



# City Council Meeting

August 26, 2024

7:00 PM

Fridley City Hall, 7071 University Avenue N.E.

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## Agenda

### **Call to Order**

The Fridley City Council (Council) requests that all attendees silence cell phones during the meeting. A paper copy of the Agenda is at the back of the Council Chambers. A paper copy of the entire Agenda packet is at the podium. The Agenda and all related materials may also be found on the City's website at [FridleyMN.gov/1564/Agenda-Center](https://www.fridleymn.gov/1564/Agenda-Center).

### **Pledge of Allegiance**

### **Proclamations/Presentations**

### **Proposed Consent Agenda**

The following items are considered to be routine by the Council and will be approved by one motion. There will be no discussion of these items unless a Councilmember requests, at which time that item may be moved to the Regular Agenda.

#### **Meeting Minutes**

- [1.](#) Approve the Minutes from the City Council Meeting of August 12, 2024
- [2.](#) Receive the Minutes from the City Council Conference Meeting of August 12, 2024
- [3.](#) Receive the Minutes from the Parks and Recreation Commission Meeting of March 4, 2024
- [4.](#) Receive the Minutes from the Parks and Recreation Commission Meeting of May 6, 2024
- [5.](#) Receive the Minutes from the Parks and Recreation Commission Meeting of June 3, 2024

#### **New Business**

- [6.](#) Ordinance No. 1424, Amending Interim Ordinance 1411, Authorizing a Study and Imposing a Moratorium on the Establishment and Operation of Cannabis Business within the City of Fridley (Second Reading)
- [7.](#) Resolution No. 2024-109, Approving the Agreement for Construction Management at Risk Services for Commons Park Hub Project
- [8.](#) Resolution No. 2024-112, Approving Gifts, Donations and Sponsorships Received Between June 15, 2024, and August 16, 2024

- 9. Resolution 2024-114, Approving Public Arts Commission Recommendation for Sculpture in Moore Lake Park

**Claims**

- 10. Resolution No. 2024-113, Approving Claims for the Period Ending August 21, 2024

**Open Forum**

The Open Forum allows the public to address the Council on subjects that are not on the Regular Agenda. The Council may take action, reply, or give direction to staff. Please limit your comments to five minutes or less.

**Regular Agenda**

The following items are proposed for the Council's consideration. All items will have a presentation from City staff, are discussed, and considered for approval by separate motions.

**New Business**

- 11. Resolution No. 2024-110, Awarding University Avenue Service Road Traffic Changes Project
- 12. Resolution No. 2024-111, Authorizing Execution of Grant Agreement with MnDOT for University Avenue Service Road Traffic Changes Project

**Informal Status Reports**

**Adjournment**

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Accessibility Notice:

- If you need free interpretation or translation assistance, please contact City staff.
- Si necesita ayuda de interpretación o traducción gratis, comuníquese con el personal de la ciudad.
- Yog tias koj xav tau kev pab txhais lus los sis txhais ntaub ntawv dawb, ces thov tiv tauj rau Lub Nroog cov neeg ua hauj lwm.
- Haddii aad u baahan tahay tarjumaad bilaash ah ama kaalmo tarjumaad, fadlan la xiriir shaqaalaha Magaalada.

Upon request, accommodation will be provided to allow individuals with disabilities to participate in any City of Fridley services, programs or activities. Hearing impaired persons who need an interpreter or other persons who require auxiliary aids should contact [CityClerk@FridleyMN.gov](mailto:CityClerk@FridleyMN.gov) or (763) 572-3450.



# AGENDA REPORT

**Meeting Date:** August 26, 2024

**Meeting Type:** City Council

**Submitted By:** Beth Kondrick, Deputy City Clerk

## Title

Approve the Minutes from the City Council Meeting of August 12, 2024

## Background

Attached are the minutes from the City Council meeting of August 12, 2024.

## Financial Impact

None.

## Recommendation

Staff recommend the approval of the minutes from the City Council meeting of August 12, 2024.

## Focus on Fridley Strategic Alignment

- |  |   |
|--|---|
| <input type="checkbox"/> Vibrant Neighborhoods & Places              | <input type="checkbox"/> Community Identity & Relationship Building |
| <input type="checkbox"/> Financial Stability & Commercial Prosperity | <input type="checkbox"/> Public Safety & Environmental Stewardship  |
| <input checked="" type="checkbox"/> Organizational Excellence        |   |

## Attachments and Other Resources

- Minutes from the City Council Meeting of August 12, 2024

## Vision Statement

We believe Fridley will be a safe, vibrant, friendly and stable home for families and businesses.



# City Council Meeting

August 12, 2024

7:00 PM

Fridley City Hall, 7071 University Avenue NE

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## Minutes

### **Call to Order**

Mayor Lund called the City Council Meeting of August 12, 2024, to order at 7:00 p.m.

### **Present**

Mayor Scott Lund  
Councilmember Dave Ostwald  
Councilmember Tom Tillberry  
Councilmember Ryan Evanson  
Councilmember Ann Bolkom

### **Absent**

### **Others Present**

Walter Wysopal, City Manager  
Scott Hickok, Community Development Director  
Brandon Brodhag, Assistant City Engineer  
Sarah Sonsalla, City Attorney

### **Pledge Of Allegiance**

### **Proclamations/Presentations**

### **Approval of Proposed Consent Agenda**

Motion made by Councilmember Evanson to adopt the proposed Consent Agenda. Seconded by Councilmember Ostwald.

Upon a voice vote, all voting aye, Mayor Lund declared the motion carried unanimously.

### **Approval/Receipt of Minutes**

1. Approve the Minutes from the City Council Meeting of July 22, 2024.
2. Receive the Minutes from the Council Conference Meeting of July 22, 2024.
3. Receive the Minutes from the Planning Commission Meeting of July 17, 2024.

### **New Business**



4. Resolution No 2024-105, Approving Claims for the Period Ending August 7, 2024.
5. Resolution No. 2024-106, Approving Receipt of Local Affordable Housing Aid and Transfer to Fridley Housing Redevelopment Authority (HRA).
6. Resolution No. 2024-107, Approving Investment Policy Revisions.
7. Resolution No. 2024-108, Adding UBS Financial Services, Inc. as an Official Depository for the City of Fridley.

**Open Forum, Visitors:** (Consideration of Items not on Agenda – 15 minutes.)

Derek Lind, Ramsey resident, stated that he is present representing Anoka County Election Integrity Team (ACEIT). He stated that ACEIT simply wants to protect the integrity of elections.

Paul Barrett, Coon Rapids resident, also representing ACEIT provided additional details on the voter registration data base and how an audit was completed to find duplicate registrations. He explained that was a result of people that had moved but had not yet been updated in the system to remove their previous registration.

Joe Richardson, Andover resident, also representing ACEIT provided additional details on the post-election reviews and the work the group has done on that topic.

Lori Mahold, Coon Rapids resident, also representing ACEIT stated the group is requesting that the City invite the group back to discuss the post-election review more specifically to Fridley.

Mr. Lind commented that their desire is to ensure that the election results are accurate. He recognized that the machine has to be used to count the election votes and provided details on the laws passed by the state related to election vote counting. He explained that the post-election review would send election judges to the state ten days after the election to hand count the votes. He stated that this movement is gaining momentum and some cities in Anoka County have agreed to complete the post-election review as proposed.

Mayor Lund stated that he would be interested in double checking a few of the counts to ensure the accuracy of the machines.

Julie Houle, Columbia Heights School District, thanked the voters that passed the levy that will assist with providing services to students. She also thanked Fridley organizations that provided scholarships to their students. She stated that the District worked on their Strategic Plan and initiatives this year and provided an overview.

**Adoption of Regular Agenda**

Motion made by Councilmember Tillberry to adopt the regular agenda. Seconded by Councilmember Bolkom.

Upon a voice vote, all voting aye, Mayor Lund declared the motion carried unanimously.

## **Regular Agenda**

### **New Business**

8. Resolution No. 2024-103, Approving Special Use Permit, SP #24-02 for a Private School to Operate in Addition to a Church Authorized Under SP#91-01 and Repealing Expired Special Use Permit, SP #94-15 for Adult Daycare, for the Property at 6180 Highway 65 NE (Ward 2)

Scott Hickok, Community Development Director, presented a request to operate a private preschool and elementary school alongside an existing church located at 6180 Highway 65 NE. He provided information on the site and history of the site, noting previous uses that have been allowed through Special Use Permit (SUP). He stated that most recently, in 1994, an adult daycare was permitted through a SUP. He stated that as part of the action, the previous SUP would be revoked as that activity is no longer occurring onsite. He identified the portions of the building that would be utilized by the school and reviewed the recommended conditions for the SUP. He stated that the Planning Commission heard this request on July 17<sup>th</sup> and unanimously recommended approval as presented.

Hal Erks, applicant, provided additional details on the Harbon Montessori School noting that the school is excited to come to Fridley.

Councilmember Evanson commented that it is great to have choices for education.

Motion made by Councilmember Evanson to approve Resolution No. 2024-103, Approving Special Use Permit, SP #24-02 for a Private School to Operate in Addition to a Church Authorized Under SP #91-01 and Repealing Expired Special Use Permit, SP #94-15 for Adult Daycare, for the Property at 6180 Highway 65 NE (Ward 2). Seconded by Councilmember Ostwald.

Upon a voice vote, all voting aye, Mayor Lund declared the motion carried unanimously.

9. Resolution No. 2024-104, Approving and Referring a Petition for Street Access Closure at the Intersection of Able Street and Mississippi Street

Brandon Brodhag, Assistant City Engineer, presented a request to consider street access closure at the intersection of Able Street and Mississippi Street which was brought forward by a resident request. He provided background on the request and petition which was submitted to the City supporting the request. He provided details on project initiation and next steps.

Councilmember Tillberry commented that it seems the house that would be most affected did not sign the petition and he would be curious as to why. He stated that he likes the idea of looking into this topic more, recognizing that this is probably a cut through route for some drivers. He asked what this would look like as a closure, using the example of another closure that was put in place with poles

that does not have a great appearance. Mr. Brodhag replied that they would use temporary delineators this fall to show how a closure could work. He stated that a permanent closure would move the curb to close that spot. He confirmed that the land would still remain right-of-way. Councilmember Tillberry commented that it would be ideal if this would align with the County's work on Mississippi. He asked the anticipated cost for this type of permanent closure. Mr. Brodhag commented that would depend on the design but estimated \$20,000 for a simple turnaround which would have a cost of about \$1,000 per resident. Councilmember Tillberry commented that he likes the feasibility study being completed as that will consider other unexpected consequences of a closure. Mr. Brodhag stated that they could also consider a modified closure that would not allow vehicles in, but would allow vehicles out. He confirmed that once the study is completed, they would present the information to the public. Councilmember Tillberry stated that he would also be interested to hear input from residents on Jackson Street.

Councilmember Bolkcom asked and received confirmation on the different elements that would be reviewed through the feasibility study. It was confirmed that a petition of this nature simply requires the City to study the matter and does not commit the City to that decision.

Motion made by Councilmember Tillberry to approve Resolution No. 2024-104, Approving and Referring a Petition for Street Access Closure at the Intersection of Able Street and Mississippi Street. Seconded by Councilmember Bolkcom.

Upon a voice vote, all voting aye, Mayor Lund declared the motion carried unanimously.

### **Informal Status Reports**

The Council reported on amazing visits during Night to Unite and encouraged residents to get out and vote the following day for the primaries. It was noted that the movie in the park, fireworks, and music will take place this Friday at Commons Park.

### **Adjourn**

Motion made by Councilmember Ostwald to adjourn. Seconded by Councilmember Evanson.

Upon a voice vote, all voting aye, Mayor Lund declared the motion carried unanimously and the meeting adjourned at 8:15 p.m.

Respectfully Submitted,

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Melissa Moore  
City Clerk

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Scott J. Lund  
Mayor



# AGENDA REPORT

**Meeting Date:** August 26, 2024

**Meeting Type:** City Council

**Submitted By:** Beth Kondrick, Deputy City Clerk

## Title

Receive the Minutes from the City Council Conference Meeting of August 12, 2024

## Background

Attached are the minutes from the City Council conference meeting of August 12, 2024.

## Financial Impact

## Recommendation

Receive the minutes from the City Council conference meeting of August 12, 2024.

## Focus on Fridley Strategic Alignment

- |  |   |
|--|---|
| <input type="checkbox"/> Vibrant Neighborhoods & Places              | <input type="checkbox"/> Community Identity & Relationship Building |
| <input type="checkbox"/> Financial Stability & Commercial Prosperity | <input type="checkbox"/> Public Safety & Environmental Stewardship  |
| <input checked="" type="checkbox"/> Organizational Excellence        |   |

## Attachments and Other Resources

- Minutes from the City Council Conference Meeting of August 12, 2024

## Vision Statement

We believe Fridley will be a safe, vibrant, friendly and stable home for families and businesses.



# City Council Conference Meeting

August 12, 2024

5:30 P.M.

Fridley City Hall, 7071 University Avenue NE

## Minutes

### **Roll Call**

Present: Mayor Scott Lund  
 Councilmember Dave Ostwald  
 Councilmember Tom Tillberry  
 Councilmember Ryan Evanson  
 Councilmember Ann Bolkcom

Others Present: Walter Wysopal, City Manager  
 Joe Starks, Finance Director  
 Melissa Moore, City Clerk/Communications Manager  
 Maddison Zikmund, Fire Chief  
 Scott Hickok, Community Development Director

### **Items for Discussion**

#### 1. Updating the City Seal

Melissa Moore gave the Council a presentation regarding updating the City Seal to reflect the new State Seal, as this has been a past practice. Council is supportive of making this update.

#### 2. Discussion of the Fridley Firefighters Relief Association consideration of joining the Public Employee Retirement Association (PERA) Statewide Volunteer Fire Plan (SVF).

Maddison Zikmund provided background. Council was supportive of the concept and moving forward with it.

#### 3. Proposed Investment Policy Revisions and Safekeeping/Custodial Depository Change

Joe Starks provided background information on this change and what the necessary steps will be.

#### 4. Public Arts Commission Recommendation for Art at Moore Lake Park

Scott Hickok provided information relative to the Public Arts Commission's recommendation for artwork at Moore Lake Park. Council was supportive of the proposal.



# AGENDA REPORT

**Meeting Date:** August 26, 2024      **Meeting Type:** City Council  
**Submitted By:** Mike Maher, Director of Parks and Recreation

**Title**

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Receive the Minutes from the Parks and Recreation Commission Meeting of March 4, 2024

**Background**

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Attached are the minutes from the Parks and Recreation Commission meeting of March 4, 2024.

**Financial Impact**

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None.

**Recommendation**

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Receive the minutes from the Parks and Recreation Commission meeting of March 4, 2024.

**Focus on Fridley Strategic Alignment**

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|--|---|
| <input type="checkbox"/> Vibrant Neighborhoods & Places              | <input type="checkbox"/> Community Identity & Relationship Building |
| <input type="checkbox"/> Financial Stability & Commercial Prosperity | <input type="checkbox"/> Public Safety & Environmental Stewardship  |
| <input checked="" type="checkbox"/> Organizational Excellence        |   |

**Attachments and Other Resources**

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- Minutes from the Parks and Recreation Commission of March 4, 2024

**Vision Statement**

We believe Fridley will be a safe, vibrant, friendly and stable home for families and businesses.



# Park Commission Meeting

March 4, 2024

7:00 PM

Fridley City Hall, 7071 University Avenue NE

## Minutes

### **Call to Order**

Chair Borman called the Parks and Recreation Commission meeting to order at 7:00 p.m.

### **Present**

Luke Cardona  
 Peter Borman  
 Tim Kirk  
 Suad Maow (arrived at 7:07 p.m.)  
 Ken Schultz  
 Don Whalen

### **Absent**

EB Graham

### **Also Present**

Mike Maher, Parks and Recreation Director

### **Approve Parks & Recreation Commission Agenda for March 4, 2024**

*Motion by Commissioner Cardona to approve the March 4, 2024 meeting agenda. Seconded by Commissioner Schultz. The motion passed unanimously.*

### **Approve Parks & Recreation Commission Minutes for February 5, 2024**

*Motion by Commissioner Schultz to approve the February 5, 2024 meeting minutes. Seconded by Commissioner Whalen. The motion passed unanimously.*

### **New Business**

1. Election of Vice Chair

Chair Borman commented that he has spoken with Commissioner Graham, and she is willing to continue to serve as Vice Chair.

*Motion by Commissioner Cardona to elect EB Graham as Vice Chair of the Park Commission for 2024. Seconded by Commissioner Schultz. The motion passed unanimously.*

## 2. Fridley Parks and Recreation Mission Statement

Mike Maher, Parks and Recreation Director, commented that this was discussed at the last meeting and after additional work by staff, he wanted to bring a final draft back to the Commission for review.

*Motion by Commissioner Whalen to approve the updated Parks and Recreation Mission and Vision Statement. Seconded by Commissioner Kirk. The motion passed unanimously.*

## 3. Updated Neighborhood Park Playground Design for Sylvan Hills Park

Mr. Maher presented the 2024 neighborhood park playground concept design for Sylvan Hills which incorporates the input from the community and the theme.

Commissioner Maow arrived during the staff presentation.

Commissioner Maow asked for details on whether there would be any improvements to the areas outside the playground, such as the basketball court and tennis court areas. Mr. Maher replied that there is an updated site design for Sylvan Hills, but that is still being worked out with the stormwater management details.

Commissioner Cardona asked and received confirmation that the plans fit within the proposed budget.

*Motion by Commissioner Schultz to endorse the playground design for Sylvan Hills Park. Seconded by Commissioner Maow. The motion passed unanimously.*

## 4. Parks and Recreation Commission 2024 Goals and Workplan Review

Mr. Maher presented the draft 2024 goals and workplan. He confirmed that this is a working document.

## **Old Business**

Chair Borman referenced Innsbruck Nature Center, which was previously discussed and asked if there has been any progress on a potential name change. Mr. Maher replied that the discussion ended with a desire for community input, which staff has not had time to complete as of yet. He stated that the park is scheduled for park improvements in 2028 or 2029, therefore that process will occur before that time.



## **Staff Reports**

### 5. Springbrook Nature Center Report

Mr. Maher provided an overview on the written report noting that the Nature Center staff has been busy working with the local public schools, holding the nature preschool club, as well as holding birthday parties. He stated that the lantern light hike attracted over 100 participants. He noted that the summer day camps have been opened for registration.

### 6. Fridley Parks and Recreation Division Report

Mr. Maher provided an update on recently held activities and programs including the Valentine's Day part, afterschool programming, lantern light hike, and north metro athletic leagues. He reported that the Summer Rocks programming registration begins later this week. He noted that with the warmer temperatures staff has begun to install nets for tennis and pickleball.

### 7. Park Maintenance and Construction Report

Mr. Maher provided an overview of the written report and recent activities of park maintenance staff.

Commissioner Cardona commented that while there may not be grand opening/ribbon cutting ceremonies for all the neighborhood parks, perhaps there could be something in the newsletter listing the updates playgrounds and parks.

## **Unfinished Business**

None

## **Adjournment**

*Commissioner Kirk made the motion to adjourn the meeting at 7:51 p.m. Seconded by Commissioner Whalen. The motion passed unanimously.*

Respectfully submitted,

Amanda Staple  
Recording Secretary



# AGENDA REPORT

**Meeting Date:** August 26, 2024

**Meeting Type:** City Council

**Submitted By:** Mike Maher, Director of Parks and Recreation

## Title

Receive the Minutes from the Parks and Recreation Commission Meeting of May 6, 2024

## Background

Attached are the minutes from the Parks and Recreation Commission meeting of May 6, 2024.

## Financial Impact

None.

## Recommendation

Receive the minutes from the Parks and Recreation Commission meeting of May 6, 2024.

## Focus on Fridley Strategic Alignment

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|--|---|
| <input type="checkbox"/> Vibrant Neighborhoods & Places              | <input type="checkbox"/> Community Identity & Relationship Building |
| <input type="checkbox"/> Financial Stability & Commercial Prosperity | <input type="checkbox"/> Public Safety & Environmental Stewardship  |
| <input checked="" type="checkbox"/> Organizational Excellence        |   |

## Attachments and Other Resources

- Minutes from the Parks and Recreation Commission of May 6, 2024

### Vision Statement

We believe Fridley will be a safe, vibrant, friendly and stable home for families and businesses.



# Park Commission Meeting

May 6, 2024

7:00 PM

Fridley City Hall, 7071 University Avenue NE

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## Minutes

### **Call to Order**

Chair Borman called the Parks and Recreation Commission meeting to order at 7:00 p.m.

### **Present**

EB Graham  
Peter Borman  
Suad Maow  
Tim Kirk  
Ken Schultz  
Don Whalen

### **Absent**

Luke Cardona

### **Also Present**

Mike Maher, Parks and Recreation Director  
Karen Blaska, Anoka County Parks Planner

### **Approve Parks & Recreation Commission Agenda for May 6, 2024**

*Motion by Commissioner Kirk to approve the May 6, 2024 meeting agenda. Seconded by Commissioner Graham. The motion passed unanimously.*

### **Approve Parks & Recreation Commission Minutes for April 1, 2024**

*Motion by Commissioner Graham to approve the April 1, 2024 meeting minutes. Seconded by Commissioner Schultz. The motion passed unanimously.*

### **Open Forum**

No comments.

### **New Business**

1. Rice Creek West Regional Trail Corridor Master Plan Update

Mike Maher, Parks and Recreation Director, introduced Karen Blaska from Anoka County Parks who is present to share the final draft of the Rice Creek West Regional Trail Corridor Master Plan.

Karen Blaska, Anoka County Parks Planner, identified the 4.5-mile Rice Creek West trail corridor within Fridley as well as the connections it has which make it a 41-mile trail. She stated that the trail has been broken into segments, reviewing each segment within Fridley and identifying the long-range plans for the segment and adjacent amenities. She reviewed the estimated total development cost, highlighting some elements that are planned in the near future and noting that the remainder of the improvements would be about 10 to 20 years out. She confirmed that this would be a phased project over the next 20 years.

Commissioner Schultz noted a portion of the trail that ices over in the winter. He asked and received confirmation that would be addressed when that trail segment is improved. Commissioner Kirk noted that the State will be doing some safety improvements at two locations on University and asked if that would be helpful. Ms. Blaska commented that she did share the tunnel plans and it was stated that project could be included with the pedestrian improvements. She noted that she would follow up again to ensure that would still be included.

Commissioner Graham asked and received confirmation that through the project the entire trail would be resurfaced, although it would be completed in segments.

Chair Borman asked for details on timing. Ms. Blaska commented that they would plan to begin on the Locke Park segment in the next three to five years. She asked if the Commission would recommend approval of a resolution of support.

*Motion by Commissioner Schultz to recommend that the City Council support the proposed Rice Creek West Regional Trail Long Range Plan. Seconded by Commissioner Whalen. The motion passed unanimously.*

## 2. 2025 Parks Capital Investment Program Recommendation

Mr. Maher stated that each year the Park Commission reviews the Capital Investment Program (CIP) projects for the coming year to make a recommendation, noting that tonight he would review the projects anticipated for 2025. He provided an overview of the CIP, noting that traditionally the Parks CIP budget has ranged from \$300,000 to \$600,000 annually but explained that has increased in recent years with the implementation of the Parks System Improvement Plan. He provided a summary of the 2025 CIP for parks for the Commission to review.

Chair Borman asked if there will be a roundabout in front of Springbrook and whether that would impact the trail that runs in that corridor. Mr. Maher confirmed that the construction project has started for the roundabout project and noted that will not disrupt the trail project. He provided additional information on the existing conditions of the trail/boardwalk and the poor condition it is in.

*Motion by Commissioner Kirk to recommend approval of the proposed 2025 Capital Investment Program. Seconded by Commissioner Maow. The motion passed unanimously.*

### 3. Commons Park Recreation Building Discussion

Mr. Maher stated that construction on Commons Park is estimated to begin in 2025 and be completed in 2027, noting that a significant portion of the project is the park building. He reviewed the guiding themes of the Park System Improvement Plan as well as providing background information and the concept for the gateway to Commons Park. He reviewed additional features of the proposed recreation building including the indoor playground concept and indoor playground concept alternatives. He also provided information on the recreation building service delivery and staffing. He stated that he would like input on the vision presented tonight, with the recognition that this would require additional funds of the budget to be allocated towards the building.

Commissioner Kirk commented that if something is going to be incorporated for an indoor play space, it should probably be more than McDonalds has but did not see a need to compete with something like Eagle's Nest. Mr. Maher clarified that the intent would not be to build to the scale of Eagle's Nest but to have something right sized for Fridley.

Commissioner Schultz commented on indoor recreation facilities in Maple Grove and Golden Valley that seem similar, noting that it has been a great experience with his grandkids. Mr. Maher commented that staff has been in discussion with staff from those communities to gain information and comparable data.

Commissioner Graham asked if increasing the building size would have impacts on the fields. Mr. Maher replied that staff continues to work with the School District and FYSA to ensure that the needs of the baseball community can be met. He confirmed that the building footprint would not have an impact on the fields.

Commissioner Maow commented that an indoor play space would be a great amenity for local families. She asked if there would be a capacity to ensure that the space is not overrun. Mr. Maher commented that staff continues to develop the operational model.

Chair Borman commented that there were staffed park buildings in the community where he grew up and he would like to see that in Fridley as well.

*Motion by Commissioner Graham to support the Commons Park recreation building concept featuring classroom space, indoor playground and gathering spaces to be open to the public on a regular schedule and staffed by Fridley Parks and Recreation. Seconded by Commissioner Schultz. The motion passed unanimously.*

**Staff Reports**

4. Springbrook Nature Center Report

Mr. Maher commented on the success of the recent fundraising event and highlighted the upcoming spring and summer programming and events.

5. Fridley Parks and Recreation Division Report

Mr. Maher provided a brief overview of the robust programs offered for residents of all ages and noted that staff has been busy confirming community rentals for upcoming events. He also provided an update on hiring for the summer season, Fridley 49er Days, and the community concert series.

6. Park Maintenance and Construction Report

Mr. Maher noted his written report with updates on park maintenance and construction projects.

**Unfinished Business**

None

**Adjournment**

*Commissioner Graham made the motion to adjourn the meeting at 8:26 p.m. Seconded by Commissioner Whalen. The motion passed unanimously.*

Respectfully submitted,

Amanda Staple  
Recording Secretary



# AGENDA REPORT

**Meeting Date:** August 26, 2024

**Meeting Type:** City Council

**Submitted By:** Mike Maher, Director of Parks and Recreation

## Title

Receive the Minutes from the Parks and Recreation Commission Meeting of June 3, 2024

## Background

Attached are the minutes from the Parks and Recreation Commission meeting of June 3, 2024.

## Financial Impact

None.

## Recommendation

Receive the minutes from the Parks and Recreation Commission meeting of June 3, 2024.

## Focus on Fridley Strategic Alignment

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|--|---|
| <input type="checkbox"/> Vibrant Neighborhoods & Places              | <input type="checkbox"/> Community Identity & Relationship Building |
| <input type="checkbox"/> Financial Stability & Commercial Prosperity | <input type="checkbox"/> Public Safety & Environmental Stewardship  |
| <input checked="" type="checkbox"/> Organizational Excellence        |   |

## Attachments and Other Resources

- Minutes from the Parks and Recreation Commission of June 3, 2024

### Vision Statement

We believe Fridley will be a safe, vibrant, friendly and stable home for families and businesses.



## Park Commission Meeting (Work Session)

June 3, 2024

6:00 PM

Commons Park, 6249 7<sup>th</sup> Street NE, Fridley MN 55432

### Minutes

#### **Call to Order**

Chair Borman called the Parks and Recreation Commission work session to order at 6:05 p.m.

#### **Present**

EB Graham  
 Peter Borman  
 Luke Cardona  
 Tim Kirk  
 Ken Schultz  
 Don Whalen  
 Mike Maher, Parks and Recreation Director

#### **Approve Parks & Recreation Commission Minutes for May 6, 2024**

*Minutes for the May 6 meeting will be presented for approval at the August 5, 2024 meeting.*

#### **Approve Parks & Recreation Commission Agenda for June 5, 2023**

*Motion by Commissioner Cardona to approve the June 3, 2024 meeting agenda. Seconded by Commissioner Graham. The motion passed unanimously.*

#### **New Business**

1. Proposed K9 Training Area at Locke Park

Sergeant Tom Roddy presented a proposal to develop a training area for the Fridley Public Safety K9 program at Locke Park. The proposed area is located southeast of the main park lot. The proposed training area would be enclosed in fencing and would contain training equipment to keep police dogs in good condition and training.

There is a desire to develop the area during the 2024 construction season. Commissioners asked clarifying questions on fencing types, access, maintenance, enclosure size and how the area may be used by other agencies.



After questions, the group reached a consensus agreement of support for development of the K9 training area at Locke Park.

2. Commons Park Walking Tour and Discussion

The Commission reviewed several concepts for redevelopment of Commons Park including the development concept found in the 2022 Park System Improvement Plan and an updated 2024 preferred concept.

The Commission discussed the plan approach to balance the requests of Fridley residents with plans for development of athletic facilities within the park and Fridley Public Schools campus. An overview was provided on where proposed amenities are shown on the concept plan in relation to landmarks in a walking tour of the park.

No recommendations were made by the Commission.

**Old Business**

**Staff Reports**

**Adjournment**

*The meeting was adjourned by Chair Borman at 7:45 pm*

Respectfully submitted,

Mike Maher  
Parks and Recreation Director, City of Fridley



# AGENDA REPORT

**Meeting Date:** August 26, 2024

**Meeting Type:** City Council Meeting

**Submitted By:** Beth Kondrick, Deputy City Clerk  
Danielle Herrick, City Management Intern  
Sarah Sonsalla, City Attorney

## Title

Ordinance No. 1424, Amending Interim Ordinance 1411, Authorizing a Study and Imposing a Moratorium on the Establishment and Operation of Cannabis Business within the City of Fridley (Second Reading)

## Background

In July 2023, Interim Ordinance No. 1411 was passed to place a moratorium on Cannabis Businesses in the City of Fridley (City) and to conduct a study regarding the adoption or amendment of reasonable restrictions on time, place, and manner of operation for any Cannabis Businesses. This moratorium does not apply to established businesses as part of the Medical Cannabis Program administered by the Minnesota Department of Health or certain edible cannabinoid products and nonintoxicating cannabinoids pursuant to the Hemp THC Products Chapter of the Fridley City Code.

City Attorney Sarah Sonsalla advised staff that during the 2024 Legislative Session the statutory definition of "Cannabis Business" has changed. With the changes to the definition of "Cannabis Business," there are now two categories of businesses associated with cannabis that can operate without a cannabis business license (medical cannabis businesses) or a license at all (license preapproval-Early Cultivator).

It was further advised by the City Attorney that Ordinance 1411 be amended to clarify to businesses that the City is considering License Preapprovals, Early Cultivators, and Medical Cannabis Businesses as part of its potential regulations regarding businesses related to cannabis. The amendment also explicitly includes reference to the City's general authority to enact a moratorium in case a court were to determine that License Preapprovals, Early Cultivators, and Medical Cannabis Businesses are not subject to the current moratorium on Cannabis Businesses.

A public hearing and first reading of the Ordinance was held on July 22, 2024 with no concerns from the City Council (Council) or the public.

## Vision Statement

We believe Fridley will be a safe, vibrant, friendly and stable home for families and businesses.

Staff anticipate the following schedule:

- August 26 – the Council will conduct the second reading of the Ordinance;
- August 29 – the Ordinance will be published in the Official Publication;
- September 13 – the Ordinance becomes effective.

**Financial Impact**

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None.

**Recommendation**

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Staff recommend the Council approve a second reading of Ordinance No. 1424.

Staff recommend the Council motion to approve the Summary Ordinance No. 1424 for Publication.

**Focus on Fridley Strategic Alignment**

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- |  |   |
|--|---|
| <input type="checkbox"/> Vibrant Neighborhoods & Places              | <input type="checkbox"/> Community Identity & Relationship Building           |
| <input type="checkbox"/> Financial Stability & Commercial Prosperity | <input checked="" type="checkbox"/> Public Safety & Environmental Stewardship |
| <input type="checkbox"/> Organizational Excellence                   |   |

**Attachments and Other Resources**

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- Ordinance No. 1424
- Summary Ordinance No. 1424

**Vision Statement**

We believe Fridley will be a safe, vibrant, friendly and stable home for families and businesses.

## Interim Ordinance No. 1424

### **Amending Interim Ordinance No. 1411 Authorizing a Study and Imposing a Moratorium on the Establishment and Operation of Cannabis Businesses Within the City of Fridley**

The City Council of the City of Fridley does ordain, after review, examination and staff recommendation that a moratorium on cannabis businesses be enacted as follows:

#### **Section 1. Legislative Findings and Authority**

1. The Minnesota Legislature recently enacted, and the Governor signed, 2023 Minnesota Session Laws, Chapter 63 – H.F. No. 100 (Act), which is comprehensive legislation relating to cannabis including, but not limited to, the establishment of the Office of Cannabis Management (OCM), legalizing and limiting the possession and use of cannabis and certain hemp products by adults, providing for the licensing, inspection, and regulation of cannabis and hemp businesses, taxing the sale of cannabis flower, cannabis products, and certain hemp products, establishing grant and loan programs, amending criminal penalties, providing for expungement of certain convictions, and providing for the temporary regulation of Edible Cannabinoid Products and Nonintoxicating Cannabinoids.

2. The Act provides local units of government certain authority related to Cannabis Businesses, including the authority to (i) require local registration of certain Cannabis Businesses operating retail establishments, (ii) adopt reasonable restrictions on the time, place, and manner of the operation of Cannabis Businesses, provided that such restrictions do not prohibit the establishment or operation of a Cannabis Business, (iii) limit the number of certain Cannabis Businesses based on the population of the community, and (iv) prohibit the operation of a Cannabis Business within 1,000 feet of a school, or 500 feet of a day care, residential treatment facility, or an attraction within a public park that is regularly used by minors, including a playground or athletic field.

3. The Act requires the OCM, which was established effective July 1, 2023, to work with local governments to develop model ordinances for reasonable restrictions on the time, place, and manner of the operation of Cannabis Businesses. The Act also requires the OCM to establish additional rules and regulations relating to the operation of Cannabis Businesses. It is anticipated that the City of Fridley (City) will benefit from reviewing and analyzing the OCM's model ordinances, rules and regulations before making any decisions related to the regulation of Cannabis Businesses in the City.

4. The Act (Minnesota Statutes (M.S.) § 342.13(e)) expressly allows a local unit of government that is conducting studies or has authorized a study to be conducted or has held or scheduled a hearing for the purpose of considering adoption or amendment of reasonable restrictions on the time, place and manner of the operation of Cannabis Businesses to adopt an interim ordinance applicable to all or part of its jurisdiction for the purpose of protecting the planning process and the health, safety, and welfare of its citizens. The interim ordinance may regulate,

restrict, or prohibit the operation of Cannabis Businesses within the jurisdiction or a portion thereof until January 1, 2025.

5. Given the uncertainty regarding the model ordinances to be developed by the OCM and the broad scope of the changes to Minnesota law brought about by the Act, the Fridley City Council (Council) desires to adopt an interim ordinance for the purpose of protecting the planning process and the health, safety, and welfare of its citizens.

6. The Council desires to conduct a study for the purpose of considering the adoption or amendment of reasonable restrictions on the time, place and manner of the operation of Cannabis Businesses as well as the other regulations local units of government may adopt under the Act.

7. On July 10, 2023, after providing at least 10 days published notice, the Council held a public hearing regarding the consideration and adoption of an interim ordinance prohibiting the operation of Cannabis Businesses within the City until January 1, 2025.

[8. On May 24, the Governor signed 2024 Minnesota Session Laws Chapter 121 \(H.F. 4757\) amending the Act \(2024 Amendment\). The 2024 Amendment included two amendments to the Act. The first of those amendments creates a license preapproval for certain businesses that will authorize a business to begin certain processes without a Cannabis Business license under Minnesota Laws, chapter 121, section 148 \(License Preapproval\), including in some instances allowing a business to begin cultivation without a license under Minnesota Laws chapter 121, section 151 \(Early Cultivation\). The second of those amendments removes medical cannabis business, medical cannabis processor, and medical cannabis retailer \(Medical Cannabis Businesses\) from the definition of Cannabis Business in Minnesota Statutes 324.01, subdivision 14.](#)

[9. The Legislature's decision to change the definition of Cannabis Business in the 2024 Amendment does not preclude the City from having a moratorium on businesses related to cannabis that will be subject to city zoning and operational regulations and which are Cannabis Businesses; Medical Cannabis Businesses; businesses with a License Preapproval, including Early Cultivators; or other businesses that must confirm compliance with city regulations.](#)

[10. To provide clear communication to businesses seeking to operate within the City and to create a clear record, the City Council desires to amend the interim ordinance to explicitly list and include License Preapproval, Early Cultivation, and Medical Cannabis Business in the businesses that are subject to the interim ordinance.](#)

[11. The amendments to this Ordinance are intended to supplement and clarify Interim Ordinance 1411 to confirm that if a court of competent jurisdiction finds that License Preapproval, Early Cultivators, or Medical Cannabis Businesses are not subject to the authority granted to units of local government in M.S. § 342.13 \(e\) that these amendments invoke the](#)

[authority granted under M.S. § 462.355, subdivision 4\(a\) "to regulate, restrict, or prohibit any use ... within the jurisdiction or a portion thereof for a period not to exceed one year from the date it is effective" by enacting an interim ordinance.](#)

**Section 2. Definitions**

[2024 Amendment: refers to 2024 Minnesota Session Laws, Chapter 121 \(H.F. 4757\).](#)

Act: 2023 Minnesota Session Laws, Chapter 63 (H.F. No. 100).

Cannabis Business: the meaning given the term in M.S. § 342.01, subd. 14. [Cannabis Business also includes Medical Cannabis Businesses, Early Cultivators, and License Preapprovals.](#)

City: City of Fridley, a Minnesota municipal corporation.

[Early Cultivator: a business authorized to begin cultivating/growing cannabis prior to receiving a license as provided under 2024 Minnesota Session Laws, chapter 121, section 151.](#)

Edible Cannabinoid Product: has the meaning given the term in M.S. § 151.72, subd. 1(f).

[License Preapproval: a business authorized to begin certain business operation related to cannabis under 2024 Minnesota Session Laws, chapter 121, section 148.](#)

Nonintoxicating Cannabinoid: has the meaning given the term in M.S. § 151.72, subd 1(k).

OCM: the Office of Cannabis Management, established as set forth in M.S. § 342.02, subd. 1.

Ordinance: this interim ordinance, which is adopted pursuant to M.S. § 342.13(e) and M.S. § 462.355, subdivision 4(a).

**Section 3. Study Authorized**

The Council hereby authorizes and directs City staff to conduct a study regarding the adoption or amendment of reasonable restrictions on the time, place, and manner of the operation of Cannabis Businesses, as well as other potential local regulations allowed under the Act, and report to the Council on the potential regulation of Cannabis Businesses. The study may include a review of any model ordinances that OCM is directed to draft under M.S. § 342.13(d), an analysis of potential setback regulations allowed under M.S. § 342.13(c), and such other matters as staff may determine are relevant to the city council’s consideration of this matter. The report may also include City staff’s recommendations on whether the Council should adopt regulations and, if so, the recommended types of regulations.

**Section 4. Moratorium**

A moratorium is hereby imposed on the operation of any Cannabis Business within the City. During the term of this Ordinance, no business, person, or entity may establish or operate a Cannabis Business within the jurisdictional boundaries of the City. Accordingly, during the period that this Ordinance is in effect, the City shall not accept, process, or act on any application, site plan, building permit, zoning request, or other approval, including any requested confirmation, certification, approval, or other request from the OCM or other governmental entity requesting City review of any application or proposal for a business proposing to engage in the operation of a Cannabis Business. During the term of the moratorium, it is a violation of this Ordinance for any business, person, or entity to establish or operate a Cannabis Business within the City. [The moratorium also includes Early Cultivators, License Preapprovals, and Medical Cannabis Businesses to the extent they are considered to be outside of the definition of Cannabis Business.](#)

**Section 5. Exceptions**

The moratorium imposed by this Ordinance does not apply to: (i) the continued operation of a duly established business as part of the Medical Cannabis Program administered by the Minnesota Department of Health [and the OCM](#); or (ii) the sale of Edible Cannabinoid Products and Nonintoxicating Cannabinoids, provided, however, that nothing in this Ordinance exempts a business, person, or entity from complying with all other requirements and prohibitions of applicable laws and ordinances related to such exceptions. For example, as of the effective date of this Ordinance, the sale of certain cannabinoids is currently prohibited within the City pursuant to Interim Ordinance 1408 and the City requires a license to sell certain Edible Cannabinoid Products and Nonintoxicating Cannabinoids pursuant to the Hemp THC Products Chapter of the Fridley City Code (Code).

**Section 6. Enforcement**

Violation of this Ordinance is a misdemeanor. The City may also enforce this Ordinance by mandamus, injunction, or other appropriate civil remedy in any court of competent jurisdiction. A violation of this Ordinance is also subject to the City’s general penalties prescribed in the Code and may further result in the City reporting violations to the OCM, if relevant to OCM licensing. The Council hereby authorizes City staff and consultants to initiate any legal action deemed necessary to secure compliance with this Ordinance.

**Section 7. Severability**

Every section, provision, and part of this Ordinance is declared severable from every other section, provision, and part. If any section, provision, or part of this Ordinance is held to be invalid by a court of competent jurisdiction, such judgment shall not invalidate any other section, provision, or part of this Ordinance.

**Section 8. Effective Date and Term**

This Ordinance shall become effective on August 11, 2023. This Ordinance will remain in effect until January 1, 2025, or until the Council expressly repeals it, whichever occurs first.

**Passed and adopted by the City Council of the City of Fridley the 26th day of August, 2024.**

\_\_\_\_\_  
Scott J. Lund, Mayor

Attest:

\_\_\_\_\_  
Melissa Moore, City Clerk

Public Hearing: July 22, 2024  
First reading: July 22, 2024  
Second reading: August 26, 2024  
Publication: August 29, 2024  
Effective: September 13, 2024



City of Fridley  
Summary Interim Ordinance No. 1424

An Amendment to Interim Ordinance No. 1411 Authorizing a Study and Imposing a Moratorium on the Establishment and Operation of Cannabis Businesses Within the City of Fridley

The City of Fridley does ordain, after review, examination, and staff recommendation that an amendment to the moratorium on the establishment and operation of cannabis businesses be enacted. A summary of the moratorium made by Interim Ordinance No. 1424 is as follows:

Section one of the ordinance summarizes the 2024 Legislative Session recently amended H.F. No. 100 (Act). Section two adds and clarifies the definitions for "Cannabis Business", "Early Cultivator", "Edible Cannabinoid Product", and "License Preapproval". Section four imposes a moratorium on business that could fall under the revised definitions. Section five provides exceptions to the moratorium for business selling products related to the Medical Cannabis Program. Section six declares any violation of the ordinance is a misdemeanor. Section seven declares every section of the ordinance to be separate from any other section. Section eight establishes the term for the moratorium, which will expire January 1, 2025 or sooner.

Ordinance No. 1424 was passed and adopted by the City Council of the City of Fridley on August 26, 2024. The full text of the Ordinance is available on the City website or for inspection by any person during regular office hours at the Office of the City Clerk.



# AGENDA REPORT

**Meeting Date:** August 26, 2024

**Meeting Type:** City Council

**Submitted By:** James Kosluchar, Public Works Director  
 Brandon Brodhag, Assistant City Engineer  
 Nic Schmidt, Engineering Project Manager

## Title

Resolution No. 2024-109, Approving the Agreement for Construction Management at Risk Services for Commons Park Hub Project

## Background

On July 11, 2024, the Park System Improvement Plan Project Management Team comprised of Public Works and Parks & Recreation Staff, initiated a two-step process of selecting a construction management firm to provide construction management at risk (CMaR) services for the Commons Park "Hub" Project.

The Commons Park "Hub" Project was identified to include an inclusive playground, splash pad, approximately 6,000 square foot park building (containing restrooms, classrooms, administration/office space, storage, and mechanical room), landscape, hardscape, irrigation, lighting, and technology (including programmable locks, Wi-Fi, fiber, and cameras). The construction budget was set at \$5.3 million. The proposed site work at Commons Park will be completed under a separate contract with a general contractor.

As noted above, the selection of the CMaR was competed through a two-step process in accordance with Minnesota Statute (M.S.) § 471.463, which is a recently updated statute outlining the competitive solicitation of CMaR services. In the first step, a request for qualifications (RFQ) was publicly advertised and issued to six construction management firms that requested the RFQ. An Evaluation Committee comprised of four staff members scored the responses using uniform criteria that included the firm's experience with comparable projects, staff experience and past performance, safety program and record, and project approach. Following scoring of the six RFQ responses, four firms were short-listed as CMaR finalists and were issued a request for proposals (RFP). In the second step, the scoring criteria was expanded to include a work plan, cost estimating, scheduling, capability to be a constructor, and fee structure. The proposals were due August 8, 2024, and staff were impressed with the response and level of quality of the proposals. Four responsive proposals were received and below is a scoring tabulation with the associated fee for CMaR services.

## Vision Statement

We believe Fridley will be a safe, vibrant, friendly and stable home for families and businesses.

<i>Firm</i>	<i>RJM Construction</i>	<i>H+U Construction</i>	<i>Loeffler Construction</i>	<i>McGough Construction</i>
<i>Avg. Score (Max. 250)</i>	222.8	215.5	192.4	190.9
<i>CMAA Fee</i>	\$496,959	\$566,200	\$651,866	\$675,855

After considering the results presented above, staff invited the top two scoring firms to an interview. Following the interviews, it was revealed that the proposal from RJM Construction had many strengths and showed significant confidence that they will deliver a successful project. RJM provided a base fee of \$496,959 for up to \$5.3 million in “Hub” construction. RJM Construction will be responsible for design input, cost estimating, constructability & phasing reviews, prepare bid packages, solicitation & review of bids, contract & project management, (sub)contractor oversight, construction quality management, and close out.

If approved, the attached AIA contract would be approved by both parties, with inclusion of any specifics after review with the City Attorney and concurrence of the City Manager. The schedule of construction management services would begin upon execution of the agreements.

**Financial Impact**

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Funding is provided by bond proceeds through the Capital Investment Program.

**Recommendation**

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Staff recommends the approval of Resolution No. 2024-109, Approving the Agreement for Construction Management at Risk Services for Commons Park Hub Project.

**Focus on Fridley Strategic Alignment**

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- |  |  |
|--|--|
| <input checked="" type="checkbox"/> Vibrant Neighborhoods & Places   | <input checked="" type="checkbox"/> Community Identity & Relationship Building |
| <input type="checkbox"/> Financial Stability & Commercial Prosperity | <input checked="" type="checkbox"/> Public Safety & Environmental Stewardship  |
| <input checked="" type="checkbox"/> Organizational Excellence        |  |

**Attachments and Other Resources**

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- Resolution No. 2024-109
- Exhibit A – Project Schedule
- Exhibit B – Owner-modified AIA Document A133-2019 and A201-2017

**Vision Statement**

We believe Fridley will be a safe, vibrant, friendly and stable home for families and businesses.

**Resolution No. 2024-109**

**Approving the Agreement for Construction Management at Risk Services for Commons Park "Hub" Project**

**Whereas,** the City of Fridley (City) began a process of understanding the needs and desires of residents for City parks improvements in 2019 called "Finding Your Fun in Fridley" by conducting public workshops with residents; and

**Whereas,** Fridley residents expressed an interest in improving City parks by upgrading playgrounds and amenities; and

**Whereas,** on April 25, 2022 the Fridley City Council adopted Resolution No. 2022-36, which approves the Park System Improvement Plan Final Report and authorizes staff to begin the implementation phase of the Plan; and

**Whereas,** the Park System Improvement Plan includes construction of a building in Commons Park budgeted at \$5 million; and

**Whereas,** the Commons Park "Hub" Project includes an inclusive playground, splash pad, approximately 6,000 square foot park building, landscape, hardscape, irrigation, lighting, and technology budgeted at \$5.3 million; and

**Whereas,** staff has requested, received, and ranked six submitted qualification proposals and four subsequent proposal responses received for construction management services related to the project in accordance with Minnesota Statutes § 471.463, and recommends RJM Construction to provide construction management at risk services for the project;

**Now, therefore be it resolved,** that the City Council of the City of Fridley hereby approves finalization and execution of an Agreement for Construction Management at Risk Services for the Commons Park "Hub" Project with RJM Construction, LLC in the amount of \$496,959.

**Passed and adopted by the City Council of the City of Fridley this 26<sup>th</sup> day of August, 2024.**

\_\_\_\_\_  
Scott J. Lund – Mayor

Attest:

\_\_\_\_\_  
Melissa Moore – City Clerk

**Commons Park Project Schedule**

<b>Design Phases</b>	<b>Start</b>	<b>Finish</b>
Programming	January 2024	February 2024
Schematic Design	July 2024	August 2024
Design Development	September 2024	October 2024
Construction Documents	November 2024	December 2024
Authorization to Bid	January 2025	January 2025

<b>Construction Timeline</b>	<b>Start</b>	<b>Finish</b>
Bid Award	February 2025	February 2025
CMaR Anticipated GMP	March 2025	April 2025
Construction	July 7, 2025	Spring 2026
Construction Substantial Completion		April 30, 2026
Project Closeout		May 31, 2026

# DRAFT AIA® Document A133® - 2019

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

**AGREEMENT** made as of the « » day of « » in the year « »  
(In words, indicate day, month, and year.)

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

«City of Fridley »  
«7071 University Avenue NE »  
«Fridley, MN 55432 »  
«763-571-3450 »  
« »

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

«TBD »« »  
« »  
« »  
« »

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

«Commons Park “Hub” Project »  
«6249 7<sup>th</sup> Street NE »  
«Fridley, MN 55432 »

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

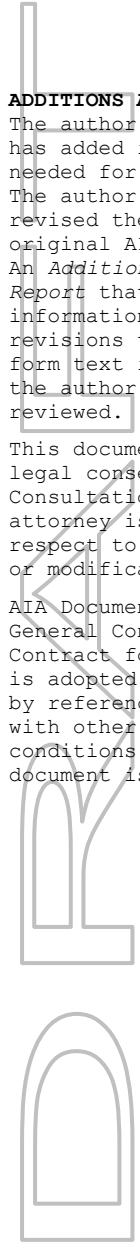
«HCM Architects »« »  
«4201 Cedar Avenue South »  
«Minneapolis, MN 55407 »  
« »

The Owner and Construction Manager agree as follows.

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

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

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



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- 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 7 COST OF THE WORK FOR CONSTRUCTION PHASE
- 8 DISCOUNTS, REBATES, AND REFUNDS
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- 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 12 DISPUTE RESOLUTION
- 13 TERMINATION OR SUSPENSION
- 14 MISCELLANEOUS PROVISIONS
- 15 SCOPE OF THE AGREEMENT

- EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT
- EXHIBIT B INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1. (For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1: (Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

«TBD »

§ 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.)

«TBD »

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

«TBD »

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

- .1 Design phase milestone dates, if any:

«TBD »

- .2 Construction commencement date:

«TBD »

- .3 Substantial Completion date or dates:

«TBD »

- .4 Other milestone dates:

« »

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

« »

§ 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.)

«Meet or exceed the State of Minnesota B3 standards. »

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

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

«TBD »

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

«TBD »  
« »  
« »  
« »  
« »  
« »

§ 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.)

«TBD »



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

.1 Geotechnical Engineer:

«TBD »  
« »  
« »  
« »  
« »

.2 Civil Engineer:

«TBD »  
« »  
« »  
« »  
« »

.3 Other, if any:

«TBD »

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

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

«TBD »  
« »  
« »  
« »  
« »  
« »

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

«TBD »  
« »  
« »  
« »  
« »  
« »

§ 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.)

«TBD »

§ 1.1.14 The Owner’s requirements for Construction Manager’s procurement of Subcontractor(s) for the performance of the Work shall incorporate Construction Manager’s described subcontractor procurement process submitted in response to the Project RFP and comply with Minnesota Statutes, Section 471.463, subd. 5(b):

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

« »

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

«Owner's Request for Qualifications and Request for Proposals »

§ 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 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. If any ambiguity exists regarding the responsibilities of Construction Manager in the Contract Documents, Construction Manager's response to the Request for Proposals shall apply to remove the ambiguity as to Construction Manager's responsibilities, capabilities, staffing, schedule or other relevant service.

### § 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, as modified, 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, as modified which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

## ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

## § 3.1 Preconstruction Phase

### § 3.1.1 Extent of Responsibility

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

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

### § 3.1.3 Consultation

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

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

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

### § 3.1.4 Project Schedule

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

### § 3.1.5 Phased Construction

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

### § 3.1.6 Cost Estimates

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

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement.

The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

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

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

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

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

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

#### § 3.1.11 Subcontractors and Suppliers

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

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project, in accordance with Minnesota Statutes, Section 471.763, subd. 5(b).

§ 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.)*

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### § 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

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

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

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

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

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

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

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

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

### § 3.3 Construction Phase

#### § 3.3.1 General

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

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

#### § 3.3.2 Administration

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

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

#### § 3.3.2.3 Monthly Report

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

#### § 3.3.2.4 Daily Logs

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

#### § 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, 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 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.

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

§ 4.1.3.1 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.

§ 4.1.3.2 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.

§ 4.1.3.3 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.

§ 4.1.4 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.

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

**§ 4.2 Owner’s Designated Representative**

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

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

**§ 4.3 Architect**

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

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

**§ 5.1 Compensation**

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

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

«TBD »

§ 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
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§ 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 « 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.

§ 5.2 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. Pursuant to the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.425 (“Prompt Payment Act”), amounts unpaid and not subject to a good faith dispute « thirty-five » ( « 35 » ) 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.)

« 4.00 » % « per annum »

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.)

«TBD / See RFP Section 4.2 »

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

«TBD »

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

«TBD »

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

«TBD »



§ 6.1.7 Other:

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



§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. To the extent the total cost of construction is less than the Guaranteed Maximum Price, the Owner shall receive 100% of the remaining Construction Manager contingency due to the savings. The Guaranteed Maximum Price (“GMP”) will be established \_\_\_\_\_.

§ 6.3 Changes in the Work

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

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

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

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

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

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

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

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

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

§ 7.2 Labor Costs

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

Work per Exhibit \_\_\_\_ – *Construction Manager at Risk Fee Summary*. This includes labor provided from any location as long as it is directly related to the Project.

**§ 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.)*

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

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

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

### **§ 7.3 Subcontract Costs**

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

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

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

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

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

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

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

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

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

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

**§ 7.6 Miscellaneous Costs**

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

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

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

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

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

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

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

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

§ 7.6.7 Costs of document reproductions and delivery charges.

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

§ 7.6.9 Mediation and litigation costs, not including attorneys' fees reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior written approval, which shall not be unreasonably withheld. Costs are not recoverable under this Agreement for disputes between the Owner and Construction Manager, Or because of non-frivolous third-party claims against the Construction Manager alleging negligence, breach of contract, or willful misconduct relating to the Project.

§ 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 only, with the Owner's prior written approval.

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

## § 7.7 Other Costs and Emergencies

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

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

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

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

## § 7.8 Related Party Transactions

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

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

## § 7.9 Costs Not To Be Reimbursed

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

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

## ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

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

**ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS**

§ 9.1 Construction Manager shall enter into Subcontracts and other agreements necessary to perform the Work required in the Contract Documents, pursuant to Minnesota Statutes, Section 471.463. 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 pursuant to Section 471.463, subd. 5(b). Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

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

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

**ARTICLE 10 ACCOUNTING RECORDS**

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner’s auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager’s records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor’s proposals, Subcontractor’s invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of six (6) years after final payment, or for such longer period as may be required by law.

**ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES**

**§ 11.1 Progress Payments**

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

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

«N/A »

§ 11.1.3 Owner payment obligations shall be governed by the Prompt Payment Act. (Federal, state or local laws may require payment within a certain period of time.)

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

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

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

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

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

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

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

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

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

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;

- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner’s auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

### § 11.1.8 Retainage

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

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

«Owner shall withhold five percent (5%) of the amount approved for payment in each payment period. »

§ 11.1.8.1.1 The following items are not subject to retainage:

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

« »

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

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

«None »

§ 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.

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

«Pursuant to Minnesota Statutes, Section 15.72, subd. 2, all retainage will be released to Construction Manager no later than sixty (60) days after Substantial Completion, provided, however, “Substantial Completion” shall be determined by the Architect consistent with the definition in Minnesota Statutes, Section 541.051, subd. 1(a). After Substantial Completion, Owner may withhold: (1) two hundred and fifty percent (250%) of the estimated cost to correct or complete Work known at the time of Substantial Completion; and (2) one percent (1%) of the value of the contract or \$500.00, whichever is greater, pending completion and submission of all final paperwork by Construction Manager. If Owner withholds payment under this paragraph, it will provide a written statement to Construction Manager detailing the amount and basis of the withholding. Owner will pay any amounts withheld under clause (1) within sixty (60) days after completion or correction of the Work, as determined by Architect. Owner will pay any amounts withheld under clause (2) after submission of all final paperwork, as determined by Owner. »

§ 11.1.9 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 shall be made by the Owner to the Construction Manager not more than thirty (30) days after the date that all of the following conditions have been met:

- .1 the Contract has been fully performed by the Construction Manager, except for the Construction Manager's responsibility to correct nonconforming Work as provided in Section 12.2.2 of A201™-2017 as currently amended by the Owner and to satisfy other requirements, if any, which necessarily survive final payment;
- .2 a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Owner;
- .3 a final Certificate for Payment has been issued by the Architect;
- .4 the requirements of Article 9 of the A201™-2017 as currently amended by the Owner have been met;
- .5 the Construction Manager has assembled and provided to the Owner in a bound compilation all warranties and operations manuals applicable to the Project; and
- .6 the Construction Manager has delivered to the Architect a complete set of redlined record drawings, indicating changes to the Construction Documents during construction.

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

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

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

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201-2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

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

« »

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



§ 11.3 Interest

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

« 4.00 » % « per annum »

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

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

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

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

« »
« »
« »
« »

§ 12.2 Binding Dispute Resolution

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

(Check the appropriate box.)

[ « » ] Arbitration pursuant to Article 15 of AIA Document A201–2017

[ « X » ] Litigation in a court of competent jurisdiction, in Hennepin County, Minnesota

[ « » ] Other: (Specify)

« »

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

ARTICLE 13 TERMINATION OR SUSPENSION

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

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

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

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

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

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

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

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

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

### § 13.2.1 Termination

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

### § 13.2.2 Termination by the Owner for Cause

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

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

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

steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

### § 13.2.3 Termination by the Owner for Convenience

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

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

<< >>

### § 13.3 Suspension

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

## ARTICLE 14 MISCELLANEOUS PROVISIONS

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

### § 14.1.1 Prompt Payment of Subcontractors

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

### § 14.1.2 Data Practices

Pursuant to Minnesota Statutes, Section 13.05, subd. 11, all of the data created, collected, received, stored, used, maintained, or disseminated by Construction Manager in performing this contract is subject to the requirements of the Minnesota Government Data Practices Act (“MGDPA”), Minnesota Statutes Chapter 13, and Construction Manager must comply with those requirements as if it were a government entity. The remedies in Minnesota Statutes, Section 13.08 apply to Construction Manager. Construction Manager does not have a duty to provide access to public data to the public if the public data are available from the Owner.

### § 14.1.3 Non-Discrimination

Pursuant to Minnesota Statutes, Section 181.59, the Construction Manager will take affirmative action to ensure that applicants are selected, and that employees are treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability or age. The Construction Manager agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this contract.

## § 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

Insurance and bonds provided for this Project shall be described in this Article 14, Exhibit B to this Contract and in Article 11 of the A201–2017, as modified.

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than << >> (\$ << >> ) 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
TBD	

§ 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.)



§ 14.5 Insurance Required by the Owner

The Owner property insurance shall be in accordance with Section 11.2 of A201-2017.

§ 14.6 Performance Bond and Payment Bond

§ 14.6.1 The Construction Manager shall furnish bonds covering faithful performance of the Construction Manager’s Contract and payment of obligations arising thereunder. Bonds may be obtained through the Construction Manager’s usual source and the cost thereof shall be included in the Cost of the Work. Construction Manager shall not be required to post separate performance and payment bonds to the extent they are duplicative of the Work.

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as modified
- .2 AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified
- .5 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203-2013 incorporated into this Agreement.)



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

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



[  ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

- .7 Other documents, if any, listed below:  
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or

proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

«Owner’s Request for Proposals  
Construction Manager’s Proposal »

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

\_\_\_\_\_  
**OWNER** *(Signature)*  
« »  
\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
**CONSTRUCTION MANAGER** *(Signature)*  
« »  
\_\_\_\_\_  
*(Printed name and title)*



# DRAFT AIA® Document A133® - 2019 Exhibit A

## Guaranteed Maximum Price Amendment

This Amendment dated the « » day of « » in the year « », is incorporated into the accompanying AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the « » day of « » in the year « » (the "Agreement")  
(In words, indicate day, month, and year.)

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

«Commons Park "Hub" Project »  
«6249 7<sup>th</sup> Street NE »  
«Fridley, MN 55432 »

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

«City of Fridley »  
«7071 University Avenue NE »  
«Fridley, MN 55432 »

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

«TBD »« »  
« »

### TABLE OF ARTICLES

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

### ARTICLE A.1 GUARANTEED MAXIMUM PRICE

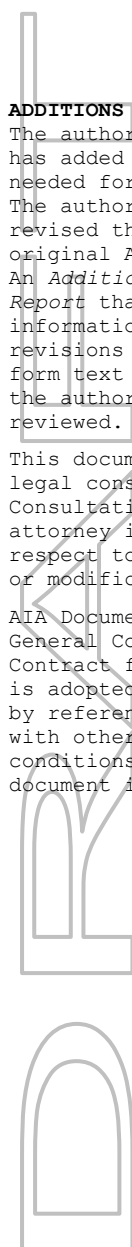
#### § A.1.1 Guaranteed Maximum Price

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

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

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

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



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§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed   (\$   ), subject to additions and deductions by Change Order as provided in the Contract Documents.

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

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

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

§ A.1.1.5 **Alternates**

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

Item	Price
<input type="checkbox"/>	<input type="checkbox"/>

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

Item	Price	Conditions for Acceptance
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

§ A.1.1.6 Unit prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

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

(Check one of the following boxes.)

The date of execution of this Amendment.

Established as follows:  
(Insert a date or a means to determine the date of commencement of the Work.)

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

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

§ A.2.3 **Substantial Completion**

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



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

[  ] Not later than  (  ) calendar days from the date of commencement of the Work.

[  ] By the following date:

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

Portion of Work	Substantial Completion Date
<input type="text"/>	<input type="text"/>

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

**ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED**

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

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

Document	Title	Date	Pages
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

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

Section	Title	Date	Pages
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

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

Number	Title	Date
<input type="text"/>	<input type="text"/>	<input type="text"/>

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

Title	Date	Pages
<input type="text"/>	<input type="text"/>	<input type="text"/>

Other identifying information:

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

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

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

<< >>

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

<< >>

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

§ A.4.1 The Construction Manager shall retain the consultants, contractors, design professionals, and suppliers, identified below:  
*(List name, discipline, address, and other information.)*

<< >>

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

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

<< >><< >>

\_\_\_\_\_  
*(Printed name and title)*

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

<< >><< >>

\_\_\_\_\_  
*(Printed name and title)*

# DRAFT AIA® Document A133® – 2019

## Exhibit B

### *Insurance and Bonds*

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

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

«Commons Park “Hub” Project »  
«6249 7<sup>th</sup> Street NE »  
«Fridley, MN 55432 »

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

«City of Fridley »  
«7071 University Avenue NE »  
«Fridley, MN 55432 »

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

«TBD »« »  
« »

#### 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.

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

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

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

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**§ B.2.2 Liability Insurance**

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

**§ B.2.3 Required Property Insurance**

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

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

Cause of Loss	Sub-Limit

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

Coverage	Sub-Limit

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

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

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

**§ B.2.3.3 Insurance for Existing Structures**

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, “all-risks” property insurance, on a replacement cost basis, protecting the existing structure

against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

**§ B.2.4 Optional Extended Property Insurance.**

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

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

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

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

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

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

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

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

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

**§ B.2.5 Other Optional Insurance.**

The Owner shall purchase and maintain the insurance selected below.

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

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

<< >>

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

Coverage	Limits

**ARTICLE B.3 CONSTRUCTION MANAGER’S INSURANCE AND BONDS**

**§ B.3.1 General**

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

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

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

**§ B.3.2 Construction Manager’s Required Insurance Coverage**

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

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

<< >>

### § B.3.2.2 Commercial General Liability

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than « One Million » (\$ « 1,000,000 » ) each occurrence, « Two Million » (\$ « 2,000,000 » ) general aggregate, and « Two Million » (\$ « 2,000,000 » ) 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 « One Million » (\$ « 1,000,000 » ) 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 may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section B.3.2.2 and B.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ B.3.2.5 Workers' Compensation at statutory limits.

§ B.3.2.6 Employers' Liability with policy limits not less than « » (\$ « » ) each accident, « » (\$ « » ) each employee, and « » (\$ « » ) 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 « One Million » (\$ « 1,000,000 » ) per claim and « Two Million » (\$ « 2,000,000 » ) 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 « » (\$ « » ) per claim and « » (\$ « » ) in the aggregate.

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

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

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

§ B.3.3 Construction Manager's Other Insurance Coverage

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

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

« »

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

*(Select the types of insurance the Construction Manager is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)*

[ « » ] § B.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

*(Where the Construction Manager's obligation to provide property insurance differs from the Owner's obligations as described under Section B.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*

« »

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



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

[ « » ] § B.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an “all-risks” completed value form.

[ « » ] § B.3.3.2.5 Property insurance on an “all-risks” completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.

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

Coverage	Limits

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

The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:  
(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Payment Bond	
Performance Bond	

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

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

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

« »

# DRAFT AIA® Document A201® - 2017

## General Conditions of the Contract for Construction

### for the following PROJECT:

(Name and location or address)

«Commons Park “Hub” Project »  
 «6249 7<sup>th</sup> Street NE »  
 «Fridley, MN 55432 »

### THE OWNER:

(Name, legal status and address)

«City of Fridley »  
 «7071 University Avenue NE »  
 «Fridley, MN 55432 »

### THE ARCHITECT:

(Name, legal status and address)

«HCM Architects »  
 «4201 Cedar Avenue South »  
 «Minneapolis, MN 55407 »

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### ADDITIONS AND DELETIONS:

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

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

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

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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 Contractor

The term "Contractor" means the Construction Manager as Constructor pursuant to the A133-2019, Standard Form Agreement Between Owner and Construction Manager as Constructor, as modified.

#### § 1.1.4 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.

#### § 1.1.5 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.

#### § 1.1.6 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.

#### § 1.1.7 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.

#### § 1.1.8 Instruments of Service

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

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

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect’s consultants.

§ 1.6 Notice

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

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

§ 1.7 Digital Data Use and Transmission

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

## 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 identify a representative authorized to act on the Owner's behalf only with respect to specific matters delegated to the representative in writing by the Owner's governing body. Except as expressly delegated by the Owner's governing body, the Owner's representative has no authority to agree to any adjustments in the Contract Sum or Contract Time.. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority.

### § 2.2 Evidence of the Owner's Financial Arrangements

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

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

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

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

### § 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. Except for utility locations provided by private utilities, which Owner does not warrant for accuracy, 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. The Contractor shall be responsible for verifying the accuracy of all utility locations supplied by private utilities

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

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

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

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect’s administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 By executing the Contract, the Contractor represents that the Contractor has reviewed and understands the Contract Documents, has visited the Site and is familiar with local conditions under which the Work is to be performed, has correlated personal observations with the requirements of the Contract Documents, and has notified the Architect of and obtained clarification of any discrepancies which have become apparent during the bidding or proposal period.

§ 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 construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

**§ 3.2.4** The Contractor must make frequent inspections during the progress of the Work to confirm that Work previously performed by the Subcontractors is in compliance with the Contract Documents and applicable laws and regulations bearing on the performance of the Work and that portion of Work previously performed by the Subcontractors or by others are in proper condition to receive subsequent Work.

**§ 3.2.5** If the Contractor believes that any portions of the Contract Documents do not comply with applicable laws, statutes, ordinances, building codes, and rules and regulations, or any orders by code enforcement officials or the Owner or its designees acting in the capacity of building code inspectors, the Contractor must promptly notify the Architect of the non-compliance as provided in Section 3.2.6 and request direction before proceeding with the affected Work.

**§ 3.2.6** The Contractor must promptly notify the Owner and the Architect in writing of any apparent errors, inconsistencies, omissions, ambiguities, construction impracticalities or code violations discovered as a result of the Contractor's review of the Contract Documents including any differences between actual and indicated dimensions, locations and descriptions, and must give the Owner and the Architect timely notice in writing of same and of any corrections, clarifications, additional Drawings or Specifications, or other information required to define the Work in greater detail or to permit the proper progress of the Work. The Contractor must provide similar notice with respect to any variance between its review of the Site and physical data and Site conditions observed.

**§ 3.2.7** If the Subcontractors perform any Work involving an apparent error, inconsistency, ambiguity, construction impracticality, omission or code violation in the Contract Documents of which the Contractor is aware, or which could reasonably have been discovered by the review required by Section 3.2, without prompt written notice to the Owner and the Architect and request for correction, clarification or additional information, as appropriate, the Subcontractors do so at their own risk and expense and all claims relating thereafter are specifically waived.

**§ 3.2.8** 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 Section 3.2., the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2, the Contractor shall pay such costs and damages to the Owner, 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 shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner

and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

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

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

#### § 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 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, Subcontractors, and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

#### § 3.5 Warranty

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

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

§ 3.5.3 The Contractor's general warranty and any additional or special warranties are not limited by the Contractor's obligations to require the Subcontractors to correct defective or nonconforming Work as provided in Article 12, nor are they limited by any other remedies provided in the Contract Documents. The Contractor shall also be liable for any damage to property or persons (including death) including consequential and direct damages to Owner relating to any breach of the Contractor's general warranty or any additional or special warranties under the Contract Documents.

§ 3.5.4 The Contractor must furnish all special warranties under the Contract Documents to the Owner no later than Substantial Completion. The Owner may require additional special warranties in connection with the approval of "Or-Equals" or Substitutions, Allowance items, Work that is defective or nonconforming, or the acceptance of nonconforming Work pursuant to Article 12.



### § 3.6 Taxes

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

### § 3.7 Permits, Fees, Notices and Compliance with Laws

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

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

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

### § 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

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

### § 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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

### § 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The Superintendent must provide his or her email address and cell phone number to Owner and Architect and must be available to be contacted during all business hours, and outside of business hours in the event of an emergency.

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

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

### § 3.10 Contractor's Construction and Submittal Schedules

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

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule within ten (10) days of execution of the Contract, shall submit a submittal schedule for the Owner's and Architect's approval. The Owner's and 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 approved by the Owner and Architect.

### § 3.11 Documents and Samples at the Site

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

### § 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

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

§ 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. The Contractor must correct at its cost, and without any adjustment in Contract Time, any Work the correction of which is required due to the Contractor's failure to obtain approval of a submittal required to have been obtained prior to proceeding with the Work, including, but not limited to, correction of any conflicts in the Work resulting from such failure.

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

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

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written

approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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

### **§ 3.13 Use of Site**

**§ 3.13.1** 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.

**§ 3.13.2** The Contractor shall coordinate the Contractor's operations with, and secure the approval of the Architect before using any portion of the site.

**§ 3.13.3** Except as may be specifically provided in the Contract Documents, the Contractor shall provide all necessary temporary facilities, including power, water, sanitation, scaffolding, storage, and security. If Owner makes any such facilities available to Contractor, it is without representation or warranty as to their adequacy for Contractor's use, and Contractor shall indemnify, defend, and hold Owner harmless from and against any claims arising out of the Contractor's or Subcontractors' use of such facilities.

### **§ 3.14 Cutting and Patching**

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

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

### **§ 3.15 Cleaning Up**

#### **§ 3.15.1**

The Contractor must keep the Site and adjacent areas free from accumulation of waste materials or rubbish caused by operations under the Contract, and must keep tools, construction equipment, machinery and surplus materials suitably stored when not in use. If the Contractor fails to do so in a manner reasonably satisfactory to the Owner or the Architect within forty-eight (48) hours after notice or as otherwise required by the Contract Documents, the Owner may clean the Site and back charge the Contractor for all costs associated with the cleaning. The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall promptly cause removal of waste materials, rubbish, the Subcontractors' 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, defend, 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 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.

### § 3.20 Prevailing Wage

Contractor agrees that all laborers or mechanics working on the Project shall receive at least the prevailing wage rate in accordance with Minnesota Statutes, Section 177.42, *et seq.* Contractor agrees further that it will incorporate any and all necessary contract language in its agreements with any subcontractors to allow Contractor to monitor and enforce the prevailing wage requirement for subcontractors of any tier.

## ARTICLE 4 ARCHITECT

### § 4.1 General

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

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

### § 4.2 Administration of the Contract

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

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

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

#### § 4.2.4 Communications

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

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

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

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

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

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

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

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

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

§ 4.2.13 The 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. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

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

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

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

§ 5.2.1 Award of Subcontracts or other contracts for trade work for the project shall be in accordance with Minnesota Statutes Sections 471.345 and 471.463, subdivision 5.

§ 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. Any objection must not be contrary to the requirements of Minnesota Statutes Section 471.463, subd. 5.

§ 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.

**ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

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

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

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

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

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

**§ 6.2 Mutual Responsibility**

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

**§ 6.2.2** If part of the Contractor’s Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or



Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

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

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

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

### **§ 6.3 Owner's Right to Clean Up**

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

## **ARTICLE 7 CHANGES IN THE WORK**

### **§ 7.1 General**

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

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

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

### **§ 7.2 Change Orders and Change Proposals**

**§ 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** The Contractor must submit Change Proposals to the Architect covering a contemplated Change Order within ten (10) days after request of the Owner, or the Architect or within twenty-one (21) days of the event giving rise to the Contractor's claim for a change in the Contract Sum or Contract Time. No increase in the Contract Sum or extension of the Contract Time will be allowed for the cost or time involved in making Change Proposals. Change Proposals will define or confirm in detail the Work which is proposed to be added, deleted, or changed and must include any adjustment which the Contractor believes to be necessary in (i) the Contract Sum, or (ii) the Contract Time. Any proposed adjustment must include detailed documentation including, but not limited to: cost, properly itemized and supported by sufficient substantiating data to permit evaluation including cost of labor, materials, supplies and equipment, rental cost of machinery and equipment, additional bond cost, plus a fixed fee for profit and overhead (which includes office overhead and Site-specific overhead and general conditions). The Subcontractor's or Sub-subcontractor's overhead and profit in turn must not exceed a total aggregate of ten percent (10%). Change Proposals will be binding upon the Contractor and may be accepted or rejected by the Owner in its

discretion. The Owner may, at its option, instruct the Contractor to proceed with the Work involved in the Change Proposal in accordance with this Section 7.2.2 without accepting the Change Proposal in its entirety.

**§ 7.2.3** If the Owner determines that a Change Proposal is appropriate, the Architect will prepare and submit a request for a Change Order or Contract Amendment providing for an appropriate adjustment in the Contract Sum or Contract Time, or both, for further action by the Owner. No such change is effective until the Owner and Architect sign the Change Order.

**§ 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 Owner and Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

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

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

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

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

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

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, 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.

§ 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.

§ 8.2.4 The Contractor must conform to the most recently approved Progress Schedule. The Contractor must cause the Subcontractor's to complete the indicated Work or achieve the required percentage of completion, as applicable, within any interim completion dates established in the most recently approved Progress Schedule.

§ 8.2.5 The Contractor must maintain at the Site, available to the Owner and the Architect for their reference during the progress of the Work, a copy of the approved Progress Schedule and any approved revisions thereto. The Contractor must keep current records of and mark on a copy of the approved Progress Schedule the actual commencement date, progress and completion date of each scheduled activity indicated on the Progress Schedule.

§ 8.2.6 The Contractor represents that its bid includes all costs, overhead and profit which may be incurred throughout the Contract Time and the period between Substantial and final Completion. Accordingly, the Contractor may not make any claim for delay damages based in whole or in part on the premise that the Subcontractors would have completed the Work prior to the expiration of the Contract Time but for any claimed delay.

§ 8.2.7 If the Contractor's progress is not maintained in accordance with the approved Progress Schedule, or the Owner determines that the Contractor is not diligently proceeding with the Work or has evidence reasonably indicating that the Contractor will not be able to conform to the most recently approved Progress Schedule, the Contractor must, promptly and at no additional cost to the Owner, take all measures necessary to accelerate its progress to overcome the delay and ensure that there will be no further delay in the progress of the Work and notify the Owner.

§ 8.2.8 The Owner reserves the right to issue a written directive to accelerate the Work that may be subject to an appropriate adjustment, if any, in the Contract Sum. If the Owner requires an acceleration of the Project Schedule and no adjustment is made in the Contract Sum, or if the Contractor disagrees with any adjustment made, the Contractor must file a claim as provided in Article 15 or the same will be deemed to be conclusively waived.

### § 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 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 delay authorized by the Owner pending mediation and litigation; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 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 for performance of the Work under the Contract Documents.

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

### § 9.2 Schedule of Values

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

### § 9.3 Applications for Payment

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

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

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

§ 9.3.2 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.

§ 9.3.4 The Contractor must submit to the Architect and Owner itemized Applications for Payment for Work completed on a monthly basis in accordance with a schedule approved by the Owner. Each Application for Payment must be consistent with the approved Schedule of Values. In order to expedite the review and approval of Applications for Payment, the Contractor may submit to and review with the Owner a draft Application for Payment at a progress meeting prior to submitting a formal Application for Payment.

§ 9.3.5 The form of Application for Payment must be AIA Document G702, Application and Certificate for Payment, supported by AIA Document G703, Continuation Sheet (latest edition), or such other form as may be prescribed by the Owner. The Application must be notarized and supported by sufficient data to demonstrate the Contractor’s right to payment and compliance with the payment provisions of the Contract to the satisfaction of the Owner and Architect, such as copies of requisitions from Subcontractors and material suppliers, partial lien waivers, releases and other documents. Each Application for Payment must reflect approved Contract Modifications and the Contract retainage provided for in the Contract Documents.

§ 9.3.6 Applications for Payment may include materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. The Owner has no obligation or responsibility to pay for materials stored off the Site. If specifically approved in writing in advance by the Owner, an Application for Payment may include materials and equipment stored off the Site at a location agreed upon in writing. Payment for materials and equipment stored on or off the Site is conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to protect the Owner’s interests. Payment for materials and equipment stored off the Site will, in addition, be conditioned upon the Contractor’s provision of applicable insurance, storage and transportation to the Site.

§ 9.3.7 The Contractor shall also furnish with each Application for Payment Certified Payroll Statements, in accordance with Minnesota Statutes Section 177.30, setting forth the wages and benefits paid each employee during the time period covered by the Application for Payment, specifying for each employee: name; identifying number; prevailing wage master job classification; hours worked each day; total hours; rate of pay; gross amount earned; each deduction for taxes; total deductions; net pay for week; dollars contributed per hour for each benefit, including name and address of administrator; benefit account number; and telephone number for health and welfare, vacation or holiday, apprenticeship training, pension, and other benefit programs.

## § 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 failure to submit Certified Payroll Statements under Section 9.3.7;
- .5 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .6 damage to the Owner or a Separate Contractor;
- .7 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
- .8 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the Contractor disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, the Contractor 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 Work properly performed or material or equipment suitably delivered. If the Owner makes payments by

joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

### § 9.6 Progress Payments

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

§ 9.6.2 The Contractor shall pay each Subcontractor, in accordance with the Prompt Payment Act, subdivision 4a 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 The Contractor and the Subcontractors shall provide payment and performance bonds as required by law. Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

### § 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor as 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.

## § 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, including but not limited to completed IC-134 forms, (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.

**§ 9.10.6** When the Contractor has completed or corrected all items on the final Punch List and considers that the Work is complete and ready for final acceptance, the Contractor must give written notice to the Owner and the Architect and request a final inspection of the Work as provided in Section 9.10.2. The Contractor's notice and request for a final inspection must be accompanied by a final Application for Payment and the Submittals required by Section 9.10.3.

**§ 9.10.7** Upon receipt of the Contractor's notice and request for final inspection, the Owner and Architect will promptly make such inspection and, when the Owner and Architect concur that the Work has been fully completed and is acceptable under the Contract Documents, Architect will issue a Certificate of Final Completion to the Owner. The Contractor's notice and request for final inspection constitutes a representation by the Contractor to the Owner that the Work has been completed in full and strict accordance with terms and conditions of the Contract Documents. The Architect will promptly notify the Contractor if the Owner or Architect do not concur that the Work is finally complete. In such case, the Contractor must bear the cost of any necessary additional professional services of the Owner or Architect until the Work is determined to be finally complete.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

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

### § 10.2 Safety of Persons and Property

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

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

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

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

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

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

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

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

### § 10.2.8 Injury or Damage to Person or Property

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

### § 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or

polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor’s notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor’s reasonable additional costs of shutdown, delay, and start-up.

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

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

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

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

**§ 10.4 Emergencies**

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

**ARTICLE 11 INSURANCE AND BONDS**

**§ 11.1 Contractor’s Insurance and Bonds**

§ 11.1.1 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. 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.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall name the Owner and Architect as additional insureds, and shall be

maintained without interruption from the date of commencement of the Work until the date of final payment through the completed operations period. Completed operations shall be the period within which any claims may be brought for damages arising out of the Project Work.

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

**§ 11.1.4** 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.

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

## **§ 11.2 Owner's Insurance**

**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

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

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

## **§ 11.3 Waivers of Subrogation**

**§ 11.3.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required

by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

**§ 11.3.2** Notwithstanding the above, Owner does not waive its right to subrogate against (1) Contractor, any of its Subcontractors, sub-Subcontractors, agents or employees for damages caused to non-Project related property, real or personal or both, at or adjacent to the site of the Project, caused by the negligent, intentional or other willful act or omission of the Contractor, any of its Subcontractors, sub-Subcontractors, agents or employees; or against (2) the Architect, or Architect's consultant, if any, for damages caused to non-Project related property, real or personal or both, at or adjacent to the site of the Project, caused by the negligent, intentional or other willful act or omission of the Architect, or Architect's consultants, if any.

**§ 11.3.3** 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.

#### **§11.4 Adjustment and Settlement of Insured Loss**

**§ 11.4.1** 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.

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

### **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

#### **§ 12.1 Uncovering of Work**

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

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to

the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

## § 12.2 Correction of Work

### § 12.2.1 Before Substantial Completion

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

### § 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. 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 With respect to any corrective work performed during the Correction Period, the Correction Period for that corrective work shall be extended for one (1) year from the date the Corrective Work was completed.

§ 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.

### § 13.2 Successors and Assigns

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

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

### § 13.3 Rights and Remedies

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

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

### § 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an 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

All payments to the Contractor shall be governed by the Prompt Payment Act, provided, however, that the interest rate for payments due but unpaid shall be four percent (4.00%) per annum.

### § 13.6 Record Keeping—Availability and Retention

Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, Contractor agrees that the books, records, documents and accounting procedures and practices of Contractor, that are relevant to the Contract or transaction, are subject to examination by the Owner and the state auditor for a minimum of six (6) years. Contractor shall maintain such records for a minimum of six (6) years after final payment.

### § 13.7 Data Practices

Pursuant to Minnesota Statutes, Section 13.05, subd. 11, all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing this contract is subject to the requirements of the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes Chapter 13, and Contractor must comply with those requirements as if it were a government entity. The remedies in Minnesota Statutes, Section 13.08 apply to Contractor. Contractor does not have a duty to provide access to public data to the public if the public data are available from the Owner, except as required by the terms of this contract.

### § 13.8 Non-Discrimination

Pursuant to Minnesota Statutes, Section 181.59, the Contractor will take affirmative action to ensure that applicants are selected, and that employees are treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability or age. The Contractor agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this contract.

## 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;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or
- .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.

§ 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.

§ 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, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:



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

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

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

**§ 14.3 Suspension by the Owner for Convenience**

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. 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; 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.

**§ 14.5 No Right to Stop Work for Non-Payment**

§ 14.5.1 The Contractor has no right to stop Work of its Subcontractors or allow them to stop Work as a consequence of non-payment. In the event of any disagreement between the Contractor and Owner involving the Contractor’s entitlement to payment, the Contractor’s only remedy is to file a Claim in accordance with Article 15. The Contractor must diligently proceed with the Work pending resolution of the Claim. If, however, an Application for Payment has been approved for payment by the Owner, and the Owner fails to make payment within sixty (60) days of the approval for payment by the Owner, the Contractor may upon ten (10) days written notice to the Owner, stop work if payment is not made by the Owner within ten (10) days following the notice.

**ARTICLE 15 CLAIMS AND DISPUTES**

**§ 15.1 Claims**

**§ 15.1.1 Definition**

A Claim is a demand or assertion by Contractor seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The responsibility to substantiate Claims

shall rest with the Contractor. 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. Nothing in this paragraph 15.1.1 is intended to apply to or in any way limit the Owner's right to make Claims related to or arising out of the Contract.

### § 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all 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 time period specified by applicable law.

### § 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the 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 written notice to the Owner 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 the Contractor 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 Contractor first recognizes the condition giving rise to the Claim, whichever is later. As a condition to making a claim for additional costs, the Contractor shall maintain and produce accurate records to substantiate all additional costs actually incurred and such substantiation shall be made within a reasonable time to be entitled to the relief requested.

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

### § 15.1.4 Continuing Contract Performance

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

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

### § 15.1.5 Claims for Additional Cost

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

### § 15.1.6 Claims for Additional Time

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

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

### § 15.2 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 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 Contractor or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

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

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

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

§ 15.2.6 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.

### § 15.3 Mediation

§ 15.3.1 Any claim, dispute or other matter in question or arising out of or related to this Agreement shall be subject to mediation. Mediation is not a condition precedent to commencing litigation, but if litigation is commenced, the parties agree to mediate before any dispositive motions or trial. The parties shall share equally the mediator's fee and any filing fees. Mediation shall be held in the place where the Project is located unless another location is mutually agreed upon. Agreements reached in mediation and ratified by the Owner's governing body shall be enforceable as settlement agreements in any court having proper jurisdiction.



# AGENDA REPORT

**Meeting Date:** August 26, 2024

**Meeting Type:** City Council

**Submitted By:** Korrie Johnson, Assistant Finance Director

**Title**

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Resolution No. 2024-112, Approving Gifts, Donations and Sponsorships Received Between June 15, 2024, and August 16, 2024

**Background**

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Each month, the City of Fridley (City) receives various donations and gifts to support City operations, programs and projects. Pursuant to Minnesota Statute § 465.03, the City may accept these donations and gifts for the benefit of residents. For specific donations or gifts, the donor may prescribe certain requirements, such as for a specific activity or department.

Consistent with the abovementioned statute, staff prepared Schedule No. 1 (Exhibit A), which outlines the various donations, gifts and/or sponsorships received by the City between June 15, 2024, and August 16, 2024. To accept the same, the Council must adopt the attached resolution by a two-third majority vote.

Lastly, for each donation, gift or sponsorship, staff ensure it meets an identified need, does not create a quid-pro-quo or long-term maintenance obligation, and the donor received an acknowledgment of their gift through a letter or publication.

**Financial Impact**

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Every donation benefits the City of Fridley’s finances.

**Recommendation**

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Staff recommend the approval of Resolution No. 2024-112, Approving Gifts, Donations and Sponsorships Received Between June 15, 2024, and August 16, 2024

**Focus on Fridley Strategic Alignment**

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- Vibrant Neighborhoods & Places
- Financial Stability & Commercial Prosperity
- Organizational Excellence
- Community Identity & Relationship Building
- Public Safety & Environmental Stewardship

**Vision Statement**

We believe Fridley will be a safe, vibrant, friendly and stable home for families and businesses.

## **Attachments and Other Resources**

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- Resolution No. 2024-112
- Exhibit A: Schedule No. 1

### **Vision Statement**

We believe Fridley will be a safe, vibrant, friendly and stable home for families and businesses.

**Resolution No. 2024-112**

**Approving Gifts, Donations and Sponsorships for the City of Fridley**

**Whereas,** throughout the year the City of Fridley (City) receives various gifts and donations; and

**Whereas,** the City is sincerely grateful for the support it receives from an array of organizations and individuals; and

**Whereas,** without this support, the continuation of different events or programs would be difficult to sustain; and

**Whereas,** the attached schedule (Exhibit A) lists all of the donations and gifts received by various City departments between June 15, 2024, and August 16 2024; and

**Whereas,** all of the items listed on the attached schedule (Exhibit A) are required to be accepted by the City Council by a two-thirds majority vote; and

**Whereas,** all items have been determined to be donated free of any quid-pro-quo expectation by the donor.

**Now, therefore be it resolved,** that the City Council of the City of Fridley hereby approves and accepts the various donations, gifts and sponsorships made between June 15, 2024, and August 16, 2024.

**Passed and adopted by the City Council of the City of Fridley this 26th day of August 2024.**

\_\_\_\_\_  
Scott J. Lund – Mayor

Attest:

\_\_\_\_\_  
Melissa Moore – City Clerk

## Gifts, Donations, and Sponsorships - City of Fridley

Schedule No. 1

Date Received	Department or Division	Program	Donor Name, if not anonymous	Amount/ Value	Fund
12/21/23	Public Safety - Police	Donation to Safety Camp	Maduro Distributors Inc	\$15,000.00	101
12/29/23	SNC	SNCF Grant Reimbursement	Xcel Energy	\$7,500.00	270
12/31/23	Public Safety - Fire	Donation for Fire Prevention Activities	MINCO	\$1,000.00	101
01/03/24	Public Safety - Police	Donation for 'Night to Unite' Supplies	MINCO	\$1,000.00	101
01/12/24	SNC	Donation Box Contents	Various	\$190.00	270
01/18/24	Public Safety - Police	Donation for Patient Memorial	Dawn Fennig	\$600.00	101
01/18/24	SNC	General Donation	Marvin Kolling	\$25.00	270
01/24/24	Parks and Recreation	Donation for Winterfest	Fridley Lions Club	\$800.00	101
01/18/24	Public Safety - Fire	Donation for Patient Memorial	Dawn Fennig	\$600.00	101
01/26/24	SNC	International Paper Grant Reimbursement (SNCF)	SNCF	\$3,000.00	270
02/02/24	SNC	Donation Box Contents	Various	\$142.00	270
02/14/24	SNC	Fireplace Donation at SNC	Springbrook Foundation	\$28,192.30	407
03/01/24	Parks and Recreation	Memorial Bench	Owen Dupre	\$2,500.00	101
03/08/24	SNC	Donation Box Contents	Various	\$218.00	270
03/08/24	Public Safety - Police	General Donation	Denise Larson	\$1,000.00	101
03/21/24	SNC	Donation Box Contents	Various	\$120.00	270
04/03/24	Public Safety - Police	Donation to Safety Camp	Fridley Lions Club	\$1,500.00	101
04/05/24	Public Safety - Police	Donation for Police Department Recruitment	Fridley Lions Club	\$10,000.00	101
04/09/24	Public Safety - Police	Donation for Police K9 Expenses	Michael/Marilynn Pantera	\$80.00	101
04/18/24	SNC	Donation Box Contents	Various	\$135.00	270
04/18/24	SNC	MN Ornithological Union (MOU) Grant	MOU	\$1,751.76	270
04/24/24	Public Safety - Police	Donation for Police Load Bearing Ballistic Vests	Kooka LLC	\$8,000.00	101
04/30/24	SNC	Donation Box Contents	Various	\$85.00	270
05/02/24	SNC	Donation (Osprey Pole)	Gary Bank	\$15,000.00	270
05/03/24	SNC	Donation Box Contents	Various	\$78.00	270
05/14/24	Public Safety - Police	General Donation	Friendly Chevrolet	\$500.00	101
05/22/24	SNC	Donation Box Contents	Various	\$232.00	270
05/24/24	SNC	Friends of Fridley Education Grant	Friends of Fridley Education	\$2,000.00	270
05/31/24	SNC	Donation Box Contents	Various	\$400.00	270
06/05/24	SNC	Donation Box Contents	Various	\$49.00	270
06/14/24	SNC	General Donation	Charities Aid Foundation America	\$500.00	270
<b>07/23/24</b>	<b>Public Safety - Police</b>	<b>Donation to purchase pink patches for duty shirts</b>	<b>Fridley Lions Club</b>	<b>\$570.00</b>	<b>101</b>
<b>07/14/24</b>	<b>SNC</b>	<b>Donation Box Contents</b>	<b>Various</b>	<b>\$129.00</b>	<b>270</b>
<b>08/09/24</b>	<b>Public Safety - Police</b>	<b>Donation for medical supplies for tactical medics</b>	<b>Allina Health System</b>	<b>\$5,000.00</b>	<b>101</b>
<b>08/09/24</b>	<b>SNC</b>	<b>Donation Box Contents</b>	<b>Various</b>	<b>\$125.00</b>	<b>270</b>

Report to Date Total

\$108,022.06



# AGENDA REPORT

**Meeting Date:** August 22, 2024

**Meeting Type:** City Council

**Submitted By:** Scott Hickok, Community Development Director

## Title

Resolution 2024-114, Approving Public Arts Commission Recommendation for Sculpture in Moore Lake Park

## Background

The City of Fridley (City) has been given the opportunity to install art in the newly reimagined Moore Lake Park. Contributions of \$6,000 from the Rice Creek Watershed District and \$10,000 from Mary Tjosvold, owner of Crooners Lounge and Supper Club, have made this art possible. The Public Arts Commission met on Wednesday evening, August 7, 2024, and reviewed each of three art concepts submitted by Artist Jessica Turtle. Ms. Turtle, a long-time artist and Water Stewardship Program graduate, researched and made certain each concept presented emphasized the importance of the environment and water quality.

Attached please find Ms. Turtle's Concept chosen by the Public Arts Commission. After much healthy discussion, the Public Arts Commission chose the Northern Leopard Frog concept. The sculpture will be in the water, in the pond and will appear as if it is on a floating lily pad.

As Ms. Turtle has indicated, *the Northern Leopard Frog (lithobates pipiens) is native to Minnesota and is the state's amphibian. They can be found in ponds and lakes across the state and are one of Minnesota's most common frogs.*

*Frogs are considered keystone species because they are connected to many other species in their food webs; they eat a variety of things, and many things eat them. Consequently, frogs are considered an indicator species; if they are in trouble, it means other, less obvious species are likely to be too. More importantly, frogs are the gateway creature to many people. Some people are drawn to the unique qualities of frogs, like their slimy skin, beautiful sounds, or ability to jump great distances. And let's not forget the cultural associations with frogs—from Kermit the Frog to fairy tales, frogs have a positive place in many people's hearts.*

*The sculpture is roughly 6feet tall and hovers within the park's holding pond's ebbing waterline. The frog's finish is playful, with bold shapes and retro patterns, primarily using colors from the nearby playground.*

## Financial Impact

### Vision Statement

We believe Fridley will be a safe, vibrant, friendly and stable home for families and businesses.



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Absorbed

**Recommendation**

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Staff recommend the approval of Resolution No. 2024-114, Approving Public Arts Commission Recommendation for Sculpture in Moore Lake Park.

**Focus on Fridley Strategic Alignment**

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- |  |  |
|--|--|
| <input checked="" type="checkbox"/> Vibrant Neighborhoods & Places   | <input checked="" type="checkbox"/> Community Identity & Relationship Building |
| <input type="checkbox"/> Financial Stability & Commercial Prosperity | <input type="checkbox"/> Public Safety & Environmental Stewardship             |
| <input type="checkbox"/> Organizational Excellence                   |  |

**Attachments and Other Resources**

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- Resolution No. 2024-114
- Northern Leopard Frog Sculpture and Location Details

**Vision Statement**

We believe Fridley will be a safe, vibrant, friendly and stable home for families and businesses.

**Resolution No. 2024-114**

**Approving Public Arts Commission Recommend for Sculpture Installation in Moore Lake Park, 5890 Central Avenue N.E., Fridley, MN**

**Whereas,** Moore Lake Park, located within the City of Fridley (City), has undergone various public improvements carried out by the City and Anoka County; and

**Whereas,** these public improvements have been completed in accordance with the plans, specifications, and regulations established by the Fridley Parks Improvement Plan; and

**Whereas,** the City has formed a Public Arts Commission to make Public Art recommendations to the City Council; and

**Whereas,** the Rice Creek Watershed District has generously donated \$6000 towards a water themed piece of art; and

**Whereas,** Mary Tjosvold, owner of Crooners Supper Club and Lounge has generously donated \$10,000 toward the installation; and

**Whereas,** the sculpture is a gift amount of \$16,000 with some in-kind work at installation.

**Now, therefore it be resolved,** that the City Council of the City of Fridley hereby approves the recommendation of the Fridley Public Arts Commission for the Northern Leopard Frog sculpture at Moore Lake Park.

**Now, be it further resolved,** that the City of Fridley expresses its gratitude to the Rice Creek Watershed District and Mary Tjosvold for their generosity to making this installation a reality.

Passed and adopted by the City Council of the City of Fridley this 26<sup>th</sup> day of August, 2024

\_\_\_\_\_  
Scott J. Lund – Mayor

Attest:

\_\_\_\_\_  
Melissa Moore – City Clerk

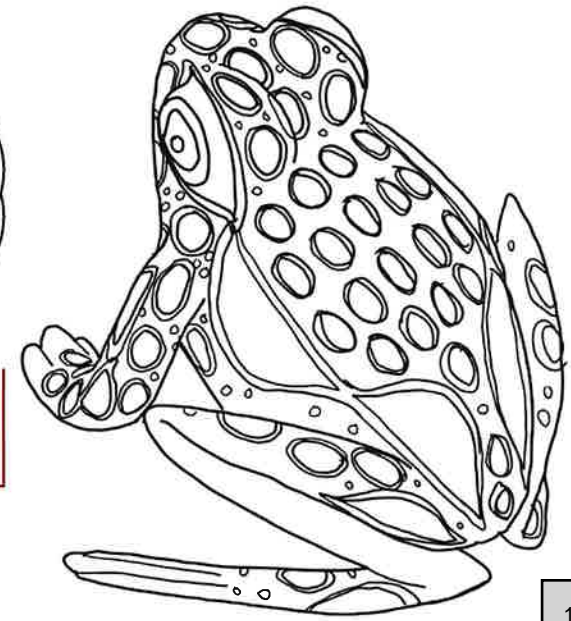
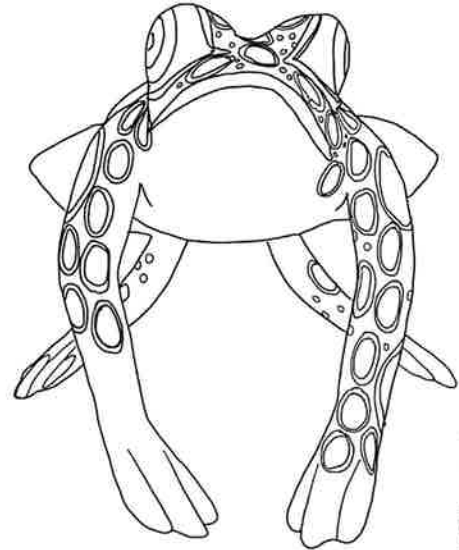
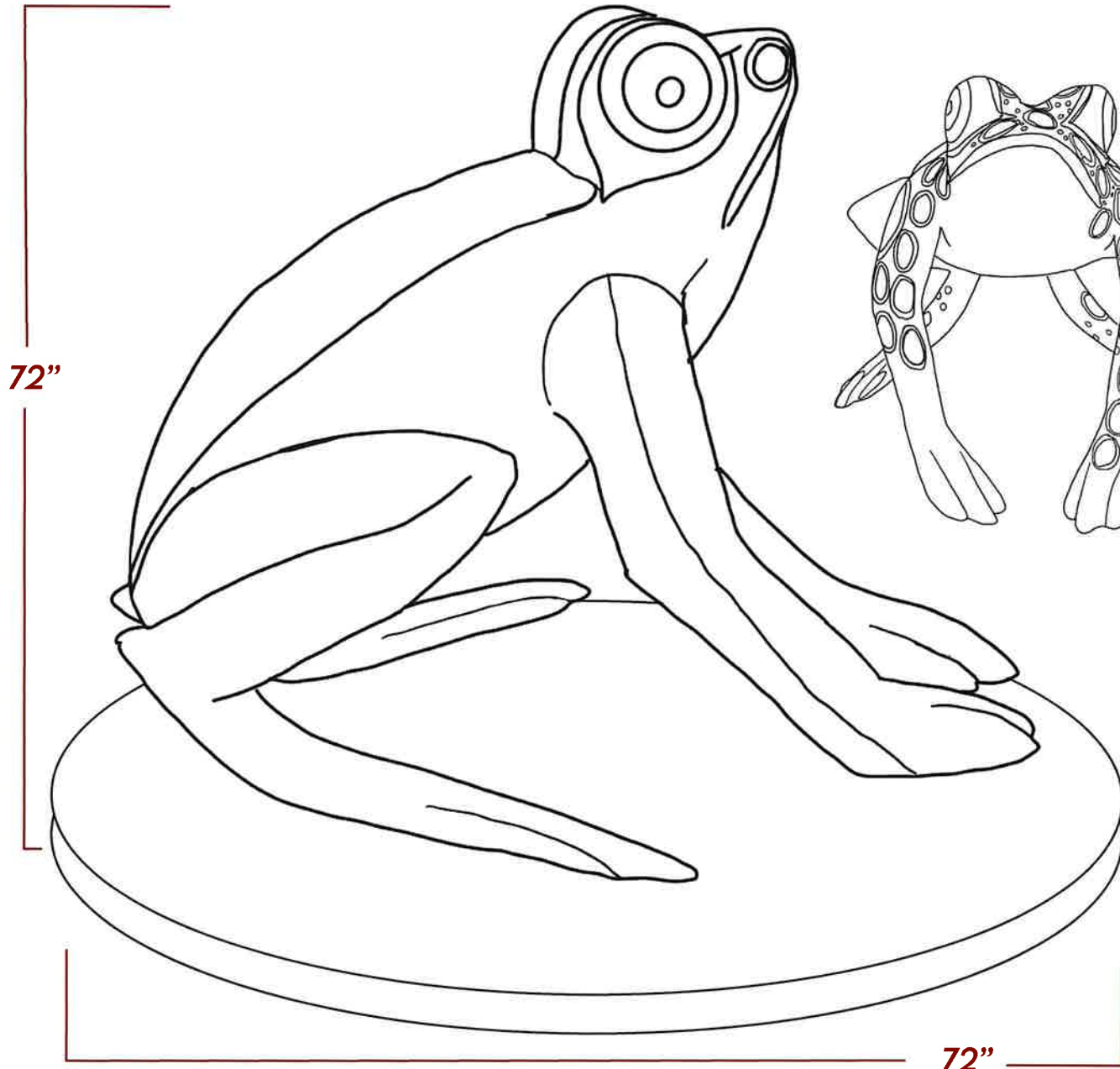
### Materials

#### Structure

- Rebar Framing
- Metal Lath
- Cement Shell
- Handmade High-fire Ceramic Tiles
- Prisma Grout

#### Notes:

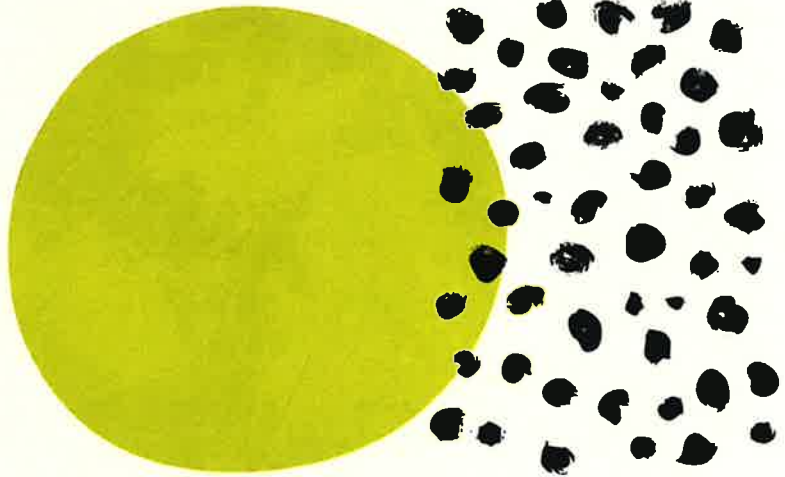
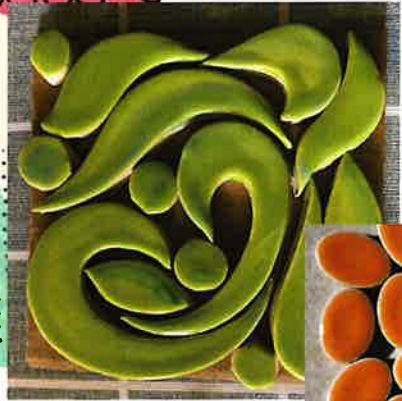
Place in either holding pond  
 Funky Patterns and shapes  
 Colors match the playground  
 Lighthearted and whimsical  
 Make base into lily pad shape?



### NORTHERN LEOPARD FROG













**PROPOSED  
LOCATION OF  
NORTHERN  
LEOPARD FROG ART  
INSTALLATION**







# AGENDA REPORT

**Meeting Date:** August 26, 2024

**Meeting Type:** City Council

**Submitted By:** Anna Smieja, Accounting Technician, Accounts Payable

**Title**

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Resolution No. 2024-113, Approving Claims for the Period Ending August 21, 2024

**Background**

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Attached is Resolution No. 2024-113 and the claims report for the period ending August 21, 2024.

**Financial Impact**

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Included in the budget.

**Recommendation**

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Staff recommend the approval of Resolution No. 2024-113, Approving Claims for the Period Ending August 21, 2024.

**Focus on Fridley Strategic Alignment**

---

- |   |   |
|---|---|
| <input type="checkbox"/> Vibrant Neighborhoods & Places                         | <input type="checkbox"/> Community Identity & Relationship Building |
| <input checked="" type="checkbox"/> Financial Stability & Commercial Prosperity | <input type="checkbox"/> Public Safety & Environmental Stewardship  |
| <input type="checkbox"/> Organizational Excellence                              |   |

**Attachments and Other Resources**

---

- Resolution No. 2024-113, Approving Claims for the Period Ending August 21, 2024
- City Council Claims Report

**Vision Statement**

We believe Fridley will be a safe, vibrant, friendly and stable home for families and businesses.

**Resolution No. 2024-113**

**Approving Claims for the Period Ending August 21, 2024**

**Whereas**, Minnesota Statute § 412.271 generally requires the City Council to review and approve claims for goods and services prior to the release of payment; and

**Whereas**, a list of such claims for the period ending August 21, 2024, was reviewed by the City Council.

**Now, therefore be it resolved**, that the City Council of the City of Fridley hereby approves the payment of the claims as presented.

**Passed and adopted by the City Council of the City of Fridley this 26th day of August, 2024.**

\_\_\_\_\_  
Scott J. Lund - Mayor

Attest:

\_\_\_\_\_  
Melissa Moore – City Clerk





City of Fridley, MN

# Bank Transaction Report

## Transaction Detail

Issued Date Range: 08/08/2024 - 08/21/2024  
Cleared Date Range: -

Issued Date	Cleared Date	Number	Description	Module	Status	Type	Amount
<b>Bank Draft</b>							
08/16/2024		<a href="#">DFT0005142</a>	EMPOWER RETIREMENT (for MN/MSRS)	Accounts Payable	Outstanding	Bank Draft	-569.98
08/16/2024		<a href="#">DFT0005143</a>	EMPOWER RETIREMENT (for MN/MSRS)	Accounts Payable	Outstanding	Bank Draft	-1539.3
08/16/2024		<a href="#">DFT0005144</a>	CITY OF FRIDLEY-MISSION SQUARE-457 Def.Comp	Accounts Payable	Outstanding	Bank Draft	-20102.42
08/16/2024		<a href="#">DFT0005145</a>	CITY OF FRIDLEY-MISSION SQUARE-457 Def.Comp	Accounts Payable	Outstanding	Bank Draft	-4730.16
08/16/2024		<a href="#">DFT0005147</a>	CITY OF FRIDLEY-MISSION SQUARE RHS Retiree Health Se	Accounts Payable	Outstanding	Bank Draft	-374.4
08/16/2024		<a href="#">DFT0005149</a>	OPTUM BANK (HSA)	Accounts Payable	Outstanding	Bank Draft	-3960.47
08/16/2024		<a href="#">DFT0005150</a>	OPTUM BANK (HSA)	Accounts Payable	Outstanding	Bank Draft	-2710.66
08/16/2024		<a href="#">DFT0005151</a>	PERA - PUBLIC EMPLOYEES	Accounts Payable	Outstanding	Bank Draft	-46829.8
08/16/2024		<a href="#">DFT0005152</a>	PERA - PUBLIC EMPLOYEES	Accounts Payable	Outstanding	Bank Draft	-164.46
08/16/2024		<a href="#">DFT0005153</a>	PERA - PUBLIC EMPLOYEES	Accounts Payable	Outstanding	Bank Draft	-66610.95
08/16/2024		<a href="#">DFT0005154</a>	CITY OF FRIDLEY-MISSION SQUARE RHS Retiree Health Se	Accounts Payable	Outstanding	Bank Draft	-901.92
08/16/2024		<a href="#">DFT0005155</a>	CITY OF FRIDLEY-MISSION SQUARE RHS Retiree Health Se	Accounts Payable	Outstanding	Bank Draft	-125
08/16/2024		<a href="#">DFT0005156</a>	CITY OF FRIDLEY-MISSION SQUARE RHS Retiree Health Se	Accounts Payable	Outstanding	Bank Draft	-2325
08/16/2024		<a href="#">DFT0005157</a>	CITY OF FRIDLEY-MISSION SQUARE RHS Retiree Health Se	Accounts Payable	Outstanding	Bank Draft	-600
08/16/2024		<a href="#">DFT0005158</a>	CITY OF FRIDLEY-MISSION SQUARE Roth IRA	Accounts Payable	Outstanding	Bank Draft	-5303.57
08/16/2024		<a href="#">DFT0005159</a>	BENEFIT RESOURCE LLC - BPA/VEBA	Accounts Payable	Outstanding	Bank Draft	-900
08/16/2024		<a href="#">DFT0005160</a>	INTERNAL REVENUE SERVICE - PAYROLL TAXES	Accounts Payable	Outstanding	Bank Draft	-54011.26
08/16/2024		<a href="#">DFT0005161</a>	INTERNAL REVENUE SERVICE - PAYROLL TAXES	Accounts Payable	Outstanding	Bank Draft	-19070.12
08/16/2024		<a href="#">DFT0005162</a>	MINN DEPT OF REVENUE - PAYROLL TAX	Accounts Payable	Outstanding	Bank Draft	-27976.66
08/16/2024		<a href="#">DFT0005163</a>	INTERNAL REVENUE SERVICE - PAYROLL TAXES	Accounts Payable	Outstanding	Bank Draft	-60930.92
<b>Bank Draft Total: (20)</b>							<b>-319737.05</b>
<b>Check</b>							
08/09/2024			ELLEN THORESON	Utility Billing	Outstanding	Check	-30.75
08/09/2024			BLAKE OLSON	Utility Billing	Outstanding	Check	-236.17
08/09/2024			KAYAK PROPERTIES	Utility Billing	Outstanding	Check	-34.06
08/09/2024			ANGELA HUBER	Utility Billing	Outstanding	Check	-155
08/09/2024			FREDERICK HAUGH	Utility Billing	Outstanding	Check	-114.67
08/09/2024			DONG SUH	Utility Billing	Outstanding	Check	-154.25
08/14/2024			ALLEGRA PRINT & IMAGING	Accounts Payable	Outstanding	Check	-432
08/14/2024			ALLINA HEALTH SYSTEM	Accounts Payable	Outstanding	Check	-710
08/14/2024			ASPEN MILLS INC	Accounts Payable	Outstanding	Check	-3864.02
08/14/2024			BEAUDRY OIL & PROPANE	Accounts Payable	Outstanding	Check	-36507.6
08/14/2024			BEISSWENGER'S HARDWARE	Accounts Payable	Outstanding	Check	-11.96
08/14/2024			BRAUN INTERTEC CORPORATION	Accounts Payable	Outstanding	Check	-1043.5
08/14/2024			CENTURY LINK	Accounts Payable	Outstanding	Check	-980.89

Bank Transaction Report

Issued Date	Cleared Date	Number	Description	Module	Status	Type	Amount
08/14/2024			COMCAST/XFINITY	Accounts Payable	Outstanding	Check	-129.76
08/14/2024			COSTAR REALTY INFORMATION	Accounts Payable	Outstanding	Check	-449.35
08/14/2024			FERGUSON WATERWORKS #2518	Accounts Payable	Outstanding	Check	-170.83
08/14/2024			FLAGSHIP RECREATION LLC	Accounts Payable	Outstanding	Check	-121540.69
08/14/2024			FLEET PRIDE TRUCK & TRAILER PARTS	Accounts Payable	Outstanding	Check	-174.16
08/14/2024			GENUINE PARTS CO/NAPA	Accounts Payable	Outstanding	Check	-12.29
08/14/2024			GROTH SEWER & WATER LLC	Accounts Payable	Outstanding	Check	-5093.5
08/14/2024			HAWKINS INC	Accounts Payable	Outstanding	Check	-4462.76
08/14/2024			KORTERRA INC	Accounts Payable	Outstanding	Check	-5566
08/14/2024			MAC QUEEN	Accounts Payable	Outstanding	Check	-1773.74
08/14/2024			METERING & TECHNOLOGY SOLUTIONS	Accounts Payable	Outstanding	Check	-6153.2
08/14/2024			METRO-INET	Accounts Payable	Outstanding	Check	-4964
08/14/2024			METROPOLITAN COUNCIL (SAC CHARGES)	Accounts Payable	Outstanding	Check	-22141.35
08/14/2024			NEW BRIGHTON, CITY OF	Accounts Payable	Outstanding	Check	-1163.86
08/14/2024			NORTHERN TOOL & EQUIPMENT	Accounts Payable	Outstanding	Check	-45.56
08/14/2024			NOVA FIRE PROTECTION INC	Accounts Payable	Outstanding	Check	-253
08/14/2024			NYKANEN, ANDREW	Accounts Payable	Outstanding	Check	-7901.6
08/14/2024			PREMIUM WATERS INC	Accounts Payable	Outstanding	Check	-95.89
08/14/2024			Q3 CONTRACTING INC / PSC	Accounts Payable	Outstanding	Check	-10503.78
08/14/2024			REPUBLIC SERVICES #899	Accounts Payable	Outstanding	Check	-36983.31
08/14/2024			REVSPRING INC	Accounts Payable	Outstanding	Check	-1411.76
08/14/2024			STAR TRIBUNE	Accounts Payable	Outstanding	Check	-285.98
08/14/2024			USA BLUEBOOK	Accounts Payable	Outstanding	Check	-228.88
08/14/2024			VESTIS	Accounts Payable	Outstanding	Check	-145.29
08/14/2024			WATER CONSERVATION SERVICE INC	Accounts Payable	Outstanding	Check	-357.51
08/14/2024			XCEL ENERGY	Accounts Payable	Outstanding	Check	-3607.03
08/21/2024			PAUL DREBLOW	Utility Billing	Outstanding	Check	-235.79
08/21/2024			DANIEL ANDRESCIK	Utility Billing	Outstanding	Check	-22.8
08/21/2024			NORMA VIDAL	Utility Billing	Outstanding	Check	-122.44
08/21/2024			OPENDOOR LABS LLC	Utility Billing	Outstanding	Check	-70.2
08/21/2024			MARTIN PETERSON	Utility Billing	Outstanding	Check	-283.23
08/21/2024			STONE TRAIL LLC	Utility Billing	Outstanding	Check	-35.58
08/21/2024			STONE TRAIL LLC	Utility Billing	Outstanding	Check	-27.68
08/21/2024			DONALD MOLINARI	Utility Billing	Outstanding	Check	-37.86
08/21/2024			KIM LY CURRY	Utility Billing	Outstanding	Check	-140.69
08/21/2024			CASH FOR HOUSES INC	Utility Billing	Outstanding	Check	-159.13
08/21/2024			BRYCE SHIMMON	Utility Billing	Outstanding	Check	-255.25
08/21/2024			ROGER C STENE	Utility Billing	Outstanding	Check	-238.13
08/21/2024			K & G INVESTMENTS LLC	Utility Billing	Outstanding	Check	-164.41
08/21/2024			MICHAEL IACONO	Utility Billing	Outstanding	Check	-33.68
08/21/2024			JOHN MARCINIAK	Utility Billing	Outstanding	Check	-9.81
08/21/2024			LYNN & KARIE BERGERON	Utility Billing	Outstanding	Check	-44.03

Issued Date	Cleared Date	Number	Description	Module	Status	Type	Amount
08/21/2024			ESTATE OF KURT W SKRANDIES	Utility Billing	Outstanding	Check	-25.7
08/21/2024			ELOISE ROELKE	Utility Billing	Outstanding	Check	-30.6
08/21/2024			LOWELL ERICKSON	Utility Billing	Outstanding	Check	-263.89
08/21/2024			LAWRENCE BESSER	Utility Billing	Outstanding	Check	-18.04
08/21/2024			JEFFREY ELLMAN	Utility Billing	Outstanding	Check	-42.29
08/21/2024			NICOLE PHILLIPS	Utility Billing	Outstanding	Check	-37.69
08/21/2024			ABLE HOSE & RUBBER	Accounts Payable	Outstanding	Check	-534.73
08/21/2024			ANOKA COUNTY SHERIFF'S OFFICE	Accounts Payable	Outstanding	Check	-250
08/21/2024			APPLE FORD WHITE BEAR LAKE	Accounts Payable	Outstanding	Check	-30.29
08/21/2024			ASPEN MILLS INC	Accounts Payable	Outstanding	Check	-647.57
08/21/2024			BEAUDRY OIL & PROPANE	Accounts Payable	Outstanding	Check	-2636.3
08/21/2024			BEISSWENGER'S HARDWARE	Accounts Payable	Outstanding	Check	-27.05
08/21/2024			BLAINE AREA PET HOSPITAL	Accounts Payable	Outstanding	Check	-482.21
08/21/2024			BOLTON & MENK INC	Accounts Payable	Outstanding	Check	-5284.5
08/21/2024			BOUND TREE MEDICAL LLC	Accounts Payable	Outstanding	Check	-1298.78
08/21/2024			CDW GOVERNMENT INC	Accounts Payable	Outstanding	Check	-13874.4
08/21/2024			CENTERPOINT ENERGY-MINNEGASCO	Accounts Payable	Outstanding	Check	-183.35
08/21/2024			CENTRAL ROOFING COMPANY	Accounts Payable	Outstanding	Check	-7793.76
08/21/2024			CENTURY LINK	Accounts Payable	Outstanding	Check	-1061.95
08/21/2024			COMCAST/XFINITY	Accounts Payable	Outstanding	Check	-315.89
08/21/2024			CORE & MAIN LP	Accounts Payable	Outstanding	Check	-2011.65
08/21/2024			CRYSTEEL TRUCK EQUIP/DISTRIBUTION	Accounts Payable	Outstanding	Check	-4403
08/21/2024			DERO	Accounts Payable	Outstanding	Check	-2776.52
08/21/2024			EBERT COMPANIES	Accounts Payable	Outstanding	Check	-60263.87
08/21/2024			EMERGENCY AUTOMOTIVE TECHNOLOGIES	Accounts Payable	Outstanding	Check	-4811.37
08/21/2024			FLEET PRIDE TRUCK & TRAILER PARTS	Accounts Payable	Outstanding	Check	-519.14
08/21/2024			FLEXIBLE PIPE TOOL CO	Accounts Payable	Outstanding	Check	-678
08/21/2024			FRIENDLY CHEVROLET INC	Accounts Payable	Outstanding	Check	-6588.76
08/21/2024			GENUINE PARTS CO/NAPA	Accounts Payable	Outstanding	Check	-51.69
08/21/2024			HAWKINS INC	Accounts Payable	Outstanding	Check	-80
08/21/2024			HCM ARCHITECTS-HAGEN CHRISTENSEN & MCILWAIN	Accounts Payable	Outstanding	Check	-12170
08/21/2024			HYDRAULIC SPECIALTY CO	Accounts Payable	Outstanding	Check	-392.6
08/21/2024			IKE'S PLUMBING & DRAIN CLEANING	Accounts Payable	Outstanding	Check	-330
08/21/2024			INSTRUMENTAL RESEARCH INC	Accounts Payable	Outstanding	Check	-384
08/21/2024			INTERSTATE ALL BATTERY CENTER	Accounts Payable	Outstanding	Check	-419.85
08/21/2024			INTL CODE COUNCIL INC	Accounts Payable	Outstanding	Check	-330
08/21/2024			KENNERLY, COLLEEN	Accounts Payable	Outstanding	Check	-100
08/21/2024			LANDSCAPE STRUCTURES	Accounts Payable	Outstanding	Check	-136416.76
08/21/2024			LANO EQUIPMENT INC	Accounts Payable	Outstanding	Check	-2.7
08/21/2024			LEAGUE OF MINNESOTA CITIES	Accounts Payable	Outstanding	Check	-30
08/21/2024			LOFFLER COMPANIES-131511	Accounts Payable	Outstanding	Check	-274.73
08/21/2024			LONG RUN LEADERSHIP CONSULTING	Accounts Payable	Outstanding	Check	-3163.24
08/21/2024			MAC QUEEN	Accounts Payable	Outstanding	Check	-266.19

Issued Date	Cleared Date	Number	Description	Module	Status	Type	Amount
08/21/2024			MARTIN MARIETTA	Accounts Payable	Outstanding	Check	-6527.17
08/21/2024			METROPOLITAN COUNCIL	Accounts Payable	Outstanding	Check	-453647.56
08/21/2024			MINN DEPT OF LABOR & INDUSTRY	Accounts Payable	Outstanding	Check	-2495.97
08/21/2024			MINN FIRE SERVICE CERT BOARD	Accounts Payable	Outstanding	Check	-472.5
08/21/2024			MINNESOTA METRO NORTH TOURISM BUREAU	Accounts Payable	Outstanding	Check	-26029.86
08/21/2024			MINNESOTA ROADWAYS	Accounts Payable	Outstanding	Check	-1445
08/21/2024			MORRELL ENTERPRISES	Accounts Payable	Outstanding	Check	-198.63
08/21/2024			NELSON CHEESE & DELI	Accounts Payable	Outstanding	Check	-172.38
08/21/2024			NORTH METRO TELEVISION	Accounts Payable	Outstanding	Check	-4077.86
08/21/2024			NORTHLAND CONCRETE & MASONRY COMPANY	Accounts Payable	Outstanding	Check	-21252.94
08/21/2024			NUSS TRUCK AND EQUIPMENT	Accounts Payable	Outstanding	Check	-155902.36
08/21/2024			ONLINE SOLUTIONS LLC	Accounts Payable	Outstanding	Check	-54000
08/21/2024			PALADIN TECHNOLOGIES (USA) INC	Accounts Payable	Outstanding	Check	-16600
08/21/2024			PIPE SERVICES	Accounts Payable	Outstanding	Check	-1445
08/21/2024			POMP'S TIRE SERVICE INC	Accounts Payable	Outstanding	Check	-1335.05
08/21/2024			RESPEC	Accounts Payable	Outstanding	Check	-12940.93
08/21/2024			ROCK SOLID LANDSCAPE & IRRIGATION	Accounts Payable	Outstanding	Check	-1960
08/21/2024			ROERS FRIDLEY APARTMENTS OWNER LLC	Accounts Payable	Outstanding	Check	-1238
08/21/2024			SCHMIT TOWING INC	Accounts Payable	Outstanding	Check	-750
08/21/2024			ST CROIX RECREATION FUN PLAYGROUNDS	Accounts Payable	Outstanding	Check	-83943.6
08/21/2024			STANDARD INSURANCE COMPANY (LIFE)	Accounts Payable	Outstanding	Check	-1888.11
08/21/2024			STANDARD INSURANCE COMPANY LTD/STD	Accounts Payable	Outstanding	Check	-7421.97
08/21/2024			TAHO SPORTSWEAR	Accounts Payable	Outstanding	Check	-1140.3
08/21/2024			TIMESAVER OFF SITE SECRETARIAL INC	Accounts Payable	Outstanding	Check	-413
08/21/2024			TRI-STATE BOBCAT INC	Accounts Payable	Outstanding	Check	-376.33
08/21/2024			TRUGREEN-CHEMLAWN	Accounts Payable	Outstanding	Check	-357.19
08/21/2024			ULINE	Accounts Payable	Outstanding	Check	-302.38
08/21/2024			USA BLUEBOOK	Accounts Payable	Outstanding	Check	-1562.25
08/21/2024			VERIZON WIRELESS	Accounts Payable	Outstanding	Check	-2415.49
08/21/2024			VESTIS	Accounts Payable	Outstanding	Check	-404.6
08/21/2024			VISU-SEWER INC	Accounts Payable	Outstanding	Check	-1445
08/21/2024			VOIGT BUS SERVICES INC	Accounts Payable	Outstanding	Check	-1867.04
08/21/2024			XCEL ENERGY	Accounts Payable	Outstanding	Check	-38364.06
<b>Check Total: (132)</b>							<b>-1457466.25</b>
<b>Check Reversal</b>							
08/21/2024			ANOKA COUNTY PROP RECORDS/TAXATION Reversal	Accounts Payable	Outstanding	Check Reversal	56
08/21/2024			JONES, RICHARD Reversal	Accounts Payable	Outstanding	Check Reversal	45
<b>Check Reversal Total: (2)</b>							<b>101</b>
<b>EFT</b>							
08/16/2024		<a href="#">953</a>	FRIDLEY POLICE ASSOCIATION-PY only	Accounts Payable	Outstanding	EFT	-200
08/16/2024		<a href="#">954</a>	FRIDLEY-IAFF DUES/INTL ASSOC/FIRE FIGHTERS	Accounts Payable	Outstanding	EFT	-100
08/16/2024		<a href="#">EFT0000222</a>	Payroll EFT	Payroll	Outstanding	EFT	-446196.16

Item 10.

EFT Total: (3)	-446496.16
Report Total: (157)	-2223598.46

# Summary

Bank Account	Count	Amount
<a href="#">0000100479 City of Fridley</a>	157	-2223598.46
<b>Report Total:</b>	<b>157</b>	<b>-2223598.46</b>

Cash Account	Count	Amount
<b>**No Cash Account**</b>	1	0
<a href="#">999 999-101100 Cash in Bank - CITY Pooled Cash</a>	156	-2223598.46
<b>Report Total:</b>	<b>157</b>	<b>-2223598.46</b>

Transaction Type	Count	Amount
Bank Draft	20	-319737.05
Check	132	-1457466.25
Check Reversal	2	101
EFT	3	-446496.16
<b>Report Total:</b>	<b>157</b>	<b>-2223598.46</b>



# AGENDA REPORT

**Meeting Date:** August 26, 2024

**Meeting Type:** City Council

**Submitted By:** Jim Kosluchar, Director of Public Works  
Brandon Brodhag, Assistant City Engineer

## Title

Resolution No. 2024-110, Awarding University Avenue Service Road Traffic Changes Project

## Background

The University Avenue Service Road Traffic Changes Project is identified within the City of Fridley's (City) 2024-2028 Capital Investment Program (CIP) and includes adding a multi-use trail on the west side of Trunk Highway 47 from 61<sup>st</sup> Avenue to 69<sup>th</sup> Avenue, conversion to a one-way on the Service Drive, converting the horseshoe on the East Service Drive to a cul-de-sac and turnaround on 66<sup>th</sup> and 67<sup>th</sup> Avenue, and constructing a trail on the East Service Drive between Fourmies Avenue and Mississippi Street. This project was submitted for eligible Minnesota Department of Transportation (MnDOT) Active Transportation (AT) Infrastructure Program funding for the trail and adjacent improvements in 2022 and received \$500,000 in State funding.

The bid letting for the project was slated for Tuesday, August 20, but due to a delay in receiving approvals from State Aid, staff were required to push back the bid letting date to Monday, August 26 with anticipation of receiving the required approvals by that date. Staff are in coordination with the State Aid staff and are hopeful that approvals will be received this week and that the bid letting will not have to be delayed again. The project is currently posted on QuestCDN, the platform the City uses for public bidding and has seven prime bidders interested in the project. Staff are planning to have the virtual bid on Monday, August 26 and plan on bringing the results of the bid letting to the City Council (Council) on Monday night for award. While this is not the typical situation of walking in the bid results to the Council for the award of the project, staff are pressing to construct this project this year.

If the Council approves the attached resolution, staff will notify the contractor of the award and issue a notice to proceed to the contractor upon receipt of acceptable submittals. Construction for this project is expected to begin in September with substantial completion in November of this year.

## Financial Impact

Funding for this project is derived from several sources including the Active Transportation Grant Program, Municipal State Aid street funding and Utility CIP funds (water, sanitary sewer, and storm sewer).

## Vision Statement

We believe Fridley will be a safe, vibrant, friendly and stable home for families and businesses.

**Recommendation**

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Staff recommend the approval of Resolution No. 2024-110, Awarding University Avenue Service Road Traffic Changes Project.

**Focus on Fridley Strategic Alignment**

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- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Vibrant Neighborhoods & Places   | <input type="checkbox"/> Community Identity & Relationship Building |
| <input type="checkbox"/> Financial Stability & Commercial Prosperity | <input type="checkbox"/> Public Safety & Environmental Stewardship  |
| <input type="checkbox"/> Organizational Excellence                   |   |

**Attachments and Other Resources**

---

- Resolution No. 2024-110

**Vision Statement**

We believe Fridley will be a safe, vibrant, friendly and stable home for families and businesses.



**Resolution No. 2024-110**

**Awarding University Avenue Service Road Traffic Changes Project**

**Whereas,** the University Avenue Service Road Traffic Changes Project (Project) has been incorporated into the City of Fridley's (City) Capital Investment Program; and

**Whereas,** the Project includes modification to 4 segments of the University Avenue Service Drives, along with construction of a multi-use trail, and other ancillary items; and

**Whereas,** the City has developed an Active Transportation Plan that identifies improvements to promote multi-modal travel along University Avenue (Trunk Highway 47) from 61<sup>st</sup> Avenue to 69<sup>th</sup> Avenue; and

**Whereas,** the City of Fridley has successfully obtained state funding to construct a multi-use trail along the west side of University Avenue (Trunk Highway 47) from 61<sup>st</sup> Avenue to 69<sup>th</sup> Avenue; and

**Whereas,** on August 26, 2024, electronic bids for the Project were received and read aloud, a bid tabulation was prepared and a lowest responsive bidder identified.

**Now therefore be it resolved,** that the City Council of the City of Fridley hereby receives bids per the attached bid tabulation and awards the University Avenue Service Road Traffic Changes Project to the lowest responsive bidder.

**Passed and adopted by the City Council of the City of Fridley this 26<sup>th</sup> day of August, 2024.**

\_\_\_\_\_  
Scott J. Lund – Mayor

Attest:

\_\_\_\_\_  
Melissa Moore – City Clerk



# AGENDA REPORT

**Meeting Date:** August 26, 2024

**Meeting Type:** City Council

**Submitted By:** Jim Kosluchar, Director of Public Works  
Brandon Brodhag, Assistant City Engineer

## Title

Resolution No. 2024-111, Authorizing Execution of Grant Agreement with MnDOT for University Avenue Service Road Traffic Changes Project

## Background

The City of Fridley's (City) Capital Investment Program (CIP) includes adding a multi-use trail on the west side of Trunk Highway 47 from 61<sup>st</sup> Avenue to 69<sup>th</sup> Avenue, conversion to a one-way on the University Avenue West Service Drive, converting the horseshoe on the University Avenue East Service Drive to a cul-de-sac and turnaround on 66<sup>th</sup> and 67<sup>th</sup> Avenue, and constructing a trail on the University Avenue East Service Drive between Fourmies Avenue and Mississippi Street. The total project length is approximately 0.88 miles. This project was submitted for eligible Minnesota Department of Transportation (MnDOT) Active Transportation (AT) Infrastructure Program funding for the trail and adjacent improvements in 2022 and received \$500,000 in State funding.

Staff are working through the approval process with State Aid and have the bid letting slated for Monday, August 26 for this project. Staff plan on bringing the awarding of the project to the City Council (Council) at the August 26 Council meeting with the bid tabulation for the lowest responsible bidder. Staff will send MnDOT the bid abstract and project cost participation breakdown for their review to receive the final amounts in an encumbrance letter. Attached is the Active Transportation Grant Agreement template that will be finalized and executed prior to construction beginning.

## Financial Impact

The Active Transportation grant will reimburse \$500,000 of the construction costs for the project. The remaining costs of the project will be funded by Minnesota State Aid, Rice Creek Watershed District grant, HRA funding and local funds.

## Recommendation

Staff recommend the approval of Resolution No. 2024-111, Authorizing Execution of Grant Agreement with MnDOT for University Avenue Service Road Traffic Changes Project.

## Focus on Fridley Strategic Alignment

- |  |   |
|--|---|
| <input type="checkbox"/> Vibrant Neighborhoods & Places              | <input type="checkbox"/> Community Identity & Relationship Building           |
| <input type="checkbox"/> Financial Stability & Commercial Prosperity | <input checked="" type="checkbox"/> Public Safety & Environmental Stewardship |
| <input type="checkbox"/> Organizational Excellence                   |   |

## Vision Statement

We believe Fridley will be a safe, vibrant, friendly and stable home for families and businesses.

### **Attachments and Other Resources**

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- Resolution No. 2024-111
- Active Transportation Program Grant Agreement Template

### **Vision Statement**

We believe Fridley will be a safe, vibrant, friendly and stable home for families and businesses.

**Resolution No. 2024-111**

**Authorizing Execution of Grant Agreement with MnDOT for  
University Avenue Service Road Traffic Changes Project  
Active Transportation Program Grant Agreement  
Grant Terms and Condition, SAP 127-590-001**

**Whereas**, the City of Fridley (City) has applied to the Commissioner of Transportation for a grant from the Local Road Improvement Fund; and

**Whereas**, the Commissioner of Transportation has given notice that funding for this project is available; and

**Whereas**, the amount of the grant has been determined to be \$500,000 by reason of the lowest responsible bid.

**Now, therefore be it resolved**, that the City Council of the City of Fridley does hereby agree to the terms and conditions of the grant consistent with Minnesota Statutes, section 174.52, and will pay any additional amount by which the cost exceeds the estimate and will return to the Active Transportation Fund any amount appropriated for the project but not required. The proper City officers are authorized to execute a grant agreement and any amendments thereto with the Commissioner of Transportation concerning the above-referenced grant.

**Passed and adopted by the City Council of the City of Fridley this 26<sup>th</sup> day of August, 2024.**

\_\_\_\_\_  
Scott J. Lund – Mayor

Attest:

\_\_\_\_\_  
Melissa Moore – City Clerk

**STATE OF MINNESOTA  
ACTIVE TRANSPORTATION PROGRAM  
GRANT AGREEMENT**

This agreement is between the State of Minnesota, acting through its Commissioner of Transportation ("State"), and ("Grantee"):

Public Entity (Grantee) name, address and contact person:

City of Fridley  
7071 University Avenue NE  
Fridley, MN 55432

Contact: Brandon Brodhag

**RECITALS**

1. Minnesota Statute § 174.38 authorizes the State to enter into this agreement.
2. General Funds were appropriated for the Active Transportation Program in Minnesota Laws 2023, Chapter 68- H.F. 2887.
3. Grantee has been awarded Active Transportation (AT) Program funds under Minn. Stat. § 174.38.
4. Grantee represents that it is duly qualified and agrees to perform all services described in this agreement to the satisfaction of the State. Pursuant to [Minn.Stat.§16B.98](#), Subd.1, Grantee agrees to minimize administrative costs as a condition of this agreement.

**AGREEMENT TERMS**

**1 Term of Agreement, Survival of Terms, and Incorporation of Exhibits**

- 1.1 **Effective Date.** This agreement will be effective on the date the State obtains all required signatures under [Minn. Stat.§16B.98](#), Subd. 5. As required by [Minn.Stat.§16B.98](#) Subd. 7, no payments will be made to Grantee until this agreement is fully executed. Grantee must not begin work under this agreement until this agreement is fully executed and Grantee has been notified by the State's Authorized Representative to begin the work.
- 1.2 **Expiration Date.** This agreement will expire on **August 15, 2028**, or when all obligations have been satisfactorily fulfilled, whichever occurs first.
- 1.3 **Survival of Terms.** All clauses which impose obligations continuing in their nature and which must survive in order to give effect to their meaning will survive the expiration or termination of this agreement, including, without limitation, the following clauses: 8. Liability; 9. State Audits; 10. Government Data Practices and Intellectual Property; 11. Workers Compensation; 12. Governing Law, Jurisdiction, and Venue; and 14. Data Disclosure.
- 1.4 **Exhibits.** Exhibit A: Sources and Uses of Funds Schedule; Exhibit B: Grant Application; Exhibit C: Grantee Resolution Approving Grant Agreement are attached and incorporated into this agreement.

**2 Grantee's Duties**

- 2.1 Grantee will conduct activities in accordance with its grant application, or in the case of legislatively selected projects, in accordance with the enabling session law, which is attached to this Agreement as Exhibit B.
- 2.2 Grantee will comply with all required grants management policies and procedures set forth through [Minn.Stat.§16B.97](#), Subd. 4 (a) (1).
- 2.3 **Asset Monitoring.** If Grantee uses funds obtained by this agreement to acquire a capital asset, the Grantee is required to use that asset for a public purpose for the normal useful life of the asset. Grantee may not sell or change the purpose of use for the capital asset(s) obtained with grant funds under this agreement without the prior written consent of the State and an agreement executed and approved by the same parties who executed and approved this agreement, or their successors in office.

**3 Time**

- 3.1 Grantee must comply with all the time requirements described in this agreement. In the performance of this grant agreement, time is of the essence.

## 4 Consideration and Payment

4.1 **Consideration.** The State will pay for all services performed by Grantee under this agreement as follows:

- 4.1.1 **Compensation.** Grantee will be reimbursed for actual, incurred costs that are eligible under Minn. Stat. § 174.38. Grantee shall use this grant solely to reimburse itself for expenditures it has already made to pay for the costs of one or more of the activities listed under section 2.1.
- 4.1.2 **Sources and Uses of Funds.** Grantee represents to State that the Sources and Uses of Funds Schedule attached as Exhibit A accurately shows the total cost of the project and all of the funds that are available for the completion of the project. Grantee agrees that it will pay for any costs that are ineligible for reimbursement and for any amount by which the costs exceed State's total obligation in section 4.1.3. Grantee will return to State any amount appropriated but not required.
- 4.1.3 **Total Obligation.** The total obligation of the State for all compensation and reimbursements to Grantee under this agreement will not exceed **\$500,000.00**.

## 4.2 Payment

- 4.2.1 **Invoices.** Grantee will submit state aid pay requests for reimbursements requested under this grant agreement. The State will promptly pay Grantee after Grantee presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services.
  - 4.2.2 **All Invoices Subject to Audit.** All invoices are subject to audit, at State's discretion.
  - 4.2.3 **State's Payment Requirements.** State will promptly pay all valid obligations under this agreement as required by Minnesota Statutes §16A.124. State will make undisputed payments no later than 30 days after receiving Grantee's invoices and progress reports for services performed. If an invoice is incorrect, defective or otherwise improper, State will notify Grantee within ten days of discovering the error. After State receives the corrected invoice, State will pay Grantee within 30 days of receipt of such invoice.
  - 4.2.4 **Grant Monitoring Visit and Financial Reconciliation.** During the period of performance, the State will make at least annual monitoring visits and conduct annual financial reconciliations of Grantee's expenditures.
    - 4.2.4.1 The State's Authorized Representative will notify Grantee's Authorized Representative where and when any monitoring visit and financial reconciliation will take place, which State employees and/or contractors will participate, and which Grantee staff members should be present. Grantee will be provided with at least seven calendar days of notice prior to any monitoring visit or financial reconciliation.
    - 4.2.4.2 Following a monitoring visit or financial reconciliation, Grantee will take timely and appropriate action on all deficiencies identified by State.
    - 4.2.4.3 At least one monitoring visit and one financial reconciliation must be completed prior to final payment being made to Grantee.
  - 4.2.5 **Unexpended Funds.** The Grantee must promptly return to the State at grant closeout any unexpended funds that have not been accounted for in a financial report submitted to the State.
  - 4.2.6 **Closeout.** The State will determine, at its sole discretion, whether a closeout audit is required prior to final payment approval. If a closeout audit is required, final payment will be held until the audit has been completed. Monitoring of any capital assets acquired with grant funds will continue following grant closeout.
- 4.3 **Contracting and Bidding Requirements.** If Grantee is a municipality as defined by Minn. Stat. § 471.345, subdivision 1, then Grantee shall comply with the requirements of Minn. Stat. § 471.345 for all procurement under this Agreement.

## 5 Conditions of Payment

All services provided by Grantee under this agreement must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Grantee will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

## 6 Authorized Representatives

6.1 The State's Authorized Representative is:

Marc Briese,  
Programs Engineer,  
MnDOT State Aid Office  
395 John Ireland Boulevard, MS 500  
St. Paul, MN 55155  
Office: 651-366-3802  
marc.briese@state.mn.us

or his/her successor. State's Authorized Representative has the responsibility to monitor Grantee's performance and the authority to accept the services provided under this agreement. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

## 6.2 Grantee's Authorized Representative is:

Brandon Brodhag,  
Assistant City Engineer,  
7071 University Avenue NE,  
Fridley, MN 55432, 763-572-3553,  
Brandon.Brodhag@fridleymn.gov.

If Grantee's Authorized Representative changes at any time during this agreement, Grantee will immediately notify the State.

## 7 Assignment Amendments, Waiver, and Grant Agreement Complete

- 7.1 **Assignment.** The Grantee may neither assign nor transfer any rights or obligations under this agreement without the prior written consent of the State and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this agreement, or their successors in office.
- 7.2 **Amendments.** Any amendments to this agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original agreement, or their successors in office.
- 7.3 **Waiver.** If the State fails to enforce any provision of this agreement, that failure does not waive the provision or the State's right to subsequently enforce it.
- 7.4 **Grant Agreement Complete.** This grant agreement contains all negotiations and agreements between the State and Grantee. No other understanding regarding this agreement, whether written or oral, may be used to bind either party.
- 7.5 **Electronic Records and Signatures.** The parties agree to contract by electronic means. This includes using electronic signatures and converting original documents to electronic records.
- 7.6 **Certification.** By signing this Agreement, the Grantee certifies that it is not suspended or debarred from receiving federal or state awards.

## 8 Liability

Grantee and State agree that each will be responsible for its own acts and the results thereof to the extent authorized by law, and neither shall be responsible for the acts of the other party and the results thereof. The liability of State is governed by the provisions of Minn. Stat. Sec. 3.736. If Grantee is a "municipality" as that term is used in Minn. Stat. Chapter 466, then the liability of Grantee is governed by the provisions of Chapter 466. Grantee's liability hereunder shall not be limited to the extent of insurance carried by or provided by Grantee, or subject to any exclusion from coverage in any insurance policy.

## 9 State Audits

Under Minn. Stat. § 16B.98, Subd.8, the Grantee's books, records, documents, and accounting procedures and practices of Grantee, or other party relevant to this grant agreement or transaction, are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this agreement, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later. Grantee will take timely and appropriate action on all deficiencies identified by an audit.

## 10 Government Data Practices and Intellectual Property Rights

10.1 **Government Data Practices.** Grantee and State must comply with the Minnesota Government Data Practices Act, [Minn. Stat. Ch. 13](#), as it applies to all data provided by the State under this grant agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Grantee under this agreement. The civil remedies of [Minn. Stat. §13.08](#) apply to the release of the data referred to in this clause by either Grantee or the State.

## 11 Workers Compensation

The Grantee certifies that it is in compliance with [Minn. Stat. §176.181](#), Subd. 2, pertaining to workers' compensation insurance coverage. The Grantee's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the State's obligation or responsibility.

## 12 Governing Law, Jurisdiction, and Venue

Minnesota law, without regard to its choice-of-law provisions, governs this agreement. Venue for all legal proceedings out of this agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

## 13 Termination; Suspension

13.1 **Termination by the State.** The State may terminate this agreement with or without cause, upon 30 days written notice to the Grantee. Upon termination, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

13.2 **Termination for Cause.** The State may immediately terminate this grant agreement if the State finds that there has been a failure to comply with the provisions of this agreement, that reasonable progress has not been made, that fraudulent or wasteful activity has occurred, that Grantee has been convicted of a criminal offense relating to a state grant agreement, or that the purposes for which the funds were granted have not been or will not be fulfilled. The State may take action to protect the interests of the State of Minnesota, including the refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed.

13.3 **Termination for Insufficient Funding.** The State may immediately terminate this agreement if:

13.3.1 It does not obtain funding from the Minnesota Legislature; or

13.3.2 If funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Grantee. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State will provide the Grantee notice of the lack of funding within a reasonable time of the State's receiving that notice.

13.4 **Suspension.** The State may immediately suspend this agreement in the event of a total or partial government shutdown due to the failure to have an approved budget by the legal deadline. Work performed by the Grantee during a period of suspension will be deemed unauthorized and undertaken at risk of non-payment.

## 14 Data Disclosure

Under [Minn. Stat. § 270C.65](#), Subd. 3, and other applicable law, Grantee consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Grantee to file state tax returns and pay delinquent state tax liabilities, if any.

15 **Fund Use Prohibited.** The Grantee will not utilize any funds received pursuant to this Agreement to compensate, either directly or indirectly, any contractor, corporation, partnership, or business, however organized, which is disqualified or debarred from entering into or receiving a State contract. This restriction applies regardless of whether the disqualified or debarred party acts in the capacity of a general contractor, a subcontractor, or as an equipment



material supplier. This restriction does not prevent the Grantee from utilizing these funds to pay any party who might be disqualified or debarred after the Grantee's contract award on this Project.

**16 Discrimination Prohibited by Minnesota Statutes §181.59.** Grantee will comply with the provisions of Minnesota Statutes §181.59 which requires that every contract for or on behalf of the State of Minnesota, or any county, city, town, township, school, school district or any other district in the state, for materials, supplies or construction will contain provisions by which Contractor agrees: 1) That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no Contractor, material supplier or vendor, will, by reason of race, creed or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; 2) That no Contractor, material supplier, or vendor, will, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause 1 of this section, or on being hired, prevent or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed or color; 3) That a violation of this section is a misdemeanor; and 4) That this contract may be canceled or terminated by the state of Minnesota, or any county, city, town, township, school, school district or any other person authorized to grant contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this Agreement.

**17 Limitation.** Under this Agreement, the State is only responsible for receiving and disbursing funds. Nothing in this Agreement will be construed to make the State a principal, co-principal, partner, or joint venturer with respect to the Project(s) covered herein. The State may provide technical advice and assistance as requested by the Grantee, however, the Grantee will remain responsible for providing direction to its contractors and consultants and for administering its contracts with such entities. The Grantee's consultants and contractors are not intended to be third party beneficiaries of this Agreement.

## **18 Additional Provisions**

**18.1 Prevailing Wages.** Grantee agrees to comply with all of the applicable provisions contained in Minnesota Statutes Chapter 177, and specifically those provisions contained in Minn. Stat. §. 177.41 through 177.435 as they may be amended or replaced from time to time with respect to the project. By agreeing to this provision, Grantee is not acknowledging or agreeing that the cited provisions apply to the project.

**18.2 E-Verification.** Grantee agrees and acknowledges that it is aware of Minn.Stat. § 16C.075 regarding e-verification of employment of all newly hired employees to confirm that such employees are legally entitled to work in the United States, and that it will, if and when applicable, fully comply with such order.

**18.3 Telecommunications Certification.** If federal funds are included in Exhibit A, by signing this agreement Grantee certifies that, consistent with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232 (Aug. 13, 2018), Grantee does not and will not use any equipment, system, or service that uses "covered telecommunications equipment or services" (as that term is defined in Section 889 of the Act) as a substantial or essential component of any system or as critical technology as part of any system. Grantee will include this certification as a flow down clause in any contract related to this agreement.

**18.4 Title VI/Non-discrimination Assurances.** Grantee agrees to comply with all applicable US DOT Standard Title VI/Non-Discrimination Assurances contained in DOT Order No. 1050.2A, and in particular Appendices A and E, which can be found at: [https://edocs-public.dot.state.mn.us/edocs\\_public/DMResultSet/download?docId=11149035](https://edocs-public.dot.state.mn.us/edocs_public/DMResultSet/download?docId=11149035). If federal funds are included in Exhibit A, Grantee will ensure the appendices and solicitation language within the assurances are inserted into contracts as required. State may conduct a review of the Grantee's compliance with this provision. The Grantee must cooperate with State throughout the review process by supplying all requested information and documentation to State, making Grantee staff and officials available for meetings as requested, and correcting any areas of non-compliance as determined by State.

**18.5 Use, Maintenance, Repair and Alterations.** The Grantee shall not, without the written consent of the State and

the Commissioner, (i) permit or allow the use of any of the Property improved with these grant funds (the Real Property) for any purpose other than in conjunction with or for nonmotorized transportation, (ii) substantially alter any of the Real Property except such alterations as may be required by laws, ordinances or regulations, or such other alterations as may improve the Real Property by increasing its value or which improve its ability to be used for the purposes set forth in section (i), (iii) take any action which would unduly impair or depreciate the value of the Real Property, (iv) abandon the Real Property, or (v) commit or permit any act to be done in or on the Real Property in violation of any law, ordinance or regulation.

If the Grantee fails to maintain the Real Property in accordance with this Section, the State may perform whatever acts and expend whatever funds necessary to so maintain the Real Property, and the Grantee irrevocably authorizes the State to enter upon the Real Property to perform such acts as may be necessary to so maintain the Real Property. Any actions taken or funds expended by the State shall be at its sole discretion, and nothing contained herein shall require the State to take any action or incur any expense and the State shall not be responsible, or liable to the Grantee or any other entity, for any such acts that are performed in good faith and not in a negligent manner. Any funds expended by the State pursuant to this Section shall be due and payable on demand by the State and will bear interest from the date of payment by the State at a rate equal to the lesser of the maximum interest rate allowed by law or 18% per year based upon a 365-day year.

**[The remainder of this page has intentionally been left blank.]**

**GRANTEE**

*The Grantee certifies that the appropriate person(s) have executed the grant agreement on behalf of the Grantee as required by applicable articles, bylaws, resolutions, or ordinances.*

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**DEPARTMENT OF TRANSPORTATION**

*Approval and Certifying Encumbrance*

By: \_\_\_\_\_

(with delegated authority)

Title: State Aid Programs Manager

Date: \_\_\_\_\_

**DEPARTMENT OF TRANSPORTATION**

**CONTRACT MANAGEMENT**

By: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT A

## SOURCES AND USES OF FUNDS SCHEDULE

## SOURCES OF FUNDS

Entity Supplying Funds	Amount
<b>State Funds:</b>	
AT General Fund Grant	\$500,000.00
SAAS Acct #	\$434,560.00
Other:	
	\$
Subtotal	\$
<b>Public Entity Funds:</b>	
Matching Funds	
Local Match	\$407,442.50
Other:	
	\$
	\$
Subtotal	\$407,442.50
<b>TOTAL FUNDS</b>	<b>\$1,342,002.50</b>

## USES OF FUNDS

Expenses	Amount
<b>Items Paid for with AT General Fund Grant Funds:</b>	
Construct trail, ADA curb ramps, concrete curb & gutter, retaining wall	\$500,000.00
	\$
	\$
Subtotal	\$500,000.00
<b>Items paid for with Non-AT General Fund Grant Funds:</b>	
Construct trail, ADA curb ramps, concrete curb & gutter	\$434,560.00
Reconstruct University Avenue East Service Drives, trail, concrete walk, plantings, turf establishment	\$407,442.50
	\$
Subtotal	\$842,002.50
<b>TOTAL PROJECT COSTS</b>	<b>\$1,342,002.50</b>

MnDOT Agreement No.

SAP No. 127-590-001

**EXHIBIT B**

GRANT APPLICATION

Attach the grant application for the project

MnDOT Agreement No.

SAP No. 127-590-001

**EXHIBIT C**

**GRANTEE RESOLUTION APPROVING GRANT AGREEMENT**

**Resolution No. 2024-XX**

**Authorizing Execution of Grant Agreement with MnDOT  
for University Avenue Service Road Traffic Changes Project  
Active Transportation Program Grant Agreement  
Grant Terms and Condition  
SAP 127-590-001**

**Whereas**, the City of Fridley has applied to the Commissioner of Transportation for a grant from the Local Road Improvement Fund; and

**Whereas**, the Commissioner of Transportation has given notice that funding for this project is available; and

**Whereas**, the amount of the grant has been determined to be \$500,000.00 by reason of the lowest responsible bid.

**Now, therefore be it resolved**, that the City Council of the City of Fridley does hereby agree to the terms and conditions of the grant consistent with Minnesota Statutes, section 174.52, and will pay any additional amount by which the cost exceeds the estimate, and will return to the Active Transportation Fund any amount appropriated for the project but not required. The proper city officers are authorized to execute a grant agreement and any amendments thereto with the Commissioner of Transportation concerning the above-referenced grant.

**Passed and adopted by the City Council of the City of Fridley this 26<sup>th</sup> day of August, 2024.**

\_\_\_\_\_

Scott J. Lund – Mayor

Attest:

\_\_\_\_\_

Melissa Moore – City Clerk