

Thank you,

CITY OF HERMANTOWN
CITY COUNCIL MEETING
Monday, November 6, 2023
6:30 PM Central

MEETING CONDUCTED IN PERSON & VIA ZOOM

CITY STAFF: John Mulder, City Administrator; Alissa Wentzlaff, City Clerk; Eric Johnson; Community Development Director; Joe Wicklund, Communications & Community Engagement Director; Trish Crego, Utility & Infrastructure Director; David Bolf, City Engineer; Gunnar Johnson, City Attorney

VISITORS: 1

1. **CALL TO ORDER**

2. **PLEDGE OF ALLEGIANCE**

3. **ROLL CALL**

4. **ANNOUNCEMENTS**

Mayor Boucher announced that Winter parking is in effect from 2:00 a.m. to 10:00 a.m. until April 15th

5. **PUBLIC HEARING**

A. Public Hearing on Proposed Assessment Roll For The Construction Of Road Improvement District No. 538 Richard Avenue And Lindgren Road

6. **COMMUNICATIONS**

A. Correspondence 23-161 through 23-164 placed on file

B. 23-164

From: Erik Misselt, MN Board of Peace

To: James Crace, CLEO

Re: POST Review

7. **PRESENTATIONS**

A. Special Revenue Budgets and Enterprise Funds

Kevin Orme, Director of Finance & Administration

(Pre-Agenda Only)

8. **PUBLIC DISCUSSION**

Shawna Jokinen appeared before the Council to discuss the design plans for the new Hermantown Hockey Ice Arena.

9. **MOTIONS**

A. Motion to approve/deny the following On Sale Intoxicating Liquor License: Marcus Midwest, LLC dba Lakes Cinema 4351 Stebner Rd On Sale / Sunday
Motion to approve the following On Sale Intoxicating Liquor License: Marcus Midwest, LLC dba Lakes Cinema 4351 Stebner Rd On Sale / Sunday. This motion, made by Councilor John Geissler and seconded by Councilor Ellie Jones, Carried.

Councilor Andy Hjelle: Yea
Councilor Brian LeBlanc: Yea
Councilor Ellie Jones: Yea
Councilor John Geissler: Yea
Mayor Wayne Boucher: Yea

Yea: 5, Nay: 0

10. **CONSENT AGENDA**

A. **Minutes** - Approval or correction of October 16, 2023 City Council Continuation Minutes

B. **Accounts Payable** - Approve general city warrants from October 16, 2023 through October 31, 2023 in the amount of \$2,778,087.22

Motion to the approve the Consent Agenda. This motion, made by Councilor Andy Hjelle and seconded by Councilor Ellie Jones, Carried.

Councilor Andy Hjelle: Yea
Councilor Brian LeBlanc: Yea
Councilor Ellie Jones: Yea
Councilor John Geissler: Yea
Mayor Wayne Boucher: Yea

Yea: 5, Nay: 0

11. **ORDINANCES**

12. **RESOLUTIONS**

A. **2023-153 Resolution Authorizing The City Of Hermantown To Sponsor A Grant Funding Request Via The Minnesota Department Of Transportation Local Road Improvement Program Associated With The Reconstruction Of Hermantown Road**

(motion, roll call)

Motion to approve 2023-153
Resolution Authorizing The City Of Hermantown To Sponsor A Grant Funding Request Via The Minnesota Department Of Transportation Local Road Improvement Program Associated With The Reconstruction Of Hermantown Road. This motion, made by Councilor Andy Hjelle and seconded by Councilor Brian LeBlanc, Carried.

Councilor Andy Hjelle: Yea
Councilor Brian LeBlanc: Yea
Councilor Ellie Jones: Yea
Councilor John Geissler: Yea
Mayor Wayne Boucher: Yea

Yea: 5, Nay: 0

B. 2023-154 Resolution Approving Cooperative Agreement With St. Louis County SAP 069-606-031 Construction Of Culvert Replacement Project On CSAH 6 (Maple Grove Road) Between TH2 And CSAH 13 (Midway Road) Within The City Of Hermantown Corporate Limits

(motion, roll call)

Motion to approve 2023-154 Resolution Approving Cooperative Agreement With St. Louis County SAP 069-606-031 Construction Of Culvert Replacement Project On CSAH 6 (Maple Grove Road) Between TH2 And CSAH 13 (Midway Road) Within The City Of Hermantown Corporate Limits. This motion, made by Councilor Brian LeBlanc and seconded by Councilor John Geissler, Carried.

Councilor Andy Hjelle: Yea
Councilor Brian LeBlanc: Yea
Councilor Ellie Jones: Yea
Councilor John Geissler: Yea
Mayor Wayne Boucher: Yea

Yea: 5, Nay: 0

C. 2023-155 Resolution Approving Cooperative Agreement With St. Louis County Intends To Undertake A Microsurface Project On Various Paved Roads (CP 0004-778336 (Low) (Arrowhead Road)) Within The City Of Hermantown Corporate Limits

(motion, roll call)

Motion to approve 2023-155 Resolution Approving Cooperative Agreement With St. Louis County Intends To Undertake A Microsurface Project On Various Paved Roads (CP 0004-778336 (Low) (Arrowhead Road)) Within The City Of Hermantown Corporate Limits. This motion, made by Councilor John Geissler and seconded by Councilor Ellie Jones, Carried.

Councilor Andy Hjelle: Yea
Councilor Brian LeBlanc: Yea
Councilor Ellie Jones: Yea
Councilor John Geissler: Yea
Mayor Wayne Boucher: Yea

Yea: 5, Nay: 0

D. 2023-156 Resolution Approving A Special Use Permit For Grading And Filling Within A Natural Shoreland Overlay Area

(motion, roll call)

Motion to approve 2023-156 Resolution Approving A Special Use Permit For Grading And Filling Within A Natural Shoreland Overlay Area. This motion, made by Councilor Andy Hjelle and seconded by Councilor Ellie Jones, Carried.

Councilor Andy Hjelle: Yea
Councilor Brian LeBlanc: Yea
Councilor Ellie Jones: Yea
Councilor John Geissler: Yea
Mayor Wayne Boucher: Yea

Yea: 5, Nay: 0

13. **CLOSED SESSION**

14. **RECESS**

Motion to recess at 6:51 p.m. This motion, made by Councilor Ellie Jones and seconded by Councilor John Geissler, Carried.

Councilor Andy Hjelle: Yea
Councilor Brian LeBlanc: Yea

Councilor Ellie Jones: Yea
Councilor John Geissler: Yea
Mayor Wayne Boucher: Yea

Yea: 5, Nay: 0

Mayor

ATTEST:

City Clerk

CITY OF HERMANTOWN

CHECKS #70405-70440
11/01/2023 - 11/15/2023

PAYROLL CHECKS

Electronic Checks - #-67202-67245 \$85,928.68

LIABILITY CHECKS

Electronic Checks - #-67197-67201 \$63,239.25

Electronic Checks - #-67246-67246 \$78,825.39

Checks - #70405-70406 \$2,298.95

PAYROLL EXPENSE TOTAL \$230,292.27

ACCOUNTS PAYABLE

Checks - #70407-70440 \$114,882.48

Electronic Payments #-99094-99117 \$274,060.70

ACCOUNTS PAYABLE TOTAL \$388,943.18

TOTAL \$619,235.45

CITY OF HERMANTOWN, MN 11/01/2023-11/15/2023
Check # is between -99117 and -99094 or Check # is between 70407 and 70440

11/9/2023

Page 1

Fun d	Account	Department	Vendor Name	Description	Amount	Check #
101	422100	Fire Administration	WEX HEALTH INC	4th QTR VEBA 2023 C	833.34	-99117
601	494400	Water Administration and General	AT&T MOBILITY	Cell Phones/Tablets-PW/CH	310.70	-99116
101	419901	City Hall & Police Building Maintenance	AT&T MOBILITY	Cell Phones/Tablets-PW/CH	44.94	-99116
602	494900	Sewer Administration and General	AT&T MOBILITY	Cell Phones/Tablets-PW/CH	182.02	-99116
101	421100	Police Administration	AT&T MOBILITY	Cell Phones PD	1,354.65	-99116
101	431100	Street Department	AT&T MOBILITY	Cell Phones/Tablets-PW/CH	157.28	-99116
101	415300	Administration & Finance	AT&T MOBILITY	Cell Phones/Tablets-PW/CH	149.41	-99116
101	421100	Police Administration	GREATAMERICA FINANCIAL SERVICES	Copier Lease/Konica C300&C3320	119.58	-99115
101	415300	Administration & Finance	GREATAMERICA FINANCIAL SERVICES	Copier Lease/Konica C458	117.87	-99115
601	494300	Water Distribution	CITY OF DULUTH COMFORT SYSTEMS	Oct Water Charges	69,371.37	-99114
101	421100	Police Administration	BRAY & REED LTD.	Prosecution Services Oct 2023	4,500.00	-99113
230	465100	HEDA	CREATIVE ARCADE	Website Monthly Maintenance	250.03	-99112
101	419901	City Hall & Police Building Maintenance	GOODIN COMPANY INC	Control Board for Modine Heate	352.44	-99111
601	494300	Water Distribution	GOODIN COMPANY INC	Relief Valve	24.99	-99111
101	452200	Community Building	GOODIN COMPANY INC	Thermostat - OCH	34.51	-99111
101	422902	Firehall #2 Morris Thomas Road	GOODIN COMPANY INC	Toilet Repair Kit - FH2	33.75	-99111
101	422902	Firehall #2 Morris Thomas Road	GOODIN COMPANY INC	Part for Toilet - FH2	61.43	-99111
101	422902	Firehall #2 Morris Thomas Road	GOODIN COMPANY INC	Parts for Toilet - FH2	38.73	-99111
101	419901	City Hall & Police Building Maintenance	GOODIN COMPANY INC	Toilet Parts - CH	363.50	-99111
101	419901	City Hall & Police Building Maintenance	GOODIN COMPANY INC	Parts for Toilet - CH	6.75	-99111
101	419901	City Hall & Police Building Maintenance	GOODIN COMPANY INC	Control Board for Modine Heate	-171.00	-99111
101	422902	Firehall #2 Morris Thomas Road	GOODIN COMPANY INC	Solenoid - Toilet Repair - FH2	229.63	-99111
602	494900	Sewer Administration and General	GOPHER STATE ONE-CALL INC	Oct 23 Locates	95.04	-99110
601	494400	Water Administration and General	GOPHER STATE ONE-CALL INC	Oct 23 Locates	142.56	-99110
101	431901	City Garage	HARTEL'S/DBJ DISPOSAL CO LLC	Yard Trash Disp Oct23-162885	187.36	-99109
101	419901	City Hall & Police Building Maintenance	HARTEL'S/DBJ DISPOSAL CO LLC	Garbage Recycling Oct23-129404	713.66	-99109
101	421100	Police Administration	INFOBUREAU SERVICES, INC.	Credit Check - Stein & Hedin	30.00	-99108
101	431100	Street Department	INTER CITY OIL CO INC	Fuel	1,464.23	-99107
101	431100	Street Department	INTER CITY OIL CO INC	Fuel	1,205.92	-99107
101	431100	Street Department	INTER CITY OIL CO INC	Fuel	1,068.26	-99107
101	431100	Street Department	INTER CITY OIL CO INC	Fuel	919.37	-99107
603	441100	Storm Water	LHB INC	Hermantown Rocky Run Creek Bri	8,332.00	-99106
240	433500	Water Improvements	BRAUN INTERTEC CORPORATION	Stebner Park Rdwy & Utilities	1,767.50	-99105
230	465100	HEDA	BRAUN INTERTEC CORPORATION	Future Business Park Site - AU	1,342.50	-99105
402	431150	Street Improvements	BRAUN INTERTEC CORPORATION	Ugstad Road Project	8,080.00	-99105
475	431150	Street Improvements	EPC ENGINEERING & TESTING LLC 21	Richard Lindgren - SAP 202-080	3,310.00	-99104
101	431100	Street Department	MCCOY CONSTRUCTION & FORESTRY, INC	Touch Up Paint	28.26	-99103
101	431100	Street Department	NORTHERN ENGINE & SUPPLY INC	Sander Light - H1	172.50	-99102

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Fun d	Account	Department	Vendor Name	Description	Amount	Check #
101	431100	Street Department	NORTHERN STATES SUPPLY INC	Nuts	20.93	-99101
412	419100	Community Development	NORTHLAND CONSULTING ENGINEERS L.L.P.	Hermantown Trail Project	10,469.00	-99100
240	433500	Water Improvements	NORTHLAND CONSULTING ENGINEERS L.L.P.	Stebner Park Utilities	9,001.50	-99100
101	214500	Escrow Deposits Payable	NORTHLAND CONSULTING ENGINEERS L.L.P.	Peyton Property Development	160.00	-99100
415	465200	Community Development	NORTHLAND CONSULTING ENGINEERS L.L.P.	Hermantown Ice Arena	5,000.00	-99100
101	431130	City Engineer	NORTHLAND CONSULTING ENGINEERS L.L.P.	Design Engineering Services	1,260.00	-99100
240	432510	Trunk Sewer Construction	NORTHLAND CONSULTING ENGINEERS L.L.P.	Oak Ridge Dr. Sanitary Sewer E	25,550.00	-99100
603	441100	Storm Water	NORTHLAND CONSULTING ENGINEERS L.L.P.	Rocky Run Bridge Replacement	480.00	-99100
475	431150	Street Improvements	NORTHLAND CONSULTING ENGINEERS L.L.P.	Richard Lindgren - SAP 202-080	11,587.50	-99100
402	431150	Street Improvements	NORTHLAND CONSULTING ENGINEERS L.L.P.	Ugstad Rd - SP 202-101-014	1,440.00	-99100
101	431100	Street Department	NORTHLAND CONSULTING ENGINEERS L.L.P.	PO 2313 MSA	720.00	-99100
101	431100	Street Department	NORTHLAND CONSULTING ENGINEERS L.L.P.	Preagenda/City Council/Four Sq	1,890.00	-99100
416	452100	Parks	NORTHLAND CONSULTING ENGINEERS L.L.P.	Fichtner Park Improvements	3,367.50	-99100
101	419100	Community Development	NORTHLAND CONSULTING ENGINEERS L.L.P.	PO 2364 Kolar Hyundai	270.00	-99100
475	431150	Street Improvements	NORTHLAND CONSULTING ENGINEERS L.L.P.	Hermantown Rd & Old Midway Rd	13,720.00	-99100
415	465200	Community Development	OVEROM LAW, PLLC	Arena Construction	1,155.00	-99099
101	416100	City Attorney	OVEROM LAW, PLLC	City Hall Roof Insulation Proj	279.50	-99099
415	465200	Community Development	OVEROM LAW, PLLC	Naming Rights Agreement Matter	75.00	-99099
230	465100	HEDA	OVEROM LAW, PLLC	Hwy 53 Business Park Developme	165.00	-99099
415	465200	Community Development	OVEROM LAW, PLLC	Construction Manager at Risk M	2,990.00	-99099
260	456101	Cable	OVEROM LAW, PLLC	2023 Mediacom Franchise Renewa	48.00	-99099
101	422100	Fire Administration	OVEROM LAW, PLLC	Creation of New City Fire Dept	917.00	-99099
101	421100	Police Administration	OVEROM LAW, PLLC	Prosecution Contract Matters	48.00	-99099
415	465200	Community Development	OVEROM LAW, PLLC	Mediacom Sponsorsihp Matters	221.00	-99099
101	416100	City Attorney	OVEROM LAW, PLLC	Earned Sick and Safe Time	36.00	-99099
101	416100	City Attorney	OVEROM LAW, PLLC	Sugar Maple Drive Erosion	120.00	-99099
230	465100	HEDA	OVEROM LAW, PLLC	Hermantown Business Park Rezon	60.00	-99099
101	421100	Police Administration	OVEROM LAW, PLLC	Student Resource Officers (SRO	36.00	-99099
101	416100	City Attorney	OVEROM LAW, PLLC	Complaint Against City by Dale	884.66	-99099
101	419100	Community Development	OVEROM LAW, PLLC	Agritainment Matters (Farm Bas	71.00	-99099
602	494900	Sewer Administration and General	OVEROM LAW, PLLC	Deferrals of Assessments	107.75	-99099
415	465200	Community Development	OVEROM LAW, PLLC	State Grant - Bond Financed Pr	2,122.25	-99099
412	419100	Community Development	OVEROM LAW, PLLC	Zierden/BMAX Property Purchase	743.00	-99099
415	465200	Community Development	OVEROM LAW, PLLC	Purchase of Chiller - Recreati	255.00	-99099
230	465100	HEDA	OVEROM LAW, PLLC	P&R Properties Engwalls Develo	195.00	-99099
101	419100	Community Development	OVEROM LAW, PLLC	Stebner Farms Projects	60.00	-99099
101	416100	City Attorney	OVEROM LAW, PLLC	General Matters/Retainer	2,000.00	-99099
230	465100	HEDA	OVEROM LAW, PLLC	HEDA Agenda Matters	135.00	-99099

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Fun d	Account	Department	Vendor Name	Description	Amount	Check #
101	416100	City Attorney	OVEROM LAW, PLLC	Paul Sens Accident Claim	120.00	-99099
230	465100	HEDA	OVEROM LAW, PLLC	HEDA Xcel Development	255.00	-99099
101	416100	City Attorney	OVEROM LAW, PLLC	3M PFAS Class Action	276.00	-99099
101	416100	City Attorney	OVEROM LAW, PLLC	5547 Highway 2 Zoning Violatio	132.00	-99099
603	441100	Storm Water	OVEROM LAW, PLLC	Hermantown Road Bridge Updates	59.00	-99099
402	431150	Street Improvements	OVEROM LAW, PLLC	Ugstad & Arrowhead Rd Improv D	1,852.50	-99099
601	494400	Water Administration and General	PITNEY BOWES INC	Ink Ctg	45.65	-99098
101	415300	Administration & Finance	PITNEY BOWES INC	Ink Ctg	91.28	-99098
602	494900	Sewer Administration and General	PITNEY BOWES INC	Ink Ctg	45.65	-99098
602	494500	Sewer Maintenance	SJE-RHOMBUS, INC.	SCADA Monitoring Oct-Dec 2023	1,264.50	-99097
101	422100	Fire Administration	VC3	Replacement Switch for Fire Ha	260.00	-99096
101	431100	Street Department	VIKING INDUSTRIAL CENTER	Safety Supplies	724.45	-99095
602	494500	Sewer Maintenance	WLSSD	Wastewater Charges	46,175.00	-99094
602	494500	Sewer Maintenance	WLSSD	2nd Half District Wide Allocat	17,874.00	-99094
101	134000	Retiree Insurance/Telephone Reimb.	MN LIFE	Nov Inactive - Rich	21.51	70407
101	134000	Retiree Insurance/Telephone Reimb.	MN LIFE	Nov Inactive - Volk	44.41	70407
101	431100	Street Department	A W KUETTEL & SONS INC	Plow Fix	2,117.00	70408
245	415300	Administration & Finance	BAKER TILLY US, LLP	Classification & Compensation	14,022.50	70409
101	214000	Security Deposits Payable	BEACON SPORTS BAR & GRILL	Permit Deposit Refund	250.00	70410
602	494500	Sewer Maintenance	CENTRAL PENSION FUND	Training Per Contract	41.56	70411
101	431100	Street Department	CENTRAL PENSION FUND	Training Per Contract	41.55	70411
601	494300	Water Distribution	CENTRAL PENSION FUND	Training Per Contract	41.56	70411
101	422903	Firehall #3 Midway Road	CENTURYLINK	Internet FH3 10/22/23-11/21/23	79.98	70412
101	422902	Firehall #2 Morris Thomas Road	CENTURYLINK	Internet FH2 10/28/23-11/27/23	79.98	70412
101	431100	Street Department	CINTAS CORPORATION	Uniforms	23.38	70413
101	431901	City Garage	CINTAS CORPORATION	Mats - PW	30.03	70413
101	431100	Street Department	CINTAS CORPORATION	Uniforms	7.92	70413
101	431901	City Garage	CINTAS CORPORATION	Supplies	28.51	70413
101	419901	City Hall & Police Building Maintenance	CINTAS CORPORATION	Mats at FD/PD	30.72	70413
101	419901	City Hall & Police Building Maintenance	CINTAS CORPORATION	Mats at CH	8.88	70413
601	494300	Water Distribution	CORE & MAIN LP	Meter Horns	3,600.71	70414
245	465100	HEDA	COSTIN GROUP MN	City Lobbyist	1,500.00	70415
101	422100	Fire Administration	ESSENTIA HEALTH	Test - S Johnson	3,499.00	70416
601	494300	Water Distribution	FERGUSON WATERWORKS #2516	Water Valve Gaskets	699.71	70417
101	431100	Street Department	HERMANTOWN HYDRAULICS	Hose Couplers - H1	54.00	70418
101	431100	Street Department	HERMANTOWN HYDRAULICS	Hoses - H1	272.76	70418
101	411300	Ordinance, Public Notice and Proceedings	HERMANTOWN STAR LLC	Ordinance - 22023-09	90.75	70419
101	424100	Building Inspection	HERMANTOWN STAR LLC	Certified Building Official Ad	148.50	70419

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Fun d	Account	Department	Vendor Name	Description	Amount	Check #
101	411300	Ordinance, Public Notice and Proceedings	HERMANTOWN STAR LLC	City Council Minutes	99.00	70419
101	421100	Police Administration	HOLIDAY COMPANIES	Car Washes - Oct 2023	30.00	70420
101	421100	Police Administration	HOLIDAY COMPANIES	Car Washes - Sept 2023	15.00	70420
101	422100	Fire Administration	INNOVATIVE OFFICE SOLUTIONS, LLC	Name Plate - Fire Chief	18.47	70421
603	441100	Storm Water	INNOVATIVE OFFICE SOLUTIONS, LLC	Name Plate - Utility Director	2.77	70421
601	494400	Water Administration and General	INNOVATIVE OFFICE SOLUTIONS, LLC	Name Plate - Utility Director	4.62	70421
602	494900	Sewer Administration and General	INNOVATIVE OFFICE SOLUTIONS, LLC	Name Plate - Utility Director	4.62	70421
101	419100	Community Development	INNOVATIVE OFFICE SOLUTIONS, LLC	Name Plate - Utility Director	6.46	70421
101	413100	Mayor	INNOVATIVE OFFICE SOLUTIONS, LLC	Signature Stamp - Mayor	41.00	70421
101	431100	Street Department	KRAEMER CONSTRUCTION, INC.	steel for heavy haul trailer	40.00	70422
101	431100	Street Department	KWIK TRIP EXTENDED NETWORK	Car Wash PW	9.00	70423
602	494500	Sewer Maintenance	KWIK TRIP EXTENDED NETWORK	Gas Utility	276.72	70423
601	494300	Water Distribution	KWIK TRIP EXTENDED NETWORK	Gas Utility	415.09	70423
101	431100	Street Department	KWIK TRIP EXTENDED NETWORK	Gas Street	370.90	70423
101	421100	Police Administration	KWIK TRIP EXTENDED NETWORK	Gas PD	4,288.86	70423
101	421100	Police Administration	KWIK TRIP EXTENDED NETWORK	Car Wash PD	202.99	70423
101	419901	City Hall & Police Building Maintenance	KWIK TRIP EXTENDED NETWORK	Gas Building	76.31	70423
101	431100	Street Department	LINDE GAS & EQUIPMENT INC.	CyldrRnt/SfEnvFee9/20-10/20/23	70.07	70424
601	494300	Water Distribution	MAVO CONCRETE SAWING SERVICES, INC.	Saw Cutting Various Locations	498.75	70425
101	415300	Administration & Finance	MELDE, MARY	Gold Pen for Christmas Cards	3.49	70426
101	419901	City Hall & Police Building Maintenance	MENARD INC	Pick Set/T-Stat	23.98	70427
601	494300	Water Distribution	MENARD INC	Hydrant Pump & Fittings	390.48	70427
601	494300	Water Distribution	MENARD INC	Drill Bit	21.76	70427
101	419901	City Hall & Police Building Maintenance	MENARD INC	Gloves/Batteries/Knife & Scrap	59.32	70427
101	214500	Escrow Deposits Payable	MILLER, DAVID	Erosion Control Deposit Refund	500.00	70428
101	419901	City Hall & Police Building Maintenance	MN TELECOMMUNICATIONS	Nov 2023 Internet	360.00	70429
101	422901	Firehall #1 Maple Grove Road	MN TELECOMMUNICATIONS	Nov 2023 Internet	90.00	70429
245	452100	Parks	MN-WI PLAYGROUND	Play Equipment/Playcurb/Wood F	22,680.00	70430
101	415300	Administration & Finance	MULDER, JOHN	Reimburse Travel & Food	86.79	70431
101	431100	Street Department	NAPA AUTO PARTS	Filters - H2 & H3	404.14	70432
101	431100	Street Department	NAPA AUTO PARTS	Motor Tune-Up	25.47	70432
101	431100	Street Department	NAPA AUTO PARTS	Antifreeze	67.49	70432
101	431100	Street Department	NAPA AUTO PARTS	Rust Proofing	129.87	70432
601	494300	Water Distribution	PRO TIRE	Tires - 3/4 Ton - H6	1,730.32	70433
101	431100	Street Department	SIR LINES-A-LOT, LLC	Hermantown 2023 Striping	39,647.88	70434
602	494500	Sewer Maintenance	SMITTY'S AUTOMOTIVE INC	Oil Cooler Hose - H5	464.46	70435
101	421100	Police Administration	STREICHER'S	Uniform - Towner	87.99	70436
101	421100	Police Administration	STREICHER'S	Uniform - Towner	200.00	70436

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Fun d	Account	Department	Vendor Name	Description	Amount	Check #
101	421100	Police Administration	STREICHER'S	Uniform - Towner	824.70	70436
101	421100	Police Administration	STREICHER'S	Uniform - Prouse	75.00	70436
101	421100	Police Administration	STREICHER'S	Uniform - Towner	120.00	70436
601	494300	Water Distribution	TRENCHERS PLUS, INC	Vac Trailer Plunger	310.22	70437
601	494300	Water Distribution	TRENCHERS PLUS, INC	Fuel Filter - Vac Trailer	39.60	70437
601	494300	Water Distribution	TRENCHERS PLUS, INC	Fuel Filters - Vac Trailer	1,119.39	70437
101	421100	Police Administration	TROY'S BP AMOCO INC	Tires - SQD 12	742.00	70438
101	421100	Police Administration	TROY'S BP AMOCO INC	Tires - SQD 15	742.00	70438
101	421100	Police Administration	TROY'S BP AMOCO INC	Tires - SQD 11	742.00	70438
601	494400	Water Administration and General	VALLI INFORMATION SYSTEMS, INC	Oct 2023 Bill Print	736.20	70439
602	494900	Sewer Administration and General	VALLI INFORMATION SYSTEMS, INC	Oct 2023 Bill Print	736.19	70439
603	441100	Storm Water	VALLI INFORMATION SYSTEMS, INC	Oct 2023 Bill Print	736.19	70439
603	441100	Storm Water	ZIEGLER INC	Mulcher head and Skid steer r	3,975.92	70440
602	494500	Sewer Maintenance	ZIEGLER INC	Mulcher head and Skid steer r	3,500.00	70440
601	494300	Water Distribution	ZIEGLER INC	Mulcher head and Skid steer r	304.08	70440

Totals: 167 records printed

388,943.18

Resolution No. 2023-157

Resolution Adopting An Assessment Against The Mercier Parcel (395-0010-02821) For Road Improvement District No. 534 (“Project 534”)

WHEREAS, pursuant to proper notice duly given as required by law, the City Council held a hearing on the proposed assessment roll on October 30, 2023 at 6:45 p.m. for Road Improvement District No. 534 (Arrowhead Road and Ugstad Road) ("Project"). The hearings held on October 30, 2023 are hereinafter collectively referred to as the “Assessment Hearings;” and

WHEREAS, prior to or at the Assessment Hearings, a written objection to the proposed assessment was received from Scott Mercier (“Mercier”) with respect to the assessment against the property owned by him and assigned Parcel Number 395-0010-02821 (“Mercier Parcel”); and

WHEREAS, pursuant to the provisions of Hermantown Resolution No. 82-52, an Adjourned hearing was held on October 30, 2023 (“Adjourned Hearing”); and

WHEREAS, Mercier appeared at the Adjourned Hearing and provided an explanation of the basis for his objection to the proposed assessment against the Mercier Parcel; and

WHEREAS, Mercier did not have any written property valuation evidence to present to the City at the objection hearing; and

WHEREAS, the City obtained a Report from Nagell Appraisal & Consulting (“Nagell Report”) with regard to the general range of market benefit for properties from the Road Improvement Plan in 2020; and

WHEREAS, the Nagell Report indicated that the Project would create a benefit to affected properties between \$8,000.00 and \$12,000.00; and

WHEREAS, a road adjacent to a parcel of property is a basic service/benefit to the parcel of property no matter the value of improvements/homes/buildings on the parcel; and

WHEREAS, the City Council having received and considered all of the evidence presented to it at the Assessment Hearings and the Adjourned Hearing, and upon the entire City file in this matter, hereby makes the following:

FINDINGS OF FACT

1. Due and proper notice of the Assessment Hearings and Adjourned Hearing was given to Mercier.

2. The methodology followed by the City in determining the amount proposed to be assessed against the Mercier Parcel was and is fair, equitable and reasonable.

3. Mercier advised the City Council, among other things, that the road improvements did not benefit his property but did not provide any written property valuation to the City.

4. The amount proposed to be assessed against the Mercier Parcel was and is based upon the City's policy that each person who abuts the road should be pay an equal amount regardless of the size of their parcel as each household needs road access for their property. To that end, the City uses a per lot assessment method for road improvement projects. Therefore, the amount proposed to be assessed against the Mercier Parcel does not exceed the benefits received by the Mercier Parcel.

On the basis of the foregoing Findings of Fact, which are hereby adopted, the City Council of the City of Hermantown is hereby resolved as follows:

1. An assessment of \$9,750.00 is hereby adopted and shall constitute the special assessment against the Mercier Parcel.

2. Such assessment shall be payable as follows:

2.1. The assessment shall be payable in equal annual installments, including principal and interest, extending over a period of fifteen (15) years, with interest at the rate of four percent (4.00 %) per annum, from and after December 31, 2023 in an amount annually required to pay the principal over such period at such interest rate. The first of such installments is to be paid with the general taxes for the year 2023, collectible with such taxes during the year 2014.

2.2. Mercier may, at any time, prior to December 31, 2023 pay the whole of the assessment without interest to the City, and thereafter at any time prior to November 15 of any year, prepay to the City the whole of the principal amount of the assessment remaining due, provided that no such prepayment shall be accepted without payment of (i) all installments, including interest and principal due to and including December 31 of the year of prepayment, and (ii) the original principal amount reduced only by the amount of principal included in such installments computed on an annual amortization basis. Partial prepayments of assessments have not been authorized by ordinance of the City of Hermantown.

3. The City Clerk shall file the assessment pertaining to the Mercier Parcel in her office and shall certify it to the St. Louis County Auditor on or before November 30, 2023.

4. The City Clerk shall mail a notice of the adoption of the assessment roll to Mercier. Such notice shall be in substantially the form of the one attached as Exhibit A.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors, _____, Mayor Boucher, aye.

and the following voted in opposition thereto:

None.

WHEREUPON, such resolution was declared duly passed and adopted on November 20, 2023.

EXHIBIT A
NOTICE OF FINAL ASSESSMENT

Hermantown, Minnesota
_____, 2023

TO: Scott Mercier

This is to notify you that the final assessment with respect to your property for the construction of Road Improvement District No. 534 (Arrowhead Road and Ugstad Road) was adopted by the City Council of the City of Hermantown on November 20, 2023 pursuant to Minnesota Statutes, Chapter 429. The final assessment is on file for inspection in the office of the City Clerk.

As a result of the adoption of the assessment roll, the assessment against the property owned/occupied/leased by you which has been assigned CVT-Plat-Parcel Number 395-0010-02821, is \$9,750.00. Such assessment will be payable, together with interest at the rate of four percent (4.00%) per annum with real estate taxes for the years 2024-2039 inclusive payable in the years 2024-2039 inclusive. Such assessment may be prepaid in full without interest, if payment is received by the City prior to December 31, 2023 and thereafter the assessment may be prepaid at any time prior to November 15 of any year if such prepayment includes (i) all installments, including interest and principal due to and including December 31 of the year of prepayment and (ii) the original principal amount reduced only by the amount of principal included in such installments computed on an annual amortization basis. Partial prepayments of the assessment have not been authorized by ordinance of the City of Hermantown.

An owner who filed a written objection with the City Clerk at or before the assessment hearing, or an owner that had reasonable cause for failing to file a written objection at or before the assessment hearing may appeal the assessment against his or her property to the District Court pursuant to Minnesota Statutes, Section 429.081, by serving notice of the appeal upon the Mayor or City Clerk within thirty (30) days after the adoption of the assessment and filing such notice with the Clerk of the District Court within ten (10) days after its service upon the Mayor or City Clerk.

Pursuant to §435.193 to 435.195 of the Minnesota Statutes and Hermantown Resolution No. 2010-99, the City Council may, in its discretion, defer the payment of a special assessment for any homestead property owned by a person sixty-five (65) years of age or older or a person who is retired due to permanent disability for whom it would be a hardship to make the payments. By Resolution No. 2010-99 the Hermantown City Council has established criteria for the consideration of requests for deferrals of special assessments, the payment of interest during the period of the deferral, the term of the deferral and the payments required when the deferral terminates. Any assessed property owner meeting the requirements of such law and City of Hermantown Resolution No. 2010-99 may, on a form obtained from the City Clerk, apply for such deferral of payment of a special assessment.

CITY OF HERMANTOWN

By _____
Its City Clerk

Resolution No. 2023-158

Resolution Adopting An Assessment Against The Jobin Parcel (395-0010-02822) For Road Improvement District No. 534 (“Project 534”)

WHEREAS, pursuant to proper notice duly given as required by law, the City Council held a hearing on the proposed assessment roll on October 30, 2023 at 7:30 p.m. for Road Improvement District No. 534 (Arrowhead Road and Ugstad Road) ("Project"). The hearings held on October 30, 2023 are hereinafter collectively referred to as the “Assessment Hearings;” and

WHEREAS, prior to or at the Assessment Hearings, a written objection to the proposed assessment was received from Martin Jobin (“Jobin”) with respect to the assessment against the property owned by him and assigned Parcel Number 395-0010-02822 (“Jobin Parcel”); and

WHEREAS, pursuant to the provisions of Hermantown Resolution No. 82-52, an Adjourned hearing was held on October 30, 2023 (“Adjourned Hearing”); and

WHEREAS, Jobin appeared at the Adjourned Hearing and provided an explanation of the basis for his objection to the proposed assessment against the Jobin Parcel; and

WHEREAS, Jobin did not have any written property valuation evidence to present to the City at the objection hearing; and

WHEREAS, the City obtained a Report from Nagell Appraisal & Consulting (“Nagell Report”) with regard to the general range of market benefit for properties from the Road Improvement Plan in 2020; and

WHEREAS, the Nagell Report indicated that the Project would create a benefit to affected properties between \$8,000.00 and \$12,000.00; and

WHEREAS, a road adjacent to a parcel of property is a basic service/benefit to the parcel of property no matter the value of improvements/homes/buildings on the parcel; and

WHEREAS, the City Council having received and considered all of the evidence presented to it the Assessment Hearings and the Adjourned Hearing, and upon the entire City file in this matter, hereby makes the following:

FINDINGS OF FACT

1. Due and proper notice of the Assessment Hearings and Adjourned Hearing was given to Jobin.
2. The methodology followed by the City in determining the amount proposed to be assessed against the Jobin Parcel was and is fair, equitable and reasonable.

3. Jobin informed the City Council that the road improvements should not fall solely on the Ugstad and Arrowhead residents, rather be spread onto YMCA and school district..

4. The amount proposed to be assessed against the Jobin Parcel was and is based upon the City's policy that each person who abuts the road should be pay an equal amount regardless of the size of their parcel as each household needs road access for their property. To that end, the City uses a per lot assessment method for road improvement projects. Therefore, the amount proposed to be assessed against the Jobin Parcel does not exceed the benefits received by the Jobin Parcel.

On the basis of the foregoing Findings of Fact, which are hereby adopted, the City Council of the City of Hermantown is hereby resolved as follows:

1. An assessment of \$9,750.00 is hereby adopted and shall constitute the special assessment against the Jobin Parcel.

2. Such assessment shall be payable as follows:

2.1. The assessment shall be payable in equal annual installments, including principal and interest, extending over a period of fifteen (15) years, with interest at the rate of four percent (4.00 %) per annum, from and after December 31, 2023 in an amount annually required to pay the principal over such period at such interest rate. The first of such installments is to be paid with the general taxes for the year 2023, collectible with such taxes during the year 2014.

2.2. Jobin may, at any time, prior to December 31, 2023 pay the whole of the assessment without interest to the City, and thereafter at any time prior to November 15 of any year, prepay to the City the whole of the principal amount of the assessment remaining due, provided that no such prepayment shall be accepted without payment of (i) all installments, including interest and principal due to and including December 31 of the year of prepayment, and (ii) the original principal amount reduced only by the amount of principal included in such installments computed on an annual amortization basis. Partial prepayments of assessments have not been authorized by ordinance of the City of Hermantown.

3. The City Clerk shall file the assessment pertaining to the Jobin Parcel in her office and shall certify it to the St. Louis County Auditor on or before November 30, 2023.

4. The City Clerk shall mail a notice of the adoption of the assessment roll to Jobin. Such notice shall be in substantially the form of the one attached as Exhibit A.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors, _____, Mayor Boucher, aye.

and the following voted in opposition thereto:

None.

WHEREUPON, such resolution was declared duly passed and adopted on November 20, 2023.

EXHIBIT A
NOTICE OF FINAL ASSESSMENT

Hermantown, Minnesota
_____, 2023

TO: Martin Jobin

This is to notify you that the final assessment with respect to your property for the construction of Road Improvement District No. 534 (Arrowhead Road and Ugstad Road) was adopted by the City Council of the City of Hermantown on November 20, 2023 pursuant to Minnesota Statutes, Chapter 429. The final assessment is on file for inspection in the office of the City Clerk.

As a result of the adoption of the assessment roll, the assessment against the property owned/occupied/leased by you which has been assigned CVT-Plat-Parcel Number 395-0010-02822, is \$9,750.00. Such assessment will be payable, together with interest at the rate of four percent (4.00%) per annum with real estate taxes for the years 2024-2039 inclusive payable in the years 2024-2039 inclusive. Such assessment may be prepaid in full without interest, if payment is received by the City prior to December 31, 2023 and thereafter the assessment may be prepaid at any time prior to November 15 of any year if such prepayment includes (i) all installments, including interest and principal due to and including December 31 of the year of prepayment and (ii) the original principal amount reduced only by the amount of principal included in such installments computed on an annual amortization basis. Partial prepayments of the assessment have not been authorized by ordinance of the City of Hermantown.

An owner who filed a written objection with the City Clerk at or before the assessment hearing, or an owner that had reasonable cause for failing to file a written objection at or before the assessment hearing may appeal the assessment against his or her property to the District Court pursuant to Minnesota Statutes, Section 429.081, by serving notice of the appeal upon the Mayor or City Clerk within thirty (30) days after the adoption of the assessment and filing such notice with the Clerk of the District Court within ten (10) days after its service upon the Mayor or City Clerk.

Pursuant to §435.193 to 435.195 of the Minnesota Statutes and Hermantown Resolution No. 2010-99, the City Council may, in its discretion, defer the payment of a special assessment for any homestead property owned by a person sixty-five (65) years of age or older or a person who is retired due to permanent disability for whom it would be a hardship to make the payments. By Resolution No. 2010-99 the Hermantown City Council has established criteria for the consideration of requests for deferrals of special assessments, the payment of interest during the period of the deferral, the term of the deferral and the payments required when the deferral terminates. Any assessed property owner meeting the requirements of such law and City of Hermantown Resolution No. 2010-99 may, on a form obtained from the City Clerk, apply for such deferral of payment of a special assessment.

CITY OF HERMANTOWN

By _____
Its City Clerk

Resolution No. 2023-159

Resolution Adopting An Assessment Against The Volk Parcel (395-0070-00102) For Road Improvement District No. 534 (“Project 534”)

WHEREAS, pursuant to proper notice duly given as required by law, the City Council held a hearing on the proposed assessment roll on October 30, 2023 at 7:00 p.m. for Road Improvement District No. 534 (Arrowhead Road and Ugstad Road) ("Project"). The hearing held on October 30, 2023 are hereinafter collectively referred to as the “Assessment Hearings;” and

WHEREAS, prior to or at the Assessment Hearings, a written objection to the proposed assessment was received from Lisa Volk (“Volk”) with respect to the assessment against the property owned by him and assigned Parcel Number 395-0070-00102 (“Volk Parcel”); and

WHEREAS, pursuant to the provisions of Hermantown Resolution No. 82-52, an Adjourned hearing was held on October 30, 2023 (“Adjourned Hearing”); and

WHEREAS, Volk appeared at the Adjourned Hearing and provided an explanation of the basis for his objection to the proposed assessment against the Volk Parcel; and

WHEREAS, Volk did not have any written property valuation evidence to present to the City at the objection hearing; and

WHEREAS, the City obtained a Report from Nagell Appraisal & Consulting (“Nagell Report”) with regard to the general range of market benefit for properties from the Road Improvement Plan in 2020; and

WHEREAS, the Nagell Report indicated that the Project would create a benefit to affected properties between \$8,000.00 and \$12,000.00; and

WHEREAS, a road adjacent to a parcel of property is a basic service/benefit to the parcel of property no matter the value of improvements/homes/buildings on the parcel; and

WHEREAS, the City Council having received and considered all of the evidence presented to it at the Assessment Hearings and the Adjourned Hearing, and upon the entire City file in this matter, hereby makes the following:

FINDINGS OF FACT

1. Due and proper notice of the Assessment Hearings and Adjourned Hearing was given to Volk.
2. The methodology followed by the City in determining the amount proposed to be assessed against the Volk Parcel was and is fair, equitable and reasonable.

3. Volk advised the City Council that the road improvements did not benefit because of the design. She says that the widen road decreased the shoulder on her side of the road making the drive steeper and her culvert was not replaced as requested. In addition, the new mailbox given to her leaks and damages her mail.

4. The amount proposed to be assessed against the Volk Parcel was and is based upon the City's policy that each person who abuts the road should be pay an equal amount regardless of the size of their parcel as each household needs road access for their property. To that end, the City uses a per lot assessment method for road improvement projects. Therefore, the amount proposed to be assessed against the Volk Parcel does not exceed the benefits received by the Volk Parcel.

On the basis of the foregoing Findings of Fact, which are hereby adopted, the City Council of the City of Hermantown is hereby resolved as follows:

1. An assessment of \$9,750.00 is hereby adopted and shall constitute the special assessment against the Volk Parcel.

2. Such assessment shall be payable as follows:

2.1. The assessment shall be payable in equal annual installments, including principal and interest, extending over a period of fifteen (15) years, with interest at the rate of four percent (4.00 %) per annum, from and after December 31, 2023 in an amount annually required to pay the principal over such period at such interest rate. The first of such installments is to be paid with the general taxes for the year 2023, collectible with such taxes during the year 2014.

2.2. Volk may, at any time, prior to December 31, 2023 pay the whole of the assessment without interest to the City, and thereafter at any time prior to November 15 of any year, prepay to the City the whole of the principal amount of the assessment remaining due, provided that no such prepayment shall be accepted without payment of (i) all installments, including interest and principal due to and including December 31 of the year of prepayment, and (ii) the original principal amount reduced only by the amount of principal included in such installments computed on an annual amortization basis. Partial prepayments of assessments have not been authorized by ordinance of the City of Hermantown.

3. The City Clerk shall file the assessment pertaining to the Volk Parcel in her office and shall certify it to the St. Louis County Auditor on or before November 30, 2023.

4. The City Clerk shall mail a notice of the adoption of the assessment roll to Volk. Such notice shall be in substantially the form of the one attached as Exhibit A.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors, _____, Mayor Boucher, aye.

and the following voted in opposition thereto:

None.

WHEREUPON, such resolution was declared duly passed and adopted on November 20, 2023.

EXHIBIT A
NOTICE OF FINAL ASSESSMENT

Hermantown, Minnesota
_____, 2023

TO: Lisa Volk

This is to notify you that the final assessment with respect to your property for the construction of Road Improvement District No. 534 (Arrowhead Road and Ugstad Road) was adopted by the City Council of the City of Hermantown on November 20, 2023 pursuant to Minnesota Statutes, Chapter 429. The final assessment is on file for inspection in the office of the City Clerk.

As a result of the adoption of the assessment roll, the assessment against the property owned/occupied/leased by you which has been assigned CVT-Plat-Parcel Number 395-0070-00102, is \$9,750.00. Such assessment will be payable, together with interest at the rate of four percent (4.00%) per annum with real estate taxes for the years 2024-2039 inclusive payable in the years 2024-2039 inclusive. Such assessment may be prepaid in full without interest, if payment is received by the City prior to December 31, 2023 and thereafter the assessment may be prepaid at any time prior to November 15 of any year if such prepayment includes (i) all installments, including interest and principal due to and including December 31 of the year of prepayment and (ii) the original principal amount reduced only by the amount of principal included in such installments computed on an annual amortization basis. Partial prepayments of the assessment have not been authorized by ordinance of the City of Hermantown.

An owner who filed a written objection with the City Clerk at or before the assessment hearing, or an owner that had reasonable cause for failing to file a written objection at or before the assessment hearing may appeal the assessment against his or her property to the District Court pursuant to Minnesota Statutes, Section 429.081, by serving notice of the appeal upon the Mayor or City Clerk within thirty (30) days after the adoption of the assessment and filing such notice with the Clerk of the District Court within ten (10) days after its service upon the Mayor or City Clerk.

Pursuant to §435.193 to 435.195 of the Minnesota Statutes and Hermantown Resolution No. 2010-99, the City Council may, in its discretion, defer the payment of a special assessment for any homestead property owned by a person sixty-five (65) years of age or older or a person who is retired due to permanent disability for whom it would be a hardship to make the payments. By Resolution No. 2010-99 the Hermantown City Council has established criteria for the consideration of requests for deferrals of special assessments, the payment of interest during the period of the deferral, the term of the deferral and the payments required when the deferral terminates. Any assessed property owner meeting the requirements of such law and City of Hermantown Resolution No. 2010-99 may, on a form obtained from the City Clerk, apply for such deferral of payment of a special assessment.

CITY OF HERMANTOWN

By _____
Its City Clerk

Resolution No. 2023-160

Resolution Adopting An Assessment Against The Olson Parcel (395-0070-00106) For Road Improvement District No. 534 (“Project 534”)

WHEREAS, pursuant to proper notice duly given as required by law, the City Council held a hearing on the proposed assessment roll on October 30, 2023 at 6:15 p.m. for Road Improvement District No. 534 (Arrowhead Road and Ugstad Road) ("Project"). The hearings held on October 30, 2023 are hereinafter collectively referred to as the “Assessment Hearings;” and

WHEREAS, prior to or at the Assessment Hearings, a written objection to the proposed assessment was received from Amber Olson (“Olson”) with respect to the assessment against the property owned by him and assigned Parcel Number 395-0070-00106 (“Olson Parcel”); and

WHEREAS, pursuant to the provisions of Hermantown Resolution No. 82-52, an Adjourned hearing was held on October 30, 2023 (“Adjourned Hearing”); and

WHEREAS, Olson appeared at the Adjourned Hearing and provided an explanation of the basis for his objection to the proposed assessment against the Olson Parcel; and

WHEREAS, Olson did not have any written property valuation evidence to present to the City at the objection hearing; and

WHEREAS, the City obtained a Report from Nagell Appraisal & Consulting (“Nagell Report”) with regard to the general range of market benefit for properties from the Road Improvement Plan in 2020; and

WHEREAS, the Nagell Report indicated that the Project would create a benefit to affected properties between \$8,000.00 and \$12,000.00; and

WHEREAS, a road adjacent to a parcel of property is a basic service/benefit to the parcel of property no matter the value of improvements/homes/buildings on the parcel; and

WHEREAS, the City Council having received and considered all of the evidence presented to it at the Assessment Hearings and the Adjourned Hearing, and upon the entire City file in this matter, hereby makes the following:

FINDINGS OF FACT

1. Due and proper notice of the Assessment Hearings and Adjourned Hearing was given to Olson.
2. The methodology followed by the City in determining the amount proposed to be assessed against the Olson Parcel was and is fair, equitable and reasonable.

3. Olson advised the City Council that the road improvements did not benefit her because of the road design. She said that the widen road decreased the shoulder on her side. She staed there is no sidewalk on her side of the road which makes it unsafe for her children.

4. The amount proposed to be assessed against the Olson Parcel was and is based upon the City's policy that each person who abuts the road should be pay an equal amount regardless of the size of their parcel as each household needs road access for their property. To that end, the City uses a per lot assessment method for road improvement projects. Therefore, the amount proposed to be assessed against the Olson Parcel does not exceed the benefits received by the Olson Parcel.

On the basis of the foregoing Findings of Fact, which are hereby adopted, the City Council of the City of Hermantown is hereby resolved as follows:

1. An assessment of \$9,750.00 is hereby adopted and shall constitute the special assessment against the Olson Parcel.

2. Such assessment shall be payable as follows:

2.1. The assessment shall be payable in equal annual installments, including principal and interest, extending over a period of fifteen (15) years, with interest at the rate of four percent (4.00 %) per annum, from and after December 31, 2023 in an amount annually required to pay the principal over such period at such interest rate. The first of such installments is to be paid with the general taxes for the year 2023, collectible with such taxes during the year 2014.

2.2. Olson may, at any time, prior to December 31, 2023 pay the whole of the assessment without interest to the City, and thereafter at any time prior to November 15 of any year, prepay to the City the whole of the principal amount of the assessment remaining due, provided that no such prepayment shall be accepted without payment of (i) all installments, including interest and principal due to and including December 31 of the year of prepayment, and (ii) the original principal amount reduced only by the amount of principal included in such installments computed on an annual amortization basis. Partial prepayments of assessments have not been authorized by ordinance of the City of Hermantown.

3. The City Clerk shall file the assessment pertaining to the Olson Parcel in her office and shall certify it to the St. Louis County Auditor on or before November 30, 2023.

4. The City Clerk shall mail a notice of the adoption of the assessment roll to Olson. Such notice shall be in substantially the form of the one attached as Exhibit A.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors, _____, Mayor Boucher, aye.

and the following voted in opposition thereto:

None.

WHEREUPON, such resolution was declared duly passed and adopted on November 20, 2023.

EXHIBIT A
NOTICE OF FINAL ASSESSMENT

Hermantown, Minnesota
_____, 2023

TO: Amber Olson

This is to notify you that the final assessment with respect to your property for the construction of Road Improvement District No. 534 (Arrowhead Road and Ugstad Road) was adopted by the City Council of the City of Hermantown on November 20, 2023 pursuant to Minnesota Statutes, Chapter 429. The final assessment is on file for inspection in the office of the City Clerk.

As a result of the adoption of the assessment roll, the assessment against the property owned/occupied/leased by you which has been assigned CVT-Plat-Parcel Number 395-0070-00106, is \$9,750.00. Such assessment will be payable, together with interest at the rate of four percent (4.00%) per annum with real estate taxes for the years 2024-2039 inclusive payable in the years 2024-2039 inclusive. Such assessment may be prepaid in full without interest, if payment is received by the City prior to December 31, 2023 and thereafter the assessment may be prepaid at any time prior to November 15 of any year if such prepayment includes (i) all installments, including interest and principal due to and including December 31 of the year of prepayment and (ii) the original principal amount reduced only by the amount of principal included in such installments computed on an annual amortization basis. Partial prepayments of the assessment have not been authorized by ordinance of the City of Hermantown.

An owner who filed a written objection with the City Clerk at or before the assessment hearing, or an owner that had reasonable cause for failing to file a written objection at or before the assessment hearing may appeal the assessment against his or her property to the District Court pursuant to Minnesota Statutes, Section 429.081, by serving notice of the appeal upon the Mayor or City Clerk within thirty (30) days after the adoption of the assessment and filing such notice with the Clerk of the District Court within ten (10) days after its service upon the Mayor or City Clerk.

Pursuant to §435.193 to 435.195 of the Minnesota Statutes and Hermantown Resolution No. 2010-99, the City Council may, in its discretion, defer the payment of a special assessment for any homestead property owned by a person sixty-five (65) years of age or older or a person who is retired due to permanent disability for whom it would be a hardship to make the payments. By Resolution No. 2010-99 the Hermantown City Council has established criteria for the consideration of requests for deferrals of special assessments, the payment of interest during the period of the deferral, the term of the deferral and the payments required when the deferral terminates. Any assessed property owner meeting the requirements of such law and City of Hermantown Resolution No. 2010-99 may, on a form obtained from the City Clerk, apply for such deferral of payment of a special assessment.

CITY OF HERMANTOWN

By _____
Its City Clerk

Resolution No. 2023-161

Resolution Adopting An Assessment Against The Gilbert Parcel (395-0070-00108) For Road Improvement District No. 534 (“Project 534”)

WHEREAS, pursuant to proper notice duly given as required by law, the City Council held a hearing on the proposed assessment roll on October 30, 2023 at 5:15 p.m. for Road Improvement District No. 534 (Arrowhead Road and Ugstad Road) ("Project"). The hearings held on October 30, 2023 are hereinafter collectively referred to as the “Assessment Hearings;” and

WHEREAS, prior to or at the Assessment Hearings, a written objection to the proposed assessment was received from Barbara Gilbert (“Gilbert”) with respect to the assessment against the property owned by her and assigned Parcel Number 395-0070-00108 (“Gilbert Parcel”); and

WHEREAS, pursuant to the provisions of Hermantown Resolution No. 82-52, an Adjourned hearing was held on October 30, 2023 (“Adjourned Hearing”); and

WHEREAS, Gilbert appeared at the Adjourned Hearing and provided an explanation of the basis for his objection to the proposed assessment against the Gilbert Parcel; and

WHEREAS, Gilbert did not have any written property valuation evidence to present to the City at the objection hearing; and

WHEREAS, the City obtained a Report from Nagell Appraisal & Consulting (“Nagell Report”) with regard to the general range of market benefit for properties from the Road Improvement Plan in 2020; and

WHEREAS, the Nagell Report indicated that the Project would create a benefit to affected properties between \$8,000.00 and \$12,000.00; and

WHEREAS, a road adjacent to a parcel of property is a basic service/benefit to the parcel of property no matter the value of improvements/homes/buildings on the parcel; and

WHEREAS, the City Council having received and considered all of the evidence presented to it at the Assessment Hearings and the Adjourned Hearing, and upon the entire City file in this matter, hereby makes the following:

FINDINGS OF FACT

1. Due and proper notice of the Assessment Hearings and Adjourned Hearing was given to Gilbert.
2. The methodology followed by the City in determining the amount proposed to be assessed against the Gilbert Parcel was and is fair, equitable and reasonable.

3. The amount proposed to be assessed against the Gilbert Parcel was and is based upon the City's policy that each person who abuts the road should be pay an equal amount regardless of the size of their parcel as each household needs road access for their property. To that end, the City uses a per lot assessment method for road improvement projects. Therefore, the amount proposed to be assessed against the Gilbert Parcel does not exceed the benefits received by the Gilbert Parcel.

4. At the Adjourned Hearing, Gilbert advised the City Council that the assessment would not create a financial hardship for her.

5. Gilbert was advised of the procedures for applying for a hardship deferral with regard to the assessment against her property.

On the basis of the foregoing Findings of Fact, which are hereby adopted, the City Council of the City of Hermantown is hereby resolved as follows:

1. An assessment of \$9,750.00 is hereby adopted and shall constitute the special assessment against the Gilbert Parcel.

2. Such assessment shall be payable as follows:

2.1. The assessment shall be payable in equal annual installments, including principal and interest, extending over a period of fifteen (15) years, with interest at the rate of four percent (4.00 %) per annum, from and after December 31, 2023 in an amount annually required to pay the principal over such period at such interest rate. The first of such installments is to be paid with the general taxes for the year 2023, collectible with such taxes during the year 2014.

2.2. Gilbert may, at any time, prior to December 31, 2023 pay the whole of the assessment without interest to the City, and thereafter at any time prior to November 15 of any year, prepay to the City the whole of the principal amount of the assessment remaining due, provided that no such prepayment shall be accepted without payment of (i) all installments, including interest and principal due to and including December 31 of the year of prepayment, and (ii) the original principal amount reduced only by the amount of principal included in such installments computed on an annual amortization basis. Partial prepayments of assessments have not been authorized by ordinance of the City of Hermantown.

3. The City Clerk shall file the assessment pertaining to the Gilbert Parcel in her office and shall certify it to the St. Louis County Auditor on or before November 30, 2023.

4. The City Clerk shall mail a notice of the adoption of the assessment roll to Gilbert. Such notice shall be in substantially the form of the one attached as Exhibit A.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors, _____, Mayor Boucher, aye.

and the following voted in opposition thereto:

None.

WHEREUPON, such resolution was declared duly passed and adopted on November 20, 2023.

EXHIBIT A
NOTICE OF FINAL ASSESSMENT

Hermantown, Minnesota
_____, 2023

TO: Barbara Gilbert

This is to notify you that the final assessment with respect to your property for the construction of Road Improvement District No. 534 (Arrowhead Road and Ugstad Road) was adopted by the City Council of the City of Hermantown on November 20, 2023 pursuant to Minnesota Statutes, Chapter 429. The final assessment is on file for inspection in the office of the City Clerk.

As a result of the adoption of the assessment roll, the assessment against the property owned/occupied/leased by you which has been assigned CVT-Plat-Parcel Number 395-0070-00108, is \$9,750.00. Such assessment will be payable, together with interest at the rate of four percent (4.00%) per annum with real estate taxes for the years 2024-2039 inclusive payable in the years 2024-2039 inclusive. Such assessment may be prepaid in full without interest, if payment is received by the City prior to December 31, 2023 and thereafter the assessment may be prepaid at any time prior to November 15 of any year if such prepayment includes (i) all installments, including interest and principal due to and including December 31 of the year of prepayment and (ii) the original principal amount reduced only by the amount of principal included in such installments computed on an annual amortization basis. Partial prepayments of the assessment have not been authorized by ordinance of the City of Hermantown.

An owner who filed a written objection with the City Clerk at or before the assessment hearing, or an owner that had reasonable cause for failing to file a written objection at or before the assessment hearing may appeal the assessment against his or her property to the District Court pursuant to Minnesota Statutes, Section 429.081, by serving notice of the appeal upon the Mayor or City Clerk within thirty (30) days after the adoption of the assessment and filing such notice with the Clerk of the District Court within ten (10) days after its service upon the Mayor or City Clerk.

Pursuant to §435.193 to 435.195 of the Minnesota Statutes and Hermantown Resolution No. 2010-99, the City Council may, in its discretion, defer the payment of a special assessment for any homestead property owned by a person sixty-five (65) years of age or older or a person who is retired due to permanent disability for whom it would be a hardship to make the payments. By Resolution No. 2010-99 the Hermantown City Council has established criteria for the consideration of requests for deferrals of special assessments, the payment of interest during the period of the deferral, the term of the deferral and the payments required when the deferral terminates. Any assessed property owner meeting the requirements of such law and City of Hermantown Resolution No. 2010-99 may, on a form obtained from the City Clerk, apply for such deferral of payment of a special assessment.

CITY OF HERMANTOWN

By _____
Its City Clerk

Resolution No. 2023-162

Resolution Adopting An Assessment Against The Postal Parcel (395-0070-00437) For Road Improvement District No. 534 (“Project 534”)

WHEREAS, pursuant to proper notice duly given as required by law, the City Council held a hearing on the proposed assessment roll on October 30, 2023 at 6:30 p.m. for Road Improvement District No. 534 (Arrowhead Road and Ugstad Road) ("Project"). The hearings held on October 30, 2023 are hereinafter collectively referred to as the “Assessment Hearings;” and

WHEREAS, prior to or at the Assessment Hearings, a written objection to the proposed assessment was received from Frank Postal (“Postal”) with respect to the assessment against the property owned by him and assigned Parcel Number 395-0070-00437 (“Postal Parcel”); and

WHEREAS, pursuant to the provisions of Hermantown Resolution No. 82-52, an Adjourned hearing was held on October 30, 2023 (“Adjourned Hearing”); and

WHEREAS, Postal appeared at the Adjourned Hearing and provided an explanation of the basis for his objection to the proposed assessment against the Postal Parcel; and

WHEREAS, Postal did not have any written property valuation evidence to present to the City at the objection hearing; and

WHEREAS, the City obtained a Report from Nagell Appraisal & Consulting (“Nagell Report”) with regard to the general range of market benefit for properties from the Road Improvement Plan in 2020; and

WHEREAS, the Nagell Report indicated that the Project would create a benefit to affected properties between \$8,000.00 and \$12,000.00; and

WHEREAS, a road adjacent to a parcel of property is a basic service/benefit to the parcel of property no matter the value of improvements/homes/buildings on the parcel; and

WHEREAS, the City Council having received and considered all of the evidence presented to it at the Assessment Hearings and the Adjourned Hearing, and upon the entire City file in this matter, hereby makes the following:

FINDINGS OF FACT

1. Due and proper notice of the Assessment Hearings and Adjourned Hearing was given to Postal.
2. The methodology followed by the City in determining the amount proposed to be assessed against the Postal Parcel was and is fair, equitable and reasonable.

3. Postal advised the City Council that the road improvements benefited the surrounding users and increased traffic, which decreased the value of his property.

4. The amount proposed to be assessed against the Postal Parcel was and is based upon the City's policy that each person who abuts the road should be pay an equal amount regardless of the size of their parcel as each household needs road access for their property. To that end, the City uses a per lot assessment method for road improvement projects. Therefore, the amount proposed to be assessed against the Postal Parcel does not exceed the benefits received by the Postal Parcel.

On the basis of the foregoing Findings of Fact, which are hereby adopted, the City Council of the City of Hermantown is hereby resolved as follows:

1. An assessment of \$9,750.00 is hereby adopted and shall constitute the special assessment against the Postal Parcel.

2. Such assessment shall be payable as follows:

2.1. The assessment shall be payable in equal annual installments, including principal and interest, extending over a period of fifteen (15) years, with interest at the rate of four percent (4.00 %) per annum, from and after December 31, 2023 in an amount annually required to pay the principal over such period at such interest rate. The first of such installments is to be paid with the general taxes for the year 2023, collectible with such taxes during the year 2014.

2.2. Postal may, at any time, prior to December 31, 2023 pay the whole of the assessment without interest to the City, and thereafter at any time prior to November 15 of any year, prepay to the City the whole of the principal amount of the assessment remaining due, provided that no such prepayment shall be accepted without payment of (i) all installments, including interest and principal due to and including December 31 of the year of prepayment, and (ii) the original principal amount reduced only by the amount of principal included in such installments computed on an annual amortization basis. Partial prepayments of assessments have not been authorized by ordinance of the City of Hermantown.

3. The City Clerk shall file the assessment pertaining to the Postal Parcel in her office and shall certify it to the St. Louis County Auditor on or before November 30, 2023.

4. The City Clerk shall mail a notice of the adoption of the assessment roll to Postal. Such notice shall be in substantially the form of the one attached as Exhibit A.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors, _____, Mayor Boucher, aye.

and the following voted in opposition thereto:

None.

WHEREUPON, such resolution was declared duly passed and adopted on November 20, 2023.

EXHIBIT A
NOTICE OF FINAL ASSESSMENT

Hermantown, Minnesota
_____, 2023

TO: Frank Postal

This is to notify you that the final assessment with respect to your property for the construction of Road Improvement District No. 534 (Arrowhead Road and Ugstad Road) was adopted by the City Council of the City of Hermantown on November 20, 2023 pursuant to Minnesota Statutes, Chapter 429. The final assessment is on file for inspection in the office of the City Clerk.

As a result of the adoption of the assessment roll, the assessment against the property owned/occupied/leased by you which has been assigned CVT-Plat-Parcel Number 395-0070-00437, is \$9,750.00. Such assessment will be payable, together with interest at the rate of four percent (4.00%) per annum with real estate taxes for the years 2024-2039 inclusive payable in the years 2024-2039 inclusive. Such assessment may be prepaid in full without interest, if payment is received by the City prior to December 31, 2023 and thereafter the assessment may be prepaid at any time prior to November 15 of any year if such prepayment includes (i) all installments, including interest and principal due to and including December 31 of the year of prepayment and (ii) the original principal amount reduced only by the amount of principal included in such installments computed on an annual amortization basis. Partial prepayments of the assessment have not been authorized by ordinance of the City of Hermantown.

An owner who filed a written objection with the City Clerk at or before the assessment hearing, or an owner that had reasonable cause for failing to file a written objection at or before the assessment hearing may appeal the assessment against his or her property to the District Court pursuant to Minnesota Statutes, Section 429.081, by serving notice of the appeal upon the Mayor or City Clerk within thirty (30) days after the adoption of the assessment and filing such notice with the Clerk of the District Court within ten (10) days after its service upon the Mayor or City Clerk.

Pursuant to §435.193 to 435.195 of the Minnesota Statutes and Hermantown Resolution No. 2010-99, the City Council may, in its discretion, defer the payment of a special assessment for any homestead property owned by a person sixty-five (65) years of age or older or a person who is retired due to permanent disability for whom it would be a hardship to make the payments. By Resolution No. 2010-99 the Hermantown City Council has established criteria for the consideration of requests for deferrals of special assessments, the payment of interest during the period of the deferral, the term of the deferral and the payments required when the deferral terminates. Any assessed property owner meeting the requirements of such law and City of Hermantown Resolution No. 2010-99 may, on a form obtained from the City Clerk, apply for such deferral of payment of a special assessment.

CITY OF HERMANTOWN

By _____
Its City Clerk

Resolution No. 2023-163

Resolution Adopting An Assessment Against The Frick Parcel (395-0070-00890) For Road Improvement District No. 534 (“Project 534”)

WHEREAS, pursuant to proper notice duly given as required by law, the City Council held a hearing on the proposed assessment roll on October 30, 2023 at 6:00 p.m. for Road Improvement District No. 534 (Arrowhead Road and Ugstad Road) ("Project"). The hearings held on October 30, 2023 are hereinafter collectively referred to as the “Assessment Hearings;” and

WHEREAS, prior to or at the Assessment Hearings, a written objection to the proposed assessment was received from Mark Frick (“Frick”) with respect to the assessment against the property owned by him and assigned Parcel Number 395-0070-00890 (“Frick Parcel”); and

WHEREAS, pursuant to the provisions of Hermantown Resolution No. 82-52, an Adjourned hearing was held on October 30, 2023 (“Adjourned Hearing”); and

WHEREAS, Frick appeared at the Adjourned Hearing and provided an explanation of the basis for his objection to the proposed assessment against the Frick Parcel; and

WHEREAS, Frick did not have any written property valuation evidence to present to the City at the objection hearing; and

WHEREAS, the City obtained a Report from Nagell Appraisal & Consulting (“Nagell Report”) with regard to the general range of market benefit for properties from the Road Improvement Plan in 2020; and

WHEREAS, the Nagell Report indicated that the Project would create a benefit to affected properties between \$8,000.00 and \$12,000.00; and

WHEREAS, a road adjacent to a parcel of property is a basic service/benefit to the parcel of property no matter the value of improvements/homes/buildings on the parcel; and

WHEREAS, the City Council having received and considered all of the evidence presented to it at the Assessment Hearings and the Adjourned Hearing, and upon the entire City file in this matter, hereby makes the following:

FINDINGS OF FACT

1. Due and proper notice of the Assessment Hearings and Adjourned Hearing was given to Frick.

2. The methodology followed by the City in determining the amount proposed to be assessed against the Frick Parcel was and is fair, equitable and reasonable.

3. Frick advised the City Council that the assessment exceeds the benefit to his property, and the project should be funded with general taxes.

4. The amount proposed to be assessed against the Frick Parcel was and is based upon the City's policy that each person who abuts the road should be pay an equal amount regardless of the size of their parcel as each household needs road access for their property. To that end, the City uses a per lot assessment method for road improvement projects. Therefore, the amount proposed to be assessed against the Frick Parcel does not exceed the benefits received by the Frick Parcel.

On the basis of the foregoing Findings of Fact, which are hereby adopted, the City Council of the City of Hermantown is hereby resolved as follows:

1. An assessment of \$9,750.00 is hereby adopted and shall constitute the special assessment against the Frick Parcel.

2. Such assessment shall be payable as follows:

2.1. The assessment shall be payable in equal annual installments, including principal and interest, extending over a period of fifteen (15) years, with interest at the rate of four percent (4.00 %) per annum, from and after December 31, 2023 in an amount annually required to pay the principal over such period at such interest rate. The first of such installments is to be paid with the general taxes for the year 2023, collectible with such taxes during the year 2014.

2.2. Frick may, at any time, prior to December 31, 2023 pay the whole of the assessment without interest to the City, and thereafter at any time prior to November 15 of any year, prepay to the City the whole of the principal amount of the assessment remaining due, provided that no such prepayment shall be accepted without payment of (i) all installments, including interest and principal due to and including December 31 of the year of prepayment, and (ii) the original principal amount reduced only by the amount of principal included in such installments computed on an annual amortization basis. Partial prepayments of assessments have not been authorized by ordinance of the City of Hermantown.

3. The City Clerk shall file the assessment pertaining to the Frick Parcel in her office and shall certify it to the St. Louis County Auditor on or before November 30, 2023.

4. The City Clerk shall mail a notice of the adoption of the assessment roll to Frick. Such notice shall be in substantially the form of the one attached as Exhibit A.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors, _____, Mayor Boucher, aye.

and the following voted in opposition thereto:

None.

WHEREUPON, such resolution was declared duly passed and adopted on November 20, 2023.

EXHIBIT A
NOTICE OF FINAL ASSESSMENT

Hermantown, Minnesota
_____, 2023

TO: Mark Frick

This is to notify you that the final assessment with respect to your property for the construction of Road Improvement District No. 534 (Arrowhead Road and Ugstad Road) was adopted by the City Council of the City of Hermantown on November 20, 2023 pursuant to Minnesota Statutes, Chapter 429. The final assessment is on file for inspection in the office of the City Clerk.

As a result of the adoption of the assessment roll, the assessment against the property owned/occupied/leased by you which has been assigned CVT-Plat-Parcel Number 395-0070-00890, is \$9,750.00. Such assessment will be payable, together with interest at the rate of four percent (4.00%) per annum with real estate taxes for the years 2024-2039 inclusive payable in the years 2024-2039 inclusive. Such assessment may be prepaid in full without interest, if payment is received by the City prior to December 31, 2023 and thereafter the assessment may be prepaid at any time prior to November 15 of any year if such prepayment includes (i) all installments, including interest and principal due to and including December 31 of the year of prepayment and (ii) the original principal amount reduced only by the amount of principal included in such installments computed on an annual amortization basis. Partial prepayments of the assessment have not been authorized by ordinance of the City of Hermantown.

An owner who filed a written objection with the City Clerk at or before the assessment hearing, or an owner that had reasonable cause for failing to file a written objection at or before the assessment hearing may appeal the assessment against his or her property to the District Court pursuant to Minnesota Statutes, Section 429.081, by serving notice of the appeal upon the Mayor or City Clerk within thirty (30) days after the adoption of the assessment and filing such notice with the Clerk of the District Court within ten (10) days after its service upon the Mayor or City Clerk.

Pursuant to §435.193 to 435.195 of the Minnesota Statutes and Hermantown Resolution No. 2010-99, the City Council may, in its discretion, defer the payment of a special assessment for any homestead property owned by a person sixty-five (65) years of age or older or a person who is retired due to permanent disability for whom it would be a hardship to make the payments. By Resolution No. 2010-99 the Hermantown City Council has established criteria for the consideration of requests for deferrals of special assessments, the payment of interest during the period of the deferral, the term of the deferral and the payments required when the deferral terminates. Any assessed property owner meeting the requirements of such law and City of Hermantown Resolution No. 2010-99 may, on a form obtained from the City Clerk, apply for such deferral of payment of a special assessment.

CITY OF HERMANTOWN

By _____
Its City Clerk

Resolution No. 2023-164

Resolution Adopting An Assessment Against The Schulze Parcel (395-0070-00980) For Road Improvement District No. 534 (“Project 534”)

WHEREAS, pursuant to proper notice duly given as required by law, the City Council held a hearing on the proposed assessment roll on October 30, 2023 at 5:45 p.m. for Road Improvement District No. 534 (Arrowhead Road and Ugstad Road) ("Project"). The hearings held on October 30, 2023 are hereinafter collectively referred to as the “Assessment Hearings;” and

WHEREAS, prior to or at the Assessment Hearings, a written objection to the proposed assessment was received from Gregory Schulze (“Schulze”) with respect to the assessment against the property owned by him and assigned Parcel Number 395-0070-00980 (“Schulze Parcel”); and

WHEREAS, pursuant to the provisions of Hermantown Resolution No. 82-52, an Adjourned hearing was held on October 30, 2023 (“Adjourned Hearing”); and

WHEREAS, Schulze appeared at the Adjourned Hearing and provided an explanation of the basis for his objection to the proposed assessment against the Schulze Parcel; and

WHEREAS, the City Council having received and considered all of the evidence presented to it at the Assessment Hearings and the Adjourned Hearing, and upon the entire City file in this matter, hereby makes the following:

FINDINGS OF FACT

1. Due and proper notice of the Assessment Hearings and Adjourned Hearing was given to Schulze.
2. The methodology followed by the City in determining the amount proposed to be assessed against the Schulze Parcel was and is fair, equitable and reasonable.
3. Schulze advised the City Council that the assessment of \$663,000 was not fairly divided among the property owners.
4. The amount proposed to be assessed against the Schulze Parcel was and is based upon the City’s policy that each person who abuts the road should be pay an equal amount regardless of the size of their parcel as each household needs road access for their property. To that end, the City uses a per lot assessment method for road improvement projects. Therefore, the amount proposed to be assessed against the Schulze Parcel does not exceed the benefits received by the Schulze Parcel.

On the basis of the foregoing Findings of Fact, which are hereby adopted, the City Council of the City of Hermantown is hereby resolved as follows:

1. An assessment of \$9,750.00 is hereby adopted and shall constitute the special assessment against the Schulze Parcel.

2. Such assessment shall be payable as follows:

2.1. The assessment shall be payable in equal annual installments, including principal and interest, extending over a period of fifteen (15) years, with interest at the rate of four percent (4.00 %) per annum, from and after December 31, 2023 in an amount annually required to pay the principal over such period at such interest rate. The first of such installments is to be paid with the general taxes for the year 2023, collectible with such taxes during the year 2014.

2.2. Schulze may, at any time, prior to December 31, 2023 pay the whole of the assessment without interest to the City, and thereafter at any time prior to November 15 of any year, prepay to the City the whole of the principal amount of the assessment remaining due, provided that no such prepayment shall be accepted without payment of (i) all installments, including interest and principal due to and including December 31 of the year of prepayment, and (ii) the original principal amount reduced only by the amount of principal included in such installments computed on an annual amortization basis. Partial prepayments of assessments have not been authorized by ordinance of the City of Hermantown.

3. The City Clerk shall file the assessment pertaining to the Schulze Parcel in her office and shall certify it to the St. Louis County Auditor on or before November 30, 2023.

4. The City Clerk shall mail a notice of the adoption of the assessment roll to Schulze. Such notice shall be in substantially the form of the one attached as Exhibit A.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors, _____, Mayor Boucher, aye.

and the following voted in opposition thereto:

None.

WHEREUPON, such resolution was declared duly passed and adopted on November 20, 2023.

EXHIBIT A
NOTICE OF FINAL ASSESSMENT

Hermantown, Minnesota
_____, 2023

TO: Gregory Schulze

This is to notify you that the final assessment with respect to your property for the construction of Road Improvement District No. 534 (Arrowhead Road and Ugstad Road) was adopted by the City Council of the City of Hermantown on November 20, 2023 pursuant to Minnesota Statutes, Chapter 429. The final assessment is on file for inspection in the office of the City Clerk.

As a result of the adoption of the assessment roll, the assessment against the property owned/occupied/leased by you which has been assigned CVT-Plat-Parcel Number 395-0070-00980, is \$9,750.00. Such assessment will be payable, together with interest at the rate of four percent (4.00%) per annum with real estate taxes for the years 2024-2039 inclusive payable in the years 2024-2039 inclusive. Such assessment may be prepaid in full without interest, if payment is received by the City prior to December 31, 2023 and thereafter the assessment may be prepaid at any time prior to November 15 of any year if such prepayment includes (i) all installments, including interest and principal due to and including December 31 of the year of prepayment and (ii) the original principal amount reduced only by the amount of principal included in such installments computed on an annual amortization basis. Partial prepayments of the assessment have not been authorized by ordinance of the City of Hermantown.

An owner who filed a written objection with the City Clerk at or before the assessment hearing, or an owner that had reasonable cause for failing to file a written objection at or before the assessment hearing may appeal the assessment against his or her property to the District Court pursuant to Minnesota Statutes, Section 429.081, by serving notice of the appeal upon the Mayor or City Clerk within thirty (30) days after the adoption of the assessment and filing such notice with the Clerk of the District Court within ten (10) days after its service upon the Mayor or City Clerk.

Pursuant to §435.193 to 435.195 of the Minnesota Statutes and Hermantown Resolution No. 2010-99, the City Council may, in its discretion, defer the payment of a special assessment for any homestead property owned by a person sixty-five (65) years of age or older or a person who is retired due to permanent disability for whom it would be a hardship to make the payments. By Resolution No. 2010-99 the Hermantown City Council has established criteria for the consideration of requests for deferrals of special assessments, the payment of interest during the period of the deferral, the term of the deferral and the payments required when the deferral terminates. Any assessed property owner meeting the requirements of such law and City of Hermantown Resolution No. 2010-99 may, on a form obtained from the City Clerk, apply for such deferral of payment of a special assessment.

CITY OF HERMANTOWN

By _____
Its City Clerk

Resolution No. 2023-165

**Resolution Not Adopting An Assessment Against The Hokanson Parcel (395-0115-00010)
For Road Improvement District No. 534 (“Project 534”)**

WHEREAS, pursuant to proper notice duly given as required by law, the City Council held a hearing on the proposed assessment roll on October 30, 2023 at 5:30 p.m. for Road Improvement District No. 534 (Arrowhead Road and Ugstad Road) ("Project"). The hearings held on October 30, 2023 are hereinafter collectively referred to as the “Assessment Hearings;” and

WHEREAS, prior to or at the Assessment Hearings, a written objection to the proposed assessment was received from Derek Hokanson (“Hokanson”) with respect to the assessment against the property owned by him and assigned Parcel Number 395-0115-00010 (“Hokanson Parcel”); and

WHEREAS, pursuant to the provisions of Hermantown Resolution No. 82-52, an Adjourned hearing was held on October 30, 2023 (“Adjourned Hearing”); and

WHEREAS, Hokanson appeared at the Adjourned Hearing and provided an explanation of the basis for his objection to the proposed assessment against the Hokanson Parcel; and

WHEREAS, Hokanson did not have any written property valuation evidence to present to the City at the objection hearing; and

WHEREAS, the City obtained a Report from Nagell Appraisal & Consulting (“Nagell Report”) with regard to the general range of market benefit for properties from the Road Improvement Plan in 2020; and

WHEREAS, the Nagell Report indicated that the Project would create a benefit to affected properties between \$8,000.00 and \$12,000.00; and

WHEREAS, a road adjacent to a parcel of property is a basic service/benefit to the parcel of property no matter the value of improvements/homes/buildings on the parcel; and

WHEREAS, the City Council having received and considered all of the evidence presented to it at the Assessment Hearings and the Adjourned Hearing, and upon the entire City file in this matter, hereby makes the following:

FINDINGS OF FACT

1. Due and proper notice of the Assessment Hearings and Adjourned Hearing was given to Hokanson.

2. The methodology followed by the City in determining the amount proposed to be assessed against the Hokanson Parcel was and is fair, equitable and reasonable.

3. The amount proposed to be assessed against the Hokanson Parcel was and is based upon the City's policy that each person who abuts the road should be pay an equal amount regardless of the size of their parcel as each household needs road access for their property. To that end, the City uses a per lot assessment method for road improvement projects. Therefore, the amount proposed to be assessed against the Hokanson Parcel does not exceed the benefits received by the Hokanson Parcel.

4. At the Adjourned Hearing, Hokanson advised the City Council that his driveway is located on Twin Pines Street not Ugstad Road and therefore the road improvements are not a benefit to his property.

On the basis of the foregoing Findings of Fact, which are hereby adopted, the City Council of the City of Hermantown is hereby resolved as follows:

1. An assessment of \$9,750 is not adopted against the Hokanson Parcel.
2. The Hokanson Parcel will be assessed when Twin Pines Street is improved at a future date.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors, _____, Mayor Boucher, aye.

and the following voted in opposition thereto:

None.

WHEREUPON, such resolution was declared duly passed and adopted on November 20, 2023.

Resolution No. 2023-166

Resolution Adopting An Assessment Against The Hanson Parcel (395-0070-00962) For Road Improvement District No. 534 (“Project 534”)

WHEREAS, pursuant to proper notice duly given as required by law, the City Council held a hearing on the proposed assessment roll on October 30, 2023 at 7:15 p.m. for Road Improvement District No. 534 (Arrowhead Road and Ugstad Road) ("Project"). The hearings held on October 30, 2023 are hereinafter collectively referred to as the “Assessment Hearings;” and

WHEREAS, prior to or at the Assessment Hearings, a written objection to the proposed assessment was received from Jason. Hanson and Kimberly Hanson (“Hanson”) with respect to the assessment against the property owned by him and assigned Parcel Number 395-0070-00962 (“Hanson Parcel”); and

WHEREAS, pursuant to the provisions of Hermantown Resolution No. 82-52, an Adjourned hearing was held on October 30, 2023 (“Adjourned Hearing”); and

WHEREAS, Hanson appeared at the Adjourned Hearing and provided an explanation of the basis for his objection to the proposed assessment against the Hanson Parcel; and

WHEREAS, Hanson did not have any written property valuation evidence to present to the City at the objection hearing; and

WHEREAS, the City obtained a Report from Nagell Appraisal & Consulting (“Nagell Report”) with regard to the general range of market benefit for properties from the Road Improvement Plan in 2020; and

WHEREAS, the Nagell Report indicated that the Project would create a benefit to affected properties between \$8,000.00 and \$12,000.00; and

WHEREAS, a road adjacent to a parcel of property is a basic service/benefit to the parcel of property no matter the value of improvements/homes/buildings on the parcel; and

WHEREAS, the City Council having received and considered all of the evidence presented to it at the Assessment Hearings and the Adjourned Hearing, and upon the entire City file in this matter, hereby makes the following:

FINDINGS OF FACT

1. Due and proper notice of the Assessment Hearings and Adjourned Hearing was given to Hanson.
2. The methodology followed by the City in determining the amount proposed to be assessed against the Hanson Parcel was and is fair, equitable and reasonable.

3. Hanson advised the City Council that the road improvements should not fall on the Ugstad and Arrowhead residents but rather on the entire city.

4. The amount proposed to be assessed against the Hanson Parcel was and is based upon the City's policy that each person who abuts the road should be pay an equal amount regardless of the size of their parcel as each household needs road access for their property. To that end, the City uses a per lot assessment method for road improvement projects. Therefore, the amount proposed to be assessed against the Hanson Parcel does not exceed the benefits received by the Hanson Parcel.

On the basis of the foregoing Findings of Fact, which are hereby adopted, the City Council of the City of Hermantown is hereby resolved as follows:

1. An assessment of \$9,750.00 is hereby adopted and shall constitute the special assessment against the Hanson Parcel.

2. Such assessment shall be payable as follows:

2.1. The assessment shall be payable in equal annual installments, including principal and interest, extending over a period of fifteen (15) years, with interest at the rate of four percent (4.00 %) per annum, from and after December 31, 2023 in an amount annually required to pay the principal over such period at such interest rate. The first of such installments is to be paid with the general taxes for the year 2023, collectible with such taxes during the year 2014.

2.2. Hanson may, at any time, prior to December 31, 2023 pay the whole of the assessment without interest to the City, and thereafter at any time prior to November 15 of any year, prepay to the City the whole of the principal amount of the assessment remaining due, provided that no such prepayment shall be accepted without payment of (i) all installments, including interest and principal due to and including December 31 of the year of prepayment, and (ii) the original principal amount reduced only by the amount of principal included in such installments computed on an annual amortization basis. Partial prepayments of assessments have not been authorized by ordinance of the City of Hermantown.

3. The City Clerk shall file the assessment pertaining to the Hanson Parcel in her office and shall certify it to the St. Louis County Auditor on or before November 30, 2023.

4. The City Clerk shall mail a notice of the adoption of the assessment roll to Hanson. Such notice shall be in substantially the form of the one attached as Exhibit A.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors, _____, Mayor Boucher, aye.

and the following voted in opposition thereto:

None.

WHEREUPON, such resolution was declared duly passed and adopted on November 20, 2023.

EXHIBIT A
NOTICE OF FINAL ASSESSMENT

Hermantown, Minnesota
_____, 2023

TO: Jason. Hanson and Kimberly Hanson

This is to notify you that the final assessment with respect to your property for the construction of Road Improvement District No. 534 (Arrowhead Road and Ugstad Road) was adopted by the City Council of the City of Hermantown on November 20, 2023 pursuant to Minnesota Statutes, Chapter 429. The final assessment is on file for inspection in the office of the City Clerk.

As a result of the adoption of the assessment roll, the assessment against the property owned/occupied/leased by you which has been assigned CVT-Plat-Parcel Number 395-0070-00962, is \$9,750.00. Such assessment will be payable, together with interest at the rate of four percent (4.00%) per annum with real estate taxes for the years 2024-2039 inclusive payable in the years 2024-2039 inclusive. Such assessment may be prepaid in full without interest, if payment is received by the City prior to December 31, 2023 and thereafter the assessment may be prepaid at any time prior to November 15 of any year if such prepayment includes (i) all installments, including interest and principal due to and including December 31 of the year of prepayment and (ii) the original principal amount reduced only by the amount of principal included in such installments computed on an annual amortization basis. Partial prepayments of the assessment have not been authorized by ordinance of the City of Hermantown.

An owner who filed a written objection with the City Clerk at or before the assessment hearing, or an owner that had reasonable cause for failing to file a written objection at or before the assessment hearing may appeal the assessment against his or her property to the District Court pursuant to Minnesota Statutes, Section 429.081, by serving notice of the appeal upon the Mayor or City Clerk within thirty (30) days after the adoption of the assessment and filing such notice with the Clerk of the District Court within ten (10) days after its service upon the Mayor or City Clerk.

Pursuant to §435.193 to 435.195 of the Minnesota Statutes and Hermantown Resolution No. 2010-99, the City Council may, in its discretion, defer the payment of a special assessment for any homestead property owned by a person sixty-five (65) years of age or older or a person who is retired due to permanent disability for whom it would be a hardship to make the payments. By Resolution No. 2010-99 the Hermantown City Council has established criteria for the consideration of requests for deferrals of special assessments, the payment of interest during the period of the deferral, the term of the deferral and the payments required when the deferral terminates. Any assessed property owner meeting the requirements of such law and City of Hermantown Resolution No. 2010-99 may, on a form obtained from the City Clerk, apply for such deferral of payment of a special assessment.

CITY OF HERMANTOWN

By _____
Its City Clerk

Resolution No. 2023-167

Resolution Adopting Assessment Roll For Road Improvement District No. 534 (Ugstad Road)

WHEREAS, the City of Hermantown (“City”) is acting under the authority to assess for local improvements granted to it by Minnesota Statutes Chapter 429; and

WHEREAS, pursuant to proper notice duly given as required by law, the City Council held a hearing (“Assessment Hearing”) on the proposed assessment roll on October 18, 2020 at 6:30 p.m. for the construction of Road Improvement District No. 534 (Ugstad Road) (“Project”); and

WHEREAS, the City Council, having received and considered all of the evidence presented to it at the Assessment Hearing and all of the Adjourned Hearings, and upon the entire City file in this matter, hereby makes the following:

FINDINGS OF FACT

1. Due and proper notice of the assessment hearings was given to the landowners and other parties affected by the assessment.
2. The methodology following by the City in determining the amount to be assessed against the affected properties was and is fair, equitable and reasonable.
3. The amount assessed against the affected properties was and is based upon benefits received by the various properties and the amount assessed against any particular parcel of property benefitting the assessed property does not exceed the benefits received by such parcel of property and was uniformly applied to the properties of the same class as the assessed property. On the basis of the foregoing Findings of Fact, which are hereby adopted, the City Council of the City of Hermantown is hereby resolved as follows:
 1. The final assessment roll attached hereto as Exhibit A is hereby adopted and shall constitute the special assessment against each piece and parcel of property named therein.
 2. Such assessment shall be payable as follows:
 - 2.1. The assessments listed on the assessment roll attached hereto as Exhibit A shall be payable in equal annual installments, including principal and interest, extending over a period of fifteen (15) years, with interest at the rate of 4% per annum, from and after December 31, 2023 in an amount annually required to pay the principal over such period at such interest rate. The first of such installments is to be paid with the general taxes for the year 2024, collectible with such taxes during the year 2024.
 - 2.2. The owner of any property so assessed may, at any time, prior to December 31, 2023 pay the whole of the assessment against such property without interest to

the City of Hermantown and thereafter at any time prior to November 15 of any year, prepay to the City of Hermantown the whole of the principal amount of the assessment remaining due, provided that no such prepayment shall be accepted without payment of (i) all installments, including interest and principal due to and including December 31 of the year of prepayment, and (ii) the original principal amount reduced only by the amount of principal included in such installment computed on an annual amortization basis. Partial prepayments of assessment have not been authorized by ordinance of the City of Hermantown.

4. The City Clerk shall file the assessment roll pertaining to this assessment in her office and shall certify in its entirety to the St. Louis County Auditor on or before November 30, 2023 the total amount due.
5. The City Clerk shall mail a notice of the adoption of the assessment roll to the owners of each piece and parcel of property affected by this assessment. Such notice shall be in substantially the form of the one attached as Exhibit B.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors _____, Mayor Boucher, aye.

and the following voted in opposition thereto:

None.

WHEREUPON, such resolution was declared duly passed and adopted November 20, 2023.

Road Improvements District No. 534 Ugstad and Arrowhead Roads

Parcel ID	Amount	% Interest	# Years	Project Code	Annual Amount	SID #	Assessment Roll Number
North of Arrowhead							
395-0074-00140	\$ 9,750.00	4.00	15	39582	\$ 876.93	534A	534A-1
395-0010-02815	9,750.00	4.00	15	39582	876.93	534A	534A-2
395-0074-00110	9,750.00	4.00	15	39582	876.93	534A	534A-3
395-0074-00100	9,750.00	4.00	15	39582	876.93	534A	534A-4
395-0074-00090	9,750.00	4.00	15	39582	876.93	534A	534A-5
395-0074-00080	9,750.00	4.00	15	39582	876.93	534A	534A-6
395-0010-02816	9,750.00	4.00	15	39582	876.93	534A	534A-7
395-0010-02821	9,750.00	4.00	15	39582	876.93	534A	534A-8
395-0074-00060	9,750.00	4.00	15	39582	876.93	534A	534A-9
395-0010-02825	9,750.00	4.00	15	39582	876.93	534A	534A-10
395-0010-02820	9,750.00	4.00	15	39582	876.93	534A	534A-11
395-0074-00050	9,750.00	4.00	15	39582	876.93	534A	534A-12
395-0074-00040	9,750.00	4.00	15	39582	876.93	534A	534A-13
395-0074-00020	9,750.00	4.00	15	39582	876.93	534A	534A-14
395-0074-00010	9,750.00	4.00	15	39582	876.93	534A	534A-15
395-0010-02822	9,750.00	4.00	15	39582	876.93	534A	534A-16
395-0083-00010	9,750.00	4.00	15	39582	876.93	534A	534A-17
395-0083-00030	9,750.00	4.00	15	39582	876.93	534A	534A-18
395-0083-00040	9,750.00	4.00	15	39582	876.93	534A	534A-19
395-0083-00050	9,750.00	4.00	15	39582	876.93	534A	534A-20
395-0083-00060	9,750.00	4.00	15	39582	876.93	534A	534A-21
395-0083-00070	9,750.00	4.00	15	39582	876.93	534A	534A-22
395-0083-00080	9,750.00	4.00	15	39582	876.93	534A	534A-23
395-0070-00104	9,750.00	4.00	15	39582	876.93	534A	534A-24
395-0070-00102	9,750.00	4.00	15	39582	876.93	534A	534A-25
395-0070-00106	9,750.00	4.00	15	39582	876.93	534A	534A-26
395-0070-00108	9,750.00	4.00	15	39582	876.93	534A	534A-27
395-0070-00110	9,750.00	4.00	15	39582	876.93	534A	534A-28
395-0160-00050	9,750.00	4.00	15	39582	876.93	534A	534A-29
395-0070-00431	9,750.00	4.00	15	39582	876.93	534A	534A-30
395-0070-00437	9,750.00	4.00	15	39582	876.93	534A	534A-31
395-0070-00436	9,750.00	4.00	15	39582	876.93	534A	534A-32
395-0070-00438	9,750.00	4.00	15	39582	876.93	534A	534A-33
395-0070-00870	9,750.00	4.00	15	39582	876.93	534A	534A-34
395-0070-00640	9,750.00	4.00	15	39582	876.93	534A	534A-35
395-0070-00890	9,750.00	4.00	15	39582	876.93	534A	534A-36
395-0070-00891	9,750.00	4.00	15	39582	876.93	534A	534A-37
395-0070-00892	9,750.00	4.00	15	39582	876.93	534A	534A-38
395-0070-00650	9,750.00	4.00	15	39582	876.93	534A	534A-39
395-0070-00660	9,750.00	4.00	15	39582	876.93	534A	534A-40
395-0070-00665	9,750.00	4.00	15	39582	876.93	534A	534A-41
395-0070-00670	9,750.00	4.00	15	39582	876.93	534A	534A-42
395-0070-00680	9,750.00	4.00	15	39582	876.93	534A	534A-43
395-0010-04320	9,750.00	4.00	15	39582	876.93	534A	534A-44
395-0070-00901	9,750.00	4.00	15	39582	876.93	534A	534A-45
395-0070-00910	9,750.00	4.00	15	39582	876.93	534A	534A-46
395-0070-00920	9,750.00	4.00	15	39582	876.93	534A	534A-47

Road Improvements District No. 534 Ugstad and Arrowhead Roads

Parcel ID	Amount	% Interest	# Years	Project Code	Annual Amount	SID #	Assessment Roll Number
395-0070-00930	9,750.00	4.00	15	39582	876.93	534A	534A-48
395-0070-00963	9,750.00	4.00	15	39582	876.93	534A	534A-49
395-0070-00964	9,750.00	4.00	15	39582	876.93	534A	534A-50
395-0010-04325	9,750.00	4.00	15	39582	876.93	534A	534A-51
395-0010-04336	9,750.00	4.00	15	39582	876.93	534A	534A-52
395-0010-04337	9,750.00	4.00	15	39582	876.93	534A	534A-53
395-0010-04330	9,750.00	4.00	15	39582	876.93	534A	534A-54
395-0010-04334	9,750.00	4.00	15	39582	876.93	534A	534A-55
395-0010-04331	9,750.00	4.00	15	39582	876.93	534A	534A-56
395-0010-04332	9,750.00	4.00	15	39582	876.93	534A	534A-57
395-0070-00962	9,750.00	4.00	15	39582	876.93	534A	534A-58
395-0070-00952	9,750.00	4.00	15	39582	876.93	534A	534A-59
395-0070-00950	9,750.00	4.00	15	39582	876.93	534A	534A-60
395-0070-00980	9,750.00	4.00	15	39582	876.93	534A	534A-61
395-0070-00983	9,750.00	4.00	15	39582	876.93	534A	534A-62
395-0070-00955	9,750.00	4.00	15	39582	876.93	534A	534A-63
395-0180-00010	9,750.00	4.00	15	39582	876.93	534A	534A-64
395-0180-00020	9,750.00	4.00	15	39582	876.93	534A	534A-65
395-0180-00050	9,750.00	4.00	15	39582	876.93	534A	534A-66
395-0180-00080	9,750.00	4.00	15	39582	876.93	534A	534A-67
395-0180-00090	9,750.00	4.00	15	39582	876.93	534A	534A-68
395-0070-00880	9,750.00	4.00	15	39582	876.93	534A	534A-69
395-0070-00895	9,750.00	4.00	15	39582	876.93	534A	534A-70
Along Arrowhead							
395-0070-00430	9,750.00	4.00	15	39582	876.93	534A	534A-71
395-0160-00010	9,750.00	4.00	15	39582	876.93	534A	534A-72
Total: 72	\$ 702,000.00						

EXHIBIT B

NOTICE OF FINAL ASSESSMENT

November 21, 2023

Resident Name
Address
City, State, Zip

RE: Notice of Final Assessment

Resident Name:

This is to notify you that the final assessment for the construction of Road Improvement District No. 534 Ugstad Road (“Project”) was adopted by the City Council of the City of Hermantown on November 20, 2023 pursuant to Minnesota Statutes, Chapter 429. The final assessment is on file for inspection in the office of the City Clerk.

As a result of the adoption of the assessment roll, the assessment against the property owned/occupied/leased by you which has been assigned CVT-Plat-Parcel Number _____, is **\$9,750.00**. Such assessment will be payable, together with interest at the rate of 4% per annum with real estate taxes during the years 2024-2039 inclusive payable in the years 2024-2039 inclusive. Such assessment may be prepaid in full without interest, if payment is received by the City prior to December 31, 2023 and thereafter the assessment may be prepaid at any time prior to November 15 of any year if such prepayment includes (i) all installments, including interest and principal due to and including December 31 of the year of prepayment and (ii) the original principal amount reduced only by the amount of principal included in such installments computed on an annual amortization basis. Partial prepayments of the assessment have not been authorized by ordinance of the City of Hermantown.

An owner who filed a written objection with the City Clerk at or before the assessment hearing, or an owner that had reasonable cause for failing to file a written objection at or before the assessment hearing may appeal the assessment against his or her property to the District Court pursuant to Minnesota Statutes, Section 429.081, by serving notice of the appeal upon the Mayor or City Clerk within thirty (30) days after the adoption of the assessment and filing such notice with the Clerk of the District Court within ten (10) days after its service upon the Mayor or City Clerk.

Under §435.193 to 435.195 of the Minnesota Statutes and Hermantown Resolution No. 2010-99 the City Council may, in its discretion, defer the payment of a special assessment for any homestead property owned by a person sixty-five (65) years of age or older or a person who is retired due to permanent disability or who is a member of the military service called to active duty for whom it would be a hardship to make the payments. When deferment of the special assessment has been granted and is terminated for any reason provided in that law, all amounts accumulated plus applicable interest become due. Any assessed property owner meeting the requirements of such law and City of Hermantown Resolution No. 2010-99, may, on a form obtained from the City Clerk, apply for such deferral of payment of a special assessment.

Payments of the amount assessed may be made by check or credit card. If a credit card is used, a credit card service fee of three percent (3%) of the amount paid will be added to the amount paid on the assessment.

CITY OF HERMANTOWN
By Alissa Wentzlaff
Its City Clerk

Resolution No. 2023-168

Resolution Approving Application Of Assessment Roll Number 534A-27 For Deferral Of Assessment Against The Property For The Construction Of Road Improvement District No. 534 (“Hardship Deferral”)

WHEREAS, the owner of Assessment Roll Number 537A-27 (“Owner”) owns property in the City of Hermantown at 4320 Ugstad Road (“Owner’s Property”), which property has been assigned CVT-Plat-Parcel Number 395-0070-00108; and

WHEREAS, the Owner’s Property has been assessed the sum of \$9,750.00 for the construction of Road Improvement District No. 534; and

WHEREAS, Owner, pursuant to Hermantown Resolution No. 2010-99 with reference to Minnesota Statutes Section 435.193, et. seq. and Sections 2 and 3 of Chapter 585 of the Laws of 1984, applied for the deferral of the payments on such assessment; and

WHEREAS, the City Council has fully considered this matter and hereby makes the following:

FINDINGS OF FACT

1. Owner properly applied for a deferral of the payments on the assessment in accordance with Hermantown Resolution No. 2010-99 and Minnesota Statutes Section 435.193 et. seq.
2. The Owner’s Property is the homestead of Owner.
3. Owner is:
 - 3.1. _____ X _____ over the age of sixty-five (65);
 - 3.2. _____ X _____ retired by the virtue of a permanent or total disability; or
 - 3.3. _____ a member of the military service in active duty.
4. Owner occupies the property as Owner(s) principal residence.
5. The average annual payment from all assessments levied against Owner’s property exceeds (i) two percent (2%) of the adjusted gross income of Owner.

NOW, THEREFORE, on the basis of the foregoing Findings of Fact, which are hereby adopted and the authority granted by Minnesota Statutes Section 435.193 and Hermantown Resolution No. 2010-99, the City Council of the City of Hermantown is hereby resolved as follows:

1. The annual payment of the assessment against the Owner’s Property is hereby deferred.

2. The assessment levied against the Owner's Property, shall bear interest at the rate set forth in Resolution No. 2023-167, "Resolution Adopting Assessment Roll For The Construction Of Road Improvement District No. 534 (Ugstad Road)" ("Assessment Resolution") during the term of the deferral.

3. The deferral of the payment of the portion of the assessment that is deferred by operation of this Resolution shall terminate and all payments that were deferred on such property shall be due and payable immediately upon the occurrence of any of the following events:

3.1. The death of Owner(s).

3.2. The sale, transfer or subdivision of such parcel of property or any part thereof.

3.3. The loss of the homestead status of such parcel of property for any reason.

3.4. If, for any reason, the City Council determines that there would be no hardship on owners to require immediate or partial payments of the Deferred Assessment against such parcel of property.

3.5. December 31, 2039.

4. Following the termination of the deferral, all payments on the assessment that were not deferred by this resolution shall be paid in the manner set forth in the Assessment Resolution.

5. The City Clerk shall file with the County Recorder and/or Registrar of Titles and County Auditor an appropriate Certificate with respect to the deferral of the payment on such assessment and shall provide written notice to Owner of the action of the City Council on his application and the terms and provisions applicable to the approved deferral.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors, _____, Mayor Boucher, aye.

and the following voted in opposition thereto:

None.

WHEREUPON, such resolution was declared duly passed and adopted on November 20, 2023.

ACKNOWLEDGEMENT AND CONSENT

Barbara J. Gilbert, owner of the property described in the foregoing Certificate with respect to Deferred Assessments acknowledges and consents to the deferral of the special assessment referenced in such Certificate.

Dated this ____ day of November, 2023.

Barbara J. Gilbert

STATE OF MINNESOTA)
)ss.
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of November, 2023 by Barbara J. Gilbert.

Notarial Stamp or Seal

Signature of Person Taking Acknowledgement

This Instrument was drafted by:

Steven C. Overom
Overom Law
11 E. Superior St. Ste. 543
Duluth, MN 55802

Resolution No. 2023-169

Resolution Approving Application Of Assessment Roll Number 537A-44 For Deferral Of Assessment Against The Property For The Construction Of Road Improvement District No. 534 (“Hardship Deferral”)

WHEREAS, the owner of Assessment Roll Number 537A-44 (“Owner”) owns property in the City of Hermantown at 4192 Ugstad Road (“Owner’s Property”), which property has been assigned CVT-Plat-Parcel Number 395-0010-04320; and

WHEREAS, the Owner’s Property has been assessed the sum of \$9,750.00 for the construction of Road Improvement District No. 534; and

WHEREAS, Owner, pursuant to Hermantown Resolution No. 2010-99 with reference to Minnesota Statutes Section 435.193, et. seq. and Sections 2 and 3 of Chapter 585 of the Laws of 1984, applied for the deferral of the payments on such assessment; and

WHEREAS, the City Council has fully considered this matter and hereby makes the following:

FINDINGS OF FACT

1. Owner properly applied for a deferral of the payments on the assessment in accordance with Hermantown Resolution No. 2010-99 and Minnesota Statutes Section 435.193 et. seq.
2. The Owner’s Property is the homestead of Owner.
3. Owner is:
 - 3.1. _____ X _____ over the age of sixty-five (65);
 - 3.2. _____ X _____ retired by the virtue of a permanent or total disability; or
 - 3.3. _____ a member of the military service in active duty.
4. Owner occupies the property as Owner(s) principal residence.
5. The average annual payment from all assessments levied against Owner’s property exceeds (i) two percent (2%) of the adjusted gross income of Owner.

NOW, THEREFORE, on the basis of the foregoing Findings of Fact, which are hereby adopted and the authority granted by Minnesota Statutes Section 435.193 and Hermantown Resolution No. 2010-99, the City Council of the City of Hermantown is hereby resolved as follows:

1. The annual payment of the assessment against the Owner’s Property in excess of Two Hundred Twenty-Six and 93/100 Dollars (\$226.93) is hereby deferred. That portion of the annual

assessment in the amount of Two Hundred Twenty-Six and 93/100 Dollars (\$226.93) remains payable with the real estate taxes against the property beginning with the taxes due and payable in 2024. This amount that will be applied to interest as specified in Resolution 2010-99.

2. The assessment levied against the Owner's Property, shall bear interest at the rate set forth in Resolution No. 2023-167, "Resolution Adopting Assessment Roll For The Construction Of Road Improvement District No. 534 (Ugstad Road)" ("Assessment Resolution") during the term of the deferral.

3. The interest on the assessment will be averaged over the term of the assessment as specified in Resolution No. 2010-99.

4. The deferral of the payment of the portion of the assessment that is deferred by operation of this Resolution shall terminate and all payments that were deferred on such property shall be due and payable immediately upon the occurrence of any of the following events:

4.1. The death of Owner(s).

4.2. The sale, transfer or subdivision of such parcel of property or any part thereof.

4.3. The loss of the homestead status of such parcel of property for any reason.

4.4. If, for any reason, the City Council determines that there would be no hardship on owners to require immediate or partial payments of the Deferred Assessment against such parcel of property.

4.5. December 31, 2039.

5. Following the termination of the deferral, all payments on the assessment that were not deferred by this resolution shall be paid in the manner set forth in the Assessment Resolution.

6. The City Clerk shall file with the County Recorder and/or Registrar of Titles and County Auditor an appropriate Certificate with respect to the deferral of the payment on such assessment and shall provide written notice to Owner of the action of the City Council on his application and the terms and provisions applicable to the approved deferral.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors, _____, Mayor Boucher, aye.

and the following voted in opposition thereto:

None.

WHEREUPON, such resolution was declared duly passed and adopted on November 20, 2023.

CERTIFICATE WITH RESPECT TO DEFERRED ASSESSMENT

Larry A. Whitney & Becky R. Whitney:

The City of Hermantown, by and through its Mayor and City Clerk, hereby certifies and declares that a special assessment has been levied but the payment deferred in the amount indicated against the parcel of property located in St. Louis County, Minnesota, as follows:

Original Principal Amount Deferred: \$9,750.00. This amount will increase by any interest that accrues on the assessment that is not paid during the period of deferral.

Real Estate Identification Number: CVT: 395 PLAT: 0010 PARCEL: 04320

Legal Description: Lot: , Blk:
Duluth Homesteads Subdivision Plat
Section 15; Township 50; Range 15

Such deferred assessment shall become payable upon the happening of certain events as set forth in City of Hermantown Resolution No. 2010-99. For further information with respect to this deferred assessment, contact the City Clerk of the City of Hermantown.

Dated this ____ day of _____ 2023.

CITY OF HERMANTOWN:

By _____
Its Mayor

And By _____
Its City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Wayne Boucher and Alissa Wentzlaff, the Mayor and Acting City Clerk, respectively, of the City of Hermantown, on behalf of the City of Hermantown.

Notary Public

ACKNOWLEDGEMENT AND CONSENT

Larry A. Whitney & Becky R. Whitney, owner of the property described in the foregoing Certificate with respect to Deferred Assessments acknowledges and consents to the deferral of the special assessment referenced in such Certificate.

Dated this ____ day of November, 2023.

Larry A. Whitney

Becky R. Whitney

STATE OF MINNESOTA)
)ss.
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of November, 2023 by Barbara J. Gilbert.

Notarial Stamp or Seal

Signature of Person Taking Acknowledgement

This Instrument was drafted by:

Steven C. Overom
Overom Law
11 E. Superior St. Ste. 543
Duluth, MN 55802



332 West Superior Street
Suite 600
Duluth, MN 55803

P (218) 722-3915
T (866) 452-9454
F (218) 722-4548

www.msa-ps.com

November 15, 2023

John Mulder – City Administrator
City of Hermantown
5105 Maple Grove Rd
Hermantown, MN 55811

Re: Pay Application #6 & Change Orders 17
SP 202-101-014, SP 202-104-012
Ugstad Rd & Arrowhead Rd Improvements

Dear Mr. Mulder,

Enclosed are the following documents recommended for approval at the next council meeting.

1. Pay Application #6 in the amount of \$98,514.43 to Ulland Brothers, Inc, the project prime contractor. This amount is for work completed in the time frame 10/07/23 to 11/10/23.
2. Change Order #17 in the amount of \$16,416.00 for payment of bituminous density incentives as required by MnDOT Spec 2360. This amount is included in Pay App #6.

Sincerely,

MSA Professional Services, Inc.

A handwritten signature in black ink that reads "James A. Watters". The signature is fluid and cursive, with a large, sweeping flourish at the end.

James Watters, PE
Project Manager

Resolution No. 2023-170

**Resolution Approving Change Order Number 17 For Road Improvement Project 534
(Ugstad & Arrowhead Roads)**

WHEREAS, the City of Hermantown has contracted with Ulland Brothers Inc, for Road Improvement Project 534 (Ugstad & Arrowhead Roads) (“Project:”); and

WHEREAS, Ulland Brothers, Inc, have submitted Change Order No. 17 in the amount of \$16,416.00 for bituminous pavement density incentive work on Ugstad Road, and

WHEREAS, Ulland Brothers Inc, has recommended Change Order No. 17, and;

WHEREAS, the project engineer, (MSA Professional Services, Inc.), and the City Engineer, (Northland Consulting Engineers LLP) have approved Change Order No. 17, and;

WHEREAS, the City Administrator has reviewed the change order and recommends its approval.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Hermantown, Minnesota as follows:

1. Change Order No. 17 is hereby approved.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____, upon a vote being taken thereon, the following voted in favor thereof:

Councilors _____, Mayor Boucher, aye.

and the following voted in opposition thereto:

None.

WHEREUPON, such resolution has been duly passed and adopted November 20, 2023.



STATE AID FOR LOCAL TRANSPORTATION
CHANGE ORDER

Rev. February 2018


SP	202-101-014, 202-104-012	MN Project No.:	6922(198)	Change Order No.	17
----	--------------------------	-----------------	-----------	------------------	----


Project Location	UGSTAD RD FROM MAPLE GROVE RD TO MILLER TRUNK HIGHWAY 194 (US 53) AND ARROWHEAD RD FROM 1300 FT WEST OF UGSTAD RD TO 800 FT EAST OF UGSTAD RD.		
Local Agency	CITY OF HERMANTOWN	Local Project No.	NA
Contractor	ULLAND BROTHERS, INC.	Contract No.	NA
Address/City/State/Zip	1634 Hwy. 210 Carlton, MN 55718		
Total Change Order Amount \$	16,416.00		


Regarding bituminous density, MnDOT Specification 2360.5B Monetary Adjustment states "the Department must apply Incentives and Disincentives and may apply monetary deductions for Plan Mixed Asphalt Pavement. The amounts of these adjustments are deemed reasonable."

See attached density incentive/disincentive adjustments worksheet provided by Braun Intertec based on bituminous cores taken during construction

Estimate Of Cost: <i>(Include any increases or decreases in contract items, any negotiated or force account items.)</i>						
**Group/funding Category	Item No.	Description	Unit	Unit Price	+ or - Quantity	+ or - Amount \$
SP 202-101-014	2360.601	BITUMINOUS PAVEMENT DENSITY INCENTIVE	LS	\$13,101.74	1	\$13,101.74
SP 202-104-012	2360.601	BITUMINOUS PAVEMENT DENSITY INCENTIVE	LS	\$3,314.26	1	\$3,314.26
Net Change this Change Order						\$16,416.00
Due to this change, the contract time: <i>(check one)</i>						
<input checked="" type="checkbox"/> Is NOT changed			<input type="checkbox"/> May be revised as provided in MnDOT Specification 1806			
<input type="checkbox"/> Is Increased by _____ Working Days			<input type="checkbox"/> Is Increased by _____ Calendar Days			
<input type="checkbox"/> Is Decreased by _____ Working Days			<input type="checkbox"/> Is Decreased by _____ Calendar Days			

Approved by Project Engineer:  Date: 11/14/23
 Print Name: James Watters, PE Phone: 612-548-3152

Approved by City Engineer:  Date: 11/14/23
 Print Name: David Bolf, PE - Hermantown City Engineer Phone: 218-727-5995

Approved by Contractor:  Date: 11/14/23
 Print Name: Ryan Swanson, PE - Ulland Brothers, Inc Phone: 218-966-9822

DSAE Portion: The State of Minnesota is not a participant in this contract. Signature by the District State Aid Engineer is for FUNDING PURPOSES ONLY and for compliance with State and Federal Aid Rules/Policy. Eligibility does not guarantee funds will be available.

This work is eligible for: ___ Federal Funding ___ State Aid Funding ___ Local funds

District State Aid Engineer: _____ Date: _____

Plant Mixed Asphalt Pavement (Mn/DOT Specification 2360) Density Incentive/Disincentive Worksheet

2020 Spec. Book
S.P. 202-101-014
CR 101
 Location **Ugstad Rd.**

Contractor **UBI**
 Engineer **James Watters**

MDR # **01-2023-0140**
 Plant: **3601**
 Date Paved **7/12/2023**
 Date Cored **7/13/2023**

Bid Price (\$/ton) **\$88.00**
 % Passing #4 Sieve: **66**
 1% Reduced Prjct? **No**
 Long. Jnt. Density? **No**

Total Tons Produced: **1205.35**
 Max. Density Tons: **1205.35**
 Max./Total Ratio: **1.00**

Lots Required: **3**
 Over-ride # of Lots:
 Tons/Lot: **401.8**

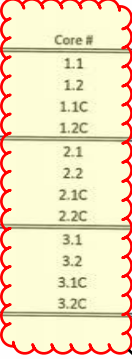
SPWEA340B (MSCR)

Mix Design Type	SP (Gyratory)
Mix Course	WE (Wear)
Max. Aggr. Size	A (1/2 inch)
ESALS [Traffic Level]	1 to < 3 [Level 3]
Air Voids	4%
Asphalt Binder Grade	B = PG 58S-28 (MSCR)
Shoulder?	No
Tons or Sq Yd in. Prjct?	Tons

Sample Number	3	4	5														
Sample Tons	183	584	849														
Tons Represented	584	265	356														
Density Tons	584	265	356														
Individual Air Voids	3.4	2.8	3.8														
Individual Gmm	2.511	2.518	2.523														
Moving Avg. Gmm	2.509	2.509	2.514														

Average Gmm ==> 2.517 Design Air Voids: 4.0 Min. Air Voids: 3.5 Day's Weighted Avg. Air Void: 3.4
 Use Laboratory Method 1810

Lot	Min. Mat Density Reqd:	92	Core Thickness (inches)	Air Dry (g)	Pan ID	Core + Pan (g)	Pan (g)	SSD (g)	Immersed (g)	Dry Weight (g)	% water absorbed	Gmb/ Bulk Sp. G	Density % of Gmm	Bulk Sp. G used	Lot Avg. Density (% of Gmm)	Mat Pay Factor "A"	Tons Represent	Incentive Disincentive
1	Contr. QC	1.1	1.40	528.8	A	642.5	116.8	529.5	301.9	525.7	0.3	2.310	91.8	2.310	92.6	1.00	401.8	\$0.00
	Contr. QC	1.2	1.73	684.7	B	798.1	115.9	685.2	395.1	682.2	0.2	2.352	93.4	2.352				
	Agency QA	1.1C	1.38	548.7	AMK	877.0	333.3	549.2	311.4	543.7	0.2	2.286	90.8					
	Agency QA	1.2C																
														2.331	= Avg. Gmb			
2	Contr. QC	2.1	1.90	728.3	C	841.6	117.1	728.7	421.2	724.5	0.1	2.356	93.6	2.356	92.0	1.00	401.8	\$0.00
	Contr. QC	2.2	1.45	560.2	D	671.8	116.9	560.3	316.5	554.9	0.0	2.276	90.4	2.276				
	Agency QA	2.1C	1.84	719.8	DS	1052.4	336.4	720.0	417.3	716.0	0.1	2.365	94.0					
	Agency QA	2.2C																
														2.316	= Avg. Gmb			
3	Contr. QC	3.1	1.35	544.1	E	659.5	116.5	544.3	315.6	543.0	0.1	2.374	94.3	2.374	95.5	1.00	401.8	\$0.00
	Contr. QC	3.2	1.40	607.7	F	723.4	116.4	607.6	358.2	607.0	0.0	2.434	96.7	2.434				
	Agency QA	3.1C																
	Agency QA	3.2C	1.45	634.7	GP	964.6	331.1	635.1	374.7	633.5	0.2	2.433	96.7	2.404				
															= Avg. Gmb			



SP 202-101-014 - Ugstad Rd

Min. Confined LD Required: 91 Min. Unconfined LD Required: 89.5

Pan ID

No Core
No Core

No Core
No Core

Net Inc./Disinc.
\$0.00

Max. Possible Incentive
\$3,182.26
Percent of Max. Earned
0.0%

Daily Core Characteristics
Avg. Density 146.4
lb/yd³ in. 109.8

Day's Weighted Average Air Void Less than Minimum Air Voids Required, No Incentives

Info:

Notes:

QC By: _____
QA By: _____
Field Check By: _____

Plant Mixed Asphalt Pavement (Mn/DOT Specification 2360) Density Incentive/Disincentive Worksheet

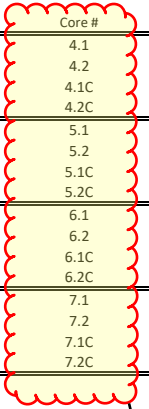
2020 Spec. Book		Contractor: Ulland Brothers		MDR #: 01-2023-0081	Bid Price (\$/ton): \$96.00	Total Tons Produced: 1608	Lots Required: 4
S.P. 202-101-014	Ugstad Rd	Engineer: City of Hermantown	Plant: 3601	% Passing #4 Sieve: 55	Max. Density Tons: 1608	Over-ride # of Lots: 0	
CSAH	Ugstad Rd		Date Paved: 9/1/2023	1% Reduced Prjct?: No	Max./Total Ratio: 1.00	Tons/Lot: 402.0	
Location: Ugstad Rd			Date Cored: 9/5/2023	Long. Jnt. Density?: Yes			

Mix Design Type	SP (Gyratory)
Mix Course	NW (Non-Wearing)
Max. Aggr. Size	B (3/4 inch)
ESALS [Traffic Level]	1 to < 3 [Level 3]
Air Voids	3%
Asphalt Binder Grade	C = PG 58H-34 (MSCR)
Shoulder?	No
Tons or Sq Yd in. Prjct?	Tons

Sample Number	3	4	5																
Sample Tons	123	554	1043																
Tons Represented	554	489	565																
Density Tons	554	489	565																
Individual Air Voids	2.1	1.9	2.4																
Individual Gmm	2.529	2.531	2.543																
Moving Avg. Gmm		2.538	2.537																

Average Gmm ==> 2.534 Design Air Voids: 3.0 Min. Air Voids: 2.5 Day's Weighted Avg. Air Void: 2.1

Lot	Core #	Core Thickness (inches)	Air Dry (g)	Pan ID	Core +			SSD (g)	Immersed (g)	Dry Weight (g)	% water absorbed	Gmb/ Bulk Sp. G	Density % of Gmm	Bulk Sp. G used	Lot Avg. Density (% of Gmm)	Mat Pay Factor "A"	Total Pay Factor AxBxC	Tons Represent	Incentive Disincentive	
					Pan (g)	Pan (g)	Pan (g)													
4	Contr. QC	4.1	1378.8	A	1494.2	116.8	1379.3	821.2	1377.4	0.1	2.468	97.4	2.468	95.9	1.00			402	\$0.00	
	Contr. QC	4.2	963.7	B	1076.9	115.6	964.5	562.9	961.3	0.2	2.394	94.5	2.394							
	Agency QA	4.1C																		
	Agency QA	4.2C	2.94	958.0		954.0	0.0	958.5	561.8	954.0	0.1	2.405	94.9							2.431 = Avg. Gmb
5	Contr. QC	5.1	828.4	C	944.7	117.1	829.5	489.6	827.6	0.3	2.435	96.1	2.435	95.6	1.00			402	\$0.00	
	Contr. QC	5.2	951.9	D	1068.0	117.6	952.5	558.2	950.4	0.2	2.410	95.1	2.410							
	Agency QA	5.1C	2.21	826.6		823.3	0.0	827.5	490.9	823.3	0.3	2.446	96.5							
	Agency QA	5.2C	2.70	928.7		923.4	0.0	929.5	546.3	923.4	0.2	2.410	95.1							2.423 = Avg. Gmb
6	Contr. QC	6.1	1313.4	E	1428.3	116.7	1314.2	786.6	1311.6	0.2	2.486	98.1	2.486	98.5	1.00			402	\$0.00	
	Contr. QC	6.2	1153.1	F	1269.3	117.1	1152.6	692.3	1152.2		2.503	98.8	2.503							
	Agency QA	6.1C																		
	Agency QA	6.2C	3.04	1148.6		1143.6	0.0	1149.3	687.5	1143.6	0.2	2.476	97.7							2.495 = Avg. Gmb
7	Contr. QC	7.1	1315.6	G	1429.6	116.3	1316.2	784.5	1313.3	0.1	2.470	97.5	2.470	96.9	1.00			402	\$0.00	
	Contr. QC	7.2	1226.8	H	1341.7	116.6	1227.8	725.5	1225.1	0.2	2.439	96.3	2.439							
	Agency QA	7.1C	3.58	1363.9		1358.7	0.0	1365.0	814.5	1358.7	0.2	2.468	97.4							
	Agency QA	7.2C											2.455 = Avg. Gmb							



SP 202-101-014 - Ugstad Rd

Longitudinal Joint Density Cores		Min. Confined LID Required: 92					Min. Unconfined LID Required: 90.5					Dry Weight (g)	% water absorbed	Gmb/ Bulk Sp.G	Density (% of Gmm)	Bulk Sp. G used	Lot Avg. Density % of Gmm	Edge Pay Factor B or C
Assoc. Mat Core	Core #	Joint Type	Core Thickness (inches)	Air Dry (g)	Pan ID	Pan (g)	Pan (g)	Pan (g)	SSD (g)	Immersed (g)								
		No Core									0.0							
		No Core									0.0							
		No Core																
		No Core																

Net Inc./Disinc.
\$0.00

Max. Possible Incentive
\$4,631.04

Percent of Max. Earned
0.0%

Daily Core Characteristics

Avg. Density 152.7
lb/yd³ in. 114.5

Info: Day's Weighted Average Air Void Less than Minimum Air Voids Required, No Incentives

Notes:

QC By: _____

QA By: _____

Field Check By: _____

Plant Mixed Asphalt Pavement (Mn/DOT Specification 2360) Density Incentive/Disincentive Worksheet

2020 Spec. Book	S.P. 202-101-014	Contractor Ulland Brothers	MDR # 01-2023-0081	Bid Price (\$/ton) \$96.00	Total Tons Produced: 2219	Lots Required: 3
CSAH	Ugstad Rd	Engineer City of Hermantown	Plant: 3601	% Passing #4 Sieve: 55	Max. Density Tons: 1575	Over-ride # of Lots:
Location Ugstad Rd			Date Paved: 9/5/2023	1% Reduced Prjct?: No	Max./Total Ratio: 0.71	Tons/Lot: 525.0
			Date Cored: 9/6/2023	Long. Jnt. Density?: Yes		

SPNWB330C	
Mix Design Type	SP (Gyratory)
Mix Course	NW (Non-Wearing)
Max. Aggr. Size	B (3/4 inch)
ESALS [Traffic Level]	1 to < 3 [Level 3]
Air Voids	3%
Asphalt Binder Grade	C = PG 58-34
Shoulder?	No
Tons or Sq Yd in. Prjct?	Tons

Sample Number	6	7	8										
Sample Tons	216	735	1706										
Tons Represented	735	971	513										
Density Tons	522	689	364										
Individual Air Voids	2.6	4.0	2.4										
Individual Gmm	2.538	2.529	2.541										
Moving Avg. Gmm	2.535	2.535	2.538										

Average Gmm ==> 2.536 Design Air Voids: 3.0 Min. Air Voids: 2.5 Day's Weighted Avg. Air Void: 3.2

Use Laboratory Method 1810

Lot	Min. Mat Density Reqrd:	93	Core Thickness (inches)	Air Dry (g)	Pan ID	Core + Pan (g)	Pan (g)	SSD (g)	Immersed (g)	Dry Weight (g)	% water absorbed	Gmb/ Bulk Sp. G	Density % of Gmm	Bulk Sp. G used	Lot Avg. Density (% of Gmm)	Mat Pay Factor "A"	Total Pay Factor AxBxC	Tons Represent	Incentive Disincentive
8	Contr. QC	8.1	2.39	860.8	A	972.3	117.0	861.4	496.6	855.3	0.2	2.345	92.5	2.345	93.2	1.00		525	\$0.00
	Contr. QC	8.2	2.03	760.1	B	872.2	115.3	760.8	443.2	756.9	0.2	2.383	94.0	2.383					
	Agency QA	8.1C	2.40	940.6		932.4	0.0	941.4	545.3	932.4	0.2	2.354	92.8						
	Agency QA	8.2C												2.364	= Avg. Gmb				
9	Contr. QC	9.1	2.09	847.5	C	962.2	116.7	848.1	502.6	845.5	0.2	2.447	96.5	2.447	95.5	1.03		525	\$1,512.00
	Contr. QC	9.2	2.42	846.0	D	959.9	116.8	846.6	494.6	843.1	0.2	2.395	94.4	2.395					
	Agency QA	9.1C	2.12	869.4		865.8	0.0	869.8	512.6	865.8	0.1	2.424	95.6						
	Agency QA	9.2C												2.421	= Avg. Gmb				
10	Contr. QC	10.1	3.45	1291.0	E	1404.9	116.6	1291.8	767.0	1288.3	0.2	2.455	96.8	2.455	96.2	1.03		525	\$1,512.00
	Contr. QC	10.2	3.08	1144.5	F	1257.0	116.4	1145.4	675.3	1140.6	0.2	2.426	95.7	2.426					
	Agency QA	10.1C																	
	Agency QA	10.2C	3.10	1160.8		1158.6	0.0	1161.8	684.3	1158.6	0.2	2.426	95.7	2.440	= Avg. Gmb				

SP 202-101-014 - Ugstad Rd

Longitudinal Joint Density Cores Min. Confined LID Required: 92 Min. Unconfined LID Required: 90.5

Assoc.	Core #	Joint Type	Core Thickness (inches)	Air Dry (g)	Pan ID	Core + Pan (g)	Pan (g)	SSD (g)	Immersed (g)	Dry Weight (g)	% water absorbed	Gmb/ Bulk Sp. G	Density % of Gmm	Bulk Sp. G used	Lot Avg. Density % of Gmm	Edge Pay Factor B or C
		No Core								0.0						
		No Core								0.0						
		No Core														
		No Core														

Net Inc./Disinc.
\$3,024.00

Max. Possible Incentive
\$4,536.00

Percent of Max. Earned
66.7%

Daily Core Characteristics

Avg. Density	150.0
lb/yd ³ in.	112.5

Info: _____

Notes: _____

QC By: _____

QA By: _____

Field Check By: _____

Plant Mixed Asphalt Pavement (Mn/DOT Specification 2360) Density Incentive/Disincentive Worksheet

2020 Spec. Book
S.P. 202-101-014
TH Ugstad
 Location Ugstad Road

Contractor **Ulland Brothers**
 Engineer **Hermantown**

MDR # **01-2023-0083**
 Plant: **3601**
 Date Paved **9/8/2023**
 Date Cored **9/11/1993**

Bid Price (\$/ton) **\$94.00**
 % Passing #4 Sieve: **65**
 1% Reduced Prjct?: **No**
 Long. Jnt. Density?: **No**

Total Tons Produced: **1553**
 Max. Density Tons: **1553**
 Max./Total Ratio: **1.00**

Lots Required: **3**
 Over-ride # of Lots:
 Tons/Lot: **517.7**

SPWEA340C (MSCR)

Mix Design Type	SP (Gyratory)
Mix Course	WE (Wear)
Max. Aggr. Size	A (1/2 inch)
ESALS [Traffic Level]	1 to < 3 [Level 3]
Air Voids	4%
Asphalt Binder Grade	C = PG 58H-34 (MSCR)
Shoulder?	No
Tons or Sq Yd in. Prjct?	Tons

Sample Number	8	9																		
Sample Tons	213	806																		
Tons Represented	806	747																		
Density Tons	806	747																		
Individual Air Voids	4.0	4.4																		
Individual Gmm	2.516	2.535																		
Moving Avg. Gmm	2.521	2.524																		

Average Gmm ==> 2.524 Design Air Voids: 4.0 Min. Air Voids: 3.5 Day's Weighted Avg. Air Void: 4.2

Use Laboratory Method 1810

Lot	Min. Mat Density Reqrd: 92	Core #	Core Thickness (inches)	Air Dry (g)	Pan ID	Core +		SSD (g)	Immersed (g)	Dry Weight (g)	% water absorbed	Gmb/ Bulk Sp. G	Density % of Gmm	Bulk Sp. G used	Lot Avg. Density (% of Gmm)	Mat Pay Factor "A"	Tons Represent	Incentive Disincentive
						Pan (g)	Pan (g)											
11	92	11.1	1.48	589.8	A	700.0	116.7	590.4	338.8	583.3	0.2	2.318	91.8	2.318	92.8	1.00	517.7	\$0.00
		11.2	1.85	738.7	B	849.1	115.5	739.0	429.1	733.6	0.1	2.367	93.8	2.367				
		11.1C	1.48	558.9	MG	910.7	358.3	559.2	323.7	552.4	0.1	2.346	92.9					
		11.2C												2.343	= Avg. Gmb			
12	92	12.1	1.47	611.1	C	723.3	116.9	611.7	352.0	606.4	0.2	2.335	92.5	2.335	93.3	1.02	517.7	\$973.28
		12.2	1.53	624.6	D	738.4	116.8	624.7	363.0	621.6	0.0	2.375	94.1	2.375				
		12.1C																
		12.2C	1.53	616.0	AMK	949.5	337.0	616.5	359.2	612.5	0.2	2.380	94.3	2.355	= Avg. Gmb			
13	92	13.1	1.69	694.7	E	808.2	116.4	695.2	402.7	691.8	0.2	2.365	93.7	2.365	93.3	1.02	517.7	\$973.28
		13.2	1.78	721.4	F	834.0	116.5	721.9	415.6	717.5	0.2	2.342	92.8	2.342				
		13.1C	1.69	688.8	DS	1022.0	337.2	689.6	399.7	684.8	0.3	2.362	93.6					
		13.2C												2.354	= Avg. Gmb			

SP 202-101-014 - Ugstad Rd

Min. Confined LJD Required: 91 Min. Unconfined LJD Required: 89.5

Pan ID

No Core	
No Core	
No Core	
No Core	

Net Inc./Disinc.
\$1,946.56

Max. Possible Incentive
 \$4,379.74
 Percent of Max. Earned
 44.4%

Daily Core Characteristics

Avg. Density 146.4
 lb/yd³ in. 109.8

Info:
 Notes:

QC By:
 QA By:
 Field Check By:

Plant Mixed Asphalt Pavement (Mn/DOT Specification 2360) Density Incentive/Disincentive Worksheet

2020 Spec. Book
S.P. 202-101-014
CSAH Ugstad Rd
 Location **Ugstad Rd**

Contractor **Ulland Brothers**
City of Hermantown
Engineer

MDR # **01-2023-0081**
Plant: **3601**
Date Paved **9/16/2023**
Date Cored **9/18/2023**

Bid Price (\$/ton) **\$96.00**
% Passing #4 Sieve: **55**
1% Reduced Prjct? **No**
Long. Jnt. Density? **Yes**

Total Tons Produced: **1193**
Max. Density Tons: **997**
Max./Total Ratio: **0.84**

Lots Required: **2**
Over-ride # of Lots:
Tons/Lot: **498.5**

SPNWB330C

Mix Design Type	SP (Gyratory)
Mix Course	NW (Non-Wearing)
Max. Aggr. Size	B (3/4 inch)
ESALS [Traffic Level]	1 to < 3 [Level 3]
Air Voids	3%
Asphalt Binder Grade	C = PG 58-34
Shoulder?	No
Tons or Sq Yd in. Prjct?	Tons

Sample Number	9
Sample Tons	153
Tons Represented	1193
Density Tons	997
Individual Air Voids	3.1
Individual Gmm	2.526
Moving Avg. Gmm	2.534

Average Gmm ==> 2.534 Design Air Voids: 3.0 Min. Air Voids: 2.5 Day's Weighted Avg. Air Void: 3.1

Use Laboratory Method 1810

Lot	Min. Mat Density Reqrd:	Core Thickness (inches)	Air Dry (g)	Pan ID	Core + Pan (g)	Pan (g)	SSD (g)	Immersed (g)	Dry Weight (g)	% water absorbed	Gmb/ Bulk Sp. G	Density % of Gmm	Bulk Sp. G used	Lot Avg. Density (% of Gmm)	Mat Pay Factor "A"	Total Pay Factor AxBxC	Tons Represent	Incentive Disincentive
14	93	14.1	556.5	A	669.7	116.7	556.9	320.7	553.0	0.2	2.341	92.4	2.341	93.1	1.00		498.5	\$0.00
		14.2	741.4	B	853.9	115.6	741.8	430.8	738.3	0.1	2.374	93.7	2.374					
		14.1C	566.0		562.8	0.0	567.1	328.3	562.8	0.5	2.357	93.0						
		14.2C												2.358 = Avg. Gmb				
15	93	15.1	876.5	C	991.7	116.6	877.0	513.6	875.1	0.1	2.408	95.0	2.408	94.4	1.02		498.5	\$957.12
		15.2	797.8	D	911.7	116.6	798.7	464.1	795.1	0.3	2.376	93.8	2.376					
		15.1C	858.8		857.3	0.0	859.7	503.2	857.3	0.3	2.405	94.9						
		15.2C												2.392 = Avg. Gmb				

SP 202-101-014 - Ugstad Rd
 SP 202-104-012 - Arrowhead Rd
 SP 202-104-012 - Arrowhead Rd

Longitudinal Joint Density Cores

Min. Confined LID Required: 92 Min. Unconfined LID Required: 90.5

Assoc.	Core #	Joint Type	Core Thickness (inches)	Air Dry (g)	Pan ID	Core + Pan (g)	Pan (g)	SSD (g)	Immersed (g)	Dry Weight (g)	% water absorbed	Gmb/ Bulk Sp. G	Density % of Gmm	Bulk Sp. G used	Lot Avg. Density % of Gmm	Edge Pay Factor B or C
		No Core								0.0						
		No Core								0.0						
		No Core														
		No Core														

Net Inc./Disinc.
\$957.12

Max. Possible Incentive
 \$2,871.36
Percent of Max. Earned
 33.3%

Daily Core Characteristics
 Avg. Density 148.0
 lb/yd³ in. 111.0

Info: _____

Notes: _____

85

QC By: _____
 QA By: _____
 Field Check By: _____

Plant Mixed Asphalt Pavement (Mn/DOT Specification 2360) Density Incentive/Disincentive Worksheet

2020 Spec. Book
S.P. 202-101-014
TH Ugstad
 Location Ugstad Road

Contractor **Ulland Brothers**
 Engineer **Hermantown**

MDR # **01-2023-0083**
 Plant: **3601**
 Date Paved **9/18/2023**
 Date Cored **9/19/2023**

Bid Price (\$/ton) **\$94.00**
 % Passing #4 Sieve: **65**
 1% Reduced Prjct?: **No**
 Long. Jnt. Density?: **No**

Total Tons Produced: **2343**
 Max. Density Tons: **1135**
 Max./Total Ratio: **0.48**

Lots Required: **3**
 Over-ride # of Lots:
 Tons/Lot: **378.3**

SPWEA340C (MSCR)

Mix Design Type	SP (Gyratory)
Mix Course	WE (Wear)
Max. Aggr. Size	A (1/2 inch)
ESALS [Traffic Level]	1 to <3 [Level 3]
Air Voids	4%
Asphalt Binder Grade	C = PG 58H-34 (MSCR)
Shoulder?	No
Tons or Sq Yd in. Prjct?	Tons

Sample Number	10	11	12												
Sample Tons	112	693	1455												
Tons Represented	693	762	888												
Density Tons	336	369	430												
Individual Air Voids	3.1	4.1	3.6												
Individual Gmm	2.54	2.536	2.541												
Moving Avg. Gmm	2.528	2.532	2.538												

Average Gmm ==> 2.539 Design Air Voids: 4.0 Min. Air Voids: 3.5 Day's Weighted Avg. Air Void: 3.6

Use Laboratory Method 1810

Lot	Core #	Core Thickness (inches)	Air Dry (g)	Pan ID	Core + Pan (g)	Pan (g)	SSD (g)	Immersed (g)	Dry Weight (g)	% water absorbed	Gmb/ Bulk Sp. G	Density % of Gmm	Bulk Sp. G used	Lot Avg. Density (% of Gmm)	Mat Pay Factor "A"	Tons Represent	Incentive Disincentive
16	Contr. QC	16.1	1.66	645.3	A	758.8	116.9	645.8	372.0	641.9	0.2	2.344	92.3	2.344	1.00	378.3	\$0.00
	Contr. QC	16.2	1.36	494.9	B	608.5	115.4	495.4	288.3	493.1	0.2	2.381	93.8	2.381			
	Agency QA	16.1C															
	Agency QA	16.2C	1.36	530.4		528.2	0.0	531.0	308.8	528.2	0.3	2.377	93.6	2.362	= Avg. Gmb		
17	Contr. QC	17.1	1.53	603.4	C	717.2	116.8	604.0	348.9	600.4	0.2	2.354	92.7	2.354	93.9	378.3	\$1,066.81
	Contr. QC	17.2	1.71	705.5	D	821.0	116.3	705.9	413.8	704.7	0.1	2.413	95.0	2.413			
	Agency QA	17.1C															
	Agency QA	17.2C	1.70	733.8		733.7	0.0	734.5	430.1	733.7	0.2	2.410	94.9	2.384	= Avg. Gmb		
18	Contr. QC	18.1	1.35	550.8	E	664.3	116.2	551.4	319.5	548.1	0.3	2.364	93.1	2.364	93.3	378.3	\$711.20
	Contr. QC	18.2	1.70	675.2	F	789.5	116.2	675.8	392.2	673.3	0.2	2.374	93.5	2.374			
	Agency QA	18.1C	1.37	530.4		528.2	0.0	531.0	308.8	528.2	0.3	2.377	93.6				
	Agency QA	18.2C												2.369	= Avg. Gmb		

SP 202-101-014 - Ugstad Rd
 SP 202-104-012 - Arrowhead Rd
 SP 202-104-012 - Arrowhead Rd

Min. Confined LID Required: 91

Min. Unconfined LID Required: 89.5

Pan ID

No Core	No Core
No Core	No Core
No Core	No Core
No Core	No Core

Net Inc./Disinc.
\$1,778.01

Max. Possible Incentive
 \$3,200.42
 Percent of Max. Earned
 55.6%

Daily Core Characteristics
 Avg. Density 147.8
 lb/yd³ in. 110.8

QC By: _____
 QA By: _____
 Field Check By: _____

Info:

Notes:

Plant Mixed Asphalt Pavement (Mn/DOT Specification 2360) Density Incentive/Disincentive Worksheet

2020 Spec. Book	S.P. 202-101-014	Contractor Ulland Brothers	MDR # 01-2023-0083	Bid Price (\$/ton) \$94.00	Total Tons Produced: 2750	Lots Required: 4
TH	Ugstad	Engineer James Watters	Plant: 3601	% Passing #4 Sieve: 65	Max. Density Tons: 1966	Over-ride # of Lots:
Location Ugstad Road			Date Paved 9/19/2023	1% Reduced Prjct? No	Max./Total Ratio: 0.71	Tons/Lot: 491.5
			Date Cored 9/20/2023	Long. Int. Density? No		

Mix Design Type	SP (Gyratory)
Mix Course	WE (Wear)
Max. Aggr. Size	A (1/2 inch)
ESALS [Traffic Level]	1 to < 3 [Level 3]
Air Voids	4%
Asphalt Binder Grade	C = PG 58H-34 (MSCR)
Shoulder?	No
Tons or Sq Yd in. Prjct?	Tons

Sample Number	13	14	15																	
Sample Tons	128	963	1861																	
Tons Represented	963	898	889																	
Density Tons	688	642	636																	
Individual Air Voids	3.7	4.0	3.9																	
Individual Gmm	2.527	2.53	2.521																	
Moving Avg. Gmm	2.536	2.534	2.530																	

Average Gmm ==> 2.526 Design Air Voids: 4.0 Min. Air Voids: 3.5 Day's Weighted Avg. Air Void: 3.9

Use Laboratory Method 1810

Lot	Core #	Core Thickness (inches)	Air Dry (g)	Pan ID	Core +			SSD (g)	Immersed (g)	Dry Weight (g)	% water absorbed	Gmb/ Bulk Sp. G	Density % of Gmm	Bulk Sp. G used	Lot Avg. Density (% of Gmm)	Mat Pay Factor "A"	Tons Represent	Incentive Disincentive
					Pan (g)	Pan (g)	Pan (g)											
19	19.1	2.16	899.8	A	1014.5	116.9	900.0	528.2	897.6	0.1	2.414	95.6	2.414	95.5	1.03	491.5	\$1,386.03	
	19.2	2.18	901.9	B	1015.3	115.1	902.2	528.9	900.2	0.1	2.411	95.4	2.411					
	19.1C																	
	19.2C	2.18	924.5	MG	1280.9	359.6	924.5	542.1	921.3	0.0	2.409	95.4	2.412	= Avg. Gmb				
20	20.1	2.18	934.0	C	1049.4	116.9	934.6	548.3	932.5	0.2	2.414	95.6	2.414	95.0	1.03	491.5	\$1,386.03	
	20.2	2.04	821.2	D	934.5	116.8	822.1	479.5	817.7	0.3	2.387	94.5	2.387					
	20.1C	2.22	936.7	AMK	1269.4	335.5	937.9	549.9	933.9	0.3	2.407	95.3						
	20.2C												2.400	= Avg. Gmb				
21	21.1	2.10	874.9	E	989.0	116.5	875.6	512.4	872.5	0.2	2.402	95.1	2.402	95.6	1.03	491.5	\$1,386.03	
	21.2	2.14	876.1	F	991.3	116.3	876.5	516.5	875.0	0.1	2.431	96.2	2.431					
	21.1C	2.11	859.6	JE	1214.0	357.9	860.9	503.7	856.1	0.4	2.397	94.9						
	21.2C												2.416	= Avg. Gmb				
22	22.1	2.23	910.4	G	1025.1	116.5	910.8	531.2	908.6	0.1	2.394	94.8	2.394	94.3	1.03	491.5	\$1,386.03	
	22.2	2.00	838.3	H	951.5	116.5	839.0	486.8	835.0	0.2	2.371	93.9	2.371					
	22.1C																	
	22.2C	1.98	792.7	DS	1125.7	338.4	794.5	461.2	787.3	0.5	2.362	93.5	2.383	= Avg. Gmb				

SP 202-101-014 - Ugstad Rd

Min. Confined LID Required: 91 Min. Unconfined LID Required: 89.5

Pan ID

	No Core	No Core			
	No Core	No Core			
	No Core	No Core			

Net Inc./Disinc.
\$5,544.12

Max. Possible Incentive
\$5,544.12
Percent of Max. Earned
100.0%

Daily Core Characteristics
Avg. Density 149.7
lb/yd³ in. 112.3

Info: _____

Notes: _____

QC By: _____
QA By: _____
Field Check By: _____

Plant Mixed Asphalt Pavement (Mn/DOT Specification 2360) Density Incentive/Disincentive Worksheet

2020 Spec. Book						Total Tons Produced: 1995	Lots Required: 3
S.P. 202-101-014	Contractor Ulland Brothers	MDR # 01-2023-0083	Bid Price (\$/ton) \$94.00	Max. Density Tons: 1376	Over-ride # of Lots:		
TH Ugstad	Engineer Hermantown	Plant: 3601	% Passing #4 Sieve: 65	Max./Total Ratio: 0.69	Tons/Lot: 458.7		
Location Ugstad Road		Date Paved 9/21/2023	1% Reduced Prjct? No				
		Date Cored 9/22/2023	Long. Int. Density? No				

SPWEA340C (MSCR)

Mix Design Type	SP (Gyratory)
Mix Course	WE (Wear)
Max. Aggr. Size	A (1/2 inch)
ESALS [Traffic Level]	1 to < 3 [Level 3]
Air Voids	4%
Asphalt Binder Grade	C = PG 58H-34 (MSCR)
Shoulder?	No
Tons or Sq Yd in. Prjct?	Tons

Sample Number	16	17	18														
Sample Tons	136	821	1607														
Tons Represented	821	786	388														
Density Tons	566	542	268														
Individual Air Voids	4.1	3.6	4.5														
Individual Gmm	2.532	2.538	2.543														
Moving Avg. Gmm	2.528	2.530	2.534														

Average Gmm ==> 2.538 Design Air Voids: 4.0 Min. Air Voids: 3.5 Day's Weighted Avg. Air Void: 4.0

Use Laboratory Method 1810

Lot	Min. Mat Density Reqrd:	Core Thickness (inches)	Air Dry (g)	Pan ID	Core +			SSD (g)	Immersed (g)	Dry Weight (g)	% water absorbed	Gmb/ Bulk Sp. G	Density % of Gmm	Bulk Sp. G used	Lot Avg. Density (% of Gmm)	Mat Pay Factor "A"	Tons Represent	Incentive Disincentive												
					Pan (g)	Pan (g)	Pan (g)																							
23	92	23.1	661.2	A	774.7	117.1	661.3	385.4	657.6	0.0	2.383	93.9	2.383	93.9	1.03	458.7	\$1,293.53													
																		23.2	B	1067.4	115.6	955.7	556.1	951.8	0.0	2.382	93.9	2.382		
																		23.1C												
																		23.2C	KB	1307.1	334.1	974.4	565.8	973.0	171.4	2.381	93.8	2.383	= Avg. Gmb	
24	92	24.1	688.1	C	803.3	117.0	688.3	403.2	686.3	0.1	2.407	94.8	2.407	94.6	1.03	458.7	\$1,293.53													
																		24.2	D	982.5	116.6	868.4	507.3	865.9	0.1	2.398	94.5	2.398		
																		24.1C												
																		24.2C	MG	1036.5	361.3	678.3	398.3	675.2	0.1	2.411	95.0	2.402	= Avg. Gmb	
25	91	25.1	780.3	E	892.6	116.9	780.5	451.8	775.7	0.1	2.360	93.0	2.360	94.0	1.03	458.7	\$1,293.53													
																		25.2	F	777.2	116.4	663.1	389.0	660.8	0.1	2.411	95.0	2.411		
																		25.1C												
																		25.2C		472.2	1147.4	338.2	814.0	472.2	809.2	0.2	2.367	93.3	2.386	= Avg. Gmb
SP 202-101-014 - Ugstad Rd																														
SP 202-104-012 - Arrowhead Rd																														

Min. Confined LID Required: 91 Min. Unconfined LID Required: 89.5

Pan ID

		No Core																	
		No Core																	
		No Core																	
		No Core																	

Net Inc./Disinc.
\$3,880.59

Max. Possible Incentive
\$3,880.60
Percent of Max. Earned
100.0%

Daily Core Characteristics
Avg. Density 148.9
lb/yd³ in. 111.7

Info: _____

Notes: _____

QC By: _____

QA By: _____

Field Check By: _____



332 West Superior Street
Suite 600
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www.msa-ps.com

November 15, 2023

John Mulder – City Administrator
City of Hermantown
5105 Maple Grove Rd
Hermantown, MN 55811

Re: Pay Application #6 & Change Orders 17
SP 202-101-014, SP 202-104-012
Ugstad Rd & Arrowhead Rd Improvements

Dear Mr. Mulder,

Enclosed are the following documents recommended for approval at the next council meeting.

1. Pay Application #6 in the amount of \$98,514.43 to Ulland Brothers, Inc, the project prime contractor. This amount is for work completed in the time frame 10/07/23 to 11/10/23.
2. Change Order #17 in the amount of \$16,416.00 for payment of bituminous density incentives as required by MnDOT Spec 2360. This amount is included in Pay App #6.

Sincerely,

MSA Professional Services, Inc.

A handwritten signature in black ink, reading "James A. Watters". The signature is fluid and cursive, with a large, sweeping flourish at the end.

James Watters, PE
Project Manager

Resolution No. 2023-171

Resolution Approving Pay Request Number 6 For Road Improvement District 534 To Ulland Brothers, Inc. In the Amount Of \$98,514.43

WHEREAS, the City of Hermantown has contracted with Ulland Brothers, Inc for Road Improvement District 534 (“Project”); and

WHEREAS, Ulland Brothers Inc. has performed a portion of the agreed upon work in said Project; and

WHEREAS, Ulland Brothers Inc has submitted Pay Request No. 6 in the amount of \$98,514.43; and

WHEREAS, the City will maintain an accumulated retainage as shown on the pay requests until the final work and documentation is completed; and

WHEREAS, Northland Consulting Engineers LLP has approved such Pay Request No. 6 provided that \$223,960.43 as retainage of 5% be withheld pending final acceptance of the Project by the City of Hermantown.

WHEREAS, the necessary documentation for the pay request is on file and available for inspection.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Hermantown, Minnesota as follows:

1. Pay Request No. 6 is hereby approved.
2. The City is hereby authorized and directed to pay to Ulland Brothers Inc the sum of \$98,514.43 which is the amount represented on Pay Request No. 6.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors _____, and Mayor Boucher, aye.

and the following voted in opposition thereto:

None.

WHEREUPON, such resolution has been duly passed and adopted November 20, 2023.



Contractor's Application for Payment No.

6

To (Owner): City of Hermantown	Application Period: 10/6/2023 to 11/10/2023	Application Date: 11/14/2023
Project: UGSTAD RD & W ARROWHEAD RD IMPROVEMENTS S.P. 202-101-014 & S.P. 202-104-012	From (Contractor): Ulland Brothers Inc.	Via (Engineer): MSA Professional Services, Inc.
Owner's Contract No.:	Contract: SP 202-101-014, 202-104-012	Engineer's Project No.: 7994015

**Application For Payment
Change Order Summary**

Number	Additions	Deductions
1	\$0.00	
2	\$6,625.00	
3	\$45,123.20	
4	\$0.00	
5	\$11,068.20	
6	\$0.00	
7	\$9,308.60	
8	\$74,550.00	
9	\$3,312.00	
10	\$60,085.20	
11	\$4,650.00	
12	\$18,070.08	
13	\$3,723.20	
14	\$21,556.00	
15	\$2,574.00	
16	\$1,258.00	
17	\$16,416.00	
TOTALS	\$ 278,319.48	\$ -
NET CHANGE BY CHANGE ORDERS	\$ 278,319.48	


1. ORIGINAL CONTRACT PRICE.....	\$	\$4,198,170.00
2. Net change by Change Orders.....	\$	\$278,319.48
3. Current Contract Price (Line 1 ± 2).....	\$	\$4,476,489.48
4. TOTAL COMPLETED AND STORED TO DATE (Column F or I total on Progress Estimates).....	\$	\$4,479,208.66
5. RETAINAGE:		
a. 5% X \$4,479,208.66 Work Completed.....	\$	\$223,960.43
b. 0% X \$0.00 Stored Material.....	\$	\$0.00
c. Total Retainage (Line 5.a + Line 5.b).....	\$	\$223,960.43
6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5.c).....	\$	\$4,255,248.22
7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application).....	\$	\$4,156,733.79
8. AMOUNT DUE THIS APPLICATION.....	\$	\$98,514.43
9. BALANCE TO FINISH, PLUS RETAINAGE (Column [G for LS] or [J for UP] total on Progress Estimates + Line 5.c above).....	\$	\$221,241.26

Contractor's Certification
The undersigned Contractor certifies, to the best of its knowledge, the following:

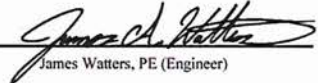
(1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment;

(2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner at time of payment free and clear of all Liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such Liens, security interest, or encumbrances); and

(3) All the Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

Contractor Signature
By:  Date: 11/14/2023

Payment of: \$ 98,514.43
(Line 8 or other - attach explanation of the other amount)

is recommended by:  11/14/2023
James Watters, PE (Engineer) (Date)

Payment of: \$ 98,514.43
(Line 8 or other - attach explanation of the other amount)

is approved by: _____
David Bolf, PE (City Engineer) (Date)

Approved by: _____
Funding or Financing Entity (if applicable) (Date)

Progress Estimate - Unit Price Work

Contractor's Application

For (Contract): SP 202-101-014, 202-104-012											Application Number: 6					
Application Period: 10/6/2023 to 11/10/2023											Application Date: 11/14/2023					
A				B	C	D	E	F	G	H	I		J			
Item				Contract Information			Work Completed to Date				Materials Presently Stored (not in F)	Total Completed and Stored to Date (G + H)	% (I / B)	Balance to Finish (B - I)		
Bid Item No.	Spec. Item No.	Description		Item Quantity	Units	Unit Price	Total Value of Item (\$)	Quantities from Previous Pay Applications	Estimated Quantities Installed this Pay Period	Value of Work Installed this Pay Period					Total Estimated Quantity Installed	Value of Work Installed to Date
1		MOBILIZATION		1	LUMP SUM	\$24,996.80	\$24,996.80	1.0		\$0.00	1.0	\$24,996.80	\$0.00	\$24,996.80	100.0%	\$0.00
2		CLEARING AND GRUBBING		1	LUMP SUM	\$1,600.00	\$1,600.00			\$0.00		\$0.00	\$0.00	\$0.00	0.0%	\$1,600.00
3		REMOVE CASTING		50	EACH	\$100.00	\$5,000.00	50		\$0.00	50	\$5,000.00	\$0.00	\$5,000.00	100.0%	\$0.00
4		REMOVE DRAINAGE STRUCTURE		19	EACH	\$400.00	\$7,600.00	21		\$0.00	21	\$8,400.00	\$0.00	\$8,400.00	110.5%	-\$800.00
5		REMOVE MAIL BOX SUPPORT		58	EACH	\$130.00	\$7,540.00	58		\$0.00	58	\$7,540.00	\$0.00	\$7,540.00	100.0%	\$0.00
6		REMOVE SIGN TYPE C		113	EACH	\$50.00	\$5,650.00	113		\$0.00	113	\$5,650.00	\$0.00	\$5,650.00	100.0%	\$0.00
7		SALVAGE PIPE APRON		2	EACH	\$600.00	\$1,200.00	1		\$0.00	1	\$600.00	\$0.00	\$600.00	50.0%	\$600.00
8		SALVAGE SIGN TYPE C		20	EACH	\$50.00	\$1,000.00	20		\$0.00	20	\$1,000.00	\$0.00	\$1,000.00	100.0%	\$0.00
9		REMOVE BITUMINOUS CURB		605	LIN FT	\$3.00	\$1,815.00	419		\$0.00	419	\$1,257.00	\$0.00	\$1,257.00	69.3%	\$558.00
10		REMOVE CURB AND GUTTER		11,676	LIN FT	\$2.70	\$31,525.20	11898		\$0.00	11898	\$32,124.60	\$0.00	\$32,124.60	101.9%	-\$599.40
11		REMOVE PIPE CULVERTS		70	LIN FT	\$14.00	\$980.00	70		\$0.00	70	\$980.00	\$0.00	\$980.00	100.0%	\$0.00
12		REMOVE SEWER PIPE (STORM)		1,224	LIN FT	\$15.00	\$18,360.00	1140		\$0.00	1140	\$17,100.00	\$0.00	\$17,100.00	93.1%	\$1,260.00
13		REMOVE BITUMINOUS PAVEMENT		19,064	SQ YD	\$3.75	\$71,490.00	19555		\$0.00	19555	\$73,331.25	\$0.00	\$73,331.25	102.6%	-\$1,841.25
14		REMOVE CONCRETE WALK		3,725	SQ YD	\$11.00	\$40,975.00	4305	93	\$1,023.00	4398	\$48,378.00	\$0.00	\$48,378.00	118.1%	-\$7,403.00
15		GRANULAR EMBANKMENT (CV) (P)		670	CU YD	\$29.00	\$19,430.00	670		\$0.00	670	\$19,430.00	\$0.00	\$19,430.00	100.0%	\$0.00
16		COMMON EMBANKMENT (CV) (P)		4,075	CU YD	\$5.20	\$21,190.00	4075		\$0.00	4075	\$21,190.00	\$0.00	\$21,190.00	100.0%	\$0.00
17		EXCAVATION - COMMON (P)		16,540	CU YD	\$12.00	\$198,480.00	16540		\$0.00	16540	\$198,480.00	\$0.00	\$198,480.00	100.0%	\$0.00
18		SELECT GRANULAR EMBANKMENT MOD 7% (CV) (P)		7,165	CU YD	\$24.00	\$171,960.00	6091		\$0.00	6091	\$146,184.00	\$0.00	\$146,184.00	85.0%	\$25,776.00
19		HAUL & DISPOSE OF CONTAMINATED SOIL		25	CU YD	\$105.00	\$2,625.00	0		\$0.00		\$0.00	\$0.00	\$0.00	0.0%	\$2,625.00
20		GEOTEXTILE FABRIC TYPE 5		17,405	SQ YD	\$3.20	\$55,696.00	17343		\$0.00	17343	\$55,497.60	\$0.00	\$55,497.60	99.6%	\$198.40
21		STREET SWEEPER (WITH PICKUP BROOM)		150	HOUR	\$205.00	\$30,750.00	6	86	\$17,630.00	92	\$18,860.00	\$0.00	\$18,860.00	61.3%	\$11,890.00
22		AGGREGATE BASE (CV) CLASS 5 (P)		7,545	CU YD	\$41.00	\$309,345.00	7545		\$0.00	7545	\$309,345.00	\$0.00	\$309,345.00	100.0%	\$0.00
23		AGGREGATE SURFACING (CV) CLASS 5 (P)		265	CU YD	\$95.00	\$25,175.00	195	73	\$6,887.50	268	\$25,412.50	\$0.00	\$25,412.50	100.9%	-\$237.50
24		FULL DEPTH RECLAMATION		10,445	SQ YD	\$1.20	\$12,534.00	10445		\$0.00	10445	\$12,534.00	\$0.00	\$12,534.00	100.0%	\$0.00
25		HAUL FULL DEPTH RECLAMATION (LV)		430	CU YD	\$17.00	\$7,310.00	430		\$0.00	430	\$7,310.00	\$0.00	\$7,310.00	100.0%	\$0.00
26		MILL BITUMINOUS SURFACE (3.0")		23,670	SQ YD	\$2.50	\$59,175.00	23258		\$0.00	23258	\$58,145.00	\$0.00	\$58,145.00	98.3%	\$1,030.00
27		TYPE 12.5 BIT MIXTURE FOR PATCHING		900	SQ YD	\$29.50	\$26,550.00	557		\$0.00	557	\$16,431.50	\$0.00	\$16,431.50	61.9%	\$10,118.50
28		TYPE SP 9.5 BITUMINOUS MIXTURE FOR PATCHING		306	TON	\$355.00	\$108,630.00	305		\$0.00	305	\$108,275.00	\$0.00	\$108,275.00	99.7%	\$355.00
29		TYPE SP 9.5 WEARING COURSE MIXTURE (3,B)		4,220	TON	\$88.00	\$371,360.00	1348		\$0.00	1348	\$118,624.00	\$0.00	\$118,624.00	31.9%	\$252,736.00
30		TYPE SP 9.5 WEARING COURSE MIXTURE (3,C)		5,185	TON	\$94.00	\$487,390.00	6810		\$0.00	6810	\$640,140.00	\$0.00	\$640,140.00	131.3%	-\$152,750.00
31		TYPE SP 12.5 NON WEARING COURSE MIXTURE (3,C)		1,885	TON	\$96.00	\$180,960.00	3320		\$0.00	3320	\$318,720.00	\$0.00	\$318,720.00	176.1%	-\$137,760.00
32		12" RC PIPE APRON		4	EACH	\$1,400.00	\$5,600.00	3		\$0.00	3	\$4,200.00	\$0.00	\$4,200.00	75.0%	\$1,400.00
33		15" RC PIPE APRON		7	EACH	\$1,500.00	\$10,500.00	7		\$0.00	7	\$10,500.00	\$0.00	\$10,500.00	100.0%	\$0.00
34		24" RC PIPE APRON		4	EACH	\$1,800.00	\$7,200.00	4		\$0.00	4	\$7,200.00	\$0.00	\$7,200.00	100.0%	\$0.00
35		30" RC PIPE APRON		2	EACH	\$2,300.00	\$4,600.00	2		\$0.00	2	\$4,600.00	\$0.00	\$4,600.00	100.0%	\$0.00
36		28" SPAN RC PIPE-ARCH APRON		7	EACH	\$2,000.00	\$14,000.00	7		\$0.00	7	\$14,000.00	\$0.00	\$14,000.00	100.0%	\$0.00
37		36" SPAN RC PIPE-ARCH APRON		4	EACH	\$2,800.00	\$11,200.00	4		\$0.00	4	\$11,200.00	\$0.00	\$11,200.00	100.0%	\$0.00
38		4" PERF PVC PIPE DRAIN		8,594	LIN FT	\$11.00	\$94,534.00	8176		\$0.00	8176	\$89,936.00	\$0.00	\$89,936.00	95.1%	\$4,598.00
39		12" RC PIPE SEWER DESIGN 3006		110	LIN FT	\$96.00	\$10,560.00	107		\$0.00	107	\$10,272.00	\$0.00	\$10,272.00	97.3%	\$288.00
40		15" RC PIPE SEWER DESIGN 3006		366	LIN FT	\$100.00	\$36,600.00	360		\$0.00	360	\$36,000.00	\$0.00	\$36,000.00	98.4%	\$600.00
41		18" RC PIPE SEWER DESIGN 3006		79	LIN FT	\$105.00	\$8,295.00	79		\$0.00	79	\$8,295.00	\$0.00	\$8,295.00	100.0%	\$0.00
42		24" RC PIPE SEWER DESIGN 3006		109	LIN FT	\$130.00	\$14,170.00	110		\$0.00	110	\$14,300.00	\$0.00	\$14,300.00	100.9%	-\$130.00
43		30" RC PIPE SEWER DESIGN 3006		16	LIN FT	\$190.00	\$3,040.00	16		\$0.00	16	\$3,040.00	\$0.00	\$3,040.00	100.0%	\$0.00
44		28" SPAN RC PIPE-ARCH SEWER CLASS IIA		575	LIN FT	\$170.00	\$97,750.00	564		\$0.00	564	\$95,880.00	\$0.00	\$95,880.00	98.1%	\$1,870.00
45		36" SPAN RC PIPE-ARCH SEWER CLASS IIA		187	LIN FT	\$220.00	\$41,140.00	191		\$0.00	191	\$42,020.00	\$0.00	\$42,020.00	102.1%	-\$880.00
46		CONNECT TO EXISTING STORM SEWER		6	EACH	\$2,300.00	\$13,800.00	6		\$0.00	6	\$13,800.00	\$0.00	\$13,800.00	100.0%	\$0.00
47		3" POLYSTYRENE INSULATION		100	SQ YD	\$36.00	\$3,600.00	22		\$0.00	22	\$792.00	\$0.00	\$792.00	22.0%	\$2,808.00
48		ADJUST VALVE BOX		21	EACH	\$500.00	\$10,500.00	19		\$0.00	19	\$9,500.00	\$0.00	\$9,500.00	90.5%	\$1,000.00
49		ADJUST CURB STOP		2	EACH	\$250.00	\$500.00	2		\$0.00	2	\$500.00	\$0.00	\$500.00	100.0%	\$0.00

Progress Estimate - Unit Price Work

Contractor's Application

For (Contract): SP 202-101-014, 202-104-012											Application Number: 6				
Application Period: 10/6/2023 to 11/10/2023											Application Date: 11/14/2023				
A					B	C	D	E	F	G	H	I		J	
Item			Contract Information			Work Completed to Date					Materials Presently Stored (not in F)	Total Completed and Stored to Date (G + H)	% (I / B)	Balance to Finish (B - I)	
Bid Item No.	Spec. Item No.	Description	Item Quantity	Units	Unit Price	Total Value of Item (\$)	Quantities from Previous Pay Applications	Estimated Quantities Installed this Pay Period	Value of Work Installed this Pay Period	Total Estimated Quantity Installed					Value of Work Installed to Date
50		CONNECT TO EXISTING WATER MAIN	2	EACH	\$6,000.00	\$12,000.00	1		\$0.00	1	\$6,000.00	\$0.00	\$6,000.00	50.0%	\$6,000.00
51		HYDRANT	5	EACH	\$11,000.00	\$55,000.00	5		\$0.00	5	\$55,000.00	\$0.00	\$55,000.00	100.0%	\$0.00
52		CASTING ASSEMBLY	51	EACH	\$830.00	\$42,330.00	50		\$0.00	50	\$41,500.00	\$0.00	\$41,500.00	98.0%	\$830.00
53		CONSTRUCT DRAINAGE STRUCTURE DESIGN 48-4020	8	EACH	\$5,300.00	\$42,400.00	8		\$0.00	8	\$42,400.00	\$0.00	\$42,400.00	100.0%	\$0.00
54		CONSTRUCT DRAINAGE STRUCTURE DESIGN 60-4020	11	EACH	\$7,100.00	\$78,100.00	10		\$0.00	10	\$71,000.00	\$0.00	\$71,000.00	90.9%	\$7,100.00
55		CONSTRUCT DRAINAGE STRUCTURE DESIGN 72-4020	4	EACH	\$9,100.00	\$36,400.00	3		\$0.00	3	\$27,300.00	\$0.00	\$27,300.00	75.0%	\$9,100.00
56		CONSTRUCT DRAINAGE STRUCTURE DESIGN 84-4020	1	EACH	\$11,900.00	\$11,900.00	2		\$0.00	2	\$23,800.00	\$0.00	\$23,800.00	200.0%	-\$11,900.00
57		CONSTRUCT DRAINAGE STRUCTURE DESIGN G	20	EACH	\$4,000.00	\$80,000.00	20		\$0.00	20	\$80,000.00	\$0.00	\$80,000.00	100.0%	\$0.00
58		CONSTRUCT DRAINAGE STRUCTURE DESIGN H	1	EACH	\$3,400.00	\$3,400.00	1		\$0.00	1	\$3,400.00	\$0.00	\$3,400.00	100.0%	\$0.00
59		RANDOM RIPRAP CLASS II	61	CU YD	\$69.00	\$4,209.00	37	2	\$138.00	39	\$2,656.50	\$0.00	\$2,656.50	63.1%	\$1,552.50
60		4" CONCRETE WALK	57,662	SQ FT	\$4.90	\$282,543.80	60732		\$0.00	60732	\$297,586.80	\$0.00	\$297,586.80	105.3%	-\$15,043.00
61		6" CONCRETE WALK	7,742	SQ FT	\$9.50	\$73,549.00	5554		\$0.00	5554	\$52,763.00	\$0.00	\$52,763.00	71.7%	\$20,786.00
62		DRILL AND GROUT REINF BAR (EPOXY COATED)	556	EACH	\$8.50	\$4,726.00	592		\$0.00	592	\$5,032.00	\$0.00	\$5,032.00	106.5%	-\$306.00
63		CONCRETE CURB AND GUTTER DESIGN S524	16,169	LIN FT	\$20.90	\$337,932.10	16594		\$0.00	16594	\$346,804.15	\$0.00	\$346,804.15	102.6%	-\$8,872.05
64		6" CONCRETE DRIVEWAY PAVEMENT	747	SQ YD	\$95.00	\$70,965.00	836		\$0.00	836	\$79,420.00	\$0.00	\$79,420.00	111.9%	-\$8,455.00
65		8" CONCRETE DRIVEWAY PAVEMENT	120	SQ YD	\$109.00	\$13,080.00	130		\$0.00	130	\$14,170.00	\$0.00	\$14,170.00	108.3%	-\$1,090.00
66		TRUNCATED DOMES	379	SQ FT	\$50.00	\$18,950.00	426		\$0.00	426	\$21,300.00	\$0.00	\$21,300.00	112.4%	-\$2,350.00
67		CONSTRUCT SURVEY MONUMENT	3	EACH	\$860.00	\$2,580.00	0		\$0.00		\$0.00	\$0.00	\$0.00	0.0%	\$2,580.00
68		MAIL BOX SUPPORT	58	EACH	\$205.00	\$11,890.00	63		\$0.00	63	\$12,915.00	\$0.00	\$12,915.00	108.6%	-\$1,025.00
69		TRAFFIC CONTROL	1	LUMP SUM	\$28,900.00	\$28,900.00	0.75		\$0.00	0.75	\$21,675.00	\$0.00	\$21,675.00	75.0%	\$7,225.00
70		INSTALL SIGN TYPE C	16	EACH	\$250.00	\$4,000.00	16		\$0.00	16	\$4,000.00	\$0.00	\$4,000.00	100.0%	\$0.00
71		SIGN PANELS TYPE C	260	SQ FT	\$96.00	\$24,960.00	260	19	\$1,776.00	279	\$26,736.00	\$0.00	\$26,736.00	107.1%	-\$1,776.00
72		FLASHING BEACON SYSTEM	4	SYS	\$8,750.00	\$35,000.00	0	4	\$35,000.00	4	\$35,000.00	\$0.00	\$35,000.00	100.0%	\$0.00
73		PEDESTRIAN CROSSWALK FLASHER SYSTEM	4	SYS	\$9,100.00	\$36,400.00	6		\$0.00	6	\$54,600.00	\$0.00	\$54,600.00	150.0%	-\$18,200.00
74		STABILIZED CONSTRUCTION EXIT	1	LUMP SUM	\$7,000.00	\$7,000.00	0		\$0.00		\$0.00	\$0.00	\$0.00	0.0%	\$7,000.00
75		STORM DRAIN INLET PROTECTION	68	EACH	\$190.00	\$12,920.00	73		\$0.00	73	\$13,870.00	\$0.00	\$13,870.00	107.4%	-\$950.00
76		SILT FENCE, TYPE MS	8,305	LIN FT	\$2.50	\$20,762.50	8993		\$0.00	8993	\$22,482.50	\$0.00	\$22,482.50	108.3%	-\$1,720.00
77		COMMON TOPSOIL BORROW	1,214	CU YD	\$39.00	\$47,346.00	995	351	\$13,689.00	1346	\$52,494.00	\$0.00	\$52,494.00	110.9%	-\$5,148.00
78		FERTILIZER TYPE 3	802	LBS	\$1.00	\$802.00	379	130	\$130.00	509	\$509.00	\$0.00	\$509.00	63.5%	\$293.00
79		SODDING TYPE LAWN	1,915	SQ YD	\$12.20	\$23,363.00	2127	318	\$3,879.60	2445	\$29,829.00	\$0.00	\$29,829.00	127.7%	-\$6,466.00
80		ROLLED EROSION PREVENTION CATEGORY 25	10,610	SQ YD	\$2.05	\$21,750.50	9159	3116	\$6,387.80	12275	\$25,163.75	\$0.00	\$25,163.75	115.7%	-\$3,413.25
81		SEEDING	2	ACRE	\$550.00	\$1,320.00	1.89	0.65	\$357.50	2.54	\$1,397.00	\$0.00	\$1,397.00	105.8%	-\$77.00
82		SEED MIXTURE 25-141	173	LBS	\$10.00	\$1,730.00	112	39	\$385.00	151	\$1,505.00	\$0.00	\$1,505.00	87.0%	\$225.00
83		INTERIM PAVEMENT MARKING	27,210	LIN FT	\$0.30	\$8,163.00	14403		\$0.00	14403	\$4,320.90	\$0.00	\$4,320.90	52.9%	\$3,842.10
84		4" DOUBLE SOLID LINE MULTI-COMPONENT GROUND IN	13,005	LIN FT	\$1.05	\$13,655.25	12265		\$0.00	12265	\$12,878.25	\$0.00	\$12,878.25	94.3%	\$777.00
85		4" SOLID LINE MULTI-COMPONENT GROUND IN	26,159	LIN FT	\$0.55	\$14,387.45	24420		\$0.00	24420	\$13,430.73	\$0.00	\$13,430.73	93.4%	\$956.73
86		12" SOLID LINE MULTI-COMPONENT GROUND IN	210	LIN FT	\$12.30	\$2,583.00	251		\$0.00	251	\$3,087.30	\$0.00	\$3,087.30	119.5%	-\$504.30
87		24" SOLID LINE MULTI-COMPONENT GROUND IN	110	LIN FT	\$13.20	\$1,452.00	148		\$0.00	148	\$1,953.60	\$0.00	\$1,953.60	134.5%	-\$501.60
88		4" BROKEN LINE MULTI-COMPONENT GROUND IN	160	LIN FT	\$0.55	\$88.00	834		\$0.00	834	\$458.70	\$0.00	\$458.70	521.3%	-\$370.70
89		CROSSWALK MULTI-COMPONENT GROUND IN	462	SQ FT	\$12.30	\$5,682.60	630		\$0.00	630	\$7,749.00	\$0.00	\$7,749.00	136.4%	-\$2,066.40
90		PAVEMENT MESSAGE MULTI-COMPONENT GROUND IN	656	SQ FT	\$12.30	\$8,068.80	656		\$0.00	656	\$8,068.80	\$0.00	\$8,068.80	100.0%	\$0.00
Contract Totals						\$4,198,170.00			\$87,283.40		\$4,201,227.23	\$0.00	\$4,201,227.23	100.1%	-\$3,057.22

CHANGE ORDERS

1		SEDIMENT CONTROL LOG TYPE WOOD FIBER			\$	-			\$0.00						\$0.00
2		SAWING BIT PAVEMENT	5,300	LIN FT	\$1.25	\$ 6,625.00	6114		\$0.00	6114	\$7,642.50	\$0.00	\$7,642.50	115.4%	-\$1,017.50
3		ENTRANCE & UTILITIES FOR SCHOOL DISTRICT BUILDING			\$	-			\$0.00						\$0.00
		REMOVE CURB & GUTTER	60	LIN FT	\$2.70	\$ 162.00	60		\$0.00	60	\$162.00	\$0.00	\$162.00	100.0%	\$0.00
		REMOVE BITUMINOUS PAVEMENT	22	SQ YD	\$13.10	\$ 288.20	22		\$0.00	22	\$288.20	\$0.00	\$288.20	100.0%	\$0.00

Progress Estimate - Unit Price Work

Contractor's Application

For (Contract): SP 202-101-014, 202-104-012										Application Number: 6					
Application Period: 10/6/2023 to 11/10/2023										Application Date: 11/14/2023					
A					B	C	D	E	F	G	H	I		J	
Item			Contract Information			Work Completed to Date					Materials Presently Stored (not in F)	Total Completed and Stored to Date (G + H)	% (I / B)	Balance to Finish (B - I)	
Bid Item No.	Spec. Item No.	Description	Item Quantity	Units	Unit Price	Total Value of Item (\$)	Quantities from Previous Pay Applications	Estimated Quantities Installed this Pay Period	Value of Work Installed this Pay Period	Total Estimated Quantity Installed					Value of Work Installed to Date
		EXCAVATION - COMMON (P)	94	CU YD	\$19.80	\$ 1,861.20	94		\$0.00	94	\$1,861.20	\$0.00	\$1,861.20	100.0%	\$0.00
		AGGREGATE BASE (CV) CLASS 5	48	CU YD	\$58.10	\$ 2,788.80	48		\$0.00	48	\$2,788.80	\$0.00	\$2,788.80	100.0%	\$0.00
		TYPE SP 9.5 BITUMINOUS MIXTURE FOR PATCHING	6	TON	\$360.00	\$ 2,160.00	6		\$0.00	6	\$2,160.00	\$0.00	\$2,160.00	100.0%	\$0.00
		WET TAP WITH 6" VALVE	1	EACH	\$8,300.00	\$ 8,300.00	1		\$0.00	0.54	\$4,482.00	\$0.00	\$4,482.00	54.0%	\$3,818.00
		WET TAP WITH HYDRANT	1	EACH	\$16,100.00	\$ 16,100.00	1		\$0.00	1	\$16,100.00	\$0.00	\$16,100.00	100.0%	\$0.00
		4" CONCRETE WALK	1,040	SQ FT	\$5.20	\$ 5,408.00	708		\$0.00	708	\$3,681.60	\$0.00	\$3,681.60	68.1%	\$1,726.40
		CONCRETE CURB & GUTTER DESIGN S524	60	LIN FT	\$22.00	\$ 1,320.00	60		\$0.00	60	\$1,320.00	\$0.00	\$1,320.00	100.0%	\$0.00
		6" CONCRETE DRIVEWAY PAVEMENT	55	SQ YD	\$102.00	\$ 5,610.00	37		\$0.00	37	\$3,753.60	\$0.00	\$3,753.60	66.9%	\$1,856.40
		SODDING TYPE LAWN	90	SQ YD	\$12.50	\$ 1,125.00			\$0.00		\$0.00	\$0.00	\$0.00	0.0%	\$1,125.00
4		COMPACTION METHOD				\$ -			\$0.00						\$0.00
5		EXCAVATION - COMMON (P) FOR UGSTAD RD SIDEWALK	559	CU YD	\$19.80	\$ 11,068.20	559		\$0.00	559	\$11,068.20	\$0.00	\$11,068.20	100.0%	\$0.00
6		SPECIAL PROVISION FOR TRIBAL EMPLOYMENT				\$ -			\$0.00						\$0.00
7		DRIVEWAY CULVERTS				\$ -			\$0.00						\$0.00
		REMOVE PIPE APRON	1	CU YD	\$420.00	\$ 420.00	1		\$0.00	1	\$420.00	\$0.00	\$420.00	100.0%	\$0.00
		REMOVE PIPE CULVERT	108	CU YD	\$19.40	\$ 2,095.20	108		\$0.00	108	\$2,095.20	\$0.00	\$2,095.20	100.0%	\$0.00
		15" GS PIPE APRON	1	CU YD	\$875.00	\$ 875.00	1		\$0.00	1	\$875.00	\$0.00	\$875.00	100.0%	\$0.00
		12" CP PIPE CULVERT	108	CU YD	\$54.80	\$ 5,918.40	108		\$0.00	108	\$5,918.40	\$0.00	\$5,918.40	100.0%	\$0.00
8		UGSTAD RD PATCHING				\$ -	0		\$0.00						\$0.00
		MILL BITUMINOUS SURFACE (2.0")	5,200	SQ YD	\$2.65	\$ 13,780.00	5185		\$0.00	5185	\$13,740.25	\$0.00	\$13,740.25	99.7%	\$39.75
		TYPE SP 12.5 WEARING COURSE MIXTURE (2.C)	590	TON	\$103.00	\$ 60,770.00	660		\$0.00	660	\$67,980.00	\$0.00	\$67,980.00	111.9%	-\$7,210.00
9		CALCIUM CHLORIDE	2,300	GAL	\$1.44	\$ 3,312.00	2300		\$0.00	2300	\$3,312.00	\$0.00	\$3,312.00	100.0%	\$0.00
10		UGSTAD RD ADDITIONAL MILLING & PAVING				\$ -			\$0.00						\$0.00
		MILL BITUMINOUS SURFACE (2.0")	4,010	SY	\$2.52	\$ 10,105.20	4010		\$0.00	4010	\$10,105.20	\$0.00	\$10,105.20	100.0%	\$0.00
		TYPE SP 12.5 WEARING COURSE MIXTURE (3.C)	510	TON	\$98.00	\$ 49,980.00	510		\$0.00	510	\$49,980.00	\$0.00	\$49,980.00	100.0%	\$0.00
11		HYDRANT REMOVALS				\$ -			\$0.00						\$0.00
		REMOVE HYDRANT (IN LOCATION OF NEW HYDRANT)	4	EACH	\$420.00	\$ 1,680.00	4		\$0.00	4	\$1,680.00	\$0.00	\$1,680.00	100.0%	\$0.00
		REMOVE HYDRANT (IN LOCATION WITH NO PROPOSED HYDRANT)	1	EACH	\$2,970.00	\$ 2,970.00	1		\$0.00	1	\$2,970.00	\$0.00	\$2,970.00	100.0%	\$0.00
12		ARROWHEAD RD RESIDENTIAL SERVICES & DRIVEWAY				\$ -			\$0.00						\$0.00
		SANITARY SEWER SERVICE	1	EACH	\$10,360.00	\$ 10,360.00	1		\$0.00	1	\$10,360.00	\$0.00	\$10,360.00	100.0%	\$0.00
		WATER SERVICE SYSTEM	1	EACH	\$6,420.00	\$ 6,420.00	1		\$0.00	1	\$6,420.00	\$0.00	\$6,420.00	100.0%	\$0.00
		6" CONCRETE DRIVEWAY PAVEMENT	11	SY	\$117.28	\$ 1,290.08	11		\$0.00	11	\$1,290.08	\$0.00	\$1,290.08	100.0%	\$0.00
13		30" RC PIPE CULVERT EXTENSION				\$ -	0		\$0.00						\$0.00
		TRACTOR MOUNTED BACKHOE(245)	5	HOURL	\$187.00	\$ 935.00	5		\$0.00	5	\$935.00	\$0.00	\$935.00	100.0%	\$0.00
		COMMON LABORERS	8	HOURL	\$93.00	\$ 744.00	8		\$0.00	8	\$744.00	\$0.00	\$744.00	100.0%	\$0.00
		MACHINE TIME (DELIVERY OF PIPE)	2	HOURL	\$234.00	\$ 468.00	2		\$0.00	2	\$468.00	\$0.00	\$468.00	100.0%	\$0.00
		TRACTOR MOUNTED BACKHOE(345)	3	HOURL	\$226.00	\$ 678.00	3		\$0.00	3	\$678.00	\$0.00	\$678.00	100.0%	\$0.00
		3.0 CU YD FRONT END LOADER	1	HOURL	\$151.00	\$ 151.00	1		\$0.00	1	\$151.00	\$0.00	\$151.00	100.0%	\$0.00
		30" RC PIPE CULVERT	8	LIN FT	\$93.40	\$ 747.20	8		\$0.00	8	\$747.20	\$0.00	\$747.20	100.0%	\$0.00
14		UGSTAD RD - ICE ARENA WATER SERVICE, HYDRANT, PAVEMENT				\$ -			\$0.00						\$0.00
		REMOVE BITUMINOUS PAVEMENT	90	SQ YD	\$7.80	\$ 702.00	90		\$0.00	90	\$702.00	\$0.00	\$702.00	100.0%	\$0.00
		REMOVE CURB & GUTTER	50	LIN FT	\$2.70	\$ 135.00	50		\$0.00	50	\$135.00	\$0.00	\$135.00	100.0%	\$0.00
		WET TAP	1	EACH	\$3,790.00	\$ 3,790.00	1		\$0.00	1	\$3,790.00	\$0.00	\$3,790.00	100.0%	\$0.00
		6" WATERMAIN DUCTILE IRON (SERVICE)	40	LIN FT	\$118.00	\$ 4,720.00	40		\$0.00	40	\$4,720.00	\$0.00	\$4,720.00	100.0%	\$0.00
		INSTALL HYDRANT	1	EACH	\$1,830.00	\$ 1,830.00	1		\$0.00	1	\$1,830.00	\$0.00	\$1,830.00	100.0%	\$0.00
		GEOTEXTILE FABRIC TYPE 5	90	SQ YD	\$3.10	\$ 279.00	90		\$0.00	90	\$279.00	\$0.00	\$279.00	100.0%	\$0.00
		SELECT GRANULAR EMBANKMENT MOD 7% (CV)	30	CU YD	\$43.50	\$ 1,305.00	30		\$0.00	30	\$1,305.00	\$0.00	\$1,305.00	100.0%	\$0.00
		AGGREGATE BASE (CV) CLASS 5	25	CU YD	\$59.00	\$ 1,475.00	25		\$0.00	25	\$1,475.00	\$0.00	\$1,475.00	100.0%	\$0.00
		TYPE SP 12.5 WEARING COURSE MIXTURE	10	TON	\$108.00	\$ 1,080.00	10		\$0.00	10	\$1,080.00	\$0.00	\$1,080.00	100.0%	\$0.00
		ICE ARENA FRONTAGE ROAD	1	LUMP SUM	\$6,240.00	\$ 6,240.00	1		\$0.00	1	\$6,240.00	\$0.00	\$6,240.00	100.0%	\$0.00
15		WATER MAIN AND HYDRANT VALVE BOX REPAIRS				\$ -			\$0.00						\$0.00
		COMMON LABORERS	22	HOURL	\$87.00	\$ 1,914.00	22		\$0.00	22	\$1,914.00	\$0.00	\$1,914.00	100.0%	\$0.00
		TRACTOR MOUNTED BACKHOE	4	HOURL	\$165.00	\$ 660.00	4		\$0.00	4	\$660.00	\$0.00	\$660.00	100.0%	\$0.00
16		CENTURYLINK/LUMEN UTILITY RELOCATION				\$ -			\$0.00						\$0.00
		TRACTOR MOUNTED BACKHOE	8.5	HOURL	\$148.00	\$ 1,258.00	9		\$0.00	9	\$1,258.00	\$0.00	\$1,258.00	100.0%	\$0.00
17		BITUMINOUS PAVEMENT DENSITY INCENTIVES				\$ -			\$0.00						\$0.00
		SP 202-101-014 - UGSTAD RD	1	LUMP SUM	\$13,101.74	\$ 13,101.74		1.0	\$13,101.74	1	\$13,101.74	\$0.00	\$13,101.74	100.0%	\$0.00
		SP 202-104-012 - ARROWHEAD RD	1	LUMP SUM	\$3,314.26	\$ 3,314.26		1.0	\$3,314.26	1	\$3,314.26	\$0.00	\$3,314.26	100.0%	\$0.00
Change Order/Totals						\$278,319.48			\$16,416.00		\$277,981.43	\$0.00	\$277,981.43	99.9%	\$338.05
TOTALS						\$4,476,489.48	95		\$103,699.40		\$4,479,208.66	\$0.00	\$4,479,208.66	100.1%	-\$2,719.17

Resolution No. 2023-172

Resolution Adopting Assessment Roll For Road Improvement District No. 538 (Richard Avenue And Lindgren Road)

WHEREAS, the City of Hermantown (“City”) is acting under the authority to assess for local improvements granted to it by Minnesota Statutes Chapter 429; and

WHEREAS, pursuant to proper notice duly given as required by law, the City Council held a hearing (“Assessment Hearing”) on the proposed assessment roll on October 18, 2020 at 6:30 p.m. for the construction of Road Improvement District No. 538 Richard Avenue And Lindgren Road (“Project”); and

WHEREAS, the City Council, having received and considered all of the evidence presented to it at the Assessment Hearing and all of the Adjourned Hearings, and upon the entire City file in this matter, hereby makes the following:

FINDINGS OF FACT

1. Due and proper notice of the assessment hearings was given to the landowners and other parties affected by the assessment.
2. The methodology following by the City in determining the amount to be assessed against the affected properties was and is fair, equitable and reasonable.
3. The amount assessed against the affected properties was and is based upon benefits received by the various properties and the amount assessed against any particular parcel of property benefitting the assessed property does not exceed the benefits received by such parcel of property and was uniformly applied to the properties of the same class as the assessed property. On the basis of the foregoing Findings of Fact, which are hereby adopted, the City Council of the City of Hermantown is hereby resolved as follows:
 1. The final assessment roll attached hereto as Exhibit A is hereby adopted and shall constitute the special assessment against each piece and parcel of property named therein.
 2. Such assessment shall be payable as follows:
 - 2.1. The assessments listed on the assessment roll attached hereto as Exhibit A shall be payable in equal annual installments, including principal and interest, extending over a period of fifteen (15) years, with interest at the rate of 4% per annum, from and after December 31, 2023 in an amount annually required to pay the principal over such period at such interest rate. The first of such installments is to be paid with the general taxes for the year 2024, collectible with such taxes during the year 2024.

2.2. The owner of any property so assessed may, at any time, prior to December 31, 2023 pay the whole of the assessment against such property without interest to the City of Hermantown and thereafter at any time prior to November 15 of any year, prepay to the City of Hermantown the whole of the principal amount of the assessment remaining due, provided that no such prepayment shall be accepted without payment of (i) all installments, including interest and principal due to and including December 31 of the year of prepayment, and (ii) the original principal amount reduced only by the amount of principal included in such installment computed on an annual amortization basis. Partial prepayments of assessment have not been authorized by ordinance of the City of Hermantown.

4. The City Clerk shall file the assessment roll pertaining to this assessment in her office and shall certify in its entirety to the St. Louis County Auditor on or before November 30, 2023 the total amount due.
5. The City Clerk shall mail a notice of the adoption of the assessment roll to the owners of each piece and parcel of property affected by this assessment. Such notice shall be in substantially the form of the one attached as Exhibit B.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors _____, and Mayor Boucher, aye.

and the following voted in opposition thereto:

None.

WHEREUPON, such resolution was declared duly passed and adopted November 20, 2023.

Road Improvement District No. 538 Richard Avenue and Lindgren Road

Parcel ID	Amount	% Interest	# Years	Project Code	Annual Amount	SID #	Assessment Roll Number
395-0093-00080	30,000.00	4.00	15	39583	2,698.23	538A	538A-1
395-0093-00010	30,000.00	4.00	15	39583	2,698.23	538A	538A-2
395-0090-00080	30,000.00	4.00	15	39583	2,698.23	538A	538A-3
395-0090-00072	30,000.00	4.00	15	39583	2,698.23	538A	538A-4
395-0090-00105	30,000.00	4.00	15	39583	2,698.23	538A	538A-5
395-0093-00090	26,002.03	4.00	15	39583	2,338.65	538RA	538RA-6
395-0093-00100	30,000.00	4.00	15	39583	2,698.23	538A	538A-7
395-0093-00030	30,000.00	4.00	15	39583	2,698.23	538A	538A-8
395-0093-00110	30,000.00	4.00	15	39583	2,698.23	538A	538A-9
395-0090-00045	30,000.00	4.00	15	39583	2,698.23	538A	538A-10
395-0093-00040	30,000.00	4.00	15	39583	2,698.23	538A	538A-11
395-0093-00055	30,000.00	4.00	15	39583	2,698.23	538A	538A-12
395-0093-00020	30,000.00	4.00	15	39583	2,698.23	538A	538A-13
395-0093-00060	10,000.00	4.00	15	39583	899.41	538A	538A-14
395-0093-00070	10,000.00	4.00	15	39583	899.41	538A	538A-15
Total: 16	\$ 406,002.03						

EXHIBIT B

NOTICE OF FINAL ASSESSMENT

November 21, 2023

Resident Name
Address
City, State, Zip

RE: Notice of Final Assessment

Resident Name:

This is to notify you that the final assessment for the construction of Road Improvement District No. 538 (Richard Avenue and Lindgren Road) was adopted by the City Council of the City of Hermantown on November 21, 2023 pursuant to Minnesota Statutes, Chapter 429. The final assessment is on file for inspection in the office of the City Clerk.

As a result of the adoption of the assessment roll, the assessment against the property owned/occupied/leased by you which has been assigned CVT-Plat-Parcel Number _____, is \$_____. Such assessment will be payable, together with interest at the rate of 4% per annum with real estate taxes during the years 2024-2039 inclusive payable in the years 2024-2039 inclusive. Such assessment may be prepaid in full without interest, if payment is received by the City prior to December 31, 2023 and thereafter the assessment may be prepaid at any time prior to November 15 of any year if such prepayment includes (i) all installments, including interest and principal due to and including December 31 of the year of prepayment and (ii) the original principal amount reduced only by the amount of principal included in such installments computed on an annual amortization basis. Partial prepayments of the assessment have not been authorized by ordinance of the City of Hermantown.

An owner who filed a written objection with the City Clerk at or before the assessment hearing, or an owner that had reasonable cause for failing to file a written objection at or before the assessment hearing may appeal the assessment against his or her property to the District Court pursuant to Minnesota Statutes, Section 429.081, by serving notice of the appeal upon the Mayor or City Clerk within thirty (30) days after the adoption of the assessment and filing such notice with the Clerk of the District Court within ten (10) days after its service upon the Mayor or City Clerk.

Under §435.193 to 435.195 of the Minnesota Statutes and Hermantown Resolution No. 2010-99 the City Council may, in its discretion, defer the payment of a special assessment for any homestead property owned by a person sixty-five (65) years of age or older or a person who is retired due to permanent disability or who is a member of the military service called to active duty for whom it would be a hardship to make the payments. When deferment of the special assessment has been granted and is terminated for any reason provided in that law, all amounts accumulated plus applicable interest become due. Any assessed property owner meeting the requirements of such law and City of Hermantown Resolution No. 2010-99, may, on a form obtained from the City Clerk, apply for such deferral of payment of a special assessment.

Payments of the amount assessed may be made by check or credit card. If a credit card is used, a credit card service fee of three percent (3%) of the amount paid will be added to the amount paid on the assessment.

CITY OF HERMANTOWN

By _____
Its City Clerk



CITY COUNCIL MEETING DATE: November 20, 2023

TO: Mayor & City Council

FROM: John Mulder, City Administrator

SUBJECT: Cancel Agreement of Assessment– Patriot Properties

RESOLUTION: 2023-173 **ORDINANCE:** **OTHER:**

REQUESTED ACTION

Direct Mayor and City Clerk to deliver cancelation of Resolution 2020-68 – the agreement of assessment of parcel 395-0093-0090 owned by Patriot Properties of Hermantown 3 LLC.

BACKGROUND

In 2020, The Resolution 2020-68 created an agreement which allowed Patriot Properties to build on the parcel 395-0093-0090 and committed them to pay a portion of the road which was slated to be built at a later time. This agreement allowed the development to continue, and provided some funding for the future road.

With Resolution 2020-68 Patriot Properties of Hermantown 2 LLC agreed to pay an assessment of \$48,000. As of November 1, 2023, the owner has paid \$3,997.97 of that assessment.

In 2023 Richard Avenue and Lindgren Road were improved and the City has proposed an assessment of \$30,000 for each property.

This resolution would cancel the \$48,000 assessment for 2020-68 give the owner credit of \$3,997.97 toward the new assessment of \$30,000 to Parcel 395-0093-0090 changing it to the amount \$26,002.03.

SOURCE OF FUNDS (if applicable)

N/A

ATTACHMENTS

Proposed Resolution 2023-173 and Cancel Resolution 2020-68 Agreement of Assessment and Waiver of Irregularity and Appeal

Resolution No. 2023-173

Resolution Repealing \$48,000 Assessment From The Resolution Number 2020-68

WHEREAS, the City of Hermantown (“City”) had proposed to construct improvements to a public road (“Project”) adjacent to property at 4155 Richard Avenue (“Property”) owned by Patriot Properties of Hermantown 3 LLC., Parcel 395-0093-00090 and located in the City of Hermantown, St. Louis County, Minnesota; and

WHEREAS, As provided in 2020-68 Owner agreed to pay \$48,000.00 as an assessment with regard to the Project; and

WHEREAS, City agrees to cancel the \$48,000 assessment assessed against Owner’s Property in exchange for a new lower assessment; and

WHEREAS, City agrees to credit the current paid amount of \$3,997.97 toward the new assessment amount for the Project of \$30,000.00; and

WHEREAS, attached here is a copy of the Resolution 2020-68; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hermantown, Minnesota as follows:

1. The Resolution 2020-68 is repealed and a credit of \$3,997.97 will be applied to the new \$30,000 assessment on parcel 395-0093-00090.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors _____, Mayor Boucher, aye.

and the following voted in opposition thereto:

None.

WHEREUPON, such resolution was declared duly passed and adopted November 20, 2023.

November 15, 2023

John Mulder
City Administrator
City of Hermantown
5105 Maple Grove Road
Hermantown MN 55811

Re: Richard Lindgren - Street Improvement District No. 538

Dear John:

Attached is Pay Application #5 for the work associated with the Richard Lindgren Project – Street Improvement District No. 538 from October 6, 2023 through November 10, 2023. NCE and Ulland Brothers, Inc. have reviewed the project progress thus far and agreed upon quantities of work completed. The amount of Pay Application #5 is **\$513,162.71**. The City will hold a 5% retainage of the completed construction through the duration of the project. This retainage amount for pay application #5 is **\$25,658.14**.

NCE has reviewed the quantities through construction inspection and discussions with Ulland Brothers, Inc. representatives. I recommend payment in the amount of **\$487,504.57** be authorized at the November 20, 2023 City Council Meeting.

Please contact me with any questions you may have.

Thank you,



David Bolf, P.E. – City Engineer
Northland Consulting Engineers
218-727-5995
david@nce-duluth.com

CC: Chase Ernste, E.I.T., Northland Consulting Engineers
Ryan Swanson, P.E., Ulland Brothers, Inc.

Resolution No. 2023-174

Resolution Approving Pay Request Number 5 For Road Improvement District 538 To Ulland Brothers, Inc. In the Amount Of \$487,504.57

WHEREAS, the City of Hermantown has contracted with Ulland Brothers, Inc. for Road Improvement District 538 (“Project”); and

WHEREAS, Ulland Brothers, Inc. has performed a portion of the agreed upon work in said Project; and

WHEREAS, Ulland Brothers, Inc. has submitted Pay Request No. 5 in the amount of \$513,162.71; and

WHEREAS, the City will maintain an accumulated retainage as shown on the pay requests until the final work and documentation is completed; and

WHEREAS, Northland Consulting Engineers LLP has approved such Pay Request No. 5 provided that \$ 25,658.14 as retainage of 5% be withheld pending final acceptance of the Project by the City of Hermantown.

WHEREAS, the necessary documentation for the pay request is on file and available for inspection.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Hermantown, Minnesota as follows:

1. Pay Request No. 5 is hereby approved.
2. The City is hereby authorized and directed to pay to Ulland Brothers, Inc. the sum of \$ \$487,504.57 which is the amount represented on Pay Request No. 5.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors _____, and Mayor Boucher, aye.

and the following voted in opposition thereto:

None.

WHEREUPON, such resolution has been duly passed and adopted November 20, 2023.


Contractor's Application for Payment			No. 5
Application Period:	October 6, 2023 through November 10, 2023	Application Date:	11/15/2023
To (Owner):	City of Hermantown	Project:	Richard-Lindgren Street Impr. District #538
Owner's Contract Number:	Street Improvement District #538	From (Contractor):	Ulland Brothers Inc.
		Engineer Project Number:	21-8006
		Via (Engineer):	Northland Consulting Engineers, LLP

Application For Payment Change Order Summary		
Approved Change Orders		
Number	Additions	Deductions
1		
2		
3		
4		
TOTAL		
NET CHANGE BY CHANGE ORDER:		


Application For Payment Previous Pay Application Summary		
Approved Pay Applications		
Number	Date	Amount
1	7/17/2023	\$381,674.40
2	8/21/2023	\$344,444.04
3	9/25/2023	\$38,306.85
4	10/16/2023	\$644,298.28
8. TOTALS		\$1,408,723.56

1. ORIGINAL CONTRACT PRICE.....	\$ 2,209,180.00
2. Net change by Change Orders.....	\$ 0.00
3. Current Contract Price (Line 1 ± 2).....	\$ 2,209,180.00
4. TOTAL COMPLETED AND STORED TO DATE	
See attached Pay Application Summary.....	\$ 1,996,029.62
5. RETAINAGE:	
a. 5% X \$1,996,029.62 Work Completed.....	\$ 99,801.48
b. 0% X Stored Material.....	\$
c. Total Retainage (Line 5.a + Line 5.b).....	\$ 99,801.48
6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5.c).....	\$ 1,896,228.14
7. LESS PREVIOUS PAYMENTS (Line 8).....	\$ 1,408,723.56
9. AMOUNT DUE THIS APPLICATION.....	\$ 487,504.57
10. BALANCE TO FINISH, PLUS RETAINAGE	
(Line 3 - 4 + Line 5.c above).....	\$ 312,951.86

Payment of: \$ 487,504.57
(Line 9 or other - attach explanation of the other amount)

Contractor's Certification	
<p>The undersigned Contractor certifies, to the best of its knowledge, the following:</p> <p>(1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment;</p> <p>(2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner at time of payment free and clear of all Liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such Liens, security interest, or</p>	
Contractor Signature - Ulland Brothers Inc.	
By: 	Date: 11/15/2023

Recommended by:


David Bolf, P.E. - City Engineer 11/15/2023 (Date)

Approved by:

John Mulder, City Administrator (Date)



**Pay Application #5 - November 15, 2023
City of Hermantown - Richard Lindgren
SAP 202-080-003
Street Improvement District #538**

Item No.	Spec. Number	Item Description	Unit of Measure	Contract Total Quantities	Ulland Unit Price	Total Project	
						Completed Quantities	Completed Cost
BASE BID							
1	2021.501	MOBILIZATION	LS	1	\$ 40,397.10	1	\$40,397.10
2	2101.502	CLEARING	EACH	18	\$ 145.00	58	\$8,410.00
3	2101.502	GRUBBING	EACH	18	\$ 145.00	58	\$8,410.00
4	2101.505	CLEARING	ACRE	1	\$ 5,900.00	0.44	\$2,596.00
5	2101.505	GRUBBING	ACRE	1	\$ 8,700.00	0.44	\$3,828.00
6	2104.502	REMOVE CASTING	EACH	1	\$ 200.00	1	\$200.00
7	2104.502	REMOVE CONCRETE APRON	EACH	1	\$ 230.00	1	\$230.00
8	2104.502	REMOVE DRAINAGE STRUCTURE	EACH	7	\$ 420.00	7	\$2,940.00
9	2104.502	REMOVE GATE VALVE AND BOX	EACH	1	\$ 1,300.00	1	\$1,300.00
10	2104.502	REMOVE HYDRANT	EACH	1	\$ 1,900.00	1	\$1,900.00
11	2104.502	REMOVE MAIL BOX SUPPORT	EACH	2	\$ 50.00	2	\$100.00
12	2104.502	REMOVE SIGN TYPE C	EACH	4	\$ 50.00	4	\$200.00
13	2104.503	REMOVE CURB AND GUTTER	LF	1612	\$ 4.60	1612	\$7,415.20
14	2104.503	REMOVE PIPE CULVERTS	LF	126	\$ 17.00	126	\$2,142.00
15	2104.503	REMOVE SEWER PIPE (SANITARY)	LF	20	\$ 85.00	20	\$1,700.00
16	2104.503	REMOVE SEWER PIPE (STORM)	LF	726	\$ 16.00	726	\$11,616.00
17	2104.503	SAWING BITUMINOUS PAVEMENT (FULL DEPTH)	LF	666	\$ 1.90	666	\$1,265.40
18	2104.504	REMOVE BITUMINOUS DRIVEWAY PAVEMENT	SY	262	\$ 8.20	262	\$2,148.40
19	2104.504	REMOVE BITUMINOUS PAVEMENT	SY	4226	\$ 4.00	4226	\$16,904.00
20	2104.504	REMOVE CONCRETE PAVEMENT	SY	37	\$ 20.00	37	\$740.00
21	2104.504	REMOVE CONCRETE WALK	SY	538	\$ 12.00	504	\$6,048.00
22	2106.507	EXCAVATION - COMMON	CY	8194	\$ 11.00	8194	\$90,134.00
23	2106.507	EXCAVATION - MUCK	CY	6782.32	\$ 15.00	6782.32	\$101,734.80
24	2106.507	GRANULAR EMBANKMENT (CV)	CY	7832.58	\$ 21.00	6782.32	\$142,428.72
25	2106.507	SELECT GRANULAR EMBANKMENT MOD 7% (CV)	CY	5560.8	\$ 32.00	5560.8	\$177,945.60
26	2108.604	GEOTEXTILE FABRIC TYPE 5	SY	9860	\$ 3.50	9860	\$34,510.00
27	2118.507	AGGREGATE SURFACING (CV) CLASS 5	CY	106	\$ 50.00	106	\$5,300.00
28	2211.507	AGGREGATE BASE (CV) CLASS 5	CY	2691	\$ 37.00	2691	\$99,567.00
29	2232.504	MILL BITUMINOUS SURFACE (2.0")	SY	2454	\$ 3.60	2454	\$8,834.40
30	2301.602	DRILL AND GROUT REINFORCEMENT BAR (EPOXY COATED)	EACH	104	\$ 10.00	0	\$0.00
31	2360.509	TYPE SP 9.5 BITUMINOUS MIXTURE FOR PATCHING	TON	56	\$ 210.00	56	\$11,760.00
32	2360.509	TYPE SP 9.5 WEARING COURSE MIXTURE (3,B)	TON	1302	\$ 85.00	1390	\$118,150.00
33	2360.509	TYPE SP 12.5 NON WEARING COURSE MIXTURE (3,B)	TON	1268	\$ 81.00	1227	\$99,387.00
34	2501.502	12" RC PIPE APRON	EACH	1	\$ 1,000.00	1	\$1,000.00
35	2501.502	15" RC PIPE APRON	EACH	1	\$ 1,100.00	1	\$1,100.00
36	2501.502	30" RC PIPE APRON	EACH	2	\$ 1,700.00	2	\$3,400.00
37	2501.502	12" CS PIPE APRON	EACH	2	\$ 400.00	2	\$800.00
38	2501.503	12" CS PIPE CULVERT	LF	40	\$ 50.00	40	\$2,000.00
39	2501.503	15" CP PIPE CULVERT	LF	24	\$ 50.00	24	\$1,200.00
40	2501.503	30" RC PIPE CULVERT DESIGN 3006 CLASS III	LF	72	\$ 220.00	72	\$15,840.00
41	2502.503	4" PERF PVC PIPE DRAIN	LF	2845	\$ 11.00	2845	\$31,295.00
42	2503.503	12" RC PIPE SEWER CLASS III	LF	1000	\$ 120.00	1000	\$120,000.00
43	2503.503	15" RC PIPE SEWER CLASS III	LF	660	\$ 125.00	660	\$82,500.00
44	2503.602	CONNECT TO EXISTING STORM SEWER	EACH	1	\$ 2,600.00	1	\$2,600.00
45	2504.602	6" GATE VALVE AND BOX	EACH	4	\$ 4,800.00	4	\$19,200.00
46	2504.602	8" GATE VALVE AND BOX	EACH	7	\$ 5,800.00	5	\$29,000.00
47	2504.602	ADJUST VALVE BOX	EACH	1	\$ 500.00	1	\$500.00
48	2504.602	CONNECT TO EXISTING WATER MAIN	EACH	3	\$ 3,200.00	4	\$12,800.00
49	2504.602	HYDRANT ASSEMBLY	EACH	4	\$ 12,500.00	4	\$50,000.00
50	2504.602	WATER TRACER BOX	EACH	4	\$ 255.00	4	\$1,020.00
51	2504.603	6" HDPE SDR 11 SERVICE PIPE	LF	96	\$ 80.00	96	\$7,680.00
52	2504.603	8" DIPS HDPE WATER MAIN SDR 11	LF	1642	\$ 66.00	1642	\$108,372.00
53	2504.604	4" POLYSTYRENE INSULATION	SY	4	\$ 100.00	0	\$0.00
54	2506.502	ADJUST FRAME AND RING CASTING	EACH	2	\$ 500.00	2	\$1,000.00
55	2506.502	CASTING ASSEMBLY	EACH	27	\$ 800.00	27	\$21,600.00
56	2506.503	CONSTRUCT DRAINAGE STRUCTURE DESIGN 48-4020	LF	25.4	\$ 830.00	25.4	\$21,082.00
57	2506.503	CONSTRUCT DRAINAGE STRUCTURE DESIGN F	LF	6.2	\$ 800.00	6.2	\$4,960.00
58	2506.503	CONSTRUCT DRAINAGE STRUCTURE DESIGN G	LF	49.7	\$ 800.00	49.7	\$39,760.00
59	2506.503	CONSTRUCT DRAINAGE STRUCTURE DESIGN SPECIAL	LF	40.5	\$ 1,300.00	40.5	\$52,650.00
60	2506.601	INFILTRATION/FILTRATION SYSTEM	LS	1	\$ 156,000.00	1	\$156,000.00
61	2506.602	CONNECT INTO EXISTING DRAINAGE STRUCTURE	EACH	5	\$ 2,100.00	5	\$10,500.00
62	2506.602	MANHOLE FRAME SEAL (EXTERNAL)	EACH	4	\$ 400.00	0	\$0.00
63	2506.602	MODIFY DRAINAGE STRUCTURE	EACH	2	\$ 2,700.00	2	\$5,400.00
64	2511.507	RANDOM RIPRAP CLASS II (FRACTURED)	CY	16	\$ 75.00	0	\$0.00
65	2521.518	4" CONCRETE WALK	SF	16577	\$ 6.10	2000	\$12,200.00
66	2521.518	6" CONCRETE WALK	SF	3150	\$ 9.50	0	\$0.00
67	2531.503	CONCRETE CURB AND GUTTER DESIGN B624	LF	320	\$ 32.00	320	\$10,240.00
68	2531.503	CONCRETE CURB AND GUTTER DESIGN S524	LF	4719	\$ 22.50	4719	\$106,177.50
69	2531.504	7" CONCRETE DRIVEWAY PAVEMENT	SY	232	\$ 71.00	176	\$12,496.00
70	2531.618	TRUNCATED DOMES	SF	128	\$ 43.00	16	\$688.00
71	2540.602	MAIL BOX SUPPORT	EACH	2	\$ 100.00	2	\$200.00
72	2563.601	TRAFFIC CONTROL	LS	1	\$ 4,800.00	1	\$4,800.00
73	2564.518	SIGN PANELS TYPE C	SF	124.29	\$ 58.00	121.55	\$7,049.90
74	2573.501	STABILIZED CONSTRUCTION EXIT	LS	1	\$ 1,800.00	1	\$1,800.00
75	2573.502	STORM DRAIN INLET PROTECTION	EACH	39	\$ 195.00	10	\$1,950.00
76	2573.503	SEDIMENT CONTROL LOG TYPE WOOD FIBER	LF	1293	\$ 4.30	1117	\$4,803.10
77	2573.503	SILT FENCE, TYPE HI	LF	3523	\$ 3.30	3065	\$10,114.50
78	2574.508	FERTILIZER TYPE 3	LB	356	\$ 1.00	0	\$0.00
79	2575.504	SODDING TYPE LAWN	SY	1807	\$ 7.80	0	\$0.00
80	2575.505	RAPID STABILIZATION METHOD 2	ACRE	2.9	\$ 1,500.00	0	\$0.00
81	2575.505	SEEDING	ACRE	1.43	\$ 550.00	0	\$0.00
82	2575.508	HYDRAULIC BONDED FIBER MATRIX	LB	5005	\$ 2.00	5005	\$10,010.00
83	2575.508	SEED MIXTURE 25-131	LB	315	\$ 9.00	0	\$0.00
84	2582.503	24" SOLID LINE PREFORM THERMO GROUND IN	LF	90	\$ 26.00	0	\$0.00
85	2582.503	4" DOTTED LINE MULTI-COMPONENT GROUND IN (WR)	LF	108	\$ 1.00	0	\$0.00
86	2582.503	4" DOUBLE SOLID LINE MULTI-COMPONENT GROUND IN (WR)	LF	2706	\$ 2.00	0	\$0.00
87	2582.503	4" SOLID LINE MULTI-COMPONENT GROUND IN (WR)	LF	5589	\$ 1.00	0	\$0.00
88	2582.518	CROSSWALK PREFORM THERMOPLASTIC GROUND IN	SF	720	\$ 19.50	0	\$0.00

TOTAL AMOUNT EARNED	\$1,996,029.62
LESS PREVIOUS PAY APPLICATIONS	\$1,482,866.91
TOTAL PAY APPLICATION #3	\$513,162.71

Water Utility Fund	\$231,772.00
Storm Sewer	\$566,935.20
Sanitary Utility Fund	\$2,700.00
Participating Fund	\$1,194,622.42



CITY COUNCIL MEETING DATE: November 20, 2023

TO: Mayor & City Council

FROM: John Mulder, City Administrator

SUBJECT: Ice Plant Change Order

RESOLUTION: 2023-175 **ORDINANCE:** **OTHER:**

REQUESTED ACTION

Approve changer order to increase the capacity of the Hermantown Arena Chiller

BACKGROUND

The School District solicited quotes for a 150-ton refrigeration system (chiller) for the Hermantown Arena. They were required to purchase a “like for like replacement of their existing chiller. B32 Engineering Group, the subcontractor for the City’s architect, reviewed the purchase and recommended that the ice plant capacity be increased in order adequately operate an arena with two sheets of ice. Since it has already been purchased, the best way to handle this would be the same logic of a change order on project.

Fitch Welty United Company d/b/a SCR proposed a contract change. B32 Engineering Group recommends the approval of the change order.

SOURCE OF FUNDS (if applicable)

415-465200-580
Sales Tax – Community Recreation

ATTACHMENTS

Resolution

Resolution No. 2023-175

**Resolution Approving The Change Order For The Capacity Increase To Hermantown
Arena Chiller**

WHEREAS, the City of Hermantown (“City”) and Independent School District No. 700 (“District”) entered into a Joint Resolution through City Resolution No. 2023-124 to upgrade the current Hermantown ice arena in connection Community Recreation Initiative Project (“Project”) through joint efforts in planning, budgeting and design; and

WHEREAS, the District solicited quotes for a rink 150-ton refrigeration system (“Chiller”) and purchased a new Chiller after following the applicable competitive bidding requirements as shown on Exhibit A attached hereto; and

Whereas, B32 Engineering Group, Inc. designs ice arena refrigeration systems and has provided a recommendation letter attached hereto as Exhibit B that a 170-ton Chiller be used for the Project; and

Whereas, Fitch-Welty United Company d/b/a SCR has proposed a contract change (“Change Order”) as set forth on Exhibit C attached hereto; and

WHEREAS, the City Council has reviewed the Change Order and believes that it is in the best interests of the City of Hermantown to approve the Change Order and authorize and direct the Mayor and City Clerk to execute and deliver it on behalf of the City of Hermantown.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hermantown, Minnesota, as follows:

1. The Change Order substantially in the form of the one attached hereto as Exhibit C for an increase of \$71,000.00 is hereby approved.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors _____, and Mayor Boucher, aye.

and the following voted in opposition thereto:

None.

WHEREUPON, such resolution was declared duly passed and adopted on November 20, 2023.

EXHIBIT A

[Parent Portal](#) [2023-24 Calendar](#) [Lunch Menu](#) [Employment](#)

[Back to School](#)



Hermantown Community Schools



MENU

SCHOOLS



TRANSLATE

HERMANTOWN COMMUNITY SCHOOLS // NEWS

// REQUEST FOR QUOTE: RINK REFRIGERATION SYSTEM



CHILLER REPLACEMENT REQUEST FOR QUOTE

RINK REFRIGERATION SYSTEM



REQUEST FOR QUOTE: RINK REFRIGERATION SYSTEM

Hermantown Community Schools

APR 06, 2023

 [Click for Full Proposal Packet](#)

The Hermantown School District (District) is requesting quotes for a rink refrigeration system, scheduled arrival on or before August 31, 2023. Installation will be a separate bid process.

The current ice rink chiller at the Hermantown Arena is a Carrier 30HS unit that was manufactured in the 1980s & designed utilizes R22 refrigerant. This chiller is well past that with an age of 30+ years. The refrigerant that it originally was designed to utilize has been phased out and is no longer produced. The existing facility was built in 1988.

Proposal Submittal

Proposers are required to send **two (2) sealed copies** of the proposal to the District's Superintendent on or before **Monday, June 12, 2023, 2:00 CST**. Proposals received after the deadline will remain sealed and not considered. Each proposal must be clearly identified on the outside of the envelope and shall show the name and address of the Proposer. If the proposal is sent by mail, the envelope shall contain the notation **"Hermantown Arena Refrigeration Replacement."**

Proposals shall be submitted to:

Wayne Whitwam, Superintendent

Hermantown School District

4307 Ugstad Road

Hermantown, MN 55811

Phone: 218.626.6001

QUESTIONS SHALL BE DIRECTED TO:

Lance Takkunen

Hermantown School District

4307 Ugstad Road

Hermantown MN 55811

Phone: 218.626.6002



Find Us

Hermantown Community
Schools

4307 Ugstad Rd,

**Contact a
School**

Elementary School: 218-
729-6891

Middle School: 218-729-
6690

Stay Connected



EXHIBIT B



October 31, 2023

Mr. John Gerzina
Managing Principal Architect
DSGW Architects
2 W 1st Street, Suite 201
Duluth, MN 55802

RE: NorthStar Ford Arena - Hermantown MN: CO2 Refrigeration Package

Dear Mr. Gerzina:

The purpose of this letter is to summarize the benefits of increasing the size of the proposed CO₂-based refrigeration package that will serve the ice system for the two sheet ice arena facility. It is our understanding that the School District is providing the CO₂-based refrigeration package and can only provide a system that is equal to the size of the existing refrigeration system which has a reported capacity of 150 tons.

We have reviewed the engineering data provided by SCR, the apparent low bid contractor to supply the new refrigeration system, for both the 150 ton and 170 ton capacity systems. SCR is proposing a cost increase of \$71,000 to provide the larger 170 ton system in place of the original bid of 150 ton system. We recommend the City accept the change to the larger 170 ton system for the following main reasons.

1. Flowrate (glycol). We recommend a minimum flowrate of 900 gpm to each rink floor system. The higher the flow rate, up to a certain point, the better the heat transfer in the rink floor system. The higher the heat transfer in the floor the better the performance of the floor system which leads to better ice quality including harder/faster ice, more uniform ice quality, faster set up time after resurfacing, etc.

The 170 ton capacity, with a glycol differential temperature of 2.5F across the floor, will allow a total flowrate of 1864 gpm to the two rink floors or 932 gpm to each rink floor system. If this is approved, we might recommend 900 gpm to the smaller volume arena and 964 gpm to the larger volume arena. The 150 ton system will allow a total flowrate of 1645 gpm or 822 gpm to each rink floor.

2. Air removal. The traditional design of the ice rink floor system does not readily provide an easy path for removing air that is added and trapped during the initial filling of the rink floor piping system and during maintenance of the floor system. Trapped air reduces heat transfer and negatively affects the performance of the ice rink floor system. The higher the flowrate, the easier it is to remove air from the system.
3. Performance of existing ice rink floor system. The existing ice rink floor system uses a tee-type header system arrangement. In this system, the flowrate is split in half at center ice directing half of the glycol flow in one direction and half in the other direction. This

B32 ENGINEERING GROUP, INC.,
2211 O'Neil Road, Hudson, WI 54016
t 651.256.3090 f 715.808.0842 www.B32eng.com

1



results in a slightly more energy efficient system but a lower flowrate in the rink floor piping system. Therefore, a higher flowrate to the existing rink floor system is desired to maximize its performance.

4. Compressor redundancy. It is very important to have some redundancy in the compressor equipment especially with a CO₂-based refrigeration system where compressor failure seems to be higher than other systems. With the 170 ton system, there are 5 compressors (4 at 36.2 tons each and 1 at 25.5 tons each). If one of the larger compressors fails, the remaining capacity is 134.5 tons. More capacity than required to meet an estimated average summer demand capacity of 120 tons. With the 150 ton system, there are 4 compressors at 38.7 tons each. If one compressor fails, the remaining capacity is 116 tons, slightly less than the estimated average load leaving little to no room for any additional compressor issues or maintenance.

B32 Engineering Group, Inc. has extensive experience with the design of ice system for ice arena facilities including over 75 multi-sheet facilities similar to this facility. If you have any questions or would like to review this information in more detail, please feel free to contact me on my mobile at 651.492.1376.

Sincerely,

B32 ENGINEERING GROUP, INC.

A handwritten signature in black ink that reads "Scott A. Ward".

Scott A. Ward, P.E.
President

EXHIBIT C



November 1, 2023
City of Hermantown, MN
5105 Maple Grove Rd
Hermantown, MN 55811

CENTRAL | METRO DIVISION

604 Lincoln Ave. NE
St. Cloud, MN 56304
toll free: 800-827-1642
office: 320-251-6861
fax: 320-251-9390

NORTHERN DIVISION

7674 College Road, Ste 115
Baxter, MN 56425
office: 218-828-6337
fax: 218-825-4966

SOUTHERN DIVISION

2625 Highway 14 West
Rochester, MN 55901
office: 507-535-7954
fax: 507-424-1825

153 Chestnut St., Ste 300
Mankato, MN 56001
office: 507-345-8425
fax: 507-387-3208

scr-mn.com

Services

- REFRIGERATION
- HVAC
- SERVICE
- BUILDING AUTOMATION
- FOOD SERVICE

RE: Capacity increase of Hermantown Arena Chiller from 150 tons to 170 tons

Proposal to add 20 tons of refrigeration capacity to the chiller ordered for the Hermantown Arena by the Hermantown School District. Taking the capacity from 150 tons to 170 tons. The additional capacity will be achieved by adding a 5th compressor to the system along with the necessary increases to valves and pipe sizes for the increased flow. Upsizing the gas cooler is also included to match the heat rejection requirements of the system.

PRICE INCLUDES THE FOLLOWING:

- Additional compressor added to system.
- Service valves, oil control, contactor, wiring and safeties for compressor.
- Necessary changes to piping & valves to accommodate compressor.
- Capacity increase to gas cooler

COST FOR CHANGES----- \$71,000.00

Not included

- Applicable taxes

This quote is valid for 30 days.

Thank you for the opportunity to quote you on the above project. If you have any questions, please feel free to contact me at 218-590-0592.

Sincerely,
SCR – ice arena / industrial division
Justin Zambo



November 1, 2023

City of Hermantown, MN
5105 Maple Grove Rd
Hermantown, MN 55811

**CENTRAL |
METRO DIVISION**

604 Lincoln Ave. NE
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Justin Zembo

October 31, 2023

Mr. John Gerzina
Managing Principal Architect
DSGW Architects
2 W 1st Street, Suite 201
Duluth, MN 55802

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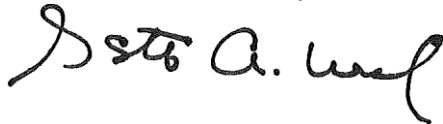
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Sincerely,

B32 ENGINEERING GROUP, INC.

A handwritten signature in black ink that reads "Scott A. Ward". The signature is written in a cursive, flowing style.

Scott A. Ward, P.E.
President

Resolution No. 2023-176

Resolution Authorizing And Directing The Mayor And City Clerk To Execute And Deliver A CMAR Contract Between The City Of Hermantown And Kraus-Anderson Construction Company

WHEREAS, City desires to contract with Kraus-Anderson Construction Company (“Kraus”) to act as the Construction Manager for the Hermantown Hockey Arena Addition (“Project”); and

WHEREAS, City and Kraus desire to enter into AIA Document A133-2019 and related contracts identified on Exhibit A attached hereto (collectively referred to as the “CMAR Contract”) and in form and substance attached hereto as Exhibit B, subject to additional negotiations, on the Guaranteed Maximum Price for the construction of the Project; and

WHEREAS, the City Council has reviewed the CMAR Contract and believes that it is in the best interests of the City of Hermantown to approve the CMAR Contract and authorize and direct the Mayor and City Clerk to execute and deliver it on behalf of the City of Hermantown.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hermantown, Minnesota as follows:

1. The CMAR Contract substantially in the form of the one attached hereto as Exhibit B is hereby approved.
2. The City Council hereby authorizes the City Administrator to make such non-substantive changes to the CMAR Contract as are approved by legal counsel.
3. The Mayor and City Clerk are hereby authorized and directed to execute and deliver the CMAR Contract on behalf of the City of Hermantown.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors _____, and Mayor Boucher, aye.

and the following voted in opposition thereto:

None.

WHEREUPON, such resolution was declared duly passed and adopted on November 20, 2023.

EXHIBIT A
Contract Document Outline

1. AIA Document A133-2019, Labor Contract, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
2. AIA Document A133-2019, Materials Contract, 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
3. AIA Document A201-2017, General Conditions of the Contract for Construction
4. AIA Document A133- 2019 Exhibit B, Insurance and Bonds – Labor
5. AIA Document A133- 2019 Exhibit B, Insurance and Bonds – Insurance and Bonds – Materials
6. Exhibit C, Award and Contract and Assignment of Award and Contract – Labor
7. Exhibit C, Award and Contract and Assignment of Award and Contract – Materials
8. Exhibit D, Tool and Equipment Rates (1)
9. Exhibit D, Tool and Equipment Rates (2)
10. Exhibit E, Certificate of Exemption

EXHIBIT B
Contract

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

LABOR CONTRACT

AGREEMENT made as of the 25th day of ~~in the year~~ September, 2023.
(In words, indicate day, month, and year.)

BETWEEN the Owner:

~~(Name, legal status, address, and other information)~~ City of Hermantown
Attn: John Mulder
5105 Maple Grove Road
Hermantown, MN 55811
218-729-3600
jmulder@hermantownmn.com

and the Construction Manager:

~~(Name, legal status, address, and other information)~~ Kraus-Anderson Construction Company
3716 Oneota Street Duluth, MN 55807
Attn: Paul Noll
paul.noll@krausanderson.com
(218) 624-8638

for the following Project:

~~(Name, location, and detailed description)~~ Hermantown Hockey Arena Addition
4309 Ugstad Road
Hermantown, MN 55811

The Architect:

~~(Name, legal status, address, and other information)~~ DSGW Architects
2 West First Street, Suite 201
Duluth, MN 55802
(218) 727-2626

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.

Init.

EXHIBIT B

The Owner and Construction Manager agree as follows.

This Agreement is for the provision of labor and miscellaneous taxable materials, supplies and equipment only. The Construction Manager has entered into a separate agreement with the Owner to act as the Owner's Purchasing Agent for all other materials to be incorporated into the Project. Any provisions in the Contract Documents inconsistent with this arrangement are hereby amended accordingly. Notwithstanding anything in this Agreement to the contrary, the Work under this Agreement is limited to all labor and taxable materials, supplies or equipment contemplated by the Contract Documents.

This Agreement is for a Construction Manager At Risk. Notwithstanding any provision of this Agreement, it is expressly understood that construction of the Project is subject to Minnesota Statutes § 471.345 and that contracts awarded for Work for the construction of the Project will be solicited, bid and awarded as required by law and pursuant to the bidding process ("Bidding Process") developed by the Owner and Construction Manager. Owner shall award and enter into contracts ("Construction Contracts") with the successful bidders and then assign the Construction Contracts to the Construction Manager pursuant to the form of Award, Contract and Assignment Agreement attached hereto as **Exhibit C**. After assignment, the Construction Manager shall have a direct contractual relationship with such successful bidders, which shall be considered Subcontractors, as referenced throughout this Agreement, to Construction Manager. Such designation does not change the status of the Construction Manager as a Construction Manager At Risk only with respect to Owner.

EXHIBIT B

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

EXHIBIT C – FORM OF AWARD, CONTRACT AND ASSIGNMENT AGREEMENT

EXHIBIT D – TOOL AND EQUIPMENT RENTAL RATES

EXHIBIT E – PROJECT LABOR AGREEMENT – To be updated and included with GMP Amendment

EXHIBIT F – WAGE DECISION - To be updated and included with GMP Amendment

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.")~~Article 1.

§ 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.)~~

will be determined by the development of the Preliminary Design. For purposes of this Agreement, development of the Preliminary Design means the completion of the Design Development Documents. The basic components of the Project are an addition to the existing Hermantown Hockey Arena, including the following:

EXHIBIT B

1. New Ice Sheet
2. Locker Rooms for Youth Sports
3. New ice plant/machine room; Zamboni circulation and storage
4. Public spaces and circulation
5. Stadium seating
6. Varsity locker rooms
7. Public concourse and amenities
8. New Central Entrance and Lobby
9. Dry land activity space
10. Administration and support spaces
11. FF&E design and procurement
12. The location of the addition will be determined during the development of the Preliminary Design.

§ 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.)

To be developed upon completion of the Preliminary Design.

§ 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.)

Eighteen Million and No/100 Dollars (\$18,000,000.00)

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

- .1 Design phase milestone dates, if any:

Preliminary Design: Fall/Winter of 2023.

- .2 Construction commencement date:

To be determined as part of the GMP Amendment

- .3 Substantial Completion date or dates:

To be determined as part of the GMP Amendment

- .4 Other milestone dates:

Other dates to be determined upon completion of the Preliminary Design.

§ 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.)

To be developed during the Preliminary Design, if any.

§ 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.)

To be developed during the Preliminary Design, if any.

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, prior to commencement of the Work the Owner and Construction Manager shall endeavor to define the terms, conditions and services related to the Owner's Sustainable Objective and may agree to complete and incorporate AIA Document E234™-2019, Sustainable Projects Exhibit,

EXHIBIT B

Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective Agreement. 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.)

To be developed during the Preliminary Design.

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

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

City of Hermantown

Attn: John Mulder

5105 Maple Grove Road

Hermantown, MN 55811

218-729-3600

jmulder@hermantownmn.com

§ 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.)~~

DSGW Architects

2 West First Street, Suite 201

Duluth, MN 55802

(218) 727-2626

§ 1.1.10 The Owner shall retain the following consultants and contractors:

~~(List name, legal status, address, and other contact information.)~~

- .1 Geotechnical Engineer:

To be retained by Owner.

- .2 Civil Engineer:

To be retained by Owner or Architect.

- .3 Other, if any:

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

Other Consultants may be retained by Owner.

- .4 Architect:

§ 1.1.11 The Architect's representative:

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

DSGW Architects

2 West First Street, Suite 201

Duluth, MN 55802

(218) 727-2626

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:

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

Paul Noll

Kraus-Anderson Construction Company

3716 Oneota Street

EXHIBIT B

Duluth, MN 55807
paul.noll@krausanderson.com
(218) 624-8638

§ 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.)

The staffing plan shall be provided prior to execution of the GMP Amendment.

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

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

See agreement language on page 2 of this Agreement.

§ 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.

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

§ 2.2 Relationship of the Parties

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

§ 2.3 General Conditions

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

EXHIBIT B

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

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

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

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other, other, which is to include an estimate of the Cost of the Work. This evaluation is to be provided weekly at each Project review meeting after the Preliminary Design is completed. The Project review meeting, prior to the completion of the Preliminary Design, shall be initially held monthly.

§ 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. These meetings shall be held at such times as required by Owner, but at least monthly before the Preliminary Design is completed and weekly thereafter.

§ 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. reductions ("Value Engineering"). The Owner acknowledges that such Value Engineering services are advisory and are not professional design services, and that in many instances the opportunity to reduce costs by using alternate or different materials, equipment or methods may come with corresponding tradeoffs in quality, performance, aesthetics, maintenance, or operations. The Owner shall have the obligation to ensure that any Value Engineering cost savings proposals are independently evaluated by the Owner, the Architect and other members of the Owner's design team to determine whether the potential cost saving opportunities are acceptable for incorporation or use in the Work, including any differences in quality, performance, aesthetics, maintenance, operations or other material aspects. Such Value Engineering services shall be considered a part of Preconstruction Services whether performed before or after commencement of the Construction Phase. The Construction Manager shall consult with the Architect regarding professional Value Engineering services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing ~~building information modeling and digital data protocols for the Project, using AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.~~

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager

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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 Preliminary Design~~ 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, 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 Preliminary Design~~ 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~~ approval prior to the execution of this Agreement.

§ 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.~~ per the agreed-upon terms, conditions and services related to the Owner's Sustainable Objective.

§ 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~~ approval and incorporation into the Bidding Process. The Bidding Process shall require all Bidders to provide a Payment and Performance Bond for the work performed and material provided to the Project.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project. Unless otherwise acknowledged by Owner, Construction Manager will establish a competitive pricing package for select trades based on the Bidding Process.

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The Construction Manager shall only recommend contracts be awarded to subcontractors who are responsive pursuant to the Bidding Process.

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

§ 3.1.12 Procurement

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

§ 3.1.13 Compliance with Laws

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

§ 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~~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.)

To be determined and added by an Addendum upon completion of the Preliminary Design.

§ 3.2 Guaranteed Maximum Price Proposal

~~§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, On the basis of the contracts awarded by the Owner and assigned to the Construction Manager following the Bidding Process, 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.items set forth in Section 3.2.3.3. The Guaranteed Maximum Price shall be provided to Owner within ten (10) days after completion of the Bidding Process for the entire Project.~~

§ 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~~ 1. A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- ~~2~~ 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~~ 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~~ Contingency set forth in Section 3.2.4; Construction Manager's General Conditions Costs; and the Construction Manager's Fee;
- ~~4~~ 4. The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- ~~5~~ 5. A date by which the Owner must accept the Guaranteed Maximum Price.

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§ 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.~~ considered reimbursable as a Cost of the Work but not included in a Change Order. Any unexpended amounts in the Construction Manager's Contingency ("Construction Manger's Contingency") at the time of Construction Manager's application for Final Payment pursuant to Section 11.2 shall be credited to Owner as Project Savings. The Construction Manager's Contingency is not intended to fund changes in the scope of the Work, differing site conditions or suspensions or delays for which the Owner is responsible.

§ 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 five (5) days following (a) the execution of the Guaranteed Maximum Price Amendment or, prior to acceptance~~ Amendment. (b) the date the Owner provides reasonable evidence pursuant to Section 4.1.2 that financial arrangements have been made to fulfill the Owner's obligations of the contract, and (c) receipt of the Building Permit for the Project or, prior to execution 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. Notwithstanding anything in the Contract to the contrary, by execution of the Guaranteed Maximum Price Amendment Owner acknowledges that Work may proceed to the extent possible prior to the established date of commencement.

§ 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. The Construction Manager shall perform all Work through

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Subcontractors. The Work to be performed during the construction phase shall be awarded to Subcontractors through the Bidding Process.

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

§ 3.3.2.3 Monthly Report

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

§ 3.3.2.4 Daily Logs

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

§ 3.3.2.5 Cost Control

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

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ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

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

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

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

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

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

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and

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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 agreed between the Owner and Construction Manager or as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, if attached to this Agreement.

§ 4.2 Owner's Designated Representative

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

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

§ 4.3 Architect

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

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

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

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

~~§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.~~

~~(If applicable, attach an exhibit of hourly billing rates or insert them below.)~~ 5.1.1.1 The stipulated sum for all preconstruction costs will be a lump sum of \$60,000. The below billing percentages will be billed for the preconstruction phase costs after each phase as follows:

Preliminary Design Complete: 50%

Construction Documents Complete: 50%

Individual or Position

Rate

~~§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions,~~

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~~assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.~~

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

§ 5.2 Payments

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

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

—%

§ 5.1.2 If the Preconstruction Phase services covered by this Agreement have not been completed within twelve (12) 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.

§ 5.3 Payments

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

§ 5.3.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid thirty (30) 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.)

Local rate of interest as set by Minnesota Statute 549.09.

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 calculation will be done at the time the Guaranteed Maximum Price is established for the Project via the Guaranteed Maximum Price Amendment and shall be determined by multiplying the estimated Cost of the Work by a rate of one and ninety-five hundredths of one percent (1.95%). The Construction Manager's Fee will become a fixed amount at the time the Guaranteed Maximum Price Amendment is executed and shall not be reduced.

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

The Construction Manager's Fee shall be increased at the rate of one and ninety-five hundredths of one percent (1.95%) multiplied by the Cost of the Work for additive changes in the work.

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

N/A

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

§ 6.1.6 Liquidated damages, if any:

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

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.)~~

§ 6.1.7.1 The difference (savings) between the Guaranteed Maximum Price less the final Cost of the Work less the Construction Manager's Fee shall accrue one hundred percent (100%) to the benefit of the Owner and zero percent (0.00%) to the benefit of the Construction Manager.

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. Notwithstanding anything in the Contract Documents to the contrary, the Guaranteed Maximum Price includes all labor and taxable materials, supplies or equipment necessary for the Work except those materials, supplies or equipment purchased by the Construction Manager as the Purchasing Agent for the Owner (the "Tax Exempt Materials") pursuant to that certain Standard Form of Agreement Between Owner and Construction Manager for the Project (the "Materials 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.

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§ 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. The Owner's execution of the Guaranteed Maximum Price Amendment shall constitute the Owner's approval of all costs identified within the Guaranteed Maximum Price.

§ 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.~~ Work at the hourly rates set forth below:

<u>Personnel Category</u>	<u>Rate Per Hour</u>
Senior Project Manager / Construction Executive	\$145.00 / hour
Project Manager	\$130.00 / hour
Project Engineer	\$95.00 / hour
General Superintendent	\$135.00 / hour
Project Superintendent	\$125.00 / hour
Clerical	\$66.00 / hour
Accounting	\$66.00 / hour
Safety Manager / Safety Engineer	\$120.00 / hour

The rates set forth above shall be in effect through December 31, 2023. Thereafter the rates shall be increased by five percent (5%) per year as of January 1 of each subsequent year. The Owner and Construction Manager acknowledge and agree that they have negotiated, stipulated to, and reached agreement upon all of the labor rates set forth in this Section 7.2. The Owner's sole and exclusive audit right with respect to the labor rates in Section 7.2 is with respect to the number of hours charged by the Construction Manager at those negotiated rates.

~~§ 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,~~ site at the hourly rates set forth in Section 7.2.2, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:
(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

Work.

~~§ 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,~~ the Work at the hourly rates set forth in Section 7.2.2.

§ 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.~~ pensions for construction workers described in Section 7.2.1. Such costs for taxes, insurance, contributions, and assessments (excluding benefits) shall be forty-six percent (46%) of gross payroll. Gross payroll consists of wages and benefits.

~~§ 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.~~

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§ 7.3 Subcontract Costs

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

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

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed ~~construction-construction, excluding the materials, supplies and equipment purchased pursuant to the Materials Contract.~~

§ 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-spoilage, except for materials, supplies and equipment purchased pursuant to the Materials Contract.~~ 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 (except for materials, supplies or equipment purchased pursuant to the Materials Contract) 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, Construction Manager-owned materials, supplies, and tools not included on Exhibit D~~ referenced in Section 7.5.2, 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. Rental charges for facilities, machinery, equipment, and hand tools rented from the Contractor shall be as set forth on the attached Exhibit D. Other rental charges shall not be higher than standard rates at the place of the Project.~~ The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

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

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

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior ~~approval-approval, excluding materials, supplies or equipment purchased pursuant to the Materials Contract.~~

§ 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. The premiums for other liability insurance, including, but not limited to, Commercial General Liability Insurance, Excess Umbrella Liability Insurance, Automobile Liability Insurance, Professional Liability Insurance and Pollution Liability Insurance shall be charged as a Cost of the Work at the rate of ninety-five hundredths of one percent (0.95%) of the Guaranteed Maximum Price (excluding this charge). Owner and Construction Manager acknowledge and agree that they have negotiated, stipulated to, and reached agreement on this insurance charge, and such amount shall be considered approved by the Owner and shall not be subject to audit.

§ 7.6.1.1 Costs for ~~self-insurance, self-insured deductibles or retentions carried by the Contractor, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.~~ Documents.

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

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§ 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.~~ Work.

§ 7.6.7 Costs of document reproductions and delivery charges.

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

§ 7.6.9 ~~Legal, mediation and arbitration.~~ Legal and mediation costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

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

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

§ 7.6.12 The cost for Construction Manager's administration of warranties required by the Contract Documents after Project completion shall be charged as a Cost of the Work at the rate of fifteen hundredths of one percent (0.15%) of the Guaranteed Maximum Price), and such amount shall be considered approved by the Owner and shall not be subject to audit.

§ 7.7 Other Costs and Emergencies

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

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

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

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§ 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. Notwithstanding anything in this Section 7.8.1 to the contrary, Kraus-Anderson Insurance Agency shall not be considered a "related party."

§ 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~~, Owner or Construction Change Directives, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 ~~Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall~~

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~~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 Work shall be performed under contracts assigned to the Construction Manager by the Owner on the basis of the bids awarded by the Owner, which, upon such assignment by the Owner to Construction Manager, shall be referred to as "subcontracts." 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. Agreement.~~

ARTICLE 10 ACCOUNTING RECORDS

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

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

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

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the first (1st) day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the thirtieth (30th) day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than ~~(—) days after the Architect receives the Application for Payment.~~

~~(Federal, state or local laws may require payment within a certain period of time.)~~ the last day of the succeeding month.

§ 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

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payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

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

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

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

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

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

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

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

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections ~~11.1.7.1.1 and 11.1.7.1.2~~ 11.1.7.1.1, 11.1.7.1.2 and 11.1.7.1.3 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~~ 11.1.7.1.1, 11.1.7.1.2 and 11.1.7.1.3 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

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.6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

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

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

Five percent (5%)

§ 11.1.8.1.1 The following items are not subject to retainage:

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

Construction Manager's Fee and Construction Manager's Cost of General Conditions.

§ 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.)~~

N/A

§ 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.)~~

The amount that is statutorily allowed to continue to be held as retainage pursuant to Minnesota Statutes § 337.10, Subd. 10.

§ 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;

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

§ 11.2.2 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 ~~30-60~~ days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

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

Payment or any binding determination of a dispute under the Contract Documents.

§ 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.)

~~%—Local rate of interest as set by Minnesota Statute 549.09.~~

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.

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

None.

§ 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

Termination of Agreement. Notwithstanding any other provision contained in the Agreement, Owner shall be entitled to terminate this Agreement for convenience at any time if Owner determines that in its sole judgment that Owner will be unable to agree to reasonable terms with any of the following parties with respect to the Project:

- Hermantown Amateur Hockey Association.
- Hermantown School District.
- North Star Ford.

Owner shall provide Construction Manager with ten (10) days written notice of a termination pursuant to this Section. In the event of termination under this Section, the terms of Section 13.1 and 13.2 of the Agreement shall be applicable.

§ 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

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

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

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

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

§ 13.2.1 Termination

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

§ 13.2.2 Termination by the Owner for Cause

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

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

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

§ 13.2.3 Termination by the Owner for Convenience

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

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

of one and ninety-five hundredths of one percent (1.95%) of the estimated Cost of the Work not completed as of the date of termination.

Init.

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EXHIBIT B

§ 13.3 Suspension

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

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

§ 14.2 Successors and Assigns

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

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

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

~~The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost. For all phases of the Project the Construction Manager and Owner shall purchase and maintain insurance and bonds 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.~~

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

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

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

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

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

§ 14.3.1.6 Other Insurance

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

EXHIBIT B

Coverage

Limits

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

~~§ 14.3.1.8~~ The Construction Manager shall provide certificates of insurance 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.

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

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

to the email address of the parties' representatives set forth in Article 1.

§ 14.5 Other provisions:

§ 14.5.1 The Owner and Construction Manager acknowledge and agree that the Construction Manager is signatory to certain collective bargaining agreements that require Construction Manager to subcontract with contractors that are signatory to an applicable labor agreement. In the event the Construction Manager is precluded by its collective bargaining agreements from contracting with any non-union contractors who are selected during the Bidding Process, the Owner and Construction Manager agree to cooperate with each other to avoid having the Construction Manager contract with non-union contractors in violation of any applicable collective bargaining agreement.

§ 14.5.2 SPECIAL SUBCONTRACT PROVISIONS

All Subcontracts for the Work shall contain provisions for the proper handling of materials purchased by the Owner exempt from sales tax, substantially as follows:

Special Provisions Regarding Materials Purchased Exempt from Sales Tax. Notwithstanding any other provision contained in this Subcontract to the contrary, with respect to those materials, supplies, and equipment furnished and purchased by Owner and/or Owner's purchasing agents exempt from sales tax (collectively, the "Owner-Supplied Materials"):

- (a) The Subcontractor retains the liability for its negligent acts and omissions, including without limitation, knowingly incorporating defective or non-conforming Owner-Supplied Materials into the Work, provided that all defective Owner-Supplied Materials installed or used in or incorporated into the Project shall remain the responsibility of the Owner.
- (b) The failure to purchase or acquire in a timely manner, by the party or parties responsible for the purchase or acquisition of materials, supplies or equipment required by the Subcontractor for the performance of the services described in this Subcontract, shall not excuse delay in substantial completion, as such term is defined in the General Contract, provided, however, that the time for substantial completion may be extended as provided in the General Contract.

EXHIBIT B

The Subcontractor shall exercise reasonable care and take reasonable precautions for the safekeeping of materials, supplies and equipment in its custody prior to the installation, use or incorporation in the Project. The risk of loss, damage and destruction with respect to all Owner-Supplied Materials is that of the Owner.

§ 14.5.3 PROJECT LABOR AGREEMENT

The Project Labor Agreement attached hereto as **Exhibit E** is applicable to the Project. All Bidders shall be required to accept and be bound by the terms and conditions of the Project Labor Agreement as part of the Bidding Process.

§ 14.5.4 PREVAILING WAGES

The Construction Manager and all Subcontractors shall comply with all of the applicable prevailing wage rate provisions contained in Chapter 177 of the Minnesota Statutes, and specifically those provisions contained in Minn. Stat. §§ 177.41 through 177.435, as they may be amended with respect to the Project. Construction Manager and all Subcontractors shall maintain appropriate payroll documentation for any covered contractual Work for a 3-year period after Substantial Completion of the Project. Construction Manager and all Subcontractors (of every tier) shall comply with the wage decision shown in **Exhibit F**.

§ 14.5.5 DATA PRACTICES ACT

The Construction Manager acknowledges that the Minnesota Government Data Practices Act (Minnesota Statutes, Chapter 13) is applicable to this Agreement. To the extent that the Construction Manager is performing a governmental function under this Agreement, the Construction Manager agrees to comply with the Minnesota Government Data Practices Act and all other applicable state and federal laws relating to data privacy or confidentiality, as provided in Minnesota Statutes, Section 13.05, subdivision 11. This provision does not create a duty on the part of the Construction Manager or its Subcontractors to provide access to public data to the public if the public data is available from the Owner. Regardless of whether or not the Construction Manager is performing a governmental function under this Agreement, the Construction Manager must immediately report to the Owner any requests from third parties for information relating to this Agreement. The Owner agrees to promptly respond to inquiries from the Construction Manager concerning data requests and the Construction Manager agrees to promptly respond to requests from the Owner concerning data requests.

§ 14.5.6 AMERICAN-MADE STEEL

The Construction Manager and any Subcontractor or material supplier will furnish and use only steel materials that have been melted and manufactured in the United States, which includes the application of the coating, to the extent practicable, except where the cost of steel materials incorporated in the Work does not exceed one-tenth of one percent of the total contract cost or \$2,500.00, whichever is greater. The Owner may approve the use of foreign steel materials for particular contract items, provided the Construction Manager, Subcontractor or Material Supplier submits a request identifying the foreign source steel product(s) and the estimated invoice cost of the product(s) for one or more contract items. The Construction Manager, Subcontractor or Material Supplier shall submit a "Request for Foreign Steel Materials" form for each request for use of foreign steel. If the Construction Manager, Subcontractor or Material Supplier chooses to use any non-domestic steel, the Construction Manager, Subcontractor or Material Supplier must submit a request regarding such non-domestic steel before it may use such non-domestic steel. The Construction Manager, Subcontractor or Material Supplier shall satisfy its obligations under this Section by submitting, prior to performing work, to Owner a certification stating that all steel items supplied are domestic origin, except for non-domestic iron and steel, specifically stipulated and permitted in accordance with this Section.

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 – Labor and Taxable Material Contract
- .2** AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3** AIA Document A133™-2019, Exhibit B, Insurance and Bonds

EXHIBIT B

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

§ 15.3 Other documents, if any, listed below:

~~.5~~ AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203-2013 incorporated into this Agreement.) 1 Exhibit C – Form of Award, Contract and Assignment Agreement

2 Exhibit D – Tool and Equipment Rental Rates

3 Exhibit E – Project Labor Agreement – To be updated and included with GMP Amendment

4 Exhibit F – Wage Decision - To be updated and included with GMP Amendment

~~.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.) This Agreement is entered into as of the day and year first written above. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original and all of which counterparts, taken together, shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this document by facsimile, pdf or other generally accepted electronic means (e.g., DocuSign) shall be effective as delivery of a manually executed counterpart of this document.

Supplementary and other Conditions of the Contract: City of Hermantown
Kraus-Anderson Construction Company

Document	Title	Date	Pages
<u>OWNER</u>		<u>CONSTRUCTION MANAGER</u>	
_____, Mayor		_____	
<i>(Printed name and title)</i>		<i>(Printed name and title)</i>	
_____ <i>And by its City Clerk</i>			

.7 Other documents, if any, listed below:

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

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

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

EXHIBIT B

(Printed name and title)

(Printed name and title)

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 this certification at 12:25:09 ET on 11/14/2023 under Order No. 3104239500 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 changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

(Title)

(Dated)

 **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

MATERIALS CONTRACT

AGREEMENT made as of the 25th day of September in the year 2023
(In words, indicate day, month, and year.)

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

City of Hermantown
Attn: John Mulder
5105 Maple Grove Road
Hermantown, MN 55811
218-729-3600
jmulder@hermantownmn.com

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

Kraus-Anderson Construction Company
3716 Oneota Street
Duluth, MN 55807
Attn: Paul Noll
paul.noll@krausanderson.com
(218) 624-8638

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

Hermantown Hockey Arena Addition
4309 Ugstad Road
Hermantown, MN 55811

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

DSGW Architects
2 West First Street, Suite 201
Duluth, MN 55802
(218) 727-2626

The Owner and Construction Manager agree as follows.

The Owner and Construction Manager agree as follows.

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.

EXHIBIT B

This Agreement is for the Construction Manager to act as the Owner's Purchasing Agent for materials, supplies or equipment to be incorporated into the Project. Any provisions in the Contract Documents inconsistent with this arrangement are hereby amended accordingly. Notwithstanding anything in this Agreement to the contrary, the Work under this Agreement means the purchase by the Construction Manager, acting as Purchasing Agent for the Owner, of the materials, supplies or equipment (collectively the "Tax Exempt Materials") for the Project, exempt from sales tax, pursuant to Section 14.5.2 of this Agreement. The Work under this Agreement does not include any of the labor or taxable materials, supplies or equipment provided to the Project by the Construction Manager pursuant to that certain Standard Form of Agreement Between Owner and Construction Manager for the Project (the "Labor and Taxable Material Contract").

This Agreement is for a Construction Manager At Risk. Notwithstanding any provision of this Agreement, it is expressly understood that construction of the Project is subject to Minnesota Statutes § 471.345 and that contracts awarded for Work for the construction of the Project will be solicited, bid and awarded as required by law and pursuant to the bidding process ("Bidding Process") developed by the Owner and Construction Manager. Owner shall award and enter into contracts ("Construction Contracts") with the successful bidders and then assign the Construction Contracts to the Construction Manager pursuant to the form of Award, Contract and Assignment Agreement attached hereto as **Exhibit C**. After assignment, the Construction Manager shall have a direct contractual relationship with such successful bidders, which shall be considered Subcontractors, as referenced throughout this Agreement, to Construction Manager. For purposes of this Materials Contract, the term "Subcontractors" includes suppliers of tax exempt materials. Such designation does not change the status of the Construction Manager as a Construction Manager At Risk only with respect to Owner.

EXHIBIT B

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

EXHIBIT C – FORM OF AWARD, CONTRACT AND ASSIGNMENT AGREEMENT

EXHIBIT D – TOOL AND EQUIPMENT RENTAL RATES

EXHIBIT E – OWNER'S MINNESOTA CERTIFICATE OF TAX EXEMPT STATUS

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.)

Project will be determined by the development of the Preliminary Design. For purposes of this Agreement, development of the Preliminary Design means the completion of the Design Development Documents. The basic components of the Project are an addition to the existing Hermantown Hockey Arena, including the following:

1. New Ice Sheet
2. Locker Rooms for Youth Sports

EXHIBIT B

3. New ice plant/machine room; Zamboni circulation and storage
4. Public spaces and circulation
5. Stadium seating
6. Varsity locker rooms
7. Public concourse and amenities
8. New Central Entrance and Lobby
9. Dry land activity space
10. Administration and support spaces
11. FF&E design and procurement
12. The location of the addition will be determined during the development of the Preliminary Design.

§ 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.)

To be developed upon completion of the Preliminary Design.

§ 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.)

Eighteen Million and No/100 Dollars (\$18,000,000.00)

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

- .1 Design phase milestone dates, if any:

Preliminary Design: Fall/Winter of 2023/2024.

- .2 Construction commencement date:

To be determined as part of the GMP Amendment

- .3 Substantial Completion date or dates:

To be determined as part of the GMP Amendment

- .4 Other milestone dates:

Other dates to be determined upon completion of the Preliminary Design

§ 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.)

To be developed during the Preliminary Design, if any.

§ 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.)

To be developed during the Preliminary Design, if any

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, prior to commencement of Work the Owner and Construction Manager shall endeavor to define the terms, conditions and services related to the Owner's Sustainable Objective and may agree to 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. ~~Agreement.~~ If E234-2019 is incorporated into this agreement, the Owner and Construction Manager shall

EXHIBIT B

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.)

To be developed during the Preliminary Design.

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

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

City of Hermantown
Attn: John Mulder
5105 Maple Grove Road
Hermantown, MN 55811
218-729-3600
jmulder@hermantownmn.com

§ 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.)

DSGW Architects
2 West First Street, Suite 201
Duluth, MN 55802
(218) 727-2626

§ 1.1.10 The Owner shall retain the following consultants and contractors:

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

.1 Geotechnical Engineer:

To be retained by Owner.

.2 Civil Engineer:

To be retained by Owner or Architect.

.3 Other, if any:

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

Other Consultants may be retained by Owner.

§ 1.1.11 The Architect's representative:

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

DSGW Architects
2 West First Street, Suite 201
Duluth, MN 55802
(218) 727-2626

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:

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

Paul Noll
Kraus-Anderson Construction Company
3716 Oneota Street
Duluth, MN 55807
paul.noll@krausanderson.com
(218) 624-8638

§ 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.)

The staffing plan shall be provided prior to execution of the GMP Amendment.

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

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

See agreement language on page 2 of this Agreement.

§ 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.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

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

§ 2.2 Relationship of the Parties

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

EXHIBIT B

§ 2.3 General Conditions

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

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

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, other~~, which is to include an estimate of the Cost of the Work. This evaluation is to be provided weekly at each Project review meeting after the Preliminary Design is completed. The Project review meeting, prior to the completion of the Preliminary Design, shall be initially held monthly.

§ 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. These meetings shall be held at such times as required by Owner, but at least monthly before the Preliminary Design is completed and weekly thereafter.

§ 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~~-reductions ("Value Engineering"). The Owner acknowledges that such Value Engineering services are advisory and are not professional design services, and that in many instances the opportunity to reduce costs by using alternate or different materials, equipment or methods may come with corresponding tradeoffs in quality, performance, aesthetics, maintenance, or operations. The Owner shall have the obligation to ensure that any Value Engineering cost savings proposals are independently evaluated by the Owner, the Architect and other members of the Owner's design team to determine whether the potential cost saving opportunities are acceptable for incorporation or use in the Work, including any differences in quality, performance, aesthetics, maintenance, operations or other material aspects. Such Value Engineering services shall be considered a part of Preconstruction Services whether performed before or after commencement of the Construction Phase. The Construction Manager shall consult with the Architect regarding ~~professional~~ Value Engineering services to be provided by the Construction Manager during the Construction Phase.

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§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing ~~building information modeling and digital data protocols for the Project, using AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.~~

§ 3.1.4 Project Schedule

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

§ 3.1.5 Phased Construction

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

§ 3.1.6 Cost Estimates

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

§ 3.1.6.2 As the Architect progresses with the preparation of the ~~Schematic Design, Design Development Preliminary Design~~ 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 Preliminary Design~~ 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~~ approval prior to the execution of this Agreement.

§ 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 per the agreed-upon terms, conditions and services related to the Owner's Sustainable Objective.~~

EXHIBIT B

§ 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. The Bidding Process shall require all Bidders to provide a Payment and Performance Bond for the work performed and material provided to the Project.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project. Unless otherwise acknowledged by Owner, Construction Manager will establish a competitive pricing package for select trades based on the Bidding Process. The Construction Manager shall only recommend contracts be awarded to subcontractors who are responsive pursuant to the Bidding Process.

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

§ 3.1.12 Procurement

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

§ 3.1.13 Compliance with Laws

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

§ 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.)

To be determined and added by an Addendum upon completion of the Preliminary Design.

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 ~~At a time to be mutually agreed upon by the Owner and the Construction Manager, On the basis of the contracts awarded by the Owner and assigned to the Construction Manager following the Bidding Process,~~ 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.~~ items set forth in Section 3.2.3.3. The Guaranteed Maximum Price shall be provided to Owner within ten (10) days after completion of the Bidding Process for the entire Project.

§ 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;

EXHIBIT B

- .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.~~ considered reimbursable as a Cost of the Work but not included in a Change Order. Any unexpended amounts in the Construction Manager's Contingency ("Construction Manger's Contingency") at the time of Construction Manager's application for Final Payment pursuant to Section 11.2 shall be credited to Owner as Project Savings. The Construction Manager's Contingency is not intended to fund changes in the scope of the Work, differing site conditions or suspensions or delays for which the Owner is responsible.

§ 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 five (5) days following (a) the execution of the Guaranteed Maximum Price Amendment or, prior to acceptance~~ Amendment, (b) the date the Owner provides reasonable evidence pursuant to Section 4.1.2 that financial arrangements have been made to fulfill the Owner's obligations of the contract, and (c) receipt of the Building Permit for the Project or, prior to execution 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. Notwithstanding anything in the Contract to the contrary, by execution of the Guaranteed Maximum Price Amendment Owner acknowledges that Work may proceed to the extent possible prior to the established date of commencement.

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§ 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. The Construction Manager shall perform all Work through Subcontractors. The Work to be performed during the construction phase shall be awarded to Subcontractors through the Bidding Process.

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

§ 3.3.2.3 Monthly Report

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

§ 3.3.2.4 Daily Logs

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

§ 3.3.2.5 Cost Control

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

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

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

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

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

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

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

EXHIBIT B

§ 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 agreed between the Owner and Construction Manager or as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, if attached to this Agreement.

§ 4.2 Owner's Designated Representative

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

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

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in ~~AIA Document B133™-2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, an agreement between the Owner and Architect,~~ 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.)

See Labor and Taxable Materials Contract.

~~§ 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

EXHIBIT B

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

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

§ 5.2 Payments

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

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid thirty (30) 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.)

~~% Local rate of interest as set by Minnesota Statute 549.09.~~

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 calculation will be done at the time the Guaranteed Maximum Price is established for the Project via the Guaranteed Maximum Price Amendment and shall be determined by multiplying one and ninety-five hundredths of one percent (1.95%) by the cost of the estimated Tax Exempt Materials purchased by the Construction Manager as the Owner's purchasing agent. The Construction Manager's Fee will become a fixed amount at the time the Guaranteed Maximum Price Amendment is executed and shall not be reduced.

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

For additive changes in the Work, the Construction Manager's Fee shall be increased at the rate of one and ninety-five hundredths of one percent (1.95%) multiplied by the cost of the estimated Tax Exempt Materials purchased by the Construction Manager as the Owner's purchasing agent associated with such additive change.

§ 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 ~~percent (—%)~~ of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

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

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.)

EXHIBIT B

§ 6.1.7.1 The difference (savings) between the Guaranteed Maximum Price less the final Cost of the Work less the Construction Manager's Fee shall accrue one hundred percent (100%) to the benefit of the Owner and zero percent (0.00%) to the benefit of the Construction Manager.

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. Notwithstanding anything in the Contract Documents to the contrary, the Guaranteed Maximum Price includes only the estimated cost of all Tax Exempt Materials purchased by the Construction Manager as Purchasing Agent for the Owner pursuant to Section 14.5.1 of this Agreement, plus the Construction Manager's Fee.

§ 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. The provisions of this Article 7 are limited in application because this Agreement is a Materials Contract.

§ 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. The Owner's execution of the Guaranteed Maximum Price Amendment shall constitute the Owner's approval of all costs identified within the Guaranteed Maximum Price.

§ 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.

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§ 7.2 Labor Costs ~~Reserved~~

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

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

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

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

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

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

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

§ 7.3 Subcontract Costs

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

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

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

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

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

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of ~~materials, supplies, temporary facilities, machinery, equipment, and tools, Construction Manager-owned materials, supplies, and tools not included on Exhibit D,~~ 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. Reserved.~~

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

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

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

§ 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. The premiums for other liability insurance, including, but not limited to, Commercial General Liability Insurance, Excess Umbrella Liability Insurance, Automobile Liability Insurance, Professional Liability Insurance and Pollution Liability Insurance shall be charged as a Cost of the Work at the rate of ninety-five hundredths of one percent (0.95%) of the Guaranteed Maximum Price (excluding this charge). Owner and Construction Manager acknowledge and agree that they have negotiated, stipulated to, and reached agreement on this insurance charge, and such amount shall be considered approved by the Owner and shall not be subject to audit.

~~§ 7.6.1.1 Costs for self insurance, self-insured deductibles or retentions carried by the Contractor, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. Documents.~~

~~§ 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. Reserved.~~

~~§ 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. Reserved.~~

~~§ 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. Reserved.~~

§ 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~~ knew 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~~ Section 3.17 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. Reserved.~~

~~§ 7.6.7 Costs of document reproductions and delivery charges. Reserved.~~

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

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

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~~§ 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. Reserved.~~

~~§ 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. Reserved.~~

§ 7.7 Other Costs and Emergencies

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

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

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

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

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager. Notwithstanding anything in this Section 7.8.1 to the contrary, Kraus-Anderson Insurance Agency shall not be considered a "related party."

§ 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;

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- .8 Costs, other than costs included in Change Orders approved by the ~~Owner~~, Owner or Construction Change Directives, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

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

ARTICLE 10 ACCOUNTING RECORDS

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

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ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

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

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the first (1st) day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the thirtieth (30th) day of the same 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.~~ the last day of the succeeding month.
(Federal, state or local laws may require payment within a certain period of time.)

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

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

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

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

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

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

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

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

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

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- .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~~ 11.1.7.1.1, 11.1.7.1.2 and 11.1.7.1.3 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~~ 11.1.7.1.1, 11.1.7.1.2 and 11.1.7.1.3 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

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

§ 11.1.8 Retainage

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

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

Five percent (5%)

§ 11.1.8.1.1 The following items are not subject to retainage:

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

Construction Manager's Fee.

§ 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.)

N/A

§ 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 all 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.)

The amount that is statutorily allowed to continue to be held as retainage pursuant to Minnesota Statutes § 337.10, Subd. 10.

§ 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.

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§ 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~~ 60 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

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

Payment or any binding determination of a dispute under the Contract Documents.

§ 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

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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.)

% Local rate of interest as set by Minnesota Statute 549.09.

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

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

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

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

None.

§ 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

Termination of Agreement. Notwithstanding any other provision contained in the Agreement, Owner shall be entitled to terminate this Agreement for convenience at any time if Owner determines that in its sole judgment that Owner will be unable to agree to reasonable terms with any of the following parties with respect to the Project:

- Hermantown Amateur Hockey Association.
- Hermantown School District.
- North Star Ford.

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Owner shall provide Construction Manager with ten (10) days written notice of a termination pursuant to this Section. In the event of termination under this Section, the terms of Section 13.1 and 13.2 of the Agreement shall be applicable.

§ 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.

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§ 13.2.2 Termination by the Owner for Cause

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

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

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

§ 13.2.3 Termination by the Owner for Convenience

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

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

one and ninety-five hundredths of one percent (1.95%) of the estimated Cost of the Work not completed as of the date of 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.

§ 14.3 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~~

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~~Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost. For all phases of the Project the Construction Manager and Owner shall purchase and maintain insurance and bonds 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.~~

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

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

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

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

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

~~§ 14.3.1.6 Other Insurance~~

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

Coverage

Limits

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

~~§ 14.3.1.8 The Construction Manager shall provide certificates of insurance 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.~~

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

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

EXHIBIT B

to the email address of the parties' representatives set forth in Article 1.

§ 14.5 Other provisions:

§ 14.5.1 The Owner and Construction Manager acknowledge and agree that the Construction Manager is signatory to certain collective bargaining agreements that require Construction Manager to subcontract with contractors that are signatory to an applicable labor agreement. In the event the Construction Manager is precluded by its collective bargaining agreements from contracting with any non-union contractors who are selected during the Bidding Process, the Owner and Construction Manager agree to cooperate with each other to avoid having the Construction Manager contract with non-union contractors in violation of any applicable collective bargaining agreement.

14.5.2 PURCHASE OF MATERIALS EXEMPT FROM SALES TAX.

§ 14.5.2.1 The Owner hereby appoints the Construction Manager as its purchasing agent for the purchase of the materials, supplies and equipment used in the performance of this Agreement that are identified in Exhibit A to this Agreement. The Owner hereby authorizes the Construction Manager (acting as Owner's agent) to appoint any material supplier or sub-supplier as a purchasing agent of the Owner for the purchase of such portion of the materials, supplies and equipment as may be designated by the Construction Manager. References herein to "Purchasing Agent" are to the Construction Manager, material supplier, or sub-supplier that acts as purchasing agent with respect to particular materials, supplies and equipment. References to "materials, supplies and equipment" in this subparagraph 14.5.2.1 are to the materials, supplies and equipment purchased by any Purchasing Agent pursuant to this agency appointment. Each contract for the purchase of materials or other agreement that provides for the appointment of a Purchasing Agent shall contain provisions comparable to this subparagraph 14.5.2.1.

§ 14.5.1.2 The Purchasing Agent is responsible for the selection of the supplier, the scheduling of delivery and the unloading of materials, supplies and equipment at the construction site.

§ 14.5.1.3 Title to the materials, supplies and equipment shall immediately vest in the Owner at the point of delivery and all incidents of ownership shall remain in Owner at all times.

§ 14.5.1.4 The risk of loss with respect to the materials, supplies and equipment shall be that of the Owner and shall be covered by its insurance.

§ 14.5.1.5 The Purchasing Agent shall, with reasonable care, inspect the materials, supplies and equipment upon delivery and report any defects to the Owner. The Purchasing Agent, as agent for the Owner, shall contact the manufacturer or supplier for immediate replacement or correction of defective materials or supplies. Owner shall be responsible for all defective materials, supplies and equipment. The Purchasing Agent shall take all reasonable precautions to protect all stored items of materials, supplies and equipment on the site from damage.

§ 14.5.1.6 The Purchasing Agent shall notify all vendors and suppliers of materials, supplies and equipment that it is acting as Purchasing Agent for the Owner and that the obligation to pay for the materials, supplies and equipment is solely that of the Owner. All purchase orders and other documents furnished to a vendor or supplier shall clearly reflect the agency relationship between the Purchasing Agent and the Owner. The Purchasing Agent shall claim exemption from sales and use taxes with respect to the materials, supplies and equipment. The Purchasing Agent shall include the following language in each purchase agreement or order for materials, supplies and equipment:

"This purchase is made by [INSERT NAME OF PURCHASING AGENT] as Purchasing Agent for [INSERT NAME OF OWNER]. Title to the purchased materials shall pass directly from the seller to [INSERT NAME OF OWNER]. The obligation to pay for the materials is solely that of [INSERT NAME OF OWNER], but invoices may be submitted for payment to [INSERT NAME OF PURCHASING AGENT] as agent for [INSERT NAME OF OWNER]. This purchase by [INSERT NAME OF OWNER] is exempt from sales and use taxation. A copy of [INSERT NAME OF OWNER] Certificate of Exempt Status is attached as an exhibit hereto."

§ 14.5.1.7 The Owner shall pay vendors or suppliers of materials, supplies and equipment after the Purchasing Agent has validated the delivery and condition of the purchased items.

EXHIBIT B

§ 14.5.1.8 The Owner warrants and represents that it is a Minnesota statutory city and that it is exempt from Minnesota sales and use taxation with respect to its purchase of materials, supplies and equipment. A copy of the Owner's Certificate of Exempt Status is attached at Exhibit E. Each Purchasing Agent designated by Construction Manager pursuant to the authorization contained in paragraph 14.5.2.1 set forth above shall be a third party beneficiary of this paragraph 14.5.2.8.

§ 14.5.1.9 It is expressly agreed that Owner shall pay each Purchasing Agent on demand, and shall indemnify, defend and hold harmless Construction Manager and each Purchasing Agent from and against, any amount of sales or use tax, penalty, or interest from which becomes payable by Construction Manager or the Purchasing Agent directly or on behalf of its subcontractors, sub-subcontractors or vendors by reason of appropriate order of the State of Minnesota related to, in connection with or arising out of the purchase of materials, supplies and equipment. Each Purchasing Agent designated by Construction Manager pursuant to the authorization contained in paragraph 14.5.2.1 set forth above shall be a third party of this paragraph 14.5.2.9.

§ 14.5.2 DATA PRACTICES ACT

The Construction Manager acknowledges that the Minnesota Government Data Practices Act (Minnesota Statutes, Chapter 13) is applicable to this Agreement. To the extent that the Construction Manager is performing a governmental function under this Agreement, the Construction Manager agrees to comply with the Minnesota Government Data Practices Act and all other applicable state and federal laws relating to data privacy or confidentiality, as provided in Minnesota Statutes, Section 13.05, subdivision 11. This provision does not create a duty on the part of the Construction Manager or its Subcontractors to provide access to public data to the public if the public data is available from the Owner. Regardless of whether or not the Construction Manager is performing a governmental function under this Agreement, the Construction Manager must immediately report to the Owner any requests from third parties for information relating to this Agreement. The Owner agrees to promptly respond to inquiries from the Construction Manager concerning data requests and the Construction Manager agrees to promptly respond to requests from the Owner concerning data requests.

§ 14.5.3 AMERICAN-MADE STEEL

The Construction Manager and any Subcontractor or material supplier will furnish and use only steel materials that have been melted and manufactured in the United States, which includes the application of the coating, to the extent practicable, except where the cost of steel materials incorporated in the Work does not exceed one-tenth of one percent of the total contract cost or \$2,500.00, whichever is greater. The Owner may approve the use of foreign steel materials for particular contract items, provided the Construction Manager, Subcontractor or Material Supplier submits a request identifying the foreign source steel product(s) and the estimated invoice cost of the product(s) for one or more contract items. The Construction Manager, Subcontractor or Material Supplier shall submit a "Request for Foreign Steel Materials" form for each request for use of foreign steel. If the Construction Manager, Subcontractor or Material Supplier chooses to use any non-domestic steel, the Construction Manager, Subcontractor or Material Supplier must submit a request regarding such non-domestic steel before it may use such non-domestic steel. The Construction Manager, Subcontractor or Material Supplier shall satisfy its obligations under this Section by submitting, prior to performing work, to Owner a certification stating that all steel items supplied are domestic origin, except for non-domestic iron and steel, specifically stipulated and permitted in accordance with this Section.

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 – Materials Contract
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™-2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .5 ~~AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:~~

~~(Insert the date of the E203-2013 incorporated into this Agreement.)~~

EXHIBIT B

~~.6~~ Other Exhibits:

(Check all boxes that apply.)

~~[]~~ AIA Document E234™ 2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:

(Insert the date of the E234-2019 incorporated into this Agreement.)

~~[]~~ Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

~~.7~~ 15.3 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.) 1 Exhibit C – Form of Award, Contract and Assignment Agreement

.2 Exhibit D – Tool and Equipment Rental Rates

.3 Exhibit E – Owner's Minnesota Certificate of Tax Exempt Status

This Agreement is entered into as of the day and year first written above. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original and all of which counterparts, taken together, shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this document by facsimile, pdf or other generally accepted electronic means (e.g., DocuSign) shall be effective as delivery of a manually executed counterpart of this document.

City of Hermantown

Kraus-Anderson Construction Company

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

_____, Mayor

(Printed name and title)

(Printed name and title)

And by its City Clerk

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 this certification at 12:16:11 ET on 11/14/2023 under Order No. 3104239500 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 changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

(Title)

(Dated)

 **AIA**[®] Document A201[®] – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Hermantown Hockey Arena Addition
4309 Ugstad Road
Hermantown, MN 55811

THE OWNER:

(Name, legal status and address)

City of Hermantown
5105 Maple Grove Road
Hermantown, MN 55811

THE ARCHITECT:

(Name, legal status and address)

DSGW Architects
2 West First Street, Suite 201
Duluth, MN 55802

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[™], Guide for Supplementary Conditions.

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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

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4.2.11, 4.2.12

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

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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.~~

§ 1.1.3.1 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.

§ 1.1.3.2 Notwithstanding anything herein to the contrary, with respect to the A133-2019 Materials Contract between the Owner and the Contractor for the Project (the "Materials Contract"), the Work under the Materials Contract means the purchase by the Contractor, acting as Purchasing Agent for the Owner, of the materials, supplies or equipment (collectively the "Tax Exempt Materials") for the Project, exempt from sales tax, and specifically excludes any taxable materials to be incorporated into the Project.

§ 1.1.3.3 Notwithstanding anything herein to the contrary, with respect to the A133-2019 Labor and Taxable Material Contract between the Owner and Contractor for the Project (the "Labor Contract"), the Work under the Labor Contract does not include any Tax Exempt Materials.

§ 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

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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 person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. 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 intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. 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.

§ 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.

§ 1.2.2 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.transmission.

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§ 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 protocols governing the transmission and use of~~ If the parties intend to transmit Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data form, prior to commencement of Work they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

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

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 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~~ appropriately, and the Contract Sum shall be equitably adjusted.

§ 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.

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§ 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.

§ 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 shall retain 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.

§ 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, 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~~ seven-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 after such seven-day period give the Contractor a second written notice to correct such deficiencies within a three-day period. If the Contractor within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, 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.

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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 Because the Contract Documents are complementary, 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 of~~ 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 pursuant to Section 3.2 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~~ require and necessary changes shall be accomplished by appropriate Modification to 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.

§ 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, as between the Owner and the Contractor, 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~~

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~~Work using its alternative means, methods, techniques, sequences, or procedures, not proceed with that portion of the Work without further written instructions from the Architect.~~

§ 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. The Owner shall take title to all Tax Exempt Materials at the point of delivery and the Owner retains the risk of loss for all Tax Exempt Materials.

§ 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 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 for a period of one-year after the date of Substantial Completion of the Work or designated portion thereof or after the date of commencement of warranties established under Subparagraph 9.9.1 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 otherwise (except for materials, supplies or equipment included in the Materials Contract).~~ The Contractor further warrants for a period of one-year after the date of Substantial Completion of the Work or designated portion thereof or after the date of commencement of warranties established under Subparagraph 9.9.1 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 Owner has the responsibility for all defective Tax Exempt Materials. 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.

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§ 3.7.2 ~~The Subject to Section 3.2.3, 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.~~ Work, including the provisions of any applicable law relating to discriminatory employment practices.

§ 3.7.3 ~~If Subject to Section 3.2.3, 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 14 days after first observance of the conditions. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted. 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.

§ 3.7.5 If, in the course of the Work, the Contractor ~~encounters human remains or recognizes the existence of human remains, burial markers, or 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~~ If such conditions are encountered, the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15 shall be equitably adjusted.

§ 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 such stated~~ 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 in~~ sufficient time to avoid delay in the Work.

§ 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~~ Contractor's Project Manager shall represent the Contractor, and communications given to the ~~superintendent~~ Contractor's Project Manager shall be as binding as if given to the Contractor.

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~~§ 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. 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, unless such person becomes unable to perform his or her duties due to death, disability, resignation, or termination of employment. If the superintendent is no longer capable of performing his or her duties as described above, the Contractor shall promptly submit to the Owner the resume of any person Contractor requests to instate as a substitute, and unless the Owner reasonably objects, such person shall be substituted.

~~§ 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

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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. ~~Documents, and the Contractor shall not be responsible for the adequacy and accuracy of such performance and design criteria.~~ 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 all~~ 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.

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§ 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 reasonably 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 as close as reasonably practicable under the circumstances 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 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

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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. The term "Architect" means the Architect or the Architect's authorized representative.

§ 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.

§ 4.2 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. Documents, except as provided in Section 3.3.1.

§ 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 endeavor to 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

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schedule, with reasonable promptness so as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, 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~~ or, unless specifically stated by the Architect, 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 promptly 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 Architect'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~~ with reasonable promptness, but in no event later than fifteen (15) days after receipt of such request. 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. Wherever the term "Subcontractor" is used in the Contract, unless the context clearly requires otherwise, it shall include the contractors whose contracts with the Owner have been assigned to the Construction Manager and with whom Construction Manager has entered into a Subcontract. The term "Subcontractor" does not include Direct Owner Contractors, 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.

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§ 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 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~~7 days of receipt of the information, the Architect 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~~7-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.

§ 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, 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.

§ 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.

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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~~ schedules when directed to do so. 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.

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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.

§ 7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

§ 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 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

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.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, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 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 Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect'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 and shall not proceed to implement the change in the Work. ~~If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect 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.

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§ 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 (1) by ~~(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 disruptions in labor or materials resulting from a health crisis regardless of whether an infectious disease, epidemic, pandemic or outbreak isolated to areas from which such labor and materials are supplied; (5) by delay authorized by the Owner pending mediation and binding dispute resolution; or ~~(5)-(6)~~ by other causes that the Contractor ~~asserts, asserts~~ and the Architect determines, justify delay, then the Contract Time ~~shall be extended for such reasonable time as the Architect may determine~~ and the Contract Sum shall be equitably adjusted by Change Order.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

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 as compensation 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 conditional 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.

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§ 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.

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§ 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 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 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 ~~amounts owed to such Subcontractor or material or equipment supplier for Work properly performed or material or equipment suitably delivered~~ ~~delivered by such Subcontractor or material or equipment supplier~~. 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 The Contractor shall promptly pay each Subcontractor, ~~no later than seven days~~ after 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 manner.

§ 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.

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§ 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 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.

§ 9.8 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.

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§ 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.

§ 9.10.4 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.

§ 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.~~ § 10.1.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.1.2 The Owner and the Contractor acknowledge and agree that the obligations of Contractor related to protection of persons and property are obligations that run to the Owner only, and nothing in this Article 10 is intended to limit or otherwise reduce the safety responsibilities of the Subcontractors. Contractor and Owner further agree that

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Contractor's Subcontractors are independent contractors and that the Subcontractors and the Subcontractors' employees are not the employees of Owner or Contractor.

§ 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 Subject to Section 3.2.3, 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~~ 10.2.1.3, except 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, If a material or substance reasonably believed by the Contractor to be hazardous, toxic, petroleum or a constituent thereof, including but not limited to asbestos or polychlorinated biphenyl (PCB), or that might cause bodily injury or death to persons, is encountered on the site by the~~

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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 the presence on the site of any (a) hazardous or toxic material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), (b) petroleum or a constituent thereof, or (c) any material or substance that might cause bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), property,~~ except to the extent that such damage, loss, or expense is due to the sole 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, provided that such material or substance was not required by the Contract Documents,~~ 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

§ 11.1.1 The Contractor 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.~~ Agreement. 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.~~

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§ 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, Agreement.~~ 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.

§ 11.1.3 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, Agreement,~~ 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 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, Agreement.~~ 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.

§ 11.2.2 **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 Agreement,~~ 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 of action 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.

§ 11.2.3 **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, Agreement,~~ 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 of action 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 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

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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.

§ 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. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

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

The Owner, at the Owner's option, may purchase and maintain insurance that will protect 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.

§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~~ the right 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 written 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~~ expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 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

EXHIBIT B

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 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.

§ 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. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the 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, or makes such assignment with or without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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§ 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 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.

§ 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 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;

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- .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.

§ 14.1.3 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.~~ termination, and damages.

§ 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.

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§ 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 Owner shall pay the Contractor for Work properly ~~executed~~; executed (including the Contractor's Fee thereon); 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.

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, adjustment or interpretation of Contract terms, 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~~ Work or such other period provided by applicable law, whichever is less. 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.

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§ 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. believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Section 15.1.

§ 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

§ 15.2.1 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 not 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

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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.~~
time.

~~§ 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.~~ deadlines, notwithstanding anything to the contrary in this Article 15.

§ 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.~~ Reserved.

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~~§ 15.3.4 The~~ Each party shall pay its own attorneys' fees in connection with such mediation and 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 Litigation

~~§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any~~ 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. Litigation in St. Louis County, Minnesota.

~~§ 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. employees and officers of Owner shall not be personally liable in any manner to the Construction Manager, subcontractors, suppliers, laborers or to any other person or persons for any claim, demand, damages, action or causes of action of any kind or character arising out of or by reason of the Contract.

~~§ 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.

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 this certification at 13:13:56 ET on 10/02/2023 under Order No. 3104237575 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 changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

(Title)

(Dated)

AIA[®] Document A133[®] – 2019 Exhibit B

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Labor and Taxable Materials Agreement, between the Owner and the Construction Manager, dated the 25th day of September in the year 2023

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

for the following **PROJECT**:

(Name and location or address)

Hermantown Hockey Arena Addition
4309 Ugstad Road
Hermantown, MN 55811

THE OWNER:

(Name, legal status, and address)

City of Hermantown
5105 Maple Grove Road
Hermantown, MN 55811

THE CONSTRUCTION MANAGER:

(Name, legal status, and address)

Kraus-Anderson Construction Company
3716 Oneota Street
Duluth, MN 55807

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.

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.

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

Init.

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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
<u>Flood</u>	<u>No less than \$1,000,000 for Flood Zone B.</u>
<u>Earthquake</u>	<u>No less than \$5,000,000.</u>

§ 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~~ ~~startup~~ and for portions of the Work stored off the site and portions of the Work in transit. 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
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§ 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.

EXHIBIT B

§ 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.

EXHIBIT B

§ 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 as required by Section B.3.1.3 up to the limits required by Sections B.3.2.2 and B.3.2.4.~~ Such certificates shall contain substantially the following statement: "The insurance covered by this certificate will not be canceled, materially altered, or not renewed, except after thirty (30) days written notice or ten (10) days for non-payment of premium, has been received by the Owner." Construction Manager shall maintain all insurance coverages required under this section at Construction Manager's sole expense and with insurance companies licensed to do business in the state of Minnesota and having a current A.M. best rating of no less than A-, unless specifically accepted by Owner in writing.

§ 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~~ Owner as additional insured 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 equivalent to~~ 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

EXHIBIT B

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.)*

two years after Substantial Completion of the Project.

§ B.3.2.2 Commercial General Liability

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form on ISO form CG 00 01 12 07 or CG 00 01 04 13, or the equivalent with "broad form" damage liability coverage with the XCU exclusion removed and policy limits of not less than two million dollars (\$ 2,000,000) each occurrence, four million dollars (\$ 4,000,000) general aggregate, and four million dollars (\$ 4,000,000) 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 two million dollars (\$ 2,000,000) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ B.3.2.4 The Construction Manager shall obtain umbrella/excess liability insurance with a combined single limit of ten million dollars (\$10,000,000). 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 of the underlying insurers limits.~~

EXHIBIT B

§ B.3.2.5 Workers' Compensation at statutory ~~limits~~ limits as required by applicable Minnesota law for all employees to be engaged in work at the site of the Project.

§ B.3.2.6 Employers' Liability with policy limits not less than two million dollars (\$ 2,000,000) each accident, two million dollars (\$ 2,000,000) each employee, and two million dollars (\$ 2,000,000) 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 five million dollars (\$ 5,000,000) per claim and ten million dollars (\$ 10,000,000) 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 five million dollars (\$ 5,000,000) per claim and ten million dollars (\$ 10,000,000) 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. Reserved.

§ 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. Reserved.

§ 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 two million dollars (\$ 2,000,000) per claim and four million dollars (\$ 4,000,000) 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.)

substantial completion of the Work.

§ 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~~ Section B.2.3, except with respect to Section B.2.3.3 and 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~~ Construction Manager 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:~~ Conditions.

EXHIBIT B

(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.3.3.2.1.1 Such insurance shall be maintained until the Work is Substantially Complete. Once the Work is Substantially Complete, the Owner shall replace the insurance policy required under Section B.3.3.2.1 with permanent property insurance covering the Project.

§ B.3.3.2.1.2 If the insurance required by Section B.3.3.2.1 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.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

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§ 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	<u>100% of Contract Sum.</u>
Performance Bond	<u>100% of Contract Sum.</u>

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:

N/A



AIA Document A133[®] – 2019 Exhibit B

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Materials Agreement, between the Owner and the Construction Manager, dated the 25th day of September in the year 2023 (In words, indicate day, month and year.)

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

Hermantown Hockey Arena Addition
4309 Ugstad Road
Hermantown, MN 55811

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

City of Hermantown
5105 Maple Grove Road
Hermantown, MN 55811

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

Kraus-Anderson Construction Company
3716 Oneota Street
Duluth, MN 55807

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.

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.

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.

EXHIBIT B

§ 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.)

<u>Cause of Loss</u>	<u>Sub-Limit</u>
<u>Flood</u>	<u>No less than \$1,000,000 for Flood Zone B.</u>
<u>Earthquake</u>	<u>No less than \$5,000,000.</u>

§ 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~~ startup, and for portions of the Work stored off the site and portions of the Work in transit. 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.)

<u>Coverage</u>	<u>Sub-Limit</u>
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§ 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

EXHIBIT B

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.

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§ 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 as required by Section B.3.1.3 up to the limits required by Sections B.3.2.2 and B.3.2.4.~~ Such certificates shall contain substantially the following statement: "The insurance covered by this certificate will not be canceled, materially altered, or not renewed, except after thirty (30) days written notice or ten (10) days for non-payment of premium, has been received by the Owner." Construction Manager shall maintain all insurance coverages required under this section at Construction Manager's sole expense and with insurance companies licensed to do business in the state of Minnesota and having a current A.M. best rating of no less than A-, unless specifically accepted by Owner in writing.

§ 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~~ Owner as additional insured 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 equivalent to 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.)~~

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two years after Substantial Completion of the Project.

§ B.3.2.2 Commercial General Liability

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form on ISO form CG 00 01 12 07 or CG 00 01 04 13, or the equivalent with "broad form" damage liability coverage with the XCU exclusion removed and policy limits of not less than two million dollars (\$ 2,000,000) each occurrence, four million dollars (\$ 4,000,000) general aggregate, and four million dollars (\$ 4,000,000) 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 two million dollars (\$ 2,000,000) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ B.3.2.4 The Construction Manager shall obtain umbrella/excess liability insurance with a combined single limit of ten million dollars (\$10,000,000). 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~~of the underlying ~~insurers~~limits.

§ B.3.2.5 Workers' Compensation at statutory ~~limits~~limits as required by applicable Minnesota law for all employees to be engaged in work at the site of the Project.

§ B.3.2.6 Employers' Liability with policy limits not less than two million dollars (\$ 2,000,000) each accident, two million dollars (\$ 2,000,000) each employee, and two million dollars (\$ 2,000,000) policy limit.

EXHIBIT B

§ 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 five million dollars (\$ 5,000,000) per claim and ten million dollars (\$ 10,000,000) 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 five million dollars (\$ 5,000,000) per claim and ten million dollars (\$ 10,000,000) 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. Reserved.

§ 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. Reserved.

§ 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 two million dollars (\$ 2,000,000) per claim and four million dollars (\$ 4,000,000) 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.)

substantial completion of the Work.

§ 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~~ Section B.2.3, except with respect to Section B.2.3.3 and 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~~ Construction Manager 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:~~ Conditions.

(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.)

EXHIBIT B

§ B.3.3.2.1.1 Such insurance shall be maintained until the Work is Substantially Complete. Once the Work is Substantially Complete, the Owner shall replace the insurance policy required under Section B.3.3.2.1 with permanent property insurance covering the Project.

§ B.3.3.2.1.2 If the insurance required by Section B.3.3.2.1 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.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	<u>100% of Contract Sum.</u>
Performance Bond	<u>100% of Contract Sum.</u>

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:

N/A

EXHIBIT B

AWARD AND CONTRACT

THIS AWARD AND CONTRACT ("Agreement") is effective as of _____, 20__, between CITY OF HERMANTOWN (hereinafter called "Owner") and _____ (hereinafter called "Contractor").

WITNESSETH THAT WHEREAS:

A. The Owner solicited bids for the Hermantown Hockey Arena Addition Project at 4309 Ugstad Road in Hermantown, Minnesota (the "Project").

B. The Contractor submitted a sealed bid dated _____, 20__ for Work Scope Category _____ for the Project (the "Bid").

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

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

Labor (if Bid only includes tax exempt materials enter "None"):\$ _____

Tax Exempt Materials: \$ _____

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

3. The Owner intends to assign, transfer, and set over unto Kraus-Anderson Construction Company, as Construction Manager (the "Construction Manager"), all of the Owner's right, title and interest in and to this Agreement for the Construction Manager's benefit in completing the Project. The full terms of this Agreement include the Kraus-Anderson Construction Company Subcontract Agreement and riders attached hereto (the "Subcontract"). By its signature below, the Contractor hereby consents to the Owner's assignment of this Agreement to the Construction Manager pursuant to the terms of the Subcontract attached hereto as Exhibit 1, if applicable, and the Standard Contract Agreement for Materials Only (the Material Contract"), attached hereto as Exhibit 2. The Contractor shall execute the Subcontract, if applicable, and the Material Contract, as part of the Owner's assignment to the Construction Manager pursuant to this Agreement.

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

EXHIBIT B

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

OWNER

CONTRACTOR

CITY OF HERMANTOWN

By: _____

By: _____

Its: Mayor

Its: _____

By: _____

Its: City Clerk

EXHIBIT B

ASSIGNMENT OF AWARD AND CONTRACT

This Assignment of Award and Contract ("Assignment") is effective as of _____, 20__ between CITY OF HERMANTOWN (hereinafter called "Owner") and _____ (hereinafter called "Contractor").

WITNESSETH THAT WHEREAS:

A. The Owner and the Contractor entered into an Award and Contract dated _____, 20__ (the "Agreement") in relation to work for a portion of the Hermantown Hockey Arena Addition Project at 4309 Ugstad Road in Hermantown, Minnesota (the "Project").

B. The Agreement indicates the intent and the understanding of Owner and Contractor that the Agreement will be assigned to the Owner's construction manager, Kraus-Anderson Construction Company.

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

1. The Owner hereby assigns, transfers and sets over unto the construction manager for the Project, Kraus-Anderson Construction Company (the "Construction Manager"), all of the Owner's right, title and interest in and to the Agreement for the Construction Manager's benefit in completing the Project.
2. The Contractor consents to the Assignment of the Agreement to the Construction Manager.
3. The Contractor shall execute the Subcontract attached hereto as Exhibit 1 (as such term is defined in the Agreement), if applicable, and the Standard Contract Agreement for Materials Only (the "Material Contract"), attached hereto as Exhibit 2. The Contractor shall execute the Subcontract, if applicable, and the Material Contract, contemporaneously with this Assignment.

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

OWNER

CONTRACTOR

CITY OF HERMANTOWN

By: _____

By: _____

Its: Mayor

Its: _____

By: _____

Its: City Clerk

EXHIBIT B

CONSTRUCTION MANAGER'S CONSENT

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

CONSTRUCTION MANAGER

KRAUS-ANDERSON CONSTRUCTION COMPANY

By: _____

Its: _____

EXHIBIT B

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EXHIBIT B

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CONTRACTOR

CITY OF HERMANTOWN

By: _____

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Its: Mayor

Its: _____

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EXHIBIT B

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CONSTRUCTION MANAGER

KRAUS-ANDERSON CONSTRUCTION COMPANY

By: _____

Its: _____



Rates are based on 8 Hr. day,
40 Hr. week, 176 Hr. Month (22 Days)

Tool Description	Weekly Rate
Air Compressor 185 CFM- Diesel	\$323.33
Air Compressor Twin Tank- Elec	\$131.32
ATV- Ranger 2- Passenger	\$251.68

Blanket- Insulated	\$9.84
Bobcat - Auger Head - Round/Hex Shaft	\$209.48
Bobcat Attachments- Forks	\$113.85
Bobcat Attachments- Grapppler Bucket	\$204.92
Bobcat Attachments- Hydro Hammer	\$463.99
Bobcat Attachments- Sweeper w/Attachments	\$236.09
Bobcat- Skid Steer Bobcat (track machine) S590	\$787.95
Bobcat- Skid Steer Bobcat (tire machine) T590	\$543.60

Carpet Tools- Carpet Puller	\$176.80
Cart-Trash Cart- 1 Yard	\$45.10
Compactor- Jumping Jack	\$216.75
Compactor- Plate Tamper	\$159.86
Containment Unit	\$53.58
Cut-Out Tool/Roto-Zip	\$22.10

Drill- SDS Roto Hammer Max	\$139.71
Drill- Hammer SDS Roto Hammer 3/8" Corded	\$55.72
Drill- Hammer SDS Roto Hammer 3/8" Cordless	\$61.04
Drill- 18 Volt	\$32.63
Drill- Right Angle 3/8"	\$22.10

Fan - 36" Barrel	\$41.56
Fan- Pedestal Fan	\$59.61
Forklift- Rough Terrain 5,000#-	\$809.44
Forklift- Pneumatic	\$331.53
Forklift- Rough Terrain 10,000#-	\$1,252.76
Gang Box- Chest Type	\$22.85

Generator 3800 Watts	\$87.44
Generator- Elec Generator 6500 watt	\$143.90
Glass Cup	\$16.08
Grinder- 7"	\$38.90
Grinder- Floor Ginder	\$163.96
Grinder- 4 1/2"	\$22.10
Ground Thaw- 6000 sf	1833..33

Equipment Description	Weekly Rate
Jobsite Office Trailer- 8' x 36'	\$221.57
Jobsite Office Trailer- 10' x 40'	\$237.14
Jobsite Office Trailer- 12' x 60'	\$308.00
Ladder- Extension 24'	\$27.21
Ladder- Extension 32'	\$39.90
Ladder- Step, 6', Fiberglass	\$13.70
Laser- Laser Level- Rotating	\$55.72
Lift- Scissor Lift 19' Reach	\$283.25

Cement Mixer-5 cubic ft.-Wheel Barrow Type	\$48.44
Nailer- Air/Pneumatic- Framing	\$54.13
Nailer- Coil Roofing	\$56.59
Nailer- Powder Actuated	\$72.96
Panther- Floor Stripper Model 7700	\$1,783.03
Planer- Door	\$45.98
Pressure Washer - Gas	\$167.12
Pump Water- 2" Trash	\$101.80
Router	\$27.86

Sander - Belt, 3" x 21"	\$40.59
Saw- Circular 7-1/4"	\$27.86
Saw- Compound Miter Sliding 12"	\$79.59
Saw- Partner- Electric	\$114.76
Saw- Partner- Gas	\$114.76
Saw- Port-a-Band	\$69.86
Saw- Sawzall Cut Saw	\$38.90
Saw- Table- 10"	\$148.56
Saw- Walk Behind Concrete Saw	\$172.13
Survey- Eye Level	\$100.19
Sweeper- Walk Behind- Battery Powered	\$271.41
Wheelbarrow	\$15.48
Hammer- Jack Hammer- Electric 60#	\$72.51

HEPA price does not include filters	
HEPA-Air Scrubber-500CFM-Blue-16 x 16	\$151.66
HEPA Aire Scrubber- 2000CFM	\$154.83



Rates are based on 8 Hr. day,
40 Hr. week, 176 Hr. Month (22 Days)

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Planer- Door	\$45.98
Pressure Washer - Gas	\$167.12
Pump Water- 2" Trash	\$101.80
Router	\$27.86

Sander - Belt, 3" x 21"	\$40.59
Saw- Circular 7-1/4"	\$27.86
Saw- Compound Miter Sliding 12"	\$79.59
Saw- Partner- Electric	\$114.76
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Survey- Eye Level	\$100.19
Sweeper- Walk Behind- Battery Powered	\$271.41
Wheelbarrow	\$15.48
Hammer- Jack Hammer- Electric 60#	\$72.51

HEPA price does not include filters	
HEPA-Air Scrubber-500CFM-Blue-16 x 16	\$151.66
HEPA Aire Scrubber- 2000CFM	\$154.83

EXHIBIT B



Form ST3, Certificate of Exemption

Purchaser: Complete this certificate and give it to the seller.

Seller: If this certificate is not completed, you must charge sales tax. Keep this certificate as part of your records.

This is a blanket certificate, unless one of the boxes below is checked. This certificate remains in force as long as the purchaser continues making purchases or until otherwise cancelled by the purchaser.

Check if this certificate is for a single purchase and enter the related invoice/purchase order # _____.

If you are a contractor and have a purchasing agent agreement with an exempt organization, check the box to make purchases for a specific job. Enter the exempt entity name and specific project:

Exempt entity name _____ Project description _____

Name of Purchaser

City of Hermantown

Business Address

5105 Maple Grove Road

City

Hermantown

State

MN

ZIP code

55811

Purchaser's Tax ID Number

7195876

State of Issue

MN

If no tax ID number,

FEIN

Driver's license number/State issued ID number

Enter one of the following:

State of Issue

Number

Name of seller from whom you are purchasing, leasing, or renting

Seller's Address

City

State

ZIP code

Type of Business

- | | |
|--|--|
| <input type="checkbox"/> 01 Accommodation and food services | <input type="checkbox"/> 11 Transportation and warehousing |
| <input type="checkbox"/> 02 Agricultural, forestry, fishing, hunting | <input type="checkbox"/> 12 Utilities |
| <input type="checkbox"/> 03 Construction | <input type="checkbox"/> 13 Wholesale trade |
| <input type="checkbox"/> 04 Finance and insurance | <input type="checkbox"/> 14 Business services |
| <input type="checkbox"/> 05 Information, publishing and communications | <input type="checkbox"/> 15 Professional services |
| <input type="checkbox"/> 06 Manufacturing | <input type="checkbox"/> 16 Education and health-care services |
| <input type="checkbox"/> 07 Mining | <input type="checkbox"/> 17 Nonprofit organization |
| <input type="checkbox"/> 08 Real estate | <input checked="" type="checkbox"/> 18 Government |
| <input type="checkbox"/> 09 Rental and leasing | <input type="checkbox"/> 19 Not a business (explain) _____ |
| <input type="checkbox"/> 10 Retail trade | <input type="checkbox"/> 20 Other (explain) _____ |

Reason for Exemption (See Instructions)

- | | |
|---|--|
| <input type="checkbox"/> A Federal government (department) _____ | <input type="checkbox"/> J Agricultural production |
| <input checked="" type="checkbox"/> B Specific government exemption
Local Government | <input type="checkbox"/> K Industrial production/manufacturing |
| <input type="checkbox"/> C Tribal government (name) _____ | <input type="checkbox"/> L Direct pay authorization |
| <input type="checkbox"/> D Foreign diplomat # _____ | <input type="checkbox"/> M Multiple points of use (services, digital goods, or computer software delivered electronically) |
| <input type="checkbox"/> E Charitable organization # _____ | <input type="checkbox"/> N Direct mail |
| <input type="checkbox"/> F Educational organization # _____ | <input type="checkbox"/> O Other (enter number from instructions) _____ |
| <input type="checkbox"/> G Religious organization # _____ | <input type="checkbox"/> P Percentage exemption |
| <input type="checkbox"/> H Resale | <input type="checkbox"/> Advertising (enter percentage) _____ % |
| <input type="checkbox"/> I Qualifying capital equipment (see instructions when equipment claimed is part of a construction project) | <input type="checkbox"/> Utilities (enter percentage) _____ % |
| | <input type="checkbox"/> Electricity (enter percentage) _____ % |

I declare that the information on this certificate is correct and complete to the best of my knowledge and belief. (PENALTY: If you try to evade paying sales tax by using an exemption certificate for items or services that will be used for purposes other than those being claimed, you may be fined \$100 under Minnesota law for each transaction for which the certificate is used.)

Signature of Authorized Purchaser

Print Name Here

John Mulder

Title

City Admin

Date

9/26/2023



CITY COUNCIL MEETING DATE: November 20, 2023

TO: Mayor & City Council

FROM: Paul Senst, Public Works Director

SUBJECT: Asset Disposition

RESOLUTION: 2023-177 **ORDINANCE:** **OTHER:**

REQUESTED ACTION

Approve Public Works to send Unit H-1 to auction.

BACKGROUND

With the recent acquirement of our new Western Star Plow Truck the International Plow truck will be sent to Ritchie Bros. Auction house for a Dec. 19th Auction. This is an online and in person Auction of heavy equipment and should bring the best dollar value for recoupment.

SOURCE OF FUNDS (if applicable)

N/A

ATTACHMENTS

Resolution
Asset Disposal Form

Resolution No. 2023-177

Resolution Authorizing The Disposal Of Surplus City Property

WHEREAS, the Public Works Director of the City of Hermantown is seeking authorization to dispose of city surplus equipment; and

WHEREAS, various vehicles are removed from use through sale or trade-in; and

WHEREAS, the Hermantown City Council deems it appropriate to dispose of such surplus equipment; and

WHEREAS, the Hermantown City Council desires to proceed forward with the disposal of the surplus equipment listed as follows:

A. Asset #02687 2013 International Workstar 7400 w/ MaxxForce DT 10

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Hermantown, Minnesota as follows:

1. The City Administrator and Public Works Director are hereby Authorized and Directed to Proceed to Dispose of Surplus Equipment in the Possession of the City of Hermantown as listed below.
2. All items will be scrapped or discarded by administrative staff in accordance with all applicable laws, rules and regulations.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors _____, and Mayor Boucher, aye.

and the following voted in opposition thereto:

None.

WHEREUPON, such resolution was declared duly passed and adopted November 20, 2023.

DISPOSITION OR LOSS OF AN ASSET

City of Hermantown

Disposition of a capitalized asset requires City Council approval prior to disposing the asset. This form should be completed and forwarded to Finance within 2 weeks of the disposition of any capital asset. If this trade in item is included in purchasing a new asset, please note it and complete an acquisition form for that item.

Employees and related parties are prohibited from purchasing or receiving City surplus property.

Asset No: 02687

VIN/Serial #:1HTWDAZR6DJ252165

City ID/Vehicle #:H-1

Description: 2013 International Workstar 7400 w/ MaxxForce DT 10

Department: PUBLIC WORKS

Date of Change: 11/17/2023

Type of Change: Disposal via: Ritchie Bros. Auction

Sold (To Whom?):

Amount:

Transferred: _____ To Dept: _____

Trade in:
For new asset (describe)

Destroyed: _____ How Disposed?



Entered on the Fixed Asset System: Yes or No

Department Head: Paul Sens

Finance Dept.: _____

Insurance notified?: Yes No N/A Date of notification:

Notes: _____

Resolution No. 2023-178

Resolution Approving Change Order Number 1 For Road Improvement District 451 To Veit In The Amount Of \$39,839.25

WHEREAS, the City of Hermantown has contracted with Veit & Company, Inc, for Road Improvement Project 451 (“Project:”); and

WHEREAS, Veit & Company, Inc, have submitted Change Order No. 1 in the amount of \$39,839.25 for bituminous pavement density incentive work on Okerstrom Road, and

WHEREAS, Veit & Company Inc, has recommended Change Order No. 1, and;

WHEREAS, the City Engineer, (Northland Consulting Engineers LLP) have approved Change Order No. 1, and;

WHEREAS, the City Administrator has reviewed the change order and recommends its approval.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Hermantown, Minnesota as follows:

1. Change Order No. 1 is hereby approved.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____, upon a vote being taken thereon, the following voted in favor thereof:

Councilors _____, Mayor Boucher, aye.

and the following voted in opposition thereto:

None.

WHEREUPON, such resolution has been duly passed and adopted November 20, 2023.

Date of Issuance: 11/15/2023	Effective Date:
Owner: City of Hermantown	Owner's Contract No.: 22-8009
Contractor: Veit & Company, Inc.	Contractor's Project No.:
Engineer: Northland Consulting Engineers	Engineer's Project No.: 22-8009
Project: Oak Ridge Dr Sanitary Sewer Extension	SSID:

The Contract is modified as follows upon execution of this Compensating Change Order:


Description: This change order covers (5) items of work.

1. A gate extension was needed to create a 24' post to post swinging gate. The adjusted cost is shown below.
The total cost of the materials for this effort is = \$2,200.00
2. Additional topsoil borrow was brought onsite to be used for slope dressing. Excavated material was not suitable for this usage.
The total cost of the time and materials for this effort is = \$4,950.00
3. Coarse filter aggregate was used as stabilization for water infiltration in the trench while constructing sanitary sewer. The city will be only responsible for the material in this effort.
The total cost of the material for this effort is = \$28,288.00
4. Sanitary pipe removal by Oak Ridge Dr adjacent to the lift station. Pipe removal was not shown on plan.
The total cost of the time and materials for this effort is = \$1,244.25
5. Manhole 105 was either built wrong or designed wrong to fit with existing Sanitary sewer line and new line coming from Manhole 104. Mudded new invert with new bench.
The total cost of the time and materials for this effort is = \$3,157.00

Total = \$39,839.25

Attachments: 1) Veit Documentation

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES
Original Contract Price: \$ 934,142.90	
Increase from previously approved Change Orders: \$ 0	
Contract Price prior to this Change Order: \$ 934,142.90	
Increase of this Change Order: \$ 39,839.25	Extend project deadline 2 weeks to 10/28/23
Contract Price incorporating this Change Order: \$ 973,982.15	

RECOMMENDED: By:  Title: City Engineer Date: 11/15/2023	ACCEPTED: By: _____ Title: Owner Date: _____	ACCEPTED: By: _____ Title: Contractor Date: _____
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CHANGE ORDER REQUEST

230233 : Okerstrom Road & Utility
Improvements
PCO#: **1 - Sanitary Removal**

Date: 09/20/2023

To: David Bolf
Northland Consulting Engineers LLP
102 South 21st Ave W STE 1
Duluth, MN 55802
218-727-5995 (O)
david@nce-duluth.com

From: Will Goldsworthy
Veit & Company, Inc
14000 Veit Place
Rogers, MN 55374
(763) 428-2242 (O)
wgoldsworthy@veitusa.com

Below is the detail for our proposal to complete the following changes in contract work:
- **Proposed Scope of Work:** Sanitary pipe removal by Oak Ridge drive adjacent to the lift station. Pipe removal was not shown on plan or SEQ.

<i>PCO Item</i>	<i>Change in Days</i>	<i>Quantity</i>	<i>UM</i>	<i>Unit Price</i>	<i>Amount</i>
1 : Sanitary Removal	0	1	LS	\$1,244.25	\$1,244.25

Submitted By:

Will Goldsworthy

Approved By:

David Bolf

Date



14000 Veit Place
 Rogers, MN 55374
 763-428-2242 Voice
 763-428-8348 Fax

Sanitary Removal & Waste Management

EXTRA WORK AUTHORIZATION

1

Owner/Contractor	Northland consulting	Date:	9/11/2023
Client Rep:	Dave Bolf	Project Location	Okerstrom RD
Client Onsite Rep:	Chase Ernste	Veit Project Manager	Will Goldsworthy
Client PO/WO Number		Veit Job Number	230233

Equipment/Operator

Equip #	Description	Hours	Unit cost	Amount
BH101	330/336 Caterpillar excavator	1	\$ 286.00	\$ 286.00
			\$ -	\$ -
			\$ -	\$ -
			\$ -	\$ -
			\$ -	\$ -
			\$ -	\$ -
			\$ -	\$ -
Total Equipment Cost \$				286.00

Labor

Quantity	Description	Hours	Unit Cost	Amount
2	Laborer	2	\$ 103.00	\$ 412.00
1	Superintendent or Foreman w/pick up	2	\$ 169.00	\$ 338.00
1	Operator	1	\$ 112.00	\$ 112.00
			\$ -	\$ -
Total Labor Cost \$				862.00

Material/Other

P.O. / Invoice #	Vendor	Quantity	Unit Cost	Amount
	Vonco Disposal (load)	0.25	\$ 198.00	\$ 49.50
			\$ -	\$ -
			\$ -	\$ -
			\$ -	\$ -
Total Material Cost \$				49.50

Trucking

Broker	Truck Type	Labor/Trucking	Hours	Loads	Unit Cost	Amount
	Quad	Trucking	0.25	0.25	\$ 187.00	\$ 46.75
					\$ -	\$ -
					\$ -	\$ -
					\$ -	\$ -
					\$ -	\$ -
Total Trucking Cost \$						46.75

Description of work

Sanitary removal by Oak Ridge Dr not shown in plans or SEQ.

Work Authorized and approved by: (Please Print)	Cost Summary
	Equipment \$ 286.00
Client Representative	Labor \$ 862.00
	Material/Other \$ 49.50
Client Phone Number	Labor/Trucking \$ 46.75
	Total Daily Cost \$ 1,244.25



CHANGE ORDER REQUEST

230233 : Okerstrom Road & Utility
Improvements
PCO#: **2 - Manhole 105 Fix**

Date: 09/20/2023

To: David Bolf
Northland Consulting Engineers LLP
102 South 21st Ave W STE 1
Duluth, MN 55802
218-727-5995 (O)
david@nce-duluth.com

From: Will Goldsworthy
Veit & Company, Inc
14000 Veit Place
Rogers, MN 55374
(763) 428-2242 (O)
wgoldsworthy@veitusa.com

Below is the detail for our proposal to complete the following changes in contract work:

- **Proposed Scope of Work:** MH105 was either build wrong or designed wrong to fit with excising Sanitary sewer line and new line coming from Mh104. Sweep angle in Mh was too extreme of an angle to work. Had to mud old invert and had to Core Drill new invert and hole for pipe coming from Mh104. Mudded new invert with new bench.

<i>PCO Item</i>	<i>Change in Days</i>	<i>Quantity</i>	<i>UM</i>	<i>Unit Price</i>	<i>Amount</i>
1 : Manhole 105 Fix	0	1	LS	\$3,157.00	\$3,157.00

Submitted By:

Will Goldsworthy

Approved By:

David Bolf

Date



14000 Veit Place
 Rogers, MN 55374
 763-428-2242 Voice
 763-428-8348 Fax

Specialty Contracting & Construction

EXTRA WORK AUTHORIZATION

2

Owner/Contractor	Northland consulting	Date:	9/13/2023
Client Rep:	Dave Bolf	Project Location	Okerstrom RD
Client Onsite Rep:	Chase Ernste	Veit Project Manager	Will Goldsworthy
Client PO/WO Number		Veit Job Number	230233

Equipment/Operator

Equip #	Description	Hours	Unit cost	Amount
BH101	330/336 Caterpillar excavator	2	\$ 286.00	\$ 572.00
	Core Drill Machine (day)	1	\$ 100.00	\$ 100.00
			\$ -	\$ -
			\$ -	\$ -
			\$ -	\$ -
			\$ -	\$ -
Total Equipment Cost \$				672.00

Labor

Quantity	Description	Hours	Unit Cost	Amount
1	Superintendent or Foreman w/pick up	5	\$ 169.00	\$ 845.00
1	Operator	5	\$ 112.00	\$ 560.00
2	Laborer	5	\$ 103.00	\$ 1,030.00
			\$ -	\$ -
Total Labor Cost \$				2,435.00

Material/Other

P.O. / Invoice #	Vendor	Quantity	Unit Cost	Amount
	3 bags of underground motor mix	1	\$ 50.00	\$ 50.00
			\$ -	\$ -
			\$ -	\$ -
			\$ -	\$ -
Total Material Cost \$				50.00

Trucking

Broker	Truck Type	Labor/Trucking	Hours	Loads	Unit Cost	Amount
					\$ -	\$ -
					\$ -	\$ -
					\$ -	\$ -
					\$ -	\$ -
Total Trucking Cost \$						-

Description of work

MH105 was either build wrong or designed wrong to fit with excising Sanitary sewer line and new line coming from Mh104. Sweep angle in Mh was too extreme of an angle to work. Had to mud old invert and had to Core Drill new invert and hole for pipe coming from Mh104. Mudded new invert with new bench.

Work Authorized and approved by: (Please Print) **Cost Summary**

	Equipment \$	\$ 672.00
Client Representative	Labor \$	\$ 2,435.00
	Material/Other \$	\$ 50.00
Client Phone Number	Labor/Trucking \$	\$ -
Veit Representative	Total Daily Cost \$	\$ 3,157.00

From: Will Goldsworthy <will.goldsworthy@veitusa.com>
Sent: Wednesday, October 4, 2023 3:24 PM
To: David Bolf
Cc: Chase Ernste; Layne Viaene
Subject: Okerstrom Rd: Request for Substantial Completion Extension to 10/28/23

Hi David,

The purpose of this email is to formally request a time extension of 2 weeks for substantial completion of the Okerstrom Road project. Due to some added work required on the project, including but not limited to a road soil correction & extensive dewatering for sanitary sewer, and high rainfall over the past month, an additional 2 weeks will be required to pave and complete the project. Veit would like to request that the contract substantial completion date of 10/14/23 be extended to 10/28/23.

Thanks,



Will Goldsworthy

Project Manager / Estimator

m: 218-390-2316



November 15, 2023

John Mulder
City Administrator
City of Hermantown
5105 Maple Grove Road
Hermantown MN 55811

Re: Okerstrom Rd - Sewer Improvement District No. 451


Dear John:

Attached is Pay Application #4 for the work associated with the Okerstrom Rd Project – Sewer Improvement District No. 451 from September 22, 2023 through November 15, 2023. NCE and Veit have reviewed the project progress thus far and agreed upon quantities of work completed. The amount of Pay Application #4 is **\$377,013.78**. The City will hold a 5% retainage of the completed construction through the duration of the project. This retainage amount for pay application #4 is **\$51,698.97**

NCE has reviewed the quantities through construction inspection and discussions with Veit representatives. I recommend payment in the amount of **\$325,314.81** be authorized at the November 20, 2023 City Council Meeting.

Please contact me with any questions you may have.

Thank you,



David Bolf, P.E. – City Engineer
Northland Consulting Engineers
218-727-5995
david@nce-duluth.com

CC: Chase Ernste, E.I.T., Northland Consulting Engineers
Will Goldsworthy, Project Manager, Veit & Company Inc.

Resolution No. 2023-179

**Resolution Approving Pay Request Number 4 For Sewer Improvement District 451 To Veit
In The Amount Of \$325,314.81**

WHEREAS, the City of Hermantown has contracted with Veit for Sewer Improvement District 451 (“Project”); and

WHEREAS, Veit has performed a portion of the agreed upon work in said Project; and

WHEREAS, Veit has submitted Pay Request No. 4 in the amount of \$325,314.81; and

WHEREAS, the City will maintain an accumulated retainage as shown on the pay requests until the final work and documentation is completed; and

WHEREAS, Northland Consulting Engineers LLP has approved such Pay Request No. 4 provided that \$51,698.97 as retainage of 5% be withheld pending final acceptance of the Project by the City of Hermantown.

WHEREAS, the necessary documentation for the pay request is on file and available for inspection.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Hermantown, Minnesota as follows:

1. Pay Request No. 4 is hereby approved.
2. The City is hereby authorized and directed to pay to Veit the sum of \$325,314.81 which is the amount represented on Pay Request No. 4.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors _____, and Mayor Boucher, aye.

and the following voted in opposition thereto:

None.

WHEREUPON, such resolution has been duly passed and adopted November 20, 2023.



Pay Application #4 - November 15, 2023
City of Hermantown
Okerstrom Rd
Sewer Improvement District #451

Item No.	Spec. Number	Item Description	Unit of Measure	Contract Total Quantities	Veit Unit Price	Total Project	
						Completed Quantities	Completed Cost
BASE BID							
1	2021.501	MOBILIZATION	LS	1	\$ 54,000.00	1	\$54,000.00
2	2101.505	CLEARING	ACRE	0.71	\$ 6,700.00	0.71	\$4,757.00
3	2101.505	GRUBBING	ACRE	0.71	\$ 6,700.00	0.71	\$4,757.00
4	2104.502	REMOVE LIFT STATION	EACH	1	\$ 5,600.00	1	\$5,600.00
5	2104.502	SALVAGE SIGN TYPE C	EACH	1	\$ 45.00	1	\$45.00
6	2104.502	REMOVE MANHOLE	EACH	1	\$ 520.00	1	\$520.00
7	2104.503	SAWING BITUMINOUS PAVEMENT (FULL DEPTH)	L F	243	\$ 2.30	243	\$558.90
8	2104.503	REMOVE WATER SERVICE PIPE	L F	230	\$ 21.10	1267	\$26,733.70
9	2104.503	REMOVE WATER MAIN	L F	825	\$ 16.00	0	\$0.00
10	2104.503	REMOVE PIPE CULVERTS	LF	122	\$ 16.00	122	\$1,952.00
11	2105.607	SELECT GRANULAR BORROW MOD 7% (CV)	C Y	1875	\$ 27.00	1875	\$50,625.00
12	2106.507	EXCAVATION - COMMON	C Y	3374	\$ 13.00	3374	\$43,862.00
13	2106.507	EXCAVATION - MUCK	C Y	665	\$ 13.00	1883	\$24,479.00
14	2106.507	GRANULAR EMBANKMENT (CV)	C Y	665	\$ 26.00	1883	\$48,958.00
15	2108.504	GEOTEXTILE FABRIC TYPE 5 (WOVEN)	S Y	3550	\$ 1.10	3550	\$3,905.00
16	2211.507	AGGREGATE BASE (CV) CLASS 5	C Y	1230	\$ 32.00	1230	\$39,360.00
17	2211.507	AGGREGATE BASE (CV) CLASS 5 (DRIVEWAYS)	C Y	70	\$ 39.00	70	\$2,730.00
18	2360.509	TYPE SP 9.5 WEARING COURSE MIXTURE (3;C)	TON	265	\$ 116.00	274	\$31,784.00
19	2360.509	TYPE SP 9.5 WEARING COURSE MIXTURE (3;C) (DRIVEWAYS)	TON	7.5	\$ 151.00	7.5	\$1,132.50
20	2360.509	TYPE SP 12.5 NON WEARING COURSE MIXTURE (3;C)	TON	265	\$ 113.00	217	\$24,521.00
21	2411.507	GRANULAR BACKFILL (CV)	C Y	290	\$ 22.50	190	\$4,275.00
22	2501.502	18" GS PIPE APRON	EACH	4	\$ 590.00	4	\$2,360.00
23	2501.502	24" GS PIPE APRON	EACH	2	\$ 690.00	2	\$1,380.00
24	2501.502	12" RC PIPE APRON	EACH	2	\$ 1,600.00	2	\$3,200.00
25	2501.502	18" RC PIPE APRON	EACH	2	\$ 1,750.00	2	\$3,500.00
26	2501.502	24" RC PIPE APRON	EACH	2	\$ 1,960.00	2	\$3,920.00
27	2501.503	12" RC PIPE CULVERT	LF	32	\$ 96.00	32	\$3,072.00
28	2501.503	12" CAS PIPE CULVERT	L F	68	\$ 59.00	102	\$6,018.00
29	2501.503	18" CAS PIPE CULVERT	L F	71	\$ 76.00	71	\$5,396.00
30	2501.503	24" CAS PIPE CULVERT	L F	35	\$ 89.00	35	\$3,115.00
31	2502.503	4" PERF PVC PIPE DRAIN	L F	1520	\$ 11.50	1520	\$17,480.00
32	2503.503	12" RC PIPE SEWER CLASS III	L F	283	\$ 72.00	283	\$20,376.00
33	2503.503	18" RC PIPE SEWER CLASS III	L F	56	\$ 94.00	56	\$5,264.00
34	2503.503	24" RC PIPE SEWER CLASS III	L F	64	\$ 115.00	64	\$7,360.00
35	2503.503	8" PVC PIPE SEWER (SDR 35)	L F	1405	\$ 80.00	1405	\$112,400.00
36	2503.602	RECONNECT SANITARY SEWER SERVICE	EACH	1	\$ 1,400.00	1	\$1,400.00
37	2503.602	8"X4" PVC WYE	EACH	6	\$ 340.00	8	\$2,720.00
38	2503.602	CONNECT TO EXISTING SANITARY SEWER	EACH	2	\$ 1,100.00	3	\$3,300.00
39	2503.602	SEWER TRACER BOX	EACH	6	\$ 200.00	6	\$1,200.00
40	2503.602	4" PIPE PLUG	EACH	1	\$ 195.00	7	\$1,365.00
41	2503.603	4" PVC SANITARY SERVICE PIPE (SCHEDULE 40)	L F	282	\$ 50.00	282	\$14,100.00
42	2504.601	TEMPORARY WATER SERVICE	LS	1	\$ 7,700.00	1	\$7,700.00
43	2504.602	CONNECT TO EXISTING WATER MAIN (WET TAP)	EACH	2	\$ 5,500.00	2	\$11,000.00
44	2504.602	HYDRANT ASSEMBLY	EACH	1	\$ 11,800.00	1	\$11,800.00
45	2504.602	8" GATE VALVE AND BOX	EACH	2	\$ 4,400.00	2	\$8,800.00
46	2504.602	8" X 1" TAPPING TEE W/ ELECTROFUSION SADDLE	EACH	6	\$ 750.00	6	\$4,500.00
47	2504.602	RECONNECT WATER SERVICE	EACH	6	\$ 520.00	6	\$3,120.00
48	2504.602	WATER TRACER BOX	EACH	6	\$ 200.00	6	\$1,200.00
49	2504.602	1" CURB STOP AND BOX	EACH	6	\$ 846.00	6	\$5,076.00
50	2504.603	1" HDPE SDR 11 SERVICE PIPE	L F	285	\$ 39.00	285	\$11,115.00
51	2504.603	8" DIPS HDPE WATER MAIN SDR 11	L F	1330	\$ 66.00	1330	\$87,780.00
52	2504.604	3" POLYSTYRENE INSULATION	S Y	8	\$ 36.00	21	\$756.00
53	2506.502	CASTING ASSEMBLY	EACH	10	\$ 720.00	10	\$7,200.00
54	2506.502	CONST DRAINAGE STRUCTURE DES 48-4020	L F	7	\$ 1,500.00	7	\$10,500.00
55	2506.503	CONST DRAINAGE STRUCTURE DESIGN F	L F	75.5	\$ 540.00	75.5	\$40,770.00
56	2506.503	CONST DRAINAGE STRUCTURE DESIGN G	L F	6	\$ 1,830.00	6	\$10,980.00
57	2506.602	SEAL MANHOLE	EACH	6	\$ 300.00	6	\$1,800.00
58	2506.603	CONSTRUCT 8" INSIDE DROP	L F	4.5	\$ 380.00	4.5	\$1,710.00
59	2511.511	RANDOM RIPRAP CLASS III	C Y	40	\$ 100.00	20	\$2,000.00
60	2521.518	4" CONCRETE WALK	S F	2860	\$ 12.70	2860	\$36,322.00
61	2531.503	CONCRETE CURB AND GUTTER DESIGN B624	L F	1510	\$ 45.50	1510	\$68,705.00
62	2531.504	7" CONCRETE DRIVEWAY PAVEMENT	S Y	72	\$ 133.00	97	\$12,901.00
63	2531.618	TRUNCATED DOMES	S F	12	\$ 91.00	12	\$1,092.00
64	2540.602	MAIL BOX	EACH	3	\$ 168.00	3	\$504.00
65	2557.502	VEHICULAR GATE-SINGLE	EACH	1	\$ 7,610.00	1	\$7,610.00
66	2563.601	TRAFFIC CONTROL	LS	1	\$ 1,680.00	1	\$1,680.00
67	2564.502	INSTALL SIGN TYPE C	EACH	9	\$ 220.00	9	\$1,980.00
68	2564.518	SIGN PANELS TYPE C	SF	16	\$ 42.00	16	\$672.00
69	2573.502	STABILIZED CONSTRUCTION EXIT	LS	1	\$ 3,300.00	1	\$3,300.00
70	2573.503	SILT FENCE; TYPE HI	L F	3900	\$ 4.80	614	\$2,947.20
71	2573.502	STORM DRAIN INLET PROTECTION	EACH	4	\$ 250.00	4	\$1,000.00
72	2573.503	SEDIMENT CONTROL LOG TYPE WOOD FIBER	L F	90	\$ 5.60	1623	\$9,088.80
73	2574.508	FERTILIZER TYPE 1	POUNDS	155	\$ 1.70	475	\$807.50
74	2575.504	ROLLED EROSION PREVENTION CETEGORY 20	S Y	5100	\$ 2.30	8600	\$19,780.00
75	2575.508	SEED MIXTURE 25-131	POUNDS	60	\$ 9.50	171	\$1,624.50
76	2575.508	SEED MIXTURE 34-171	POUNDS	5	\$ 95.00	18	\$1,710.00
77	2582.503	24" SOLID LINE MULTI COMP GR IN (WR)	L F	12	\$ 94.00	12	\$1,128.00
78		CHANGE ORDER #1	LS	1	\$ 39,839.25	1	\$39,839.25

TOTAL AMOUNT EARNED	\$1,033,979.35
PREVIOUS PAY APPLICATION #3	\$656,965.57
TOTAL PAY APPLICATION #4	\$377,013.78

Resolution No. 2023-180

Resolution Adopting Assessment Roll For Delinquent Utility Charges For 2023

WHEREAS, pursuant to Hermantown City Code Section 910.11; 920.06.3; 930.09.6 940.10 the City Clerk has prepared an Assessment Roll for delinquent Utility charges through September 29, 2023; and

WHEREAS, the individuals responsible for the payment of such accounts have been duly notified of the intent of the City to certify such accounts to the County Auditor to be paid with the real estate taxes on the property served payable in 2024; and

WHEREAS, the City Council has met, heard and passed upon all objections to the proposed assessment roll for the delinquent utility charges for 2023, and made amendments to the assessment roll as it deemed just and reasonable under the circumstances.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hermantown, Minnesota, as follows:

1. Such proposed assessment, a copy of which is attached hereto and made a part hereof, is hereby accepted and shall constitute an assessment against the lands named therein.
2. Such assessments shall be paid in full with general taxes for the year 2023, collectable with the taxes of 2024.
3. The City Clerk shall forthwith transmit a certified duplicate copy of this assessment to the County Auditor to be extended on the tax list of the County.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon the following voted in favor thereof:

Councilors _____, and Mayor Boucher, aye.

and the following voted in opposition thereto:

None.

WHEREUPON, such resolution was declared duly passed and adopted on November 20, 2023.

Account	Name	Service Address	Section	Certification Amount	
2323-00	ADOLPH AUTOMOTIVE LLC	5647 MORRIS THOMAS RD	MONTHLY	\$	117.60
2419-00	SUSAN WAGNER-THOMAS	3652 BIRCH RD	SEMI-ANNUAL		397.00
2467-00	SUSAN & BRUCE HAUGDAHL	4030 GETCHELL RD #D	SEMI-ANNUAL		199.00
2471-00	RACHEL COBB	4155 GETCHELL RD	SEMI-ANNUAL		199.00
2486-00	CODY & MELISSA RENNE	5780 HAGBERG RD	SEMI-ANNUAL		199.00
2528-00	TERRI KRAGSETH	4528 SOLWAY RD	SEMI-ANNUAL		199.00
2545-00	GREGORY ANDERSON	5260 HERMANTOWN RD	SEMI-ANNUAL		199.00
2571-00	ROBERT & BRENDA HANNINEN	5689 HERMANTOWN RD	SEMI-ANNUAL		199.00
2579-00	TODD LEPAGE	5768 HERMANTOWN RD	SEMI-ANNUAL		199.00
2599-00	ROBERT HOOVER	5752 HWY 194	SEMI-ANNUAL		199.00
2625-00	TIM & LAURA STROIK	5872 HWY 194	SEMI-ANNUAL		157.00
2628-00	MIKE MARCZAK	5716 JAMEBARD RD	SEMI-ANNUAL		199.00
2629-00	ALAN & DIANE SELINE	5726 JAMEBARD RD	SEMI-ANNUAL		199.00
2632-00	JONATHAN & MIRANDA CHAMBERS	5744 JAMEBARD RD	SEMI-ANNUAL		199.00
2650-00	DANIEL & SARAH TURCOTTE	3517 LAVAQUE RD	SEMI-ANNUAL		152.80
2671-00	JAMIE & STEPHANIE KEYE	4666 LAVAQUE RD	SEMI-ANNUAL		199.00
2708-00	SHANNON MARTINDALE	4377 LINDAHL RD	SEMI-ANNUAL		199.00
2754-00	TARY CULLEN	5847 MAPLE GROVE RD	SEMI-ANNUAL		199.00
2774-00	MIKE GIDDINGS	3690 MIDWAY RD	SEMI-ANNUAL		199.00
2808-00	BRADLEY & LISSETTE NELSON	4344 MIDWAY RD	SEMI-ANNUAL		199.00
2824-00	AILI BALAIK & MIKE GIDDINGS	4475 MIDWAY RD	SEMI-ANNUAL		199.00
2826-00	RYAN & ANNA JOHNSON	4511 MIDWAY RD	SEMI-ANNUAL		199.00
2838-00	ZACHARY SHAW	4583 MIDWAY RD	SEMI-ANNUAL		199.00
2858-00	DAVID & SUSAN DRUMSTA	5779 HWY 2	SEMI-ANNUAL		199.00
2866-00	ADAM & ELIZABETH CARLSON	5884 HWY 2	SEMI-ANNUAL		203.20
2872-00	COREY STEBNER	5212 MORRIS THOMAS RD	SEMI-ANNUAL		199.00
2874-00	CHARLES NOFFSINGER	5256 MORRIS THOMAS RD	SEMI-ANNUAL		199.00
2875-00	BENJAMIN & HEIDI AHLBERG	5263 MORRIS THOMAS RD	SEMI-ANNUAL		190.00
2885-00	CINDY BAKER	5437 MORRIS THOMAS RD	SEMI-ANNUAL		199.00
2886-00	TRACEY STRONGITHARM	5445 MORRIS THOMAS RD	SEMI-ANNUAL		152.80
2900-00	TAMI MCKEAN	5566 MORRIS THOMAS RD	SEMI-ANNUAL		199.00
2912-00	KEITH & ANGELA GUSTAFSON	5829 MORRIS THOMAS RD	SEMI-ANNUAL		199.00
2935-00	BRIAN KINNEY	3954 OLD MIDWAY RD	SEMI-ANNUAL		199.00
2939-00	LEE SANDSTROM	3966 OLD MIDWAY RD	SEMI-ANNUAL		152.80
2953-00	DUSTIN & MANDY BIRKLAND	3526 PARK DR	SEMI-ANNUAL		199.00
2954-00	DEPT OF VETERANS AFFAIRS LOAN GUAI	3535 PARK DR	SEMI-ANNUAL		199.00
2989-00	DANIEL COOK	5735 ROSE RD	SEMI-ANNUAL		199.00
3165-00	MICHAEL & CHRISTINE SAWYER	5756 SEVILLE RD	SEMI-ANNUAL		199.00
3174-00	SCOTT & LISA WATERS	5816 SEVILLE RD	SEMI-ANNUAL		199.00
3206-00	GREGORY & KIMBERLY BILLMAN	4568 SOLWAY RD	SEMI-ANNUAL		199.00
3247-00	DAVID & CHERI SOLBERG	4806 SWAN LAKE RD	SEMI-ANNUAL		199.00
3254-00	TRICIA NEUBARTH	3572 UGSTAD RD	SEMI-ANNUAL		199.00
3307-00	ROSS BJORLIN	5801 W ARROWHEAD RD	SEMI-ANNUAL		199.00
3320-00	GERARD & NORMA DOWNES	3632 WARGIN RD	SEMI-ANNUAL		199.00

Total Certified	\$	8,687.20
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CITY COUNCIL MEETING DATE: November 20, 2023

TO: Mayor & City Council

FROM: John Mulder, City Administrator

SUBJECT: Resolution Authorizing Mayor and City Clerk to Approve a Commercial Purchase Agreement

RESOLUTION: 2023-181 **ORDINANCE:** **OTHER:**

REQUESTED ACTION

Direct Mayor and City Clerk to execute and deliver a Commercial Purchase Agreement with BMAX, Inc. for vacant property on Morris Thomas Road and identified as Parcel Id. No. 395-0010-07589

BACKGROUND

The actual Resolution with its exhibited Commercial Purchase Agreement will be discussed at a closed meeting pursuant to Minnesota Statutes § 13D.05, Subd. 3(c). Following the closed meeting, the City Council will meet in open session to consider the above-described Resolution.

SOURCE OF FUNDS (if applicable)

412-419100-510 Community Recreation Sales Tax

ATTACHMENTS