



CITY COUNCIL MEETING
Tuesday, January 2, 2024 at 7:00 PM
Chambers in the Charles S. Crandall Center
540 West Hills Circle
Roll Call: Council Members Raney, Svenby, Voss,
Dotson, Burbank, Boeke & Schultz

PLEASE NOTE: At 5:30 p.m. the Council will meet in a study session in the Chambers. Items of Discussion will include the Council Member's representation on various City Boards/Commissions during 2024 and wastewater violations. If time permits, there will also be general updates on various boards and commissions.

1. INTRODUCTORY ACTIONS: Call to Order; Roll Call and Pledge of Allegiance

- 1.1. Council Agenda
- 1.2. Mayor Kuntz
- 1.3. 2024 Organizational Meeting
 - 1.3.1. Resolution 1-24: Designate 2024 Depositories and Authorize Signatories
 - 1.3.2. Resolution 2-24: Designate 2024 Responsible Authority for Data Practices
 - 1.3.3. Designate Newspaper for 2024 Official City Business
 - 1.3.4. Appoint 2024 Weed Inspector
 - 1.3.5. Change three 2024 Council Meeting Dates
 - 1.3.6. Council 2024 Representation on Boards/Commissions/Committees

2. CONSENT AGENDA ITEMS

- 2.1. Minutes – Council Meeting – December 19, 2023
- 2.2. Board/Commission Minutes
 - 2.2.1. OPU Commission Meeting - November 28, 2023
- 2.3. Department Reports:
 - 2.3.1. Fire - Monthly Dashboard and Activity Report - November 2023
- 2.4. Miscellaneous
 - 2.4.1. 2024 Seasonal/Temporary Wage Rates
 - 2.4.2. Resolution 3-24 Authorize Contract for Purchases - Fame Awards

3. ACTION ITEMS

- 3.1. Finance Report
- 3.2. Resolutions:
 - 3.2.1. Res 4-24 Premise Permit for Lawful Gambling Activity - Owatonna Wrestling Association

3.3. Miscellaneous

3.3.1. Purchase 2024 Tandem Plow and Chassis

3.3.2. Brooktree Clubhouse Kitchen Hood Replacement Bid - Owatonna Heating and Cooling, Inc.

3.3.3. 2024 Energy Management Agreement - Owatonna Public Utilities

3.3.4. Stormwater Resiliency Plan Professional Services Agreement - WHKS

4. **STAFF REPORTS**

5. **PUBLIC COMMENTS:** Please limit comments to 2 minutes. Please approach the microphone, sign-in and state your name and address for the record after being acknowledged by the Council President. Speakers will be limited to two minutes to deliver their comments. Those speaking are asked to conduct themselves in a respectful manner as they deliver their comments. Audience members are asked to refrain from reacting to comments. The City Council will not respond directly to comments in this venue or take immediate action in response to them.

6. **COUNCIL COMMENT AND GENERAL INFORMATION**

7. **ADJOURN**



CITY OF
OWATONNA

Mayor Kuntz



CITY OF
OWATONNA

2024 Organizational Meeting



DATE: January 2, 2024
TO: Mayor and City Council
FROM: Rhonda Moen, Finance Director
SUBJECT: Resolution 1-24: Designate 2024 Depositories and Authorize Signatories

Purpose:

To list authorized signatories and depositories for 2024.

Background:

The Office of the State Auditor recommends that the City annually designate depositories for the upcoming year and formally appoint individuals authorized to disperse funds. This resolution authorizes the mayor, city administrator, finance director, senior accountant and accounting technician to disperse funds through check, electronic funds transfer, wire, or ACH.

Budget Impact:

There is no budget impact.

Staff Recommendation:

Staff recommends approval.

Attachments:

1. Resolution 1-24 Name 2024 Depositories

RESOLUTION NO. 1-24

A RESOLUTION DESIGNATING DEPOSITORIES FOR THE CITY OF OWATONNA
AND PERSONS AUTHORIZED TO SIGN ORDERS THEREON.

BE IT RESOLVED by the City Council of the City of Owatonna, Minnesota, that

- US Bank
- Wells Fargo Bank
- Profinium, Inc.
- Bremer Bank
- United Prairie Bank
- Community Bank Owatonna
- West Bank
- Stifel
- RBC Wealth Management
- Wells Fargo Advisors
- Municipal Money Market Fund (LMC 4M Fund), hereinafter called "Financial Institutions and/or Brokers,"

be, and hereby are, designated as depositories for the deposits and safekeeping of said City for such amounts as may be deposited herein.

BE IT FURTHER RESOLVED that orders or checks of the City of Owatonna drawn on said Financial Institutions in whatever form shall be signed by two of the following officers:

Thomas A. Kuntz, Mayor
Kris M. Busse, City Administrator
Rhonda L. Moen, Finance Director

BE IT FURTHER RESOLVED that said Financial Institutions be, and hereby are, authorized and directed to honor and pay any orders or checks so drawn and signed as above set forth, whether or not such checks be payable to the order of one of the foregoing persons, either in his individual or in his official capacity, or deposited to his individual credit, whether or not such signatures are followed by the title or office of the person signing.

BE IT FURTHER RESOLVED that said Financial Institutions and/or Brokers be, and hereby are, authorized and directed to honor transfer of funds through wire, ACH, and electronic funds transfer from one of the above officers or from Sandra Bera, Accounting Specialist or JoAnn Matejcek, Accounting Analyst in the Finance Department.

BE IT FURTHER RESOLVED that the Finance Director is authorized to approve any claims needing to be paid in between regularly scheduled council meetings providing these are all submitted for council approval at their next regularly scheduled meeting.

Passed and adopted this ____ day of January, 2024, with the following vote:

Aye ____; No ____; Absent ____.

Approved and signed this ____ day of January, 2024.

Thomas A. Kuntz, Mayor

ATTEST:

Kris M. Busse, City Administrator/City Clerk



DATE: January 2, 2024
TO: Mayor and City Council
FROM: Jeanette Clawson, Administrative Coordinator
SUBJECT: Resolution 2-24: Designate 2024 Responsible Authority for Data Practices

Purpose:

Council to approve Resolution 2-24 to designate the City's 2024 Responsible Authority to administer the requirements for government data with the City.

Background:

Per the Minnesota Government Data Practices Act, the City must annually designate an individual as a responsible authority; typically the chief administrative official serves in this capacity.

Budget Impact:

None

Staff Recommendation:

Staff recommends approval of Resolution 2-24 to reappointment Kris M. Busse, City Administrator, as the 2024 Responsible Authority for Data Practices with the City.

Attachments:

1. Resolution 2-24 Designate 2024 RA for Data Practices

RESOLUTION NO. 2-24

A RESOLUTION APPOINTING RESPONSIBLE AUTHORITY
FOR DATA PRACTICES COMPLIANCE

WHEREAS, the Minnesota Statutes, Section 13.02, Subdivision 16, requires that the City of Owatonna appoint an employee as the Responsible Authority to administer the requirements for government data with the City; and

WHEREAS, the Minnesota Rules Chapter 1205 relates to and applies to the provisions of Minnesota Statutes, Chapter 13; and

WHEREAS, the Owatonna City Council shares concern expressed by the Legislature on the responsible use of all City data and wishes to satisfy this concern by appointing an administratively qualified Responsible Authority as required under the statute for the year 2024.

BE IT RESOLVED, the City Council of Owatonna appoints Kris M. Busse, an employee of the City, as the Responsible Authority for the purposes of meeting all requirements of Minnesota Statutes, Chapter 13 and with Minnesota Rules, Chapter 1205.

Passed and adopted this _____ day of _____, 2024, with the following vote:

Aye____; No____; Absent_____.

Approved and signed this _____ day of _____, 2024.

Thomas A. Kuntz, Mayor

ATTEST:

Kris M. Busse, City Administrator/City Clerk



DATE: January 2, 2024
TO: Mayor and City Council
FROM: Kris Busse, City Administrator
SUBJECT: Designate Newspaper for 2024 Official City Business

Purpose:

Request the Council to appoint a local newspaper for official City Business during 2024.

Background:

Section 4.7 of our City Charter requires that each year during the first regular council meeting, "Council designates a newspaper of general circulation in the City as the official paper for the publication of all matters required by law". All public notices are to be published in a qualified newspaper that is likely to give notice in the affected area or to the persons to whom the notice is directed. The Owatonna Peoples Press provides local news coverage within the city.

Budget Impact:

None.

Staff Recommendation:

Staff recommends the appointment of the Owatonna Peoples Press as the City's 2024 Official Newspaper.

Attachments:

None



DATE: January 2, 2024
TO: Mayor and City Council
FROM: Kris Busse, City Administrator
SUBJECT: Appoint 2024 Weed Inspector

Purpose:

To assign the duties as the City's Weed Inspector for 2024.

Background:

The duties of the Weed Inspector have been fulfilled by our Fire Chief, Ed Hoffman. This has worked well and offers a good point of contact for residents with concerns regarding weeds and nuisance vegetation.

Budget Impact:

None.

Staff Recommendation:

Staff recommends the reappointment of Fire Chief Ed Hoffman as the 2024 Weed Inspector for the City.

Attachments:

None



DATE: January 2, 2024
TO: Mayor and City Council
FROM: Kris Busse, City Administrator
SUBJECT: Change three 2024 Council Meeting Dates

Purpose:

Request the Council change the dates of three meetings in 2024.

Background:

The City Council meets on the first and third Tuesday of each month and three changes are required during 2024:

Two dates are 2024 Election Dates and the Minnesota State Statute prohibits public meetings between 6:00-8:00 p.m. on Election Days. The first Tuesday in March (March 5) is the Presidential Nominating Primary in the State of Minnesota. The first Tuesday in November (November 5) is the 2024 General Election.

The first Tuesday in August (August 6) is National Night Out, and many staff members, the Mayor, and Council Members will participate.

I request these three City Council meeting dates be moved one day for the meetings on the first Wednesday of these months during 2024:

Tuesday, March 5 Meeting changed to Wednesday, March 6

Tuesday, August 6 Meeting changed to Wednesday, August 7

Tuesday, November 5 Meeting changed to Wednesday, November 6

Budget Impact:

None.

Staff Recommendation:

Staff recommends approval of changing these three City Council Meeting dates during 2024.

Attachments:

None



DATE: January 2, 2024
TO: Mayor and City Council
FROM: Kris Busse, City Administrator
SUBJECT: Council 2024 Representation on Boards/Commissions/Committees

Purpose:

Each year, Council Members are assigned to various boards, commissions, and committees during the City's Annual Organizational Meeting.

Background:

Council Member's 2023 Board/Commission Assignments were:

Economic Development Authority (EDA) - Kevin P. Raney, Dan Boeke and
Doug Voss

Owatonna Area Business Development Center (The Center) - Brent Svenby and
Dan Boeke

Law Enforcement Center (LEC) Committee - Dave Burbank and Greg Schultz

Highway 14 Partnership - Kevin P. Raney

Joint Powers Board (911 Board) - Dave Burbank and Nate Dotson

Joint County/City Transportation Committee – Greg Schultz and Kevin P. Raney

Housing & Redevelopment Authority (HRA) – Nate Dotson

Joint City/Owatonna Public Utilities (OPU) Committee - Doug Voss and
Nate Dotson

Facility Steering Committee - Dan Boeke, Doug Voss and Greg Scultz

Budget Impact:

None.

Staff Recommendation:

Council will discuss these various boards, commissions, and committees during the Study Session before this Council Meeting. During the City Council Meeting, there will be a motion to approve member's 2024 assignments as discussed during the Study Session.

Attachments:

None

**Owatonna City Council Minutes – Draft Copy
December 19, 2023**

On Tuesday, December 19, 2023 at 7:00 p.m., Council President Schultz called the regular session of the Owatonna City Council to order in the Chambers of the Charles S. Crandall Center. Present were Council Members Raney, Voss, Burbank, Boeke, Dotson, Svenby and Schultz; Mayor Kuntz; Community Development Director Klecker; Public Works Director Murphy; Parks, Recreation & Facilities Director Tuma; Finance Director Moen; Human Resources Director Thamert; Communications Manager Sheely; IT System Administrator Sticken; Sergeant Zackary Schumaker; City Attorney Walbran; City Administrator Busse and Administrative Coordinator Clawson.

Following the Pledge of Allegiance, Council President Schultz welcomed everyone. Council Member Voss made a motion to approve the agenda as presented, Council Member Burbank seconded the motion; all members voted aye in approval.

Consent Agenda Items

Council President Schultz explained council members review the Consent Agenda items prior to the meeting for approval in one motion. Consent Agenda items for this meeting include:

Minutes – Council Meeting – December 5, 2023

Minutes - TNT Meeting - December 6, 2023

Library Board Meeting - November 16, 2023

Human Rights Commission Meeting - December 12, 2023

Police Crime Clock - November 2023

Exempt Permit - Raffle - St. Mary's School - April 20, 2024

Amend Exempt Permit - Ducks Unlimited - March 30, 2024

Change date of permit approved November 19, 2023 for April 6 to March 30, 2024.

Temporary Liquor Permit - Andrew Lawrence Chili Cook-Off - January 27, 2024

Annual Renewal - Tobacco Licenses:

<u>NAME OF BUSINESS</u>	<u>LOCAL ADDRESS</u>
Casey's General Store #2194	475 18th St
Casey's General Store #2418	590 State Avenue
Cah Wise #3014	495 W North Street
Cash Wise Liquor #7037	495 W North Street
Dollar General 21536	205 N Oak Avenue
Fareway Stores Inc #139	831 S Oak Avenue
Fareway Spirits and More #139	831 S Oak Avenue
Fire House Liquor	120 26th St NW
Fleet Farm Fuel	2121 W Bridge St
Holiday Stationstore #2746373	695 W Bridge Street
Holiday Stationstore #2746519	330 W North St

Hy-Vee	1620 S Cedar Avenue
Hy-Vee Gas #5511	1720 S Cedar Avenue
Hy-Vee Wine & Spirits	1620 S Cedar Avenue
J&B Liquor Inc.	202 S Oak Street
Kwik Trip #237	135 Landmark Drive
Kwik Trip #403	2270 46th Street NW
Kwik Trip #435	1075 West Frontage Rd
Kwik Trip #641	1220 S Oak Avenue
Kwik Trip #806	320 Mineral Springs
Kwik Trip #1088	410 Hoffman Drive
Kwik Trip Spirits #1088	410 Hoffman Drive
Lion's Den Adult Boutique	1178 W Frontage Rd
Medford Tobacco Plus, Inc	2350 43rd St NW #101
OT Smoke Shop Plus	1100 Frontage Rd, Ste 110
Owatonna Fuel & Food	401 N Cedar Avenue
Owatonna Smoke Shop	641 W Bridge St
Reggie's Brewhouse	218 N Cedar Avenue
Smoke N Vape Inc	1407 S Oak Avenue
Walgreens #9095	125 18th Street SE
Walmart #982	1130 West Frontage Road

Annual Renewal - Taxi Licenses:

First Choice Shuttle
Straight River Taxi

Annual Renewal - Garbage & Refuse Haulers Licenses:

Archambault Brothers Disposal
BinPro Dumpster Rental
GreenRU LLC
Junk Truck MN
Kruckeberg Fleet Services
LJP Waste Solutions
Skjeveland Enterprises
Stewart Sanitation
Thompson Sanitation Inc
Waste Management of Southern MN
West Central Sanitation Inc
Veit Disposal Systems

Event Permit - Corky's Early-bird Softball Tournament - May 3-5, 2024

Donation - Corky's Early Bird Softball Tournament 2023 - \$18,000 to Youth
Scholarship Fund

2023-2024 Sidewalk Snow Removal Agreement - From the Ground Up LLC

2024-2026 Compost Site Agreement - From the Ground Up LLC

Renew Annual Cleaning Service Agreements

Vanguard - Cleaning services at West Hills Commons

Coverall – Cleaning services at the Owatonna Public Library

Stormwater Facility Maintenance Easement - 400 Alexander Drive SW - FoamCraft Packaging

Liability Coverage Waiver - League of Minnesota Cities Insurance Trust (LMCIT) – Do not waive the monetary limits on municipal tort liability established by Minnesota Statutes 466.04

Adopt Crisis Communication Plan – this plan will provide guidance and tools for all departments to use to develop communications in crisis situations. It will serve as one component of future emergency preparedness training provided through the Human Resources, Fire and Police Departments. It will be saved in a central location with other emergency preparedness documents for relevant staff to access.

Council Member Voss made a motion to approve these Consent Agenda items, Council Member Burbank seconded the motion, all members voted aye for approval.

Finance Report

Council Member Raney recapped payments made for amounts greater than \$20,000 during this period. The total amount of bills presented was \$2,592,090.69, Council Member Boeke made a motion to approve payment of all bills presented, Council Member Voss seconded the motion, all members voted aye in approval.

Resolution 118-23: VAR-13 Duplex Lot Size - 139 Rice St W

Community Development Director Klecker requested approval of Resolution 118-23 for VAR-13. This is a request received by Michael Spitzack for a lot size variance on an 8,712 square-foot lot where 10,000 square feet is the required minimum lot size for a two-family dwelling in the R-6, High Density Residential District. There is no documentation when the property was converted into a duplex, it was prior to 2005. The Planning Commission held a public hearing and there were no objections heard about this request and recommend approval with these conditions:

- a) The units shall be registered with the Rental Registration program.
- b) The property shall not contain more than 2 units at any one time.
- c) All units shall be inspected and approved within the Rental Registration process. If any repairs are needed, they shall be completed to be in full compliance with the Rental Registration License.

Council Member Raney made a motion for approval as recommended by the Planning Commission; Council Member Voss seconded the motion. Council Member Boeke commented that good rental properties are inspected to assure safety to all residents within the city. With no additional comments, all members voted aye for approval.

Resolution 119-23: VAR-14 Single-Family Converted Duplex Lot Size - 322 Elm Avenue South

Community Development Director Klecker requested approval of Resolution 119-23 , for VAR-14. This is a request received by Brycen Gregor, on behalf of Anna Lee, for a lot size variance on an 8,712 square-foot lot where 10,000 square feet is the required minimum lot size for a two-family dwelling in the R-6, High-Density Residential District. The rental property is currently licensed for one-unit occupancy, but the property owner would like to increase occupancy to two-units. The Planning Commission held a public hearing and they asked about parking and debris in the rear yard which have been addressed. Nobody spoke opposition during the public hearing, this is an older home which can be converted to a duplex to increase housing availability. They will be working with an engineer to modify the home. Parking in the rear yard is an option if there is on a hard surface, parking availability is one of the conditions recommended by the Planning Commission. The Planning Commission recommends approval with these conditions as listed within this resolution:

- a) The units shall be registered with the Rental Registration program.
- b) The property shall not contain more than 2 units at any one time.
- c) All units shall be inspected and approved within the Rental Registration process. If any repairs are needed, they shall be completed to be in full compliance with the Rental Registration License.
- d) A code analysis by a MN Licensed Architect shall be submitted to the Building Inspections Department to determine approval of increased occupancy. In the case that alterations are required to increase occupancy to two units, building permits shall be applied for and approved of prior to alterations.
- e) An approved parking plan that meets all applicable City Code requirements shall be submitted prior to installation of parking stalls.
- f) The gate entrance for rear yard parking shall be moved to be located off the alley and a minimum of 20 feet from the east property line.
- g) The parking stalls shall be installed prior to the occupancy of a second unit.
- h) Debris and refuse shall be removed from the property or stored properly. The property shall be maintained in an adequate manner.
- i) All the above requirements shall be met before occupancy of a second unit is granted.

Council Member Boeke made a motion for approval, Council Member Dotson seconded the motion, all members voted aye in approval.

Resolution 120-23: Authorization to Sponsor Application for Federal Transportation Alternatives Program - East Side Corridor Trail

Public Works Director Murphy requested Council authorization to apply for a TAP (Transportation Alternatives Program) Grant to assist in the development of a trail segment along the future East Side Corridor, connecting the 26th St Trail and the 18th St Trail. The City will act as the sponsoring agency for the project known as the "East Side Corridor" and Steele County is the lead agency on this project. The Trail portion of the East Side Corridor is currently estimated at \$990,000, of which \$846,000 is grant-eligible and what will be requested in the application. There is a 20% local match with the grant leaving \$169,200 to be split between Steele County and City per agreement. The City and County are actively looking for other grant opportunities that may apply to the local match.

Council Member Svenby asked if the proposed East-Side Corridor Trail will connect with the trail on 26th Street. Murphy responded, yes, the current trail on 26th Street will be extended to connect with the new trail.

Council Member Boeke commented 29th Avenue alignment has not been identified, correct? Murphy responded correct, the project route has not been finalized but we had to include a proposed cost so 29th Avenue was used to estimate costs.

Council Member Raney made a motion for approval, Council Member Svenby seconded the motion, all members voted aye in approval.

Resolution 121-23: Agreement to Maintain Facility - East Side Corridor Trail

Public Works Director Murphy presented Resolution 121-23. This resolution requires the City agree to maintain the facility (trail) developed with the use of a TAP grant. This resolution is a required document in the grant application for the East Side Corridor Trail. Council Member Voss made a motion for approval, Council Member Svenby seconded the motion, all members voted aye in approval.

Resolution 122-23: Decertify TIF 3-6 - Viracon

Finance Director Moen requested approval of Resolution 122-23 for decertification of Tax Increment Finance (TIF) District 3-6. This TIF district was formed as an economic development district in 2013. The developer invested over \$100 million in their facilities, increasing their square footage by 350,000 square feet to accommodate investments in state-of-the-art equipment and automation processes. They received tax increment assistance on a "pay-as-you-go" (PAYG) basis. The PAYG payments reimbursed the developer for site improvements, the City for the TIF bonds that were issued to assist with this project, and Owatonna Public Utilities for their contribution to this project. This district is required to be decertified by 12/31/2023 per state statute. The total market value of this property is estimated at \$27,997,500 for 2024. This includes \$2,241,000 for the land and \$25,756,500 for the building. This results in a tax capacity of \$559,200. The original tax capacity was \$239,152. The resulting difference of \$320,048 will be added to

the calculations of the City's net tax capacity for 2024 which represents 1% of the city's total tax capacity.

Council Member Boeke commented that when Viracon was considering their expansion, they were looking at other sites but decided to expand their Owatonna plant because they were able to secure TIF funds. Community Development Director Klecker added, the incentive to use TIF funds played an important part in their decision. Viracon had plants in Georgia, Utah and Minnesota and all were considered for expansion. The plant was expanded here and now their Georgia and Utah plants are no longer in operation.

Council Member Boeke made a motion for approval, Council Member Voss seconded the motion, all members voted aye in approval.

Resolution 123-23: Final 2024 City Levy and Budget

Finance Director Moen presented Resolution 123-23 to set the 2024 Levy and adopt the 2024 Budget. Minnesota State Legislation, Truth in Taxation aims to improve transparency and accountability in the property tax system. Our Budget Process follows this state legislation and in addition to the above requirements, the City utilizes an online interactive budget, increasing the City's transparency and accountability. The 2024 budget is consistent with the City's strategic plan. The 2024 levy includes an increase of 8.0%, which is a decrease from the proposed levy increase of 9.05%. The City strives to have its levy increase follow growth; the current year's estimated growth rate is 6.76%. The city has made significant investments in its infrastructure spending planned for 2024. In addition, the operating levy required an increase as the City is not immune to inflation.

The proposed to be levied upon all the taxable property in the City of Owatonna a direct ad valorem tax in the amount of \$15,578,454 for general government, \$211,294 PERA rate change, and \$2,224,285 for debt retirement, which shall be spread upon the tax rolls and collected in the year 2024. The budget will be set at \$52,267,572 for expenditures for the fiscal year commencing January 1, 2024. This budget has been reviewed and potential funding sources identified as well as priorities and programs for 2024.

Council Member Raney made a motion for approval, Council Member Burbank seconded the motion. Council Member Dotson thanked Finance Director, City Administrator Busse and staff for their work to lower the final levy amount to 8%, some may have wanted to leave it higher and some wanted to see even lower so thankful for the work that was done. With no additional comments, all members voted aye for approval.

Resolution 124-23: Housing and Redevelopment Authority (HRA) 2024 Levy and Budget

Finance Director Moen requested approval of Resolution 124-23 to finalize the 2024 HRA Levy and Budget. The HRA is considered a special taxing district and its levy is adopted

separately from the City Levy. The amount of the levy shall be an amount approved by the governing body of the city, but not to exceed 0.0185 percent of estimated market value. Per the County Auditor & Assessor, the 2022 estimated market value was \$2,332,831,900. The allowable levy would be \$431,574 compared to the requested levy of \$200,000. A levy of \$200,000 represents a \$5,000 increase from 2023. Council Member Svenby made a motion for approval, Council Member Voss seconded the motion, all members voted aye in approval.

Resolution 125-23 Authorization of Intent to Provide Full Funding for WWTP Expansion (if needed)

Finance Director Moen requested approval of Resolution 125-23 to provide assurance to the State of Minnesota as it relates to the current amount of unfunded costs for the Wastewater Treatment Plant (WWTP) project. Earlier this year, the City began the multi-year expansion project of its WWTP plant. As the need for funding will be distributed throughout this three-year period, the funding will be determined in phases. The City has multiple financing options for this project as follows:

- Multiple grants through the PFA totaling \$8 million
- \$35 million loan through the PFA
- State bonding funds
- Cash on hand

In the process of completing the agreements for State bonding funds, the State of Minnesota needs a resolution from the City stating our intention to fully fund this project, if needed. This is similar to Resolution 96-22 which was approved last year. Council Member Boeke made a motion for approval, Council Member Dotson seconded the motion, all members voted aye in approval.

Requests to Defer Special Assessments

City Administrator Busse requested approval of two Deferment Requests received for assessments approved for the 2022 Street and Utility Project by Resolution 106-23 on November 7, 2023. The City's Special Assessment Policy provides for a deferment of a special assessment for those people who are 65 years of age or older or who are retired by permanent and total disability as long as they meet certain requirements. The applicants must be the owner and occupant of the property and their annual income from all sources shall not exceed the very low-income limits as determined for Steele County by the Department of Housing and Urban Development (HUD). If a deferment is approved, a lien will be filed against the property. The assessment and interest payments will become due upon the occurrence of any of the following events:

- 1) Death of the owner (if the spouse is not otherwise eligible).
- 2) Sale, transfer, or subdivision of the property.
- 3) Loss of homestead status of the property

- 4) Determination by the council that requiring an immediate or partial payment would impose no hardship.

Requests were received for:

Property Identification Number	Special Assessment Amount
17-148-0117	\$4,680.00
17-148-0202	\$4,680.00

Council Member Dotson made a motion for approval, Council Member Raney seconded the motion, all members voted aye in approval.

Personnel Policy Changes

Human Resource Director Moen requested three changes in the Personnel Policy and Procedures Manual:

Ch. 5.1 Eligibility and Ch. 5.2 Calculation and Compensation of Overtime:

Language was updated to reflect the procedural change that was approved in 2018 with the implementation of UKG. Overtime is allowed to be accumulated based on hours in excess of 40 hours per week.

Ch. 6.10 Recognition:

Language was updated to include employee awards that highlight and acknowledge teams and employees who exemplify the purpose statement and core values.

Ch. 7.17 Earned Sick and Safe Leave:

New policy to ensure compliance with Minnesota's earned sick and safe time law that goes into effect on January 1, 2024. Note – The City's current PTO & Vacation policies meet the requirements of this law. The new personnel policy will ensure ESST is made available to eligible employees not currently receiving PTO or Vacation benefits.

Council Member Voss made a motion for approval, Council Member Boeke seconded the motion, all members voted aye in approval.

School Resource Officer Agreement - Independent School District #761

City Administrator requested approval of the School Resource Officer Agreement with School District 761 for the 2023-2024 academic year. The City/Police Department has maintained a long-standing agreement to provide two police officers (School Resource Officers, or SRO) to the district during the academic year. The School District agrees to reimburse the City for wages and benefits at a cost negotiated for each academic year. For the 2023-2024 academic year, the School District agrees to reimburse the City \$85,457.40 for each position. A new provision added to this agreement is to receive overtime reimbursement that exceeds \$2,000 per SRO for school events outside of regular school hours. Council Member Raney made a motion for approval, Council Member Boeke seconded the motion, all members voted aye in approval.

Vice President Raney took over the meeting, Council President Schultz recused himself, as he owns property adjacent to the SE Field Pond.

Proposal for Land Surveying & Civil Engineering Services SE Field Pond - Jones Haugh Smith

Public Works Director Murphy requested approval received from JonesHaughSmith for land surveying and civil engineering services for the SE field pond. This analysis will determine the treatment capacity of the pond due to the development of the new Owatonna High School. In the late 2000's the City purchased land from the Rypka Family south of 18th St SE and east of Field Stone Ave SE for stormwater management.

A pond was constructed as part of a response to the 2007 SE flooding. The pond served several roles:

- Collecting field tiles to the south and east, preventing stormwater from entering the city's street storm sewer system.
- Providing relief for City street drainage in high-flow rain events
- Treatment for future development

Once the new Owatonna High School was constructed, the current and future use of the pond was altered. Land was converted from agriculture to developed on the HS property, which has its own stormwater management. A majority of the field tiles were severed, reducing drainage to the pond. And land that's able to drain to the pond was reduced. Stormwater water quality treatment rules have also changed. The budget impact of the fieldwork and analysis is \$3,000.

Council Member Boeke made a motion for approval, Council Member Svenby seconded the motion. Council Member Boeke asked if this would affect the pond on Smith and 18th near Buecksler Park. Murphy responded no that the pond was dredged this summer and has no tie to the SE Field Pond. Council Member Burbank asked if the material dredged is treated as toxic matter, Murphy responded that an analysis is done and decisions made on the outcome of the analysis on how to handle or dispose of the sludge. With no additional comments, all six members voting, voted aye for approval.

Vice President turned the meeting back to Council President Schultz.

Annexation Agreement - Owatonna Township

Community Development Director Klecker requested approval of the Annexation Agreement with Owatonna Township for 2024. The City of Owatonna has had an annexation agreement with Owatonna Township since the late 1980s. This has allowed property to be annexed into the city in an orderly fashion based on certain criteria being met in the agreement. Owatonna Township has been very cooperative in assisting the city in accommodating growth and it is important to maintain that relationship for continued growth. The existing annexation agreement will expire on December 31, 2023 and staff met with Owatonna Township officials on the proposed annexation agreement

and both sides are comfortable with the current agreement. There are no changes proposed to the annexation agreement. Owatonna Township has approved the agreement. This agreement can be extended annually if both the city and the township agree. Council Member Dotson made a motion for approval, Council Member Voss seconded the motion, all members voted aye in approval.

STAFF COMMENTS

Community Development Director Klecker commented that the year-to-date valuation of the Building Permits issued through November was \$108 million. Twenty-five single family home permits have been issued and there are a few currently in process. Many projects are in progressing and you will see construction being done during the winter months.

Finance Director Moen said there have been a lot of development TIF projects. As tax payments are received from the county, our Finance staff calculates the progression of each TIF repayment. Included in tonight's Finance Report were disbursement of payments for TIF recipients. The City's 2024 Budget and Levy were approved tonight and she anticipates their office will receive a lot of questions; tomorrow morning, she and Mayor Kuntz are guests on the local radio station for Talk of the Town. At the end of the month, the Finance Office will be trading spaces with the Park and Rec Office in City Hall so our finance will now be the first point of contact to welcome people.

Human Resources Director Thamert commented that the staff's Annual Open Enrollment is done; the Employee Meetings were held in the Chambers and this space worked well. Staff are coordinating plans for the 2024 All Hands Meeting on January 17, 2024. Beginning the process for summer seasonal staff, each year the City employes about 130 workers. Rachel Boss, Human Resource Specialist, is the lead for Open Enrollment and new staffing, Rachel is here tonight and I want to thank her for the great job she is doing. Yesterday, Sam Baratto began duties as a Community Service Officer so we welcome Sam as he joins the City of Owatonna team.

Public Works Director Murphy commented that the posting for an Engineering Tech 2 or Tech 3 just closed and there are several candidates to interview during the next few weeks. Last week, there was an accident at the intersection of Oak Ave S and Main St W. The traffic signal cabinet was damaged beyond repair and the signal system is not operational. A four way stop sign has been installed at the intersection to help mitigate the signal outage. The electrical contractor will be setting the new cabinet tomorrow for the signal to be working later this week.

Communications Manager Sheely commented that she has been working with all departments to improve communications updates. The masthead on the City's E-Newsletter was just redesigned. She continues working with increase the new brand recognition including operational identifiers for Brooktree Golf Course and Clubhouse, the Tennis & Pickleball Center, River Springs Water Park, and the Owatonna Degner Regional Airport.

PUBLIC COMMENTS

Matt Sennett, 2519 Stoney Creek Drive commented during the last City Council Meeting he hear Steele County would follow the MnDOT outline for projects to avoid, minimize, and mitigate. There has been talk of avoidance in discussion of the proposed route for the east-side beltline for 29th Avenue, only 34th Avenue. Has minimize been considered, this highway project will be next to several homes, 29th Avenue was planned as a residential street and not a highway. There has been no discussion about mitigation but should be if following MnDOT Regulations. Everyone uses 29th Avenue as the preferred route but the study is not back so he questions why this reference is made.

Melissa Zimmerman, 2525 Stoney Creek Dr commented their neighborhood has grown and safety should be number one priority. This project currently has a 1-page proposal/study completed; twenty-five years ago, there was a 150-page report. Last July, they received notice of a public hearing about this project, during that meeting they were told the speed limit could be set to 55 mph when completed. The previous data was completed for a beltline and the project is now a corridor and not a beltline, more due diligence is needed for this project.

Brad Meier, Owatonna Chamber of Commerce President/CEO thanked the City for utilization of Tax Increment Financing (TIF) in development of the city. TIF has been an important piece to economic development in Owatonna and glad to see these partnerships in place. He thanked the Council for adopting the Final 2024 Levy at 8.0%, lower than the preliminary amount at 9.05%. The 8.0 % increase is appreciated by all business property owners. The Owatonna Chamber of Commerce (OCC) also sent a Letter of Support to Steele County for the East-Side Corridor Project, the OCC Board is encouraging all required process be followed and looking forward to completion of this road as it will be an important piece for development for the city.

Gary Jones, 995 Ridge Road distributed a map detailing incidents of deer/vehicle collisions that have incurred within the last five years. Most are in the residential neighborhoods near the city's parks and only a few near Kaplan Woods. He will present a proposal at a future City Council Meeting for a future Deer Management Program.

MAYOR AND COUNCIL COMMENTS:

Council Member Boeke: The weather has been great and last week he was able to spend some time in the city's parks, it was very nice. Council Members and staff received a lot of complaints during the proposal and construction of the Cedar Avenue Streetscape Project, I wasn't a member of the Council when this project started so I missed a lot of the grief and now I hear only compliments about this street improvement.

Council Member Voss commented he, Council Member Boeke, Mayor Kuntz and City Administrator Busse attended the Ribbon Cutting Ceremony for CDI this morning. He thanked CDI Owner Tom Peterson for his investment into the Owatonna Community and for serving on the City's EDA.

Council Member Dotson expressed condolences to the family of Mark Hall, who passed away December 9th. Mark served four years as a City Council Member and mentored me and has given me some good advice over the years, he will be missed.

Mayor Kuntz wished everyone a Merry Christmas and Happy New Year.

City Administrator Busse also wished everyone a Merry Christmas and thanked all staff members for their work and the Council for supporting them.

Council President Schultz thanked everyone for participating during tonight's meeting and wished everyone a Merry Christmas and Happy New Year.

At 8:06 p.m., Council Member Dotson made a motion to adjourn, Council Member Boeke seconded the motion and with no objection, the meeting ended.

Respectfully submitted,
Jeanette Clawson, Administrative Coordinator



CITY OF
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Board Commisison

The Owatonna Public Utilities Commission met in regular session in the Morehouse Conference Room at the Owatonna Public Utilities. Present were Commissioners Zirngible, Ross, Doyal and Vetter. Absent was Commissioner Johnson. Also present were General Manager Warehime; Director, Finance & Administration Olson; Director, Engineering & Field Services Fenstermacher; Director, Information Technologies and Metering Baum; Manager, Human Resources Madson, Manager, Gas & Water Operations Prokopec; Supervisor, Accounting Linders; Executive, Communications & Administration Coordinator Schmoll; Key Accounts & Energy Conservation Officer Hendricks; OPU Employees Lori Jerpbak and Shanda Meier and Greg Ilkka, Steele County Engineer.

President Zirngible called the meeting to order and led the Pledge of Allegiance. He then asked for approval of the agenda and the consent agenda. There was a typo in the date for the October minutes. The October minutes were from October 24th. The consent agenda items contained the minutes from the October 24, 2023 Commission meeting, the special budget meeting of November 6, 2023 and the contributed services report as of October 31, 2023. Commissioner Rossi moved to approve the agenda and the consent agenda items with the October minutes being changed from October 26 to October 24. Commissioner Doyal seconded the motion. All Commissioners voting Aye, the motion passed.

Committee Reports

Finance Committee – Commissioner Doyal reported the Finance Committee met, reviewed, and approved disbursements totaling \$5,739,277.77. He reported one work order was completed and one for underground vaults was cancelled. The work order was canceled due to the work not going to be done. There was a request for another work order to replace the heating boiler in the building. Since there was not a quorum at the Finance meeting, Commissioner Doyal moved for approval of the work order in the amount of \$20,000 and asked Commissioner Zirngible to sign it with him. Commissioner Rossi seconded the motion. All Commissioners voting Aye, the motion passed.

Personnel Committee – Commissioner Vetter reported the Personnel Committee met and received a staffing updated. He noted interviews for an open Meter Serviceworker position are ongoing with external candidates, as well as internal interviews are being conducted for the HR Generalist position. Mr. Vetter also noted the committee discussed non-union wage adjustments for 2024. They received wage comparisons, historic wage adjustments versus CPI and are recommending a 3.5% wage increase. There also was not a quorum at this committee meeting, so Commissioner Vetter moved to approve a 3.5% wage increase for the non-union employees. Commissioner Rossi seconded the motion. All Commissioners voting Aye, the motion passed. Mr. Vetter continued by noting the committee received updates regarding the proposed Diversity, Equity and Inclusion policy up for approval at this meeting, changes in the PDO policy due to state law changes and an update regarding proposed health insurance company changes. He noted the union voted to stay with the existing health insurance company.

City Administrator Report

City Administrator Busse was not present,

Letter of Support for Grant Related to East Corridor Project

General Manager Warehime introduced Greg Ilkka, Steele County Engineering, and noted Mr. Ilkka will be discussing the east corridor project and asking for support of a grant for the project.

Mr. Ilkka discussed what the East Side Corridor project and study consist of and noted the County is applying for a grant to help with funding the project. Part of that process is including letters of support from the community. The main purpose of the project is to improve the connectivity of the county's transportation

network and meet near term and future travel needs on the east side of Owatonna and adjacent townships for motorized and non-motorized users. He discussed the differences between local, collector and arterial roadway functions. He discussed the purposes, needs and additional considerations for the corridor including mobility – poor connectivity, functional class network, downtown congestion impacts, land use and anticipated growth areas, walkability/bikeability, consistency with officially mapped corridor, and consistency with the County and City plans regarding transportation and development. He noted, the existing property owners along this corridor will not see an impact to the size of their property. If additional land is needed, they would try to buy additional land from the farmer across the road. Mr. Ilkka shared the project timeline and urged the Commission to check out the project website at eastsidecorridor.com. After discussion, Commissioner Doyal moved to accept and sign the letter of support for the East Side Corridor. Commissioner Rossi seconded the motion. All Commissioners voting Aye, the motion passed.

Liability of Coverage Waiver Form

Director, Finance & Administration Olson presented the Liability of Coverage Waiver Form to the Commission. He noted this is a formality the League of Minnesota Cities requires us to sign every year indicating our wishes regarding monetary limits on municipal tort liability. The form indicates we DO NOT WAIVE this liability coverage. Commissioner Rossi moved to sign the form. Commissioner Doyal seconded the motion. All Commissioners voting Aye the motion passed.

Diversity, Equity and Include Statement

General Manager Warehime presented the draft policy statement which clearly states OPU's position on Diversity, Equity, and Inclusion. Mr. Warehime noted, this has been part of strategic planning, and our focus on our culture. The company has spent about a year drafting this policy. After discussion, Commissioner Vetter moved to approve the policy as presented. Commissioner Rossi seconded the motion. All Commissioners voting Aye the motion passed.

PDO Policy

General Manager Warehime presented an updated PDO policy to the Commission. He noted, Director, Finance and Administration Olson gave a brief presentation at the Personnel Committee meeting regarding the changes to the Minnesota Earned Sick & Safe Time law (ESST) and turned it over to Mr. Olson. Mr. Olson explained what the ESST law encompasses and addressed how OPU plans to meet the requirements. He noted our current policy is more generous than what the law requires, and the updates to the policy include adding the protected uses. All employees will be notified with a copy of the updated PDO policy and/or a Memo of Understanding addressing the sections in the union contract. Supervisors will be trained on how to handle this time off law. Mr. Olson wrapped up by discussing the definition of a family member, eligible uses of ESST and made a recommendation to the Commission to approve the policy as presented. After discussion, Commissioner Rossi moved to approve the PDO policy to be compliant with the State of Minnesota changes to the law. Commissioner Vetter seconded the motion. All Commissioners voting Aye, the motion passed.

2024 Budget, 2025-2028 Forecast

Director, Finance and Administration Olson sent out the final budget to the Commission through a separate email. He noted there were not any changes discussed at the budget meeting that affected he expenses, revenue or capital. The only change made was taking out the excess residential water tiered plan. Commissioner Doyal moved to approve the 2024 Budget, 2025-2028 Forecast as presented. Commissioner Rossi seconded the motion. All Commissioners voting Aye, the motion passed.

Rate Policies

General Manager Warehime presented the rate policies which were approved in the 2024 Budget, 2025-2028 Forecast. Director, Finance & Administration Olson noted there was one minor change from the policies presented in the agenda packet. In the water rates policy, it did not specify which months were considered summer. The policy now notes the summer months for purposes of the rate policy are June to October. Commissioner Rossi moved to approve all the rate policies provide in the agenda packet. Commissioner Doyal seconded the motion. All Commissioners voting Aye, the motion passed.

General Manager/Staff Report

General Manager Warehime reminded the Commission the December meeting is rescheduled to December 20th and Mr. Warehime noted OPU will be participating in the Holiday Lighted parade with a truck and the Employees' Club is coordinating walkers to join the truck.

Director, Information Technology & Metering Baum reported the cameras for the audio-visual project are on backorder until February. The installer has been asked if the project can move forward without the cameras in regard to wiring, etc. until the cameras come in. Mr. Baum will update the Commission in December.

Commissioner Roundtable

There was nothing else to discuss.

Adjournment

There being no further business to come before the Commission, the meeting adjourned at 5:10 p.m.

Respectfully submitted,

Tammy Schmoll
Executive, Communications & Administration Coordinator



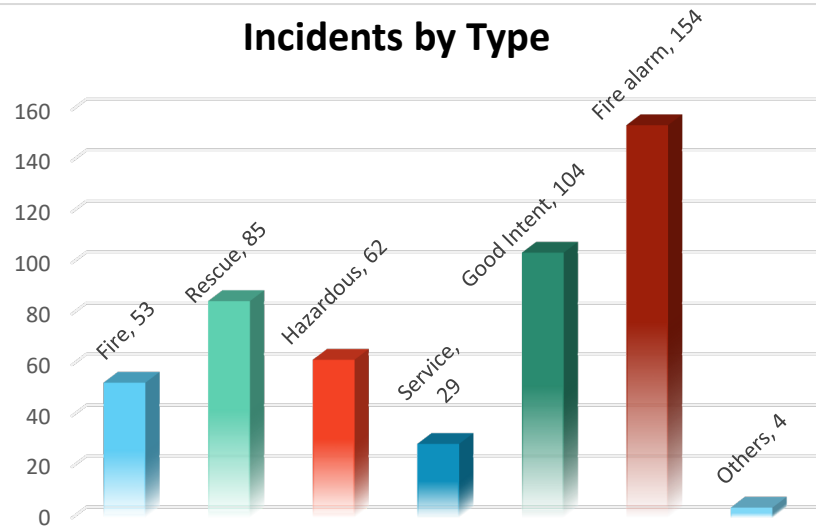
CITY OF
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Department Reports

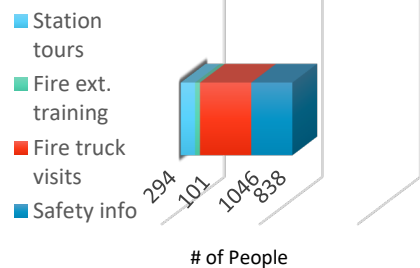
OWATONNA FIRE DEPARTMENT DASHBOARD

2023 STATISTICS

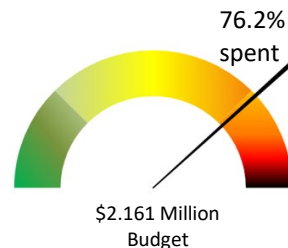
Incidents by Type



Public Education

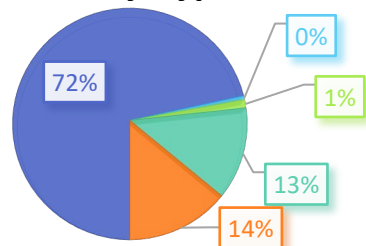


Expenditures



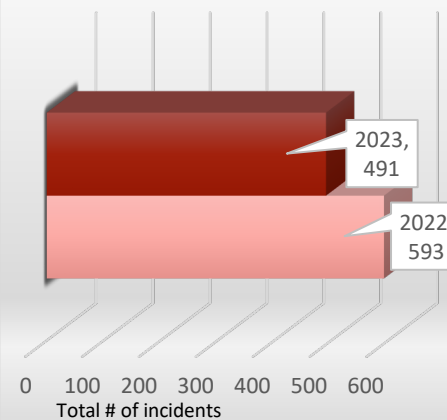
Inspections by Type

- Fire code
- Fire alarm system
- Sprinkler system
- Nuisance complaints
- Weed complaints

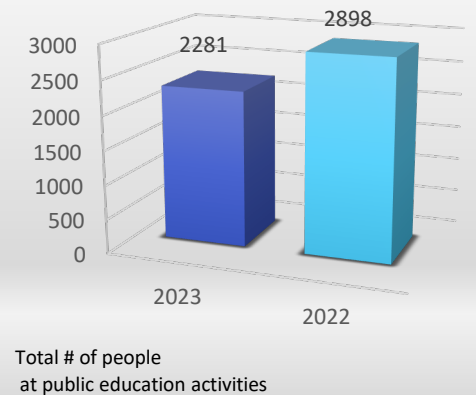


2023 VS 2022 STATISTICS

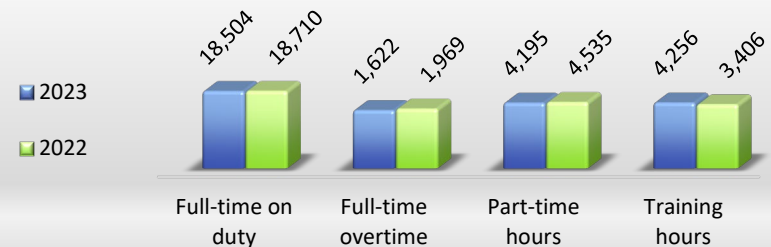
Incidents



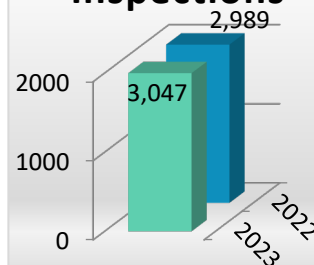
Public Education



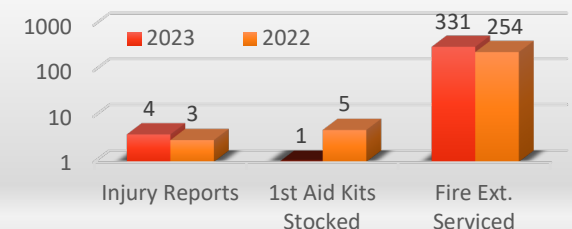
Staff Hours



Inspections



Safety Services



2023 OWATONNA FIRE DEPARTMENT MONTHLY ACTIVITY REPORT

INSPECTION SERVICES		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	2023	2022
Fire code inspections		134	153	201	112	189	75	175	268	284	363	227		2181	1988
Fire alarm inspections		2	1	1	1	1	0	2	2	2	1	3		16	20
Sprinkler system inspections		0	1	2	1	4	7	4	2	7	3	4		35	49
Nuisance inspections		3	3	6	12	106	78	63	39	47	31	2		390	382
Weed inspections		0	0	0	0	70	110	62	75	80	28	0		425	550
Sprinkler system permits issued		2	2	2	1	3	1	2	1	1	4	2		21	21
Fire alarm system permits issued		2	0	1	1	1	1	2	2	2	3	0		15	15
Hood/Suppression system permits issued		0	2	0	1	0	1	1	1	0	0	1		7	5
Plan reviews		4	7	7	6	9	12	10	9	10	9	9		92	65
Code reviews		6	1	8	6	2	2	2	1	1	2	3		34	38
# Knox boxes checked		1	0	0	2	1	1	0	1	0	4	0		10	14
PUBLIC EDUCATION SERVICES		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	2023	2022
# people given tours		0	30	4	0	8	0	13	0	0	259	10		324	307
# people given extinguisher demos		0	0	0	0	0	70	0	31	0	0	0		101	100
# people at truck visits		0	0	0	200	340	0	0	0	0	453	53		1046	738
# people fire safety information		0	72	0	0	0	241	0	110	25	400	50		898	1753
# people juvenile firesetters		0	0	0	0	0	0	0	2	0	0	0		2	0
EMERGENCY RESPONSE SERVICES		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	2023	2022
Incidents	City incidents	31	23	22	39	38	43	37	37	55	44	46		415	482
	Rural incidents	5	3	5	9	10	8	7	5	7	5	10		74	105
	Mutual aid given	0	0	0	0	0	0	0	1	0	0	1		2	6
Monthly Totals		36	26	27	48	48	51	44	43	62	49	57		491	593
Type of Incidents	Fire	4	7	2	5	8	4	6	5	5	3	4		53	67
	Rescue calls	5	4	3	10	9	10	9	6	13	9	7		85	119
	Hazardous conditions	3	7	2	7	4	4	10	7	6	4	8		62	77
	Service calls	1	0	2	2	3	3	3	2	8	2	3		29	31
	Good intent calls	14	3	12	10	8	12	6	10	12	7	10		104	113
	Fire alarms	8	5	6	14	15	18	10	12	18	24	24		154	179
	Others	1	0	0	0	1	0	0	1	0	0	1		4	7
Monthly Totals		36	26	27	48	48	51	44	43	62	49	57		491	593
Total training hours		146.00	273.29	338.35	491.00	501.25	741.08	338.57	368.24	360.85	429.13	268.70		4256	3406
SAFETY SERVICES		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	2023	2022
# injury reports		1	1	0	0	1	0	0	0	0	1	0		4	3
# lost work hours		0	0	0	0	0	0	0	0	0	0	0		0	0
# fire extinguishers serviced		201	34	0	35	19	23	0	19	0	0	0		331	254
1st aid supplies checked		0	0	0	1	0	0	0	0	0	0	0		1	5
Full-time shift hours worked		1724.25	1584.00	1743.50	1658.50	1736.00	1584.75	1764.50	1666.50	1752.50	1608.75	1680.75		18504.00	18709.75
Full-time overtime hours worked		129.49	159.80	116.81	237.91	96.61	253.91	88.97	155.80	68.93	181.08	132.59		1621.90	1969.09
Part-time hours worked		268.02	187.00	315.75	471.50	494.00	478.00	372.00	406.00	365.75	474.10	362.50		4194.62	4535.00
Monthly Hours Worked Total		2121.76	1930.80	2176.06	2367.91	2326.61	2316.66	2225.47	2228.30	2187.18	2263.93	2175.84		24320.52	25213.84



CITY OF
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Miscellaneous



DATE: January 2, 2024
TO: Mayor and City Council
FROM: Emily Thamert, Human Resources Director
SUBJECT: 2024 Seasonal/Temporary Wage Rates

Purpose:

Approve the Seasonal/Temporary wage rate document effective January 1, 2024.

Background:

In alignment with the key focus area of efficient effective government in the strategic plan, all seasonal temporary and non-benefited part-time position pay rates have been compiled into one comprehensive document. Any applicable wage increases on this scale have already been accounted for in the approved 2024 budget.

Budget Impact:

There is no budget impact.

Staff Recommendation:

Staff recommends approval of the 2024 Seasonal Temporary Wage Rate document.

Attachments:

1. proposed 2024 Seasonal Temp Pay Rates



Non-Benefited, Seasonal/Temporary/Part-Time Employee Wage Scale

Effective 01.01.2024

Employee Wage Range

Adult Program Official	\$18.50 - \$24.50 per hour
Coordinator	\$19.50 - \$24.50 per hour
Engineering Intern	\$14.00 - \$16.00 per hour
Guest Services	\$12.50 - \$14.50 per hour
Guest Services Lead	\$15.50 - \$17.50 per hour
Head Lifeguard	\$16.00 - \$18.00 per hour
Library Page	\$10.85 per hour
Lifeguard	\$14.00 - \$16.00 per hour
Lifeguard Training Instructor	\$19.00 - \$24.00 per hour
Park, Golf & Facility Maintenance	\$14.50 - \$16.50 per hour
Park & Rec Intern	\$12.50 - \$14.50 per hour
Program Lead	\$15.50 - \$17.50 per hour
Street Maintenance	\$14.50 - \$16.50 per hour
Water Safety Instructor	\$16.00 - \$18.00 per hour
Youth Program Official	\$14.50 - \$19.50 per hour**

Fire

Paid on Call Firefighter - Trainee	\$12.92 per hour (NEW – eff. for 2024 new hires)
Paid on Call Firefighter - Probationary	\$15.50 per hour (NEW – eff. for 2024 new hires)
Paid on Call Firefighter	\$17.51 per hour
Paid on Call Resident Firefighter	\$20.71 per hour
Weed/Nuisance Inspector	\$18.11 per hour

Judges

Election Judges	\$13.00 per hour
Head Election Judges	\$14.00 per hour



Seasonal/Temporary Employee Wage Increase Procedure

The following seasonal/temporary part time employees will receive a \$0.50 increase effective January 1 after every consecutive year/season of service with the city until reaching the maximum rate.

- Coordinator
- Guest Services Lead
- Program Lead
- Guest Services
- Adult Program Official
- Youth Program Official**
- Head Lifeguard
- Lifeguard
- Lifeguard Training Instructor
- Water Safety Instructor
- Park Maintenance
- Park and Rec Intern
- Street Maintenance
- Engineering Intern

***Youth Program Soccer Officials who provide proof of certification will receive an additional \$3 per hour, one time, upon receipt of verification of their certification*



DATE: January 2, 2024
TO: Mayor and City Council
FROM: Sandra Bera, Accounting Specialist
SUBJECT: Resolution 3-24 Authorize Contract for Purchases - Fame Awards

Purpose:

Council to approve Resolution 3-24 authorizing purchases from Fame Awards.

Background:

The City purchased recognition products from Fame Awards. Doug Voss, a current Council Member At-Large for the City of Owatonna, owns this business. State Statute prohibits a City Council member from having a personal financial interest in a contract with the City unless it meets an exception included in the statute. By unanimous vote, the council may contract goods and services with an interested officer in certain enumerated situations, including “a contract for which competitive bids are *not* required by law.” Competitive bids are not required for contracts less than \$100,000.00.

When no competitive bid is required, these steps must be followed:

1. That the council adopt a resolution authorizing the contract which includes a statement that the contract price is as low as or lower than the price for which the commodity could be obtained elsewhere;
2. That before payment is made to the public official, the public official must file with the city clerk an affidavit stating that to the best of the officer’s knowledge, the contract’s price is as low as or lower than the price at which the commodity could be obtained from other sources;
3. That the council must approve the contract by unanimous vote; and
4. The public official must abstain from voting on the matter.

Budget Impact:

The amount of these purchases is \$3,571.58.

Staff Recommendation:

Staff recommends approval of Resolution 3-24.

Attachments:

1. Resolution 3-24 Contract - Fame Award Purchases

RESOLUTION NO. 3-24

A RESOLUTION AUTHORIZING CONTRACT WITH FAME AWARDS
PURSUANT TO MINN. STAT. §§ 471.87-89

WHEREAS, the City of Owatonna desires to purchase certain recognition products; and

WHEREAS, Douglas V. Voss, owner of Fame Awards, is a City Council member of the City and will be financially interested in the contract; and

WHEREAS, the contract in the sum of \$3,571.58 is not one that is required to be competitively bid; and

WHEREAS, Councilmember Voss has signed an Affidavit of Official Interest in Claim as required by law. and

WHEREAS, the contract price of \$3,571.58 is as low as, or lower than, the price at which the goods can be obtained elsewhere at this time.

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

1. The City Clerk-Treasurer is directed to make the above-mentioned purchases on behalf of the City from Fame Awards for a price of \$3,571.58.
2. The Mayor and City Clerk-Treasurer are directed to issue an order-check to pay the claim upon the filing of an affidavit of official interest by the interested official pursuant to Minn. Stat. § 471.89.
3. This resolution is adopted pursuant to Minn. Stat. §§ 471.87-89.

Passed and adopted this ____ day of _____, 2024, with the following vote:

Aye ____; No ____; Absent ____; Recused ____.

Approved and signed this ____ day of _____, 2024.

ATTEST:

Thomas A. Kuntz, Mayor

Kris M. Busse, City Administrator

AFFIDAVIT OF OFFICIAL INTEREST IN CLAIM

STATE OF MINNESOTA)
) ss.
COUNTY OF STEELE)

Douglas D. Voss, being duly sworn states the following:

1. I am a City Council member of the City of Owatonna, Minnesota.
2. Goods were furnished by Fame Awards to the City of Owatonna for recognition products.
3. The contract price for such goods and their reasonable value is \$3,571.58.
4. At the time such goods were furnished to the City, I had the following personal financial interest in this contract: Owner of Fame Awards.
5. To the best of my knowledge and belief, the contract price is as low as or lower than the price at which the goods could be obtained from other sources.
6. I further state that this Affidavit constitutes a claim against the City for the contract price, that the claim is just and correct, and that no part of the claim has been paid.

Further your affiant saith naught.

Douglas D. Voss

Subscribed and sworn to before

me this __ day of _____ 2024.

Jeanette Clawson, Notary Public

RECAP:

128,182.80	Southeast Service Cooperative - Dec 2023 health ins premiums
20,750.43	Central Farm Service - fleet fuel
60,194.90	Dell Marketing LLP - computers, monitors, etc.
20,435.00	Heiman Inc - fire department turn out gear
140,567.42	Nero Engineering - WWTF Upgrade & Expansion - November 2023
1,866,176.19	Rice Lake Construction Group - WWTP Expansion Est 18
<u>221,021.07</u>	OTHER EXPENDITURES
\$ 2,457,327.81	<i>SUBTOTAL</i>
<u>98,418.18</u>	HRA HOUSING ASSISTANCE PAYMENTS
\$ <u>2,555,745.99</u>	TOTAL EXPENDITURES PRESENTED FOR APPROVAL

NOTE: Checks over \$20,000 are detailed out individually

Check Number	Check Date	Vendor Name	Net Check Amount	Check Status	Check Type
Cash Account: 999-19100-000-000-000000					
376129	12/20/23	FULLSTEAM	165.45	R	Wire Transfer
376130	12/20/23	GLOBAL PAYMENTS INTEGRATED	1,772.92	R	Wire Transfer
376131	12/20/23	MN DEPT OF LABOR AND INDUSTRY	2,398.71	R	Wire Transfer
376132	12/20/23	MN DEPT OF REVENUE	2,089.40	R	Wire Transfer
376133	12/20/23	SOUTHEAST SERVICE COOPERATIVE	128,182.80	R	Wire Transfer
376134	12/20/23	SYNCHRONY BANK	529.66	O	Regular
376135	12/20/23	SYNCHRONY BANK - LOWE'S	5,058.25	O	Regular
376136	12/20/23	US BANK	15,490.23	R	Wire Transfer
376137	12/20/23	WEX BANK	1,317.38	R	Wire Transfer
376138	12/20/23	WEX HEALTH INC	357.50	R	Wire Transfer
376139	01/01/24	A & K LLC	302.00	R	ACH
376140	01/01/24	A&H PROPERTIES	451.00	R	ACH
376141	01/01/24	ACADEMY APARTMENTS OF OWA LLC	1,549.00	R	ACH
376142	01/01/24	ADAMS REVOCABLE LIVING TRUST	544.00	R	ACH
376143	01/01/24	ALL AREA MANAGEMENT LLC	833.00	R	ACH
376144	01/01/24	APACHE APARTMENTS	810.00	R	ACH
376145	01/01/24	ARNFELT RENTS	124.00	R	ACH
376146	01/01/24	ATM PROPERTIES LLC	1,036.00	R	ACH
376147	01/01/24	AUSTIN HRA	1,136.00	O	Regular
376148	01/01/24	B-GROVE LLC	1,727.00	R	ACH
376149	01/01/24	BARRY GILLESPIE	223.00	R	ACH
376150	01/01/24	BB BROTHERS HOLDINGS LLC	329.00	R	ACH
376151	01/01/24	BROWN CYNTHIA	509.00	R	ACH
376152	01/01/24	BRYCEN GREGOR	1,040.00	R	ACH
376153	01/01/24	CAPELLE COMPANIES LLC	535.00	R	ACH
376154	01/01/24	CEDAR HILLS ESTATES	546.00	R	ACH
376155	01/01/24	CEDAR RIDGE APARTMENTS	817.00	R	ACH
376156	01/01/24	CEDAR ROSE ASSOCIATES LLC	739.00	R	ACH
376157	01/01/24	CEDAR RUN TOWN HOMES MDI #41	4,212.00	R	ACH
376158	01/01/24	CEDARDALE NORTH APARTMENTS	326.00	R	ACH
376159	01/01/24	CEDARDALE SOUTH APARTMENTS	516.00	R	ACH
376160	01/01/24	CEDARDALE WEST APARTMENTS	559.00	R	ACH
376161	01/01/24	CHRIS PROHASKI	1,109.00	R	ACH
376162	01/01/24	COMMON CENTS PROPERTIES LLC	340.00	R	ACH
376163	01/01/24	COOPERS COURT LLC	913.00	R	ACH
376164	01/01/24	DAN NECHVILLE	706.00	R	ACH
376165	01/01/24	DANIEL SCHLEGEL	483.00	R	ACH
376166	01/01/24	DONALD RIPPLE	602.00	R	ACH
376167	01/01/24	DSBMT, LLC	591.00	R	ACH
376168	01/01/24	EEK LLC	732.00	R	ACH
376169	01/01/24	ELLINGSON RICHARD	666.00	R	ACH
376170	01/01/24	ELM STREET PROPERTIES	473.00	R	ACH
376171	01/01/24	G & H MANAGEMENT CO LLC	1,078.00	R	ACH
376172	01/01/24	IMAGE APARTMENT	2,426.00	R	ACH

Check Number	Check Date	Vendor Name	Net Check Amount	Check Status	Check Type
376173	01/01/24	JASON HINNA	847.00	R	ACH
376174	01/01/24	JBLL EQUITIES LLC	1,965.00	R	ACH
376175	01/01/24	JOHN & DENISE SCHROEDER	505.00	R	ACH
376176	01/01/24	JOHNSON WINDOW & SIDING INC	5,666.00	R	ACH
376177	01/01/24	JPF PROPERTIES	1,071.00	R	ACH
376178	01/01/24	JULIE WERSAL	275.00	R	ACH
376179	01/01/24	KEG INVESTMENTS LLC	449.00	R	ACH
376180	01/01/24	KEITH MARTIN	1,292.00	R	ACH
376181	01/01/24	KERR MCCAULEY INVESTMENT II	289.00	R	ACH
376182	01/01/24	KLEVOS GREG	979.00	R	ACH
376183	01/01/24	LAXMAN S SUNDAE	775.00	R	ACH
376184	01/01/24	LEE ANNA	1,287.00	R	ACH
376185	01/01/24	LINCOLN SQUARE APARTMENTS	8,145.00	R	ACH
376186	01/01/24	LWO LIMITED PARTNERSHIP #116	3,544.00	R	ACH
376187	01/01/24	MANCINI NICHOLAS	819.00	R	ACH
376188	01/01/24	MARQUARDT DENNIS	2,298.00	R	ACH
376189	01/01/24	MARTIN ALLAN	1,480.00	R	ACH
376190	01/01/24	MCCAULEY PATRICK	835.00	R	ACH
376191	01/01/24	MIDWEST INVEST LLC	534.00	R	ACH
376192	01/01/24	MINNEAPOLIS PHA	941.34	R	ACH
376193	01/01/24	NECHVILLE SUSAN	756.00	R	ACH
376194	01/01/24	NORTH VIEW APARTMENTS	944.00	R	ACH
376195	01/01/24	NORTHCOURT APARTMENTS	964.00	R	ACH
376196	01/01/24	NORTHGATE	1,545.00	R	ACH
376197	01/01/24	NORTHSTAR HOLDINGS LLC	668.00	R	ACH
376198	01/01/24	NORTHWEST MANOR	1,537.00	R	ACH
376199	01/01/24	OWATONNA PUBLIC UTILITIES	227.00	R	ACH
376200	01/01/24	PARKVIEW OWATONNA LLC	751.00	R	ACH
376201	01/01/24	PETER BIEL	1,700.00	R	ACH
376202	01/01/24	POSITIVE SHARE LLC	806.00	R	ACH
376203	01/01/24	PROHASKI PROPERTIES	1,806.00	R	ACH
376204	01/01/24	QUALITY RENTALS OF OWATONNA LL	631.00	R	ACH
376205	01/01/24	RAYMOND WILLMOTT	196.00	R	ACH
376206	01/01/24	RWB PROPERTIES	384.00	R	ACH
376207	01/01/24	SCOTT COUNTY CDA	3,674.84	R	ACH
376208	01/01/24	SIXSPARKS LLC	737.00	R	ACH
376209	01/01/24	SMITH REAL ESTATE LLC	464.00	R	ACH
376210	01/01/24	SOUTH CENTRAL HUMAN RELATIONS	2,823.00	R	ACH
376211	01/01/24	STADHEIM PROPERTIES	830.00	R	ACH
376212	01/01/24	SUBLAND INVESTMNTS & LIFESTYLE	226.00	R	ACH
376213	01/01/24	SUMMIT MANOR	370.00	R	ACH
376214	01/01/24	TM RENTALS II LLC	461.00	R	ACH
376215	01/01/24	USDA RURAL DEVELOPMENT	480.00	0	Regular
376216	01/01/24	USDA RURAL DEVELOPMENT	401.00	0	Regular
376217	01/01/24	WILLOW RUN I MDI #58	4,350.00	R	ACH

Check Number	Check Date	Vendor Name	Net Check Amount	Check Status	Check Type
376218	01/01/24	WILLOW RUN II MDI #85	4,265.00	R	ACH
376219	01/01/24	YOUNGDAHL DEVELOPMENT LLC	1,792.00	R	ACH
376220	01/01/24	ZK INVESTORS LLC	1,651.00	R	ACH
376221	01/02/24	AFLAC	2,731.16	R	ACH
376222	01/02/24	ALAN CALLAHAN	500.00	0	Regular
376223	01/02/24	ALEXANDER LUMBER COMPANY	111.73	0	Regular
376224	01/02/24	ALEXANDRA VOGEL	500.00	0	Regular
376225	01/02/24	AMERICAN RED CROSS	168.00	0	Regular
376226	01/02/24	ANDREW VAN OSDALE	500.00	0	Regular
376227	01/02/24	ANHORN'S GAS & TIRE	297.42	0	Regular
376228	01/02/24	ANNA MARTIN	500.00	0	Regular
376229	01/02/24	ANTHONY MALEPSY	500.00	0	Regular
376230	01/02/24	ARAMARK UNIFORM SERVICES INC	155.59	0	Regular
376231	01/02/24	ARROW ACE HARDWARE	2.99	R	ACH
376232	01/02/24	B & B COLE PROPERTIES LLC	10,000.00	R	ACH
376233	01/02/24	BAKER & TAYLOR BOOKS	2,394.91	R	ACH
376234	01/02/24	BENJAMIN JOHNSON	500.00	0	Regular
376235	01/02/24	BENJAMIN METCALF	519.13	0	Regular
376236	01/02/24	BENJAMIN R JOHNSON	102.47	0	Regular
376237	01/02/24	BRADY VAITH	500.00	0	Regular
376238	01/02/24	C&D OIL SERVICES OF WASECA LLC	75.00	0	Regular
376239	01/02/24	CARQUEST	314.52	0	Regular
376240	01/02/24	CASEY MARTIN	500.00	0	Regular
376241	01/02/24	CAVALIER COACHES INC	1,300.00	0	Regular
376242	01/02/24	CDW GOVERNMENT INC	71.91	0	Regular
376243	01/02/24	CEMSTONE CONCRETE MATERIAL LLC	1,679.50	0	Regular
376244	01/02/24	CEMSTONE CONCRETE MATERIAL LLC	4,724.09	0	Regular
376245	01/02/24	CEMSTONE PRODUCTS CO	74.41	0	Regular
376246	01/02/24	CENGAGE LEARNING INC/GALE	24.00	R	ACH
376247	01/02/24	CENTRAL FARM SERVICE	20,750.43	0	Regular
376248	01/02/24	CHRISTIAN BERG	500.00	0	Regular
376249	01/02/24	CITY OF BLOOMING PRAIRIE	11,250.00	R	ACH
376250	01/02/24	CORPORATE RECOGNITION	1,276.78	R	ACH
376251	01/02/24	CULLIGAN OF OWATONNA	2.75	R	ACH
376252	01/02/24	D & M CONSTRUCTION LLC	2,221.00	R	ACH
376253	01/02/24	DAMARCO SOLUTIONS LLC	1,358.00	R	ACH
376254	01/02/24	DAVIS MECHANICAL SYSTEMS INC	4,201.51	R	ACH
376255	01/02/24	DELL MARKETING LP	60,194.90	R	ACH
376256	01/02/24	DERRIK QUINLAN	500.00	0	Regular
376257	01/02/24	EARL F ANDERSEN & ASSOC	2,413.20	0	Regular
376258	01/02/24	EBSCO INFORMATION SERVICES	6,003.00	R	ACH
376259	01/02/24	ELIZABETH GRUENHAGEN	58.14	0	Regular
376260	01/02/24	EYE MED VISION CARE	421.58	0	Regular
376261	01/02/24	FAME AWARDS	3,571.58	0	Regular
376262	01/02/24	FIRST HOSPITAL LABORATORIES IN	83.19	0	Regular

Check Number	Check Date	Vendor Name	Net Check Amount	Check Status	Check Type
376263	01/02/24	FIRST SUPPLY OWATONNA	173.43	R	ACH
376264	01/02/24	FLAHERTY & HOOD PA	9,172.50	R	ACH
376265	01/02/24	FLOW MEASUREMENT AND CONTROL	452.00	0	Regular
376266	01/02/24	GALLAGHER BENEFIT SERVICES INC	3,000.00	R	ACH
376267	01/02/24	GRAINGER	64.70	R	ACH
376268	01/02/24	HD SUPPLY INC	1,891.59	R	ACH
376269	01/02/24	HEALTHPARTNERS INC	4,847.97	0	Regular
376270	01/02/24	HEIMAN INC	20,435.00	R	ACH
376271	01/02/24	HILLYARD INC	76.74	0	Regular
376272	01/02/24	HUBER SUPPLY CO INC	398.70	0	Regular
376273	01/02/24	I U O E LOCAL 70	2,815.00	0	Regular
376274	01/02/24	IFACS	623.51	R	ACH
376275	01/02/24	INNOVATIVE OFFICE SOLUTIONS	1,559.61	0	Regular
376276	01/02/24	INSTITUTE FOR ENVIRON ASSMT	3,750.00	0	Regular
376277	01/02/24	INSTY PRINTS	60.00	R	ACH
376278	01/02/24	JASON MATEJCEK	500.00	0	Regular
376279	01/02/24	JASON PETTERSON	500.00	0	Regular
376280	01/02/24	JEANETTE CLAWSON	44.00	0	Regular
376281	01/02/24	JENKINS BROS INC	5,295.00	0	Regular
376282	01/02/24	JEREMY HOLMES-KATZ	500.00	0	Regular
376283	01/02/24	JJD COMPANIES LLC	6,010.00	R	ACH
376284	01/02/24	JOEL HUNT	500.00	0	Regular
376285	01/02/24	JOHN VAN ALSTINE	500.00	0	Regular
376286	01/02/24	JONES & BARTLETT LEARNING LLC	125.92	0	Regular
376287	01/02/24	JONES HAUGH & SMITH INC	9,540.00	0	Regular
376288	01/02/24	JOSHUA LEE	500.00	0	Regular
376289	01/02/24	KEEKER INC	19.69	R	ACH
376290	01/02/24	KWIK TRIP INC	28.26	0	Regular
376291	01/02/24	KYLE MARTIN	500.00	0	Regular
376292	01/02/24	L&D AG SERVICE	30.03	0	Regular
376293	01/02/24	LAWSON AUTOMOTIVE LLC	686.46	0	Regular
376294	01/02/24	LEGACY SIGNS INC	4,750.00	R	ACH
376295	01/02/24	LOKEN EXCAVATING & DRAINAGE	2,435.85	0	Regular
376296	01/02/24	LUKE SELVIK	500.00	0	Regular
376297	01/02/24	MACQUEEN EQUIPMENT CO	2,435.74	R	ACH
376298	01/02/24	MADISON ZIEGLER	500.00	0	Regular
376299	01/02/24	MARY JO KNUDSON	269.68	0	Regular
376300	01/02/24	MATTHEW LOUNSBURY	500.00	0	Regular
376301	01/02/24	MATTHEW OELTJENBRUNS	500.00	0	Regular
376302	01/02/24	MELISSA MICHAEL	500.00	0	Regular
376303	01/02/24	MINNESOTA LIFE	3,039.20	0	Regular
376304	01/02/24	MN BOARD OF ACCOUNTANCY	275.00	0	Regular
376305	01/02/24	MN DEPT NATURAL RESOURCES	259.17	0	Regular
376306	01/02/24	MN NCPERS GROUP LIFE INSURANCE	432.00	0	Regular
376307	01/02/24	MN VALLEY TESTING LABS INC	222.20	R	ACH

Check Number	Check Date	Vendor Name	Net Check Amount	Check Status	Check Type
376308	01/02/24	NAPA AUTO PARTS	96.78	R	ACH
376309	01/02/24	NERO ENGINEERING	140,567.42	R	ACH
376310	01/02/24	NORTHLAND FARM SYSTEMS	94.54	0	Regular
376311	01/02/24	O'REILLY AUTOMOTIVE INC	135.45	0	Regular
376312	01/02/24	OWATONNA FLOOR COVERING	2,811.00	0	Regular
376313	01/02/24	OWATONNA HEATING & COOLING INC	310.00	0	Regular
376314	01/02/24	OWATONNA PUB SCHOOLS ISD 761	415.98	0	Regular
376315	01/02/24	OWATONNA RENT N SAVE	463.08	0	Regular
376316	01/02/24	P&R CONSTRUCTION LLC	12,408.00	0	Regular
376317	01/02/24	PROQUEST LP	4,192.50	0	Regular
376318	01/02/24	PUMP AND METER SERVICE, INC	793.50	R	ACH
376319	01/02/24	RAMY TURF PRODUCTS	1,635.00	0	Regular
376320	01/02/24	RICE LAKE CONSTRUCTION GROUP	1,866,176.19	R	ACH
376321	01/02/24	RICHARD HARSMA	3,500.00	0	Regular
376322	01/02/24	ROCHESTER DIESEL INC	133.12	0	Regular
376323	01/02/24	ROCK N RESCUE	2,515.50	0	Regular
376324	01/02/24	SELCO	958.80	R	ACH
376325	01/02/24	SHARE CORPORATION	322.39	R	ACH
376326	01/02/24	SHERWIN WILLIAMS COMPANY	370.79	0	Regular
376327	01/02/24	SHI CORP	624.57	0	Regular
376328	01/02/24	SHI INTERNATIONAL CORP	540.00	0	Regular
376329	01/02/24	SNAP-ON INDUSTRIAL	449.40	0	Regular
376330	01/02/24	SPARETIME ENTERTAINMENT LLC	1,288.00	0	Regular
376331	01/02/24	SPHERION STAFFING LLC	1,624.00	0	Regular
376332	01/02/24	SPLIT ROCK MANAGEMENT INC	3,860.00	R	ACH
376333	01/02/24	STEELE COUNTY TREASURER	3,468.33	0	Regular
376334	01/02/24	STEVEN BOWMAN	500.00	0	Regular
376335	01/02/24	T-MOBILE	100.00	0	Regular
376336	01/02/24	TOR SPERLING	64.50	R	ACH
376337	01/02/24	TRACY DUCHENE	500.00	0	Regular
376338	01/02/24	TRAVIS ARDOLF	500.00	0	Regular
376339	01/02/24	TRAVIS JOHNSON	500.00	0	Regular
376340	01/02/24	ULINE	4,832.37	0	Regular
376341	01/02/24	VALERIE SATRE	500.00	0	Regular
376342	01/02/24	VENTURE HYDRAULICS INC	265.56	R	ACH
376343	01/02/24	VIA ACTUARIAL SOLUTIONS	2,900.00	0	Regular
376344	01/02/24	WAK CONSTRUCTION SERVICES	697.26	0	Regular
376345	01/02/24	WARNING LITES OF MINNESOTA INC	1,653.20	0	Regular
376346	01/02/24	WASTE MANAGEMENT OF WI-MN	150.51	0	Regular
376347	01/02/24	ZACHARY PLEIN	500.00	0	Regular
376348	01/02/24	ZACKARY SCHUMAKER	500.00	0	Regular
376349	01/02/24	ZARNOTH BRUSH WORKS	572.00	R	ACH
376350	01/02/24	ZEP MANUFACTURING CO	703.93	R	ACH

98	Checks total:	142,669.99
116	ACH total:	2,261,301.61
0	EFTPS total:	
8	Wire transfer total:	151,774.39
0	Payment Manager total:	
222	GRAND TOTALS	2,555,745.99



CITY OF
OWATONNA

Resolutions



DATE: January 2, 2024
TO: Mayor and City Council
FROM: Jeanette Clawson, Administrative Coordinator
SUBJECT: Res 4-24 Premise Permit for Lawful Gambling Activity - Owatonna Wrestling Association

Purpose:

Council approval of Resolution 4-24 acknowledging the City's approval of an application received from the Owatonna Wrestling Association for a Premises Permit to conduct lawful gambling (pull tabs) with Inside Swing, LLC.

Background:

Lawful gambling within the city must comply with Minnesota State Statue 349 and City Code 120, Lawful Gambling. The Minnesota Gambling Control Board issues Charitable Gambling Licenses, their application includes a completed LG214 Premises Permit Application that requires acknowledgment by the local unit of government by an approved resolution.

Per our City Code, each city permit for Lawful Gambling allows an organization to operate at up to five locations within the city. Each site must acquire a Premises Permit from the state. The Owatonna Wrestling Association is currently authorized to offer pull tabs at Just One More, Reggies, Lava Burgers & Wings, and Lacey's. Inside Swing is located at 685 W Bridge St #5, Owatonna, MN.

Budget Impact:

None - this will add a Premises to their current Charitable Gambling License, an annual license that renews July 1st each year. The annual license fee is \$250.00 which is collected each year during the license renewal process.

Staff Recommendation:

Staff recommends approval of Resolution 4-24.

Attachments:

1. Resolution 4-24 Premise Permit - Lawful Gambling Activity - Owatonna Wrestling Association
2. LG214 Premises Permit Application
3. LG215 Lease for Lawful Gambling Activity

RESOLUTION NO. 4-24

A RESOLUTION APPROVING
APPLICATION FOR PREMISES PERMIT

WHEREAS, the Owatonna Westling Association has made application for a premises permit to conduct lawful gambling under a lease agreement with Inside Swing, LLC dba Inside Swing at 685 W Bridge St #5 in Owatonna Minnesota; and

WHEREAS, the application for premises permit and lease have been filed with the City; and

WHEREAS, it otherwise appears to the Council that the application for a premises permit and lease are in conformity with Section 120:00, et seq., of the 2015 Ordinance Code of the City of Owatonna, as amended,

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Owatonna, Minnesota:

1. Pursuant to Section 120:07, of the 2015 Ordinance Code of the City of Owatonna, as amended, the application for premises permit submitted by the Divine Mercy Catholic School may be and hereby is approved.

Passed and adopted this ____ day of ____, 2024, with the following votes:

Aye ____; No ____; Absent ____.

Approved and signed this ____ day of ____, 2043.

Thomas A. Kuntz, Mayor

ATTEST:

Kris M. Busse, City Administrator/City Clerk

LG214 Premises Permit Application**Annual Fee \$150 (NON-REFUNDABLE)****REQUIRED ATTACHMENTS TO LG214**

1. If the premises is leased, attach a copy of your lease. Use **LG215 Lease for Lawful Gambling Activity**.
2. \$150 annual premises permit fee, for each permit (non-refundable). Make check payable to "**State of Minnesota**."

Mail the application and required attachments to:

Minnesota Gambling Control Board
1711 West County Road B, Suite 300 South
Roseville, MN 55113

Questions? Call 651-539-1900 and ask for Licensing.**ORGANIZATION INFORMATION**

Organization Name: Owatonna Wrestling Association License Number: 04978-008

Chief Executive Officer (CEO) Dan Johnson Daytime Phone: 507-521-3265

Gambling Manager: Wade Westphal Daytime Phone: 507-456-2074

GAMBLING PREMISES INFORMATION

Current name of site where gambling will be conducted: _____

List any previous names for this location:

Street address where premises is located: _____
(Do not use a P.O. box number or mailing address.)

City: OR Township:	County:	Zip Code:
Owatonna	Steele	55060

Does your organization own the building where the gambling will be conducted?

☐ Yes ☒ No If no, attach LG215 Lease for Lawful Gambling Activity.

A lease is not required if only a raffle will be conducted.

Is any other organization conducting gambling at this site? ☐ Yes ☒ No ☐ Don't know

Note: Bar bingo can only be conducted at a site where another form of lawful gambling is being conducted by the applying organization or another permitted organization. Electronic games can only be conducted at a site where paper pull-tabs are played.

Has your organization previously conducted gambling at this site? ☐ Yes ☒ No ☐ Don't know

GAMBLING BANK ACCOUNT INFORMATION; MUST BE IN MINNESOTA

Bank Name: United Prairie Bank Bank Account Number: 000000024711

Bank Street Address: 110 W Rose St. City: Owatonna State: **MN** Zip Code: 55060

ALL TEMPORARY AND PERMANENT OFF-SITE STORAGE SPACES

Address (Do not use a P.O. box number):	City:	State:	Zip Code:
<u>Owatonna Self Storage</u>	<u>Owatonna</u>	MN	<u>55060</u>
<u>Farmers Insurance</u>	<u>Owatonna</u>	MN	<u>55060</u>
_____	_____	MN	_____

ACKNOWLEDGMENT BY LOCAL UNIT OF GOVERNMENT: APPROVAL BY RESOLUTION

**CITY APPROVAL
for a gambling premises
located within city limits**

City Name: _____
Date Approved by City Council: _____
Resolution Number: _____
(If none, attach meeting minutes.)
Signature of City Personnel: _____
Title: _____ Date Signed: _____

**Local unit of government
must sign.**

**COUNTY APPROVAL
for a gambling premises
located in a township**

County Name: _____
Date Approved by County Board: _____
Resolution Number: _____
(If none, attach meeting minutes.)
Signature of County Personnel: _____
Title: _____ Date Signed: _____

TOWNSHIP NAME: _____

Complete below only if required by the county.

On behalf of the township, I acknowledge that the organization is applying to conduct gambling activity within the township limits. (A township has no statutory authority to approve or deny an application, per Minnesota Statutes 349.213, Subd. 2.)

Print Township Name: _____
Signature of Township Officer: _____
Title: _____ Date Signed: _____

ACKNOWLEDGMENT AND OATH

1. I hereby consent that local law enforcement officers, the Board or its agents, and the commissioners of revenue or public safety and their agents may enter and inspect the premises.
2. The Board and its agents, and the commissioners of revenue and public safety and their agents, are authorized to inspect the bank records of the gambling account whenever necessary to fulfill requirements of current gambling rules and law.
3. I have read this application and all information submitted to the Board is true, accurate, and complete.
4. All required information has been fully disclosed.
5. I am the chief executive officer of the organization.
6. I assume full responsibility for the fair and lawful operation of all activities to be conducted.
7. I will familiarize myself with the laws of Minnesota governing lawful gambling and rules of the Board and agree, if licensed, to abide by those laws and rules, including amendments to them.
8. Any changes in application information will be submitted to the Board no later than ten days after the change has taken effect.
9. I understand that failure to provide required information or providing false or misleading information may result in the denial or revocation of the license.
10. I understand the fee is non-refundable regardless of license approval/denial.


Signature of Chief Executive Officer (designee may not sign)

12-8-23
Date

Data privacy notice: The information requested on this form (and any attachments) will be used by the Gambling Control Board (Board) to determine your organization's qualifications to be involved in lawful gambling activities in Minnesota. Your organization has the right to refuse to supply the information; however, if your organization refuses to supply this information, the Board may not be able to determine your organization's qualifications and, as a consequence, may refuse to issue a permit. If your organization supplies the information requested, the Board will be able to process your organization's application. Your organization's name and address will be public

information when received by the Board. All other information provided will be private data about your organization until the Board issues the permit. When the Board issues the permit, all information provided will become public. If the Board does not issue a permit, all information provided remains private, with the exception of your organization's name and address which will remain public. Private data about your organization are available to: Board members, Board staff whose work requires access to the information;

Minnesota's Department of Public Safety, Attorney General, Commissioners of Administration, Minnesota Management & Budget, and Revenue; Legislative Auditor, national and international gambling regulatory agencies; anyone pursuant to court order; other individuals and agencies specifically authorized by state or federal law to have access to the information; individuals and agencies for which law or legal order authorizes a new use or sharing of information after this notice was given; and anyone with your written consent.

This form will be made available in alternative format, i.e. large print, braille, upon request.

An equal opportunity employer

LG215 Lease for Lawful Gambling Activity

LEASE INFORMATION		
Organization: Owatonna Wrestling Association	License/Site Number: 04798-008	Daytime Phone: 507-456-2074
Address: 802 N Elm	City: Owatonna	State: Zip: MN 55060
Name of Leased Premises: <u>INSIDE SWING LLC</u>	Street Address: <u>685 W. BRIDGE ST. #5</u>	
City: Owatonna	State: Zip: MN 55060	Daytime Phone: <u>507-200-2003</u>
Name of Legal Owner: <u>JESSE SLETTER</u>	Business/Street Address: <u>685 W. BRIDGE ST. #5</u>	
City: Owatonna	State: Zip: MN 55060	Daytime Phone: <u>507-213-3119</u>
Name of Lessor (if same as legal owner, write "SAME"): <u>SAME</u>	Address:	
City:	State: Zip:	Daytime Phone:
Check applicable item: ☒ New or amended lease. Effective date: <u>1/1/24</u> . Submit changes at least ten days before the effective date of the change. ☐ New owner. Effective date: _____. Submit new lease within ten days after new lessor assumes ownership.		
CHECK ALL ACTIVITY THAT WILL BE CONDUCTED (no lease required for raffles)		
☒ Pull-Tabs (paper) ☒ Pull-Tabs (paper) with dispensing device ☐ Bar Bingo ☐ Bingo ☒ Tipboards ☒ Paddlewheel ☐ Paddlewheel with table ☒ Electronic Pull-Tabs ☒ Electronic Linked Bingo Electronic games may only be conducted: 1. at a premises licensed for the on-sale of intoxicating liquor or the on-sale of 3.2% malt beverages; or 2. at a premises where bingo is conducted as the primary business and has a seating capacity of at least 100.		
PULL-TAB, TIPBOARD, AND PADDLEWHEEL RENT (separate rent for booth and bar ops)		
BOOTH OPERATION: Some or all sales of gambling equipment are conducted by an employee/volunteer of a licensed organization at the leased premises.		
ALL GAMES, including electronic games: Monthly rent to be paid: _____%, not to exceed 10% of gross profits for that month. • Total rent paid from all organizations for only booth operations at the leased premises may not exceed \$1,750 . • The rent cap does not include BAR OPERATION rent for electronic games conducted by the lessor.		
BAR OPERATION: All sales of gambling equipment conducted by the lessor or lessor's employee.		
ELECTRONIC GAMES: Monthly rent to be paid: <u>15</u> %, not to exceed 15% of the gross profits for that month from electronic pull-tab games and electronic linked bingo games.		
ALL OTHER GAMES: Monthly rent to be paid: <u>20</u> %, not to exceed 20% of gross profits from all other forms of lawful gambling. • If any booth sales conducted by a licensed organization at the premises, rent may not exceed 10% of gross profits for that month and is subject to booth operation \$1,750 cap.		
BINGO RENT (for leased premises where bingo is the primary business conducted, such as bingo hall)		
Bingo rent is limited to one of the following: • Rent to be paid: _____%, not to exceed 10% of the monthly gross profit from all lawful gambling activities held during bingo occasions, excluding bar bingo. - OR - • Rate to be paid: \$ _____ per square foot, not to exceed 110% of a comparable cost per square foot for leased space, as approved by the director of the Gambling Control Board. The lessor must attach documentation, verified by the organization, to confirm the comparable rate and all applicable costs to be paid by the organization to the lessor. ⇒ Rent may not be paid for bar bingo. ⇒ Bar bingo does not include bingo games linked to other permitted premises.		
LEASE TERMINATION CLAUSE (must be completed)		
The lease may be terminated by either party with a written <u>30</u> day notice. Other terms:		

LG215 Lease for Lawful Gambling Activity

6/15 Page 2 of 2

Lease Term: The term of this agreement will be concurrent with the premises permit issued by the Gambling Control Board (Board).

Management: The owner of the premises or the lessor will not manage the conduct of lawful gambling at the premises. The organization may not conduct any activity on behalf of the lessor on the leased premises.

Participation as Players Prohibited: The lessor will not participate directly or indirectly as a player in any lawful gambling conducted on the premises. The lessor's immediate family and any agents or gambling employees of the lessor will not participate as players in the conduct of lawful gambling on the premises, except as authorized by Minnesota Statutes, Section 349.181.

Illegal Gambling: The lessor is aware of the prohibition against illegal gambling in Minnesota Statutes 609.75, and the penalties for illegal gambling violations in Minnesota Rules 7865.0220, Subpart 3. In addition, the Board may authorize the organization to withhold rent for a period of up to 90 days if the Board determines that illegal gambling occurred on the premises or that the lessor or its employees participated in the illegal gambling or knew of the gambling and did not take prompt action to stop the gambling. Continued tenancy of the organization is authorized without payment of rent during the time period determined by the Board for violations of this provision, as authorized by Minnesota Statutes, Section 349.18, Subd. 1(a).

To the best of the lessor's knowledge, the lessor affirms that any and all games or devices located on the premises are not being used, and are not capable of being used, in a manner that violates the prohibitions against illegal gambling in Minnesota Statutes, Section 609.75.

Notwithstanding Minnesota Rules 7865.0220, Subpart 3, an organization must continue making rent payments under the terms of this lease, if the organization or its agents are found to be solely responsible for any illegal gambling, conducted at this site, that is prohibited by Minnesota Rules 7861.0260, Subpart 1, item H, or Minnesota Statutes, Section 609.75, unless the organization's agents responsible for the illegal gambling activity are also agents or employees of the lessor.

The lessor must not modify or terminate the lease in whole or in part because the organization reported, to a state or local law enforcement authority or to the Board, the conduct of illegal gambling activity at this site in which the organization did not participate.

Other Prohibitions: The lessor will not impose restrictions on the organization with respect to providers (distributor or linked bingo game provider) of gambling-related equipment and services or in the use of net profits for lawful purposes.

The lessor, the lessor's immediate family, any person residing in the same residence as the lessor, and any agents or employees of the lessor will not require the organization to perform any action that would violate statute or rule. The lessor must not modify or terminate this lease in whole or in part due to the lessor's violation of this provision. If there is a dispute as to whether a violation occurred, the lease will remain in effect pending a final determination by the Compliance Review Group (CRG) of the Board. The lessor agrees to arbitration when a violation of this provision is alleged. The arbitrator shall be the CRG.

Access to Permitted Premises: Consent is given to the Board and its agents, the commissioners of revenue and public safety and their agents, and law enforcement personnel to enter and inspect the permitted premises at any reasonable time during the business hours of the lessor. The organization has access to the premises during any time reasonable and when necessary for the conduct of lawful gambling.

Lessor Records: The lessor must maintain a record of all money received from the organization, and make the record available to the Board and its agents, and the commissioners of revenue and public safety and their agents upon demand. The record must be maintained for 3-1/2 years.

Rent All-Inclusive: Amounts paid as rent by the organization to the lessor are all-inclusive. No other services or expenses provided or contracted by the lessor may be paid by the organization, including but not limited to:

- trash removal
- electricity, heat
- snow removal
- storage
- janitorial and cleaning services
- other utilities or services
- lawn services
- security, security monitoring
- cost of any communication network or service required to conduct electronic pull-tabs games or electronic bingo
- in the case of bar operations, cash shortages.

Any other expenditures made by an organization that is related to a leased premises must be approved by the director of the Board. Rent payments may not be made to an individual.

ACKNOWLEDGMENT OF LEASE TERMS

I affirm that this lease is the total and only agreement between the lessor and the organization, and that all obligations and agreements are contained in or attached to this lease and are subject to the approval of the director of the Gambling Control Board.

Other terms of the lease:

Signature of Lessor:

Date:

Signature of Organization Official (Lessee):

Date:

Print Name and Title of Lessor:

Print Name and Title of Lessee:

Questions? Contact the Licensing Section, Gambling Control Board, at 651-539-1900. This publication will be made available in alternative format (i.e. large print, braille) upon request. **Data privacy notice:** The information requested on this form and any attachments will become public information when received by the Board, and will be used to determine your compliance with Minnesota statutes and rules governing lawful gambling activities.

Mail or fax lease to:

Minnesota Gambling Control Board
1711 W. County Road B, Suite 300 South
Roseville, MN 55113

Fax: 651-639-4032



CITY OF
OWATONNA

Miscellaneous



DATE: January 2, 2024
TO: Mayor and City Council
FROM: Sean Murphy, Public Works Director
SUBJECT: Purchase 2024 Tandem Plow and Chassis

Purpose:

Requesting City Council approval to purchase a 2024 Western Star plow truck from Truck Center Companies and a chassis from Towmaster Truck Equipment.

Background:

A 2015 Freightliner will be replaced with a 2024 Western Star. The purchase of this equipment has been identified as necessary by the Street Maintenance Manager. Rotation of equipment is critical to ensure trade value can be applied towards new vehicle purchases and to keep maintenance costs low. The equipment is anticipated to be delivered and operational as part of the fleet for the 2024 winter season.

Budget Impact:

The State Contract purchase price of the 2024 Western Star is \$148,875 and the chassis is \$189,647, totaling \$338,522. The 2015 Freightliner will be sold to the City of Clarks Grove for an agreed upon price of \$100,000. Costs will be paid for with the Vehicle Replacement Fund.

Staff Recommendation:

Staff recommends approval.

Attachments:

1. Truck Center Quote - 2024 Plow Truck
2. Towmaster Quote - Chassis

PURCHASE ORDER



BUYER COMPANY	CITY OF OWATONNA MN		
BUYER CONTACT	JOHN MARTIN	EMAIL	John.Martin@ci.owatonna.mn.us
ADDRESS	110 INDUSTRIAL BLVD		
CITY	OWATONNA	COUNTY	
STATE ZIP CODE	MN 55060		
HOME PHONE	507-774-7051	WORK PHONE	

MAKE WST	MODEL 47X	NEW/USED NEW	VEHICLE IDENTIFICATION NUMBER TBD		DATE 12-21-23
YEAR 2024	COLOR ORANGE	TYPE TRUCK	MILEAGE 0	STOCK NO. TBD	APPROX DELIVERY DATE 8-15-24

CASH PRICE OF VEHICLE		\$ 148,875		CASH PRICE OF VEHICLE		\$148,875	
ACCESSORIES				TIMES (1) UNITS			
1 NEW 47X PLOW TRUCK				TRADE ALLOWANCE			
PER CITY SPECS				DIFFERENCE			
CONTRACT 194867				ADMINISTRATIVE FEE			
				BALANCE OWED ON TRADE			
				SALES TAX		TBD	
				DEPOSIT PAYMENT		NA	
				TOTAL CASH SALE PRICE			
				CASH DUE ON DELIVERY		SALES PRICE PLUS TAX AND LICNSE	
				NEW LIENHOLDER			
				CREDIT DESIRED ☐ YES ☐ NO			
				INSURANCE DESIRED ☐ YES ☐ NO			
RECORD OF TRADE-IN							
YEAR	MAKE	MODEL					
VIN			MILEAGE				
BALANCE OWED TO							
ADDRESS							
BALANCE OWED							
RECORD OF ADDITIONAL TRADE-IN UNITS SEE ATTACHED ADDENDUM							

TERMS AND CONDITIONS

Buyer acknowledges, agrees, represents and warrants as follows:

- (1) The terms of the agreement evidenced by this Purchase Order are contained on both the front and reverse sides hereof. This Purchase Order, when signed by an authorized Dealer representative, contains a complete and exclusive statement of such terms and Dealer has no obligations beyond or in addition to what is expressly set forth herein. There are no other terms and conditions, oral or written, and this Purchase Order supersedes all prior statements, representations and promises. The terms of this agreement may be supplemented, modified or changed only by a written instrument signed by Dealer.
- (2) The Certificate of Title for the trade-in vehicle identified above (if any) is not a salvage title and no salvage title has ever been issued for such vehicle.
- (3) The only material defects in the trade-in vehicle are the following (if no defects, write "None"): _____.
- (4) None of the emissions or safety restraint systems have been altered or removed by Truck Center Companies.
- (5) No insurance of any kind is included in the agreement evidenced by this Purchase Order.
- (6) If Dealer has agreed to arrange financing for the purchase of the vehicle and Dealer is unable to promptly assign the finance contract to an institutional lender on a "non-recourse" basis, Dealer may, at its option, terminate this agreement and such finance contract.
- (7) I have read this Purchase Order, I have had an opportunity to ask questions of Dealer concerning it, and I have received a complete, signed copy of the Purchase Order.

NOTICE TO BUYER: Do not sign this Purchase Order before you read it or if it contains blank spaces. You are entitled to a copy of the Purchase Order you sign.

CONTRACTUAL DISCLOSURE STATEMENT:

The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale. The term "window form" refers only to the F.T.C. used car "Buyers Guide", if one is present, and not to any other form or sign that might be in any window.

X _____ X **JER JAVENS**
 (Buyer's Signature) (Salesman Name)

X _____ ACCEPTED BY: X _____
 (Co-Buyer's Signature) (Dealer or authorized representative)

THE CONTRACT CONDITIONS OF THIS ORDER ARE CONTINUED ON THE REVERSE SIDE HEREOF

Prepared for:
Luke Jannett
MINNESOTA STATE OF
50 Sherburne Ave
St Paul, MN 55155

Owatonna MN Tandem Plow
Summer 2024

Prepared by:
Jer Javens
Phone: 507-929-0660

Q U O T A T I O N

WESTERN STAR 47X

SET FORWARD AXLE - TRUCK	18,000# TAPERLEAF FRONT SUSPENSION
DETROIT DD13 GEN 5 12.8L 470 HP @ 1625 RPM, 1900 GOV RPM, 1650 LB-FT @ 975 RPM	111.6 INCH BBC CONVENTIONAL ALUMINUM CAB
ALLISON 4500 RDS AUTOMATIC TRANSMISSION WITH PTO PROVISION	5390MM (212 INCH) WHEELBASE, SFA ONLY
MT-40-14X 40,000# R-SERIES TANDEM REAR AXLE	11.0MM X 85.0MM X 287.0MM STEEL FRAME (0.43X3.35X11.30 INCH) 120 KSI
TUFTRAC GEN2 40,000# REAR SPRING SUSPENSION	2025MM (80 INCH) REAR FRAME OVERHANG
DETROIT DA-F-18.0-5 18,000# FL1 71.0 KPI/3.74 DROP SINGLE FRONT AXLE	TEM TO EVALUATE AND INSTALL FRAME RAIL REINFORCEMENT AS NEEDED FOR FRONT FRAME MOUNTED EQUIPMENT

		PER UNIT	TOTAL
VEHICLE PRICE	TOTAL # OF UNITS (1)	\$ 143,261	\$ 143,261
EXTENDED WARRANTY		\$ 5,905	\$ 5,905
DEALER INSTALLED OPTIONS		\$ 0	\$ 0
CUSTOMER PRICE BEFORE TAX		\$ 149,166	\$ 149,166

TAXES AND FEES

FEDERAL EXCISE TAX (FET)	\$ (291)	\$ (291)
TAXES AND FEES	\$ 0	\$ 0
OTHER CHARGES	\$ 0	\$ 0

TRADE-IN

TRADE-IN ALLOWANCE	\$ (0)	\$ (0)
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BALANCE DUE	(LOCAL CURRENCY)	\$ 148,875	\$ 148,875
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Customer: X _____ Date: ____ / ____ / ____.

Dealer: X _____ Date: ____ / ____ / ____.

Daimler Truck Financial

Financing that works for you.

See your local dealer for a competitive quote from Daimler Truck Financial, or contact us at Information@dtfoffers.com.

Daimler Truck Financial offers a variety of finance, lease and insurance solutions to fit your business needs. For more information about our products and services, visit our website at www.daimler-truckfinancial.com.



TOWMASTER, 61381 US HWY 12, LITCHFIELD, MN 55355
PH: 320-693-7900 FX: 320-693-7921 TF: 800-462-4517
TOWMASTERTRUCK.COM

Reference No.

QT 82945

**** QUOTATION ****

Ship To:	Cust:	3718	Phone:	Bill To:	Phone:
OWATONNA, CITY OF				OWATONNA, CITY OF	
1140 INDUSTRIAL RD				540 WEST HILLS CIRCLE	
OWATONNA		MN 55060	USA	OWATONNA	MN 55060

ATTN: JOHN MARTIN

PO#	Salesman	Terms	Created	Last Revised	Appx Comp
	JOSH PAULSON	NET 30 DAYS	11/08/23	11/08/23	0/00/00

Serial No.

HOIST, PLOW, PLOW STEER, WING TOE, WING HEEL, WING PUSHBAR, SCRAPER,
SANDER SPINNER, SANDER AUGER

1	9902497 - Control System Force ULTRA-4-6100 Commander control, Installed	\$15,168.00	\$15,168.00
1	9900882 - Reservoir TMTE 31 Gal Cabshield mt (stainless steel) w/intank filter for system, installed	\$4,641.00	\$4,641.00
1	9900891 - Pump Force TXV92 (5.6 ci) Pump, 280 HOT SHIFT PTO for Allison Trans, w/Elec shut down installed	\$7,896.00	\$7,896.00
1	9900893 - Valve Force Cable pull-off (for use w/telescopic hoist) installed	\$715.00	\$715.00
1	9900871 - Switch TMTE BODY UP Installed (electric controls only)	\$258.00	\$258.00
1	9900884 - Sensor Force Low oil indicator system, SLIM-LINE AND CABSHIELD MOUNTED w/light mounted in cab, installed	\$317.00	\$317.00
1	9905014 - Hydraulic Valve Hose Guard installed	\$389.00	\$389.00
1	WARRANTY - TOWMASTER EXCLUSIVE WARRANTY: 5 yr Steel/Stainless Steel Body Structure; 5 yr Whelen LED Light Systems; 3 yr Palfinger Hoists; 4 yr SwapLoader Hoists; 1 year Swenson Spreaders, 2 yr Hyd, FALLS Snow Equip, Tele Hoists, and all other items.		

Accepted by

Date

Price: \$189,647.00

Total Discounts:

Net Cost: \$189,647.00

Freight

Total: \$189,647.00



DATE: January 2, 2024
TO: Mayor and City Council
FROM: Jenna Tuma, Parks, Trails, Recreation & Facilities Director
Aaron Fitzloff, Facilities Manager
SUBJECT: Brooktree Clubhouse Kitchen Hood Replacement Bid - Owatonna Heating and Cooling, Inc.

Purpose:

Approve the bid received from Owatonna Heating and Cooling, Inc. for this work in the Brooktree Clubhouse kitchen: replace the current hood and install a condensate hood above the dishwasher.

Background:

This is a component of the 2024 Capital Improvement Project (CIP) known as Brooktree Clubhouse Improvement BG - 23 - 010.

There are two kitchen hood fire suppression systems in place at the Clubhouse. One was installed above the stove in 2012, and the other, installed in the mid-1980s covers the flattop and deep fryer. The latter is outdated as it uses a water-based system and no longer complies with current codes. Additionally, there is no hood system in place for the dishwasher.

We propose installing new kitchen hood fire suppression/exhaust hoods equipped with Ansul fire systems to rectify this. The bid encompasses two hoods: one to replace the existing cooking area hoods and another to serve as a condensate hood for the dishwasher area. This upgrade will bring the building into compliance with fire suppression/exhaust hood regulations.

The project was made available for bid through the City's online procurement platform and attracted significant interest, with 150 views and 12 downloads by various companies. Owatonna Heating and Cooling submitted the sole bid for \$102,200. We have consulted with the City attorney, who is satisfied with awarding the contract to them.

Budget Impact:

This project has received approval as part of the 2024 CIP project. The estimated cost of the hood is \$100,000. The difference will be made up in the rest of the remodeling.

Staff Recommendation:

Staff recommends approving a contract with Owatonna Heating and Cooling, Inc. for this project.

Attachments:

1. Brooktree Kitchen_Remodel Bid
2. A101-2017 - Brooktree Clubhouse Kitchen Proshop Remodeling
3. Brooktree_Bid Form
4. Brooktree bid bond
5. 00 7300 Supplementary Conditions
6. 00 7200 A201 General Conditions

Owatonna Heating and Cooling, Inc.
408 N. Cedar Ave. Owatonna MN 55060
Telephone 507-451-2051 Fax 507-455-9254

December 21, 2023

City of Owatonna
540 West Hills Circle
Owatonna, MN 55060

ATTN: Aaron

RE: Brooktree Kitchen remodel

The following is a cost to provide. The price includes: MUA, hoods, (2) exhaust fans, ducting, electrical hookup.

Total Price	\$102,200.00
--------------------	---------------------

Note: Price does not include: plumbing, roofing, hole cuts, carpentry, concrete pads, or changes necessitated by code review.

Note: Addenda received: 1

Note: This bid is valid for 10 days.

Questions or comments regarding this document can be directed to our office at the telephone number listed above or by e-mailing our office at wes.kain@owatonna-heating.com.

Submitted by,

Wes Kain

Accepted By: _____ Date: _____



AIA® Document A101® – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the Second day of January in the year 2024
(In words, indicate day, month and year.)

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

City of Owatonna
540 West Hills Circle Drive
Owatonna, MN 55060

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

Owatonna Heating and Cooling Inc
408 North Cedar Avenue
Owatonna, MN 55060

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

Brooktree Clubhouse Kitchen/Proshop Remodeling
1369 Cherry Street
Owatonna, MN 55060

The project involves the remodeling of an existing golf course clubhouse. The remodeling work includes selective demolition, replacement of kitchen equipment, mechanical equipment replacement and associated electrical work.

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

Adsit Architecture and Planning
807 Broadway Street NE Suite 245
Minneapolis, MN 55413

The Owner and Contractor 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. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

The parties should complete A101®–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	THE WORK OF THIS CONTRACT
3	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
4	CONTRACT SUM
5	PAYMENTS
6	DISPUTE RESOLUTION
7	TERMINATION OR SUSPENSION
8	MISCELLANEOUS PROVISIONS
9	ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

- ☒ The date of this Agreement.
- ☐ A date set forth in a notice to proceed issued by the Owner.
- ☐ 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 this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

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

Init.

/

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

[X] By the following date: March 1, 2024

§ 3.3.2 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 Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work

Substantial Completion Date

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be One hundred two thousand, two hundred dollars (\$ 102, 200.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item

Price

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

Item

Price

Conditions for Acceptance

§ 4.3 Allowances, if any, included in the Contract Sum:
(Identify each allowance.)

Item

Price

§ 4.4 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)

§ 4.5 Liquidated damages, if any:

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

None

§ 4.6 Other:

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

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

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

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

Biweekly ending the Wednesday before the first and third Tuesday of each month.

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the Thursday before the First and Third Tuesday of each month, the Owner shall make payment of the amount certified to the Contractor not later than the first and third Wednesday of each month
(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 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.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

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

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 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 Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor 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; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

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

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

Five percent (5%)

§ 5.1.7.1.1 The following items are not subject to retainage:

Init.

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User Notes:

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

Insurance and permit cost

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

(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage upon Substantial Completion.)

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 5.1.9 Except with the Owner’s prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

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

§ 5.3 Interest

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

(Insert rate of interest agreed upon, if any.)

%

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this 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.)

§ 6.2 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 Section 15.4 of AIA Document A201–2017

☐ Litigation in a court of competent jurisdiction

☒ Other *(Specify)*

Mediation and Arbitration

If the Owner and Contractor 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 7 TERMINATION OR SUSPENSION

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

§ 7.1.1 If the Contract is terminated for the Owner’s convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner’s convenience.)

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 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.

§ 8.2 The Owner’s representative:

(Name, address, email address, and other information)

Kris M. Busse – City Administrator
City of Owatonna
540 West Hills Circle Drive
Owatonna, MN 55060

§ 8.3 The Contractor’s representative:

(Name, address, email address, and other information)

Owatonna Heating and Cooling, Inc
408 North Cedar Avenue
Owatonna, MN 55060

§ 8.4 Neither the Owner’s nor the Contractor’s representative shall be changed without ten days’ prior notice to the other party.

Init.

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User Notes:

(1752517441)

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as set forth in 00 7300 Supplementary Conditions

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and as set forth in 00 7300 Supplementary Conditions.

§ 8.6 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.)

§ 8.7 Other provisions:

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A201™–2017, General Conditions of the Contract for Construction

(Paragraphs deleted)

-See Project Manual

.5 Drawings

Number	Title	Date
17 Drawings	Brooktree Clubhouse Remodel	12-18-2023 Addendum 1
MP0.00	Mechanical Title Sheet	
MD1.10	Main Level Mechanical Demolition Plan	
M1.10	Main Level HVAC Plan	
M6.10	HVAC Schedules, Specifications and Details	
For Reference Captiveaire Submittals- 13 Sheets		
For Reference Architectural Drawings 7 Sheets		

.6 Specifications

Section	Title	Date	Pages
Project Manual	Brooktree Clubhouse/Proshop Remodeling	12/7/2023	89

.7 Addenda, if any:

Number	Date	Pages
1	12/18/2023	1

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

Init.

.8 Other Exhibits:
(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

☐ AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

☐ The Sustainability Plan:

Title	Date	Pages
-------	------	-------

☒ Supplementary and other Conditions of the Contract:See Project Manual

Document	Title	Date	Pages
Section 00 7300	Supplementary Conditions	12/7/2023	3

.9 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 Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

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

OWNER (Signature)

Kris M Busse
City Administrator

(Printed name and title)

CONTRACTOR (Signature)

Owatonna Heating and Cooling

(Printed name and title)

Additions and Deletions Report for AIA® Document A101® – 2017

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 17:24:12 ET on 12/26/2023.

PAGE 1

AGREEMENT made as of the Second day of January in the year 2024

...

City of Owatonna
540 West Hills Circle Drive
Owatonna, MN 55060

...

Owatonna Heating and Cooling Inc
408 North Cedar Avenue
Owatonna, MN 55060

...

Brooktree Clubhouse Kitchen/Proshop Remodeling
1369 Cherry Street
Owatonna, MN 55060

The project involves the remodeling of an existing golf course clubhouse. The remodeling work includes selective demolition, replacement of kitchen equipment, mechanical equipment replacement and associated electrical work.

...

Adsit Architecture and Planning
807 Broadway Street NE Suite 245
Minneapolis, MN 55413

PAGE 2

☐ ~~_____~~ ☒ The date of this Agreement.

PAGE 3

☒ By the following date: March 1, 2024

...

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be ~~(\$—)~~ One hundred two thousand, two hundred dollars (\$ 102, 200.00), subject to additions and deductions as provided in the Contract Documents.

...

None
PAGE 4

Biweekly ending the Wednesday before the first and third Tuesday of each month.

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the ~~day of a Thursday~~ before the First and Third Tuesday of each month, the Owner shall make payment of the amount certified to the Contractor not later than the ~~day of the — month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than — (—) days after the Architect receives the Application for Payment.~~ first and third Wednesday of each month

...

Five percent (5%)
PAGE 5

Insurance and permit cost
PAGE 6

☒ Other (*Specify*)

Mediation and Arbitration

...

Kris M. Busse – City Administrator
City of Owatonna
540 West Hills Circle Drive
Owatonna, MN 55060

...

Owatonna Heating and Cooling, Inc
408 North Cedar Avenue
Owatonna, MN 55060

PAGE 7

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, ~~Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.~~ as set forth in 00 7300 Supplementary Conditions

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and ~~elsewhere in the Contract Documents.~~ as set forth in 00 7300 Supplementary Conditions.

...

- ~~2~~ AIA Document A101™–2017, Exhibit A, Insurance and Bonds
~~3~~ AIA Document A201™–2017, General Conditions of the Contract for Construction
~~4~~ 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.)–See Project Manual

...

17 Drawings

Brooktree Clubhouse
Remodel

12-18-2023 Addendum 1

<u>MP0.00</u>	<u>Mechanical Title Sheet</u>
<u>MD1.10</u>	<u>Main Level Mechanical Demolition Plan</u>
<u>M1.10</u>	<u>Main Level HVAC Plan</u>
<u>M6.10</u>	<u>HVAC Schedules, Specifications and Details</u>
<u>For Reference Captiveaire Submittals- 13 Sheets</u>	
<u>For Reference Architectural Drawings 7 Sheets</u>	

...

<u>Project Manual</u>	<u>Brooktree</u>	<u>12/7/2023</u>	<u>89</u>
	<u>Clubhouse/Proshop</u>		
	<u>Remodeling</u>		

...

<u>1</u>	<u>12/18/2023</u>	<u>1</u>
----------	-------------------	----------

PAGE 8

<u>[X]</u>	<u>Supplementary and other Conditions of the Contract:See Project Manual</u>
--------------	--

...

<u>Section 00 7300</u>	<u>Supplementary</u>	<u>12/7/2023</u>	<u>3</u>
	<u>Conditions</u>		

...

Kris M Busse
City Administrator

Owatonna Heating and Cooling

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Mina Adsit, AIA, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 17:24:12 ET on 12/26/2023 under Order No. 2114497218 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

SECTION 00 4100

BID FORM

THE PROJECT AND THE PARTIES

1.01 TO:

- A. Owner
City of Owatonna
540 West Hills Circle
Owatonna, MN 55060

1.02 FOR:

- A. Project: Brooktree Clubhouse Kitchen/Proshop Remodeling
B. Owner's Project Number: 2324
1369 Cherry Street
Owatonna, MN 55060

1.03 DATE: 12-21-23 (BIDDER TO ENTER DATE)

1.04 SUBMITTED BY: (BIDDER TO ENTER NAME AND ADDRESS)

- A. Bidder's Full Name Owatonna Heating & Cooling Inc
Address 408 N Cedar Ave
City, State, Zip Owatonna, MN 55060
Phone Number 507-451-2051
Email Address OHCmain@owatonna-heating.com

1.05 OFFER

- A. Having examined the Place of The Work and all matters referred to in the Instructions to Bidders and the Bid Documents prepared by Widseth for the above mentioned project, we, the undersigned, hereby offer to enter into a Contract to perform the Work for the Sum of:

One Hundred Two Thousand Two Hundred -
dollars
(\$ 102,200.00), in lawful money of the United States of America.

- B. We have included the required security deposit as required by the Instruction to Bidders.
C. We have included the required performance assurance bonds in the Bid Amount as required by the Instructions to Bidders.

1.06 ACCEPTANCE

- A. This offer shall be open to acceptance and is irrevocable for thirty days from the bid closing date.
B. If this bid is accepted by Owner within the time period stated above, we will:
1. Execute the Agreement within seven days of receipt of Notice of Award.
2. Furnish the required bonds within seven days of receipt of Notice of Award.
3. Commence work as soon as possible after the Notice to Proceed,
C. If this bid is accepted within the time stated, and we fail to commence the Work or we fail to provide the required Bond(s), the security deposit shall be forfeited as damages to Owner by reason of our failure, limited in amount to the lesser of the face value of the security deposit or the difference between this bid and the bid upon which a Contract is signed.
D. In the event our bid is not accepted within the time stated above, the required security deposit shall be returned to the undersigned, in accordance with the provisions of the Instructions to Bidders; unless a mutually satisfactory arrangement is made for its retention and validity for an extended period of time.

1.07 CONTRACT TIME

- A. If this Bid is accepted, we will:

B. Complete the Work by the First day of March, 2024.

1.08 ADDENDA

A. The following Addenda have been received. The modifications to the Bid Documents noted below have been considered and all costs are included in the Bid Sum.

1. Addendum # 1 Dated 12-18-23.
2. Addendum # _____ Dated _____.

1.09 BID FORM SUPPLEMENTS

A. We agree to submit the following Supplements to Bid Forms within 24 hours after submission of this bid for additional bid information:

1. List of Subcontractors
2. Proposed Schedule of Values

1.10 BID FORM SIGNATURE(S)

The Corporate Seal of

Owaxtonna Heating and Cooling Inc

(Bidder - print the full name of your firm)

was hereunto affixed in the presence of:

W. K. President

(Authorized signing officer, Title)

(Seal)

Amy Kinn Contractor

(Authorized signing officer, Title)

1.11 IF THE BID IS A JOINT VENTURE OR PARTNERSHIP, ADD ADDITIONAL FORMS OF EXECUTION FOR EACH MEMBER OF THE JOINT VENTURE IN THE APPROPRIATE FORM OR FORMS AS ABOVE.

END OF SECTION

THE CINCINNATI INSURANCE COMPANY

Bid Bond

CONTRACTOR (Name, legal status and address):

Owatonna Heating & Cooling, Inc.
408 North Cedar
Owatonna, MN 55060

SURETY (Name, legal status and principal place of business):

THE CINCINNATI INSURANCE COMPANY
6200 S. GILMORE ROAD
FAIRFIELD, OHIO 45014-5141

OWNER (Name, legal status and address):

City of Owatonna, Minnesota
540 West Hills Circle
Owatonna, MN 55060

BOND AMOUNT:

Five Percent of Amount Bid (5%)

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

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

PROJECT (Name, location or address, and Project number, if any):

Brooktree Clubhouse Kitchen/Pro Shop Remodeling Project Number, if any:

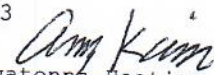
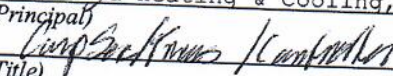
The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond the sixty (60) days.

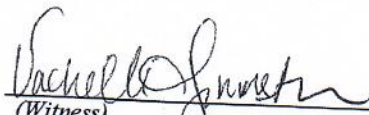
If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirements shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 21st day of December, 2023


(Witness)


Owatonna Heating & Cooling, Inc.
(Principal) 
(Title) 


(Witness)

THE CINCINNATI INSURANCE COMPANY

(Surety)

(Seal)

(Title)

Nicole M. Coty

Attorney-in-fact

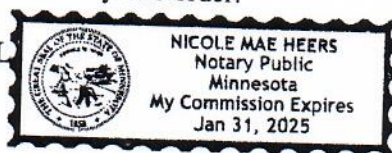
The Company executing this bond vouches that this document conforms to American Institute of Architects Document A310, 2010 Edition.
S-2000-AIA (11/10) PUBLIC

CORPORATE ACKNOWLEDGMENT

STATE OF Minnesota
COUNTY OF Steele

On the 21st day of December, 2023, before me personally appeared, Amy J Kain to me, who being duly sworn, did depose and say: that s/he resides in Minnesota that s/he is the Controller of the Owatonna Heating & Cooling, Inc. the corporation described in and which executed the foregoing instrument; that s/he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that s/he signed her/his name thereto by like order.

(SEAL)



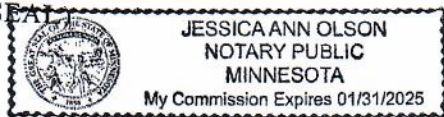
Nicole Heers
Notary Public

ACKNOWLEDGMENT OF CORPORATE SURETY

STATE OF MINNESOTA
COUNTY OF Dakota

On the 21st day of December, 2023, before me personally appeared, Nicole M. Coty to me known, who being duly sworn, did say: that s/he resides in Minnesota that s/he is the aforesaid officer or attorney in fact of The Cincinnati Insurance Company a corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that said instrument as signed and sealed on behalf of said corporation by the aforesaid officer, by authority of its board of directors; and the aforesaid officer acknowledged said instrument to be the free act and deed of said corporation.

(SEAL)



Jessica Ann Olson
Notary Public

THE CINCINNATI INSURANCE COMPANY
THE CINCINNATI CASUALTY COMPANY

Fairfield, Ohio

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That THE CINCINNATI INSURANCE COMPANY and THE CINCINNATI CASUALTY COMPANY, corporations organized under the laws of the State of Ohio, and having their principal offices in the City of Fairfield, Ohio (herein collectively called the "Companies"), do hereby constitute and appoint

Mark A. Thune; DeEtte Wurm; Mark W. Hayford; Nicole M. Coty; Litton E.S. Field, Jr.; Jacqueline Riley; Erin J. Pohlman; Amanda Plantenburg; Jeffrey R. Skarr; Kristie Reynolds; Mulya Enoksen; Toni Miller; Marlena Pope; Debra M. Bledsoe; Brenda S. Klimstra; Dena Grunhovid; Leslie Seehusen; Lori J. Hubbard; Martha Hoven; Jessica A. Olson and/or Sierra McQuoid

of St. Cloud, Thief River Falls, Mendota Heights and Rochester, Minnesota their true and legal Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and deliver on behalf of the Companies as Surety, any and all bonds, policies, undertakings or other like instruments, as follows:

Any such obligations in the United States, up to
Fifty Million and No/100 Dollars (\$50,000,000.00).

This appointment is made under and by authority of the following resolutions adopted by the Boards of Directors of The Cincinnati Insurance Company and The Cincinnati Casualty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the President or any Senior Vice President be hereby authorized, and empowered to appoint Attorneys-in-Fact of the Company to execute any and all bonds, policies, undertakings, or other like instruments on behalf of the Corporation, and may authorize any officer or any such Attorney-in-Fact to affix the corporate seal; and may with or without cause modify or revoke any such appointment or authority. Any such writings so executed by such Attorneys-in-Fact shall be binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company.

RESOLVED, that the signature of the President or any Senior Vice President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Secretary or Assistant Vice-President and the Seal of the Company may be affixed by facsimile to any certificate of any such power and any such power of certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certified by certificate so executed and sealed shall, with respect to any bond or undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS WHEREOF, the Companies have caused these presents to be sealed with their corporate seals, duly attested by their President or any Senior Vice President this 16th day of March, 2021.



STATE OF OHIO)
COUNTY OF BUTLER)

THE CINCINNATI INSURANCE COMPANY
THE CINCINNATI CASUALTY COMPANY

Stephen A. Wente

On this 16th day of March, 2021 before me came the above-named President or Senior Vice President of The Cincinnati Insurance Company and The Cincinnati Casualty Company, to me personally known to be the officer described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of said Companies and the corporate seals and the signature of the officer were duly affixed and subscribed to said instrument by the authority and direction of said corporations.



Keith Collett

Keith Collett, Attorney at Law
Notary Public - State of Ohio

My commission has no expiration date.
Section 147.03 O.R.C.

I, the undersigned Secretary or Assistant Vice-President of The Cincinnati Insurance Company and The Cincinnati Casualty Company, hereby certify that the above is the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Power of Attorney is still in full force and effect.

Given under my hand and seal of said Companies at Fairfield, Ohio, this 21st day of December, 2023



Ed H

BN-1457 (3/21)

**SECTION 00 7300
SUPPLEMENTARY CONDITIONS**

PART 1 GENERAL

1.01 SUMMARY

- A. These Supplementary Conditions amend and supplement the General Conditions defined in Document 00 7200 - General Conditions and other provisions of Contract Documents as indicated below. Provisions that are not so amended or supplemented remain in full force and effect.
- B. The terms used in these Supplementary Conditions that are defined in the General Conditions have the meanings assigned to them in the General Conditions.

1.02 MODIFICATIONS TO GENERAL CONDITIONS

1.03 MODIFICATIONS TO AIA A201

1.04 ARTICLE 1.1 - BASIC DEFINITIONS

- A. 1.1.9 Workmanship:
 - 1. The degree of skill in which the Work is completed.
 - 2. All Work is to be completed in a professional manner by a skilled and experienced craftsman in accordance with the manufacturer's installations instructions.
 - 3. All pipes, conduits, ducts, and supports are to be installed parallel or perpendicular to the building lines while maintaining the integrity of the installation.

1.05 ARTICLE 1.2 - CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

- A. 1.2.1.1 Add Subparagraph:
 - 1. If there is an inconsistency in the quality and/or quantity of Work required by the Contract Documents, either the greater quality and/or quantity of Work indicated shall be provided in accordance with the engineer/architect's interpretation without change in the contract sum.

1.06 ARTICLE 7.2 - CHANGE ORDERS

- A. Add the following subparagraph:
 - 1. 7.2.2: The following fees apply to Changes in the Work:
 - a. A 10 percent maximum on overhead and profit for the direct cost of Work performed by a Contractor or Subcontractor;
 - b. A 5 percent maximum overhead and profit on indirect costs of a Contractor's Subcontractors;
 - c. The total mark-up shall not exceed 20 percent and all mark-ups are subject to the Architect approval.
 - d. On Work deleted from the Contract, credit to the Owner shall be the Architect approved net cost plus 1/2 of the overhead and profit percentage noted above.
 - 2. In the case of an increase or decrease in the contract sum, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data, showing adjustments on the basis of reasonable expenditures and savings of those performing the Work attributable to the change.

1.07 ARTICLE 7.3 - CONSTRUCTION CHANGE DIRECTIVES

- A. Add the following subparagraph:
 - 1. 7.3.11: The following fees apply to Changes in the Work in accordance with Subparagraph 7.3.6:
 - a. A 10 percent maximum on overhead and profit for the direct cost of Work performed by a Contractor or Subcontractor;
 - b. A 5 percent maximum overhead and profit on indirect costs of a Contractor's Subcontractor;
 - c. The total mark-up shall not exceed 20 percent and all mark-ups are subject to the Architect approval.
 - d. On Work deleted from the Contract, credit to the Owner shall be the Architect approved net cost plus 1/2 of the overhead and profit percentage noted above.
 - 2. In the case of an increase or decrease in the contract sum, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with

appropriate supporting data, showing adjustments on the basis of reasonable expenditures and savings of those performing the Work attributable to the change.

1.08 ARTICLE 8 - TIME

A. Add the following subparagraph:

1. 8.2.4: Contract Time is identified in Section 00 3113 - Bidding and Construction Schedule.

1.09 ARTICLE 11.1 - CONTRACTOR'S LIABILITY INSURANCE

A. Add the following Paragraph as follows:

B. Insurance:

C. The Contractor shall secure and maintain such insurance from an insurance company authorized to write casualty insurance in the State where the work is located as will protect himself, his subcontractors and which shall indemnify and save harmless the Owner and the Architect and their officers, agents, and employees from and against all claims for bodily injury, death or property damage which may arise from the Contractor's operations under this contract, whether such operations be by himself or by any subcontractor or by anyone directly or indirectly employed by the Contractor and Subcontractor.

D. The Contractor shall not commence work under this Contract until he has obtained all insurance required under this section and shall have filed the certificate of insurance with the Owner and a copy with the Owner's attorney. Each insurance policy shall contain a clause assuring the insurance company will not cancel the insurance without thirty days written notice to the Owner, the Owner's attorney, and the Architect of intention to cancel. The amounts of such insurance shall be not less than the following, or greater if required by law:

1. Commercial General Liability (Including Premises- Operations; Independent Contractors' Protective; Products and Completed Operations; Broad Form Property Damage):
 - a. Bodily Injury and Property Damage (Name Owner as additional insured):
 - 1) \$1,000,000 Each Occurrence
 - 2) \$50,000 Damage to Rented Premises (Each Occurrence)
 - 3) \$5,000 Med Exp (Any One Person)
 - 4) \$1,000,000 Personal & Advertising Injury
 - 5) \$2,000,000 General Aggregate
 - 6) \$2,000,000 Annual Aggregate
 - b. Products and Completed Operations to be maintained for two years after final payment.
 - c. Property Damage Liability Insurance shall provide X, C, or U coverage as applicable.
 - d. Contractual Liability to be included.
2. Comprehensive Automobile Liability:
 - a. Bodily Injury:
 - 1) \$1,000,000 CSL Each Person
 - 2) \$(included) Each Occurrence
 - b. Property Damage:
 - 1) \$(included) Each Occurrence
3. Umbrella Excess Liability: Name Owner as additional insured:
 - a. Excess Liability:
 - 1) \$3,000,000 Each Occurrence
 - 2) \$3,000,000 Aggregate
4. Worker's Compensation:
 - a. State Statutory
 - b. Applicable Federal Statutory
 - 1) (e.g. Longshoremen's)
 - c. Employer's Liability
 - 1) \$1,000,000 Each Accident
 - 2) \$1,000,000 Disease - EA Employee
 - 3) \$1,000,000 Disease - Policy Limit
5. Rented Equipment:
 - a. Special/Replacement Cost
 - 1) \$100,000 Rented Equipment
6. Per occurrence - 30 day notice of cancellation/non-renewal - no waiver of subrogation.

1.10 ARTICLE 11.2 - PROPERTY INSURANCE

- A. The Owner will be responsible for purchasing and maintaining a "special form" or equivalent policy as described in the General Conditions of the Contract for Construction.
 - 1. The General Conditions refers to the policy as an "all-risk" policy. This verbiage shall be replaced with "special form".
- B. A copy of the General Conditions of the Contract for Construction can be obtained at the office of the Architect.

1.11 ARTICLE 11 - PERFORMANCE BOND AND PAYMENT BOND

- A. Add the following:
 - 1. 11.1.4: The bond value requirements are as follows:
 - a. Provide bonds on a standard surety bond form.
 - b. Provide a 100 percent Performance Bond.
 - c. Provide a 100 percent Payment Bond.
 - d. Deliver bonds within 3 days after execution of the Contract.

PART 2 PRODUCTS - NOT USED

PART 3 EXECUTION - NOT USED

END OF SECTION



AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Brooktree Clubhouse Kitchen/Proshop Remodeling

THE OWNER:

(Name, legal status and address)

City of Owatonna
540 West Hills Circle Drive
Owatonna, Minnesota 55060

THE ARCHITECT:

(Name, legal status and address)

Adsit Architecture and Planning

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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. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

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

14 TERMINATION OR SUSPENSION OF THE CONTRACT

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

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

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

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

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

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

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

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

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

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

§ 1.6 Notice

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

§ 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. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document

G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

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

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

§ 2.2 Evidence of the Owner's Financial Arrangements

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

§ 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. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

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

§ 2.4 Owner's Right to Stop the Work

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

§ 2.5 Owner's Right to Carry Out the Work

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

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

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

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

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

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

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and 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 and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

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

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

§ 3.6 Taxes

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

§ 3.7 Permits, Fees, Notices and Compliance with Laws

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

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

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

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 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.

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

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

§ 3.10 Contractor's Construction and Submittal Schedules

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

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

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

§ 3.11 Documents and Samples at the Site

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

delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

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

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

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

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

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

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will

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

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

§ 3.13 Use of Site

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

§ 3.14 Cutting and Patching

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

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

§ 3.15 Cleaning Up

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

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

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

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

§ 3.18.2 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.

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

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

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

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

§ 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

§ 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.

§ 7.3 Construction Change Directives

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

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

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

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

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

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

§ 8.3 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 binding dispute resolution; 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.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

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

§ 9.4 Certificates for Payment

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

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

§ 9.5 Decisions to Withhold Certification

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;

- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

§ 9.5.3 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, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

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

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

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

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

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

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

§ 9.8 Substantial Completion

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

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

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

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

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

§ 9.9 Partial Occupancy or Use

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

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

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

§ 9.10 Final Completion and Final Payment

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

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

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

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

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

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

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

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

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

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

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

§ 10.2.8 Injury or Damage to Person or Property

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

§ 10.3 Hazardous Materials and Substances

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

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will

promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

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

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

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

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

§ 10.4 Emergencies

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 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 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.

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

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or

expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall 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 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 Loss of Use, Business Interruption, and Delay in Completion Insurance

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

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

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

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

§ 12.2.2 After Substantial Completion

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

that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

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

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

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

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

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

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

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to 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

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

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

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

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

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

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

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

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

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

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

§ 14.3 Suspension by the Owner for Convenience

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

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

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

§ 14.4 Termination by the Owner for Convenience

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

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

- .1 cease operations as directed by the Owner in the notice;

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

§ 14.4.3 In case of such termination for the Owner's convenience, the 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.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

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

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

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

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

§ 15.1.4 Continuing Contract Performance

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

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

§ 15.1.5 Claims for Additional Cost

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

§ 15.1.6 Claims for Additional Time

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

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

§ 15.1.7 Waiver of Claims for Consequential Damages

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

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

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

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

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

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

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

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

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

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

§ 15.3 Mediation

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

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

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

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

§ 15.4 Arbitration

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

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

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

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

§ 15.4.4 Consolidation or Joinder

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

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

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



DATE: January 2, 2024
TO: Mayor and City Council
FROM: Sean Murphy, Public Works Director
SUBJECT: 2024 Energy Management Agreement - Owatonna Public Utilities

Purpose:

To amend the existing agreement with Owatonna Public Utilities regarding the Energy Management Program and rates for peak shaving.

Background:

Owatonna Public Utilities facilitates an Energy Management Program. This program helps control and reduce Owatonna's peak electricity demand. The Waste Water Treatment Plant (WWTP) will occasionally, when requested by OPU, run the emergency generator during peak demand periods to help offset the overall need on the grid. Due to more energy-efficient systems and possibly the decreased performance of the generator, OPU has proposed to revise the rate structure to more align with actual demand reduction. OPU has proposed a rate structure decrease from 150 kW to 125 kW.

Budget Impact:

Variable depending on how many Energy Management calls are made in 2024. Calls will increase revenue, which more than covers the costs to run and maintain the emergency generator.

Staff Recommendation:

Staff recommends approval.

Attachments:

1. Memorandum of Understanding - Energy Management Program - 2024 WWTP

MEMORANDUM OF UNDERSTANDING
Energy Management Program

Overview

To facilitate reduction in peak electrical load, Owatonna Public Utilities offers our Energy Management (EM) Program to commercial and industrial customers with curtailable loads of at least 100 kW. Load reduction may be met through any combination of direct generation, large load shut down, operational shut down, or other agreed upon method.

Definitions

TLR – Target Load Reduction is a reasonable, repeatable level of demand reduction in kW a customer can meet to participate in the EM program, with a minimum of 100 kW, in increments of 25 kW.

ALR – Actual Load Reduction will be measured by subtracting the average demand in kW during an EM event from the peak demand in kW during the period of 7:00 a.m. the morning of the event to the moment the event starts.

Program Year – Summer months of June, July, August, and September

EM Event – The 6-hour period of load shed requested by OPU.

Conditions

- Customer agrees to make a good faith effort to select a reasonable, repeatable TLR.
- Customer agrees to shed load for a 6-hour period during an EM event when called by OPU, given a 1-hour notice, for an incentive detailed in Credits section below.
- OPU shall limit EM Events to no more than 3 consecutive business days in a week, and no more than 9 events per program year.
- Customer understands that OPU may, when necessary, ask for additional voluntary EM participation in excess of 3 business days and 9 event limits. Customer shall not be penalized for failure to meet TLR during voluntary events.
- Customer agrees to shed load for Grid Stability Events, for no additional incentive. Grid Stability Events are initiated by the regional transmission operator and are necessary to reduce the risk of rolling blackouts.
- Customer agrees to take a mandatory reduction in TLR for the following program year if they consistently fail to meet TLR in the current program year.
- OPU agrees to give customer notice of reduced TLR at the time of incentive payment.
- Customer shall provide on-site contact information who can initiate load shedding.

Credits

\$12.00/kW per program month of ALR during EM up to the TLR

\$6.00/kW per program month of ALR in excess of TLR during EM Event

\$3.00/kW per program month for the TLR in which no EM event is called, provided Customer averages at least 75% of TLR during EM Events during the rest of the Program Year.

In months which more than one EM event is called, ALR of all events in each month will be averaged to calculate the load reduction in that program month for determining eligible credit. If an EM is called while a customer is already shut down and base load is negligible, this event will be removed from the calculations in determining credits and eligibility for that customer.

Participating Customer: City of Owatonna – WWTP Service Address: _____
(Business Name) (One service address per MOU)

Meter Number(s): 1035660, _____, _____, _____
(Multiple Meters on the same service address may be combined)

Target Load Reduction: _____ kW *(Based on performance, cannot exceed 125 kW for 2024)*

Please explain method(s) of load reduction: _____

Authorized Representative:

Print Name _____
Signature _____
Title _____
Date _____

Owatonna Public Utilities:

Print Name _____
Signature _____
Title _____
Date _____



DATE: January 2, 2024
TO: Mayor and City Council
FROM: Sean Murphy, Public Works Director
SUBJECT: Stormwater Resiliency Plan Professional Services Agreement - WHKS

Purpose:

Request City Council approval of a Stormwater Resiliency Plan Professional Services Agreement with WHKS.

Background:

The City received a Planning Grant of \$88,380 for Stormwater Resilience in March 2023. The grant requires a 10% match, which can include staff time. The grant submission included 62 hours of City staff time. This project will study the effects of localized flooding in flood risk priority areas identified by the 2022 Surface Water Management Plan Update project that are also located within MPCA identified Environmental Justice Areas of Concern. The attached agreement will result in the following items:

- Detailed hydrologic and hydraulic modeling and 2D flood maps in flood risk priority areas.
- Concept level design of stormwater infrastructure or road improvements and estimated costs.
- Plan for maintaining access and core functions during flood events.

Upon approval, WHKS will begin this project for scheduled completion by June 30, 2024.

Budget Impact:

The agreement is not to exceed \$91,380, including expenses. Fees will be paid for using the grant funds received and the 10% match will be paid for by the Stormwater Fund. City staff will be utilized to the extent practicable to reduce use of Stormwater Funds.

Staff Recommendation:

Staff recommends approval.

Attachments:

1. SW Resiliency Plan Professional Services Agreement - WHKS



PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, by and between **City of Owatonna** hereinafter referred to as the "Client" and WHKS & Co., hereinafter referred to as "WHKS", is made as follows:

WHEREAS, the Client has a need for certain professional services relating to the project described as **Stormwater Resiliency Plan**.

WHEREAS, WHKS proposes to furnish the professional services required by the Client for said project,

NOW THEREFORE, the Client hereby agrees to retain and compensate WHKS to perform the professional services in accordance with the terms and conditions of this Agreement and the attached Standard Terms and Conditions.

Scope of Services

WHKS shall perform the following described services for the Client:

Engineering services as described in the attached Scope of Services included in Attachment A.

Basis of Compensation

For the services described above, the Client shall remunerate WHKS as follows:

Billed Hourly with a Not-to-Exceed Fee of \$91,380 including Expenses. External expenses include an administrative charge of 10 percent.

Executed this _____ day of December, 2023

City of Owatonna

By: _____

Printed Name: _____

Title: _____

WHKS & CO.

By: _____

Printed Name: Timothy A. Hruska, PE, LS

Title: Vice President

Attachment A:

Planning Grants for Stormwater, Wastewater, and Community Resilience

Project workplan

Doc Type: Grant Application

Project title:

City of Owatonna Stormwater Resiliency Plan

Statement of project details

The city of Owatonna is in the Cannon River Watershed in southeastern Minnesota and straddles the Straight River. Flooding in the city due to large rain events is a primary surface water concern. The city of Owatonna is currently updating its Surface Water Management Plan with an identified need to address infrastructure resiliency related to climate change and increased rainfall amount, duration, and frequency.

One notable flood in 2010 caused several major impacts and damages to public infrastructure, private property/structures, and endangered the health and welfare of the public. Heavy rains passed through Owatonna on September 23, 2010, with nearly 6.5 inches of rain falling within several hours during the day and another 1.5 inches of rain overnight. Impacts included road closures due to several feet of impassable water, undermining of roads and a wastewater lift station, surcharging of the stormwater system, sanitary sewer overflow, and extensive damage to public and private buildings.

The western and southern portions of Owatonna are within State-identified Environmental Justice Areas due to greater than 40% of people with reported income below 185% of the federal poverty level. These communities are also disproportionately impacted by flooding during large rainfall events, including the 2010 flood. This study will focus on the flood risk priority areas within the Environmental Justice Areas of Owatonna.

Goal statement, project deliverable(s), tasks, and subtasks

Goal statement: The goals of this project are to: 1) identify improvements to stormwater infrastructure in flood risk priority areas within the Environmental Justice Areas under future rainfall events to protect economically vulnerable homes and businesses; 2) develop a climate response plan for underserved portions of Owatonna to maintain access to integral community services during future flood events; and 3) provide scientific basis for an upcoming stormwater utility rate update, development of the next 10-year capital improvement plan, and state funding grant applications.

Project deliverables: We will complete XP-SWMM modeled scenarios of peak flows and flood elevations in flood risk priority areas located in Environmental Justice Areas under current (Atlas-14, volume 8, version 2) and future (mid-century) flood events to evaluate deficiencies in the existing stormwater infrastructure and street design under future climate change. We will use this information to develop a prioritized list of stormwater infrastructure and street improvements to inform an upcoming stormwater utility rate update and to be incorporated into the next 10-year capital improvement plan. We will also develop a climate response plan that will assign responsibility to City departments for implementing measures to maintain access to integral community services in underserved portions of Owatonna during future flood events. The plan will identify other partners for implementation and climate resiliency planning, including partners of the Cannon River One Watershed-One Plan, Clean River Partners, the Steele County Soil and Water Conservation District, local schools, businesses, and private landowners.

Task 1 of 3: H&H Model Development and Scenarios

Subtask 1a: Field Data Collection

Brief description of activities involved: Climate, topographical, and existing stormwater infrastructure data have already been collected for Owatonna as part of the 2022 Surface Water Management Plan Update. This task includes field collection of previously identified data gaps in stormwater infrastructure invert elevations, pipe size, and pipe material in flood risk priority areas within the Environmental Justice Areas.

Subtask 1b: H&H Model Development and Scenarios

Brief description of activities involved: This task covers the construction of a 2D hydrologic & hydraulic model in XP-SWMM of the flood risk priority areas with simulations of a range of rainfall intensities and durations under current (Atlas-14, volume 8, version 2) and future (mid-century) flood events.

Subtask 1c: Identification of Flooding Impacts

Brief description of activities involved: We will compare peak flows and flood elevations in the flood risk priority areas under current (Atlas-14, volume 8, version 2) and future (mid-century) flood events to identify flooding impacts due to deficiencies in the existing stormwater infrastructure and street design under future climate change.

Task 2 of 3: Infrastructure Improvement Plan

Subtask 2a: Prioritization of Improvements and Estimated Costs

Brief description of activities involved: City and consulting staff will use the modeling results and their expertise to prioritize stormwater infrastructure and street improvements for implementation over the next 10 years that have the biggest impact on protecting homes, businesses, and roads from future flood events within the Environmental Justice Areas.

Subtask 2b: Community Outreach and Engagement

Brief description of activities involved: This task includes presentation of the study results at City Council meetings and overall Stormwater Management Plan Update study sessions, as well as distribution of results to potential implementation partners (such as Clean River Partners, the Cannon River One Watershed-One Plan planning partnership, the Steele County Soil and Water Conservation Districts, local schools, businesses, and private landowners). The purpose of these meetings will be to educate the public on the impacts of increased rainfall on their communities and to provide an opportunity for their input on the prioritization of proposed stormwater infrastructure and street improvements. These public input opportunities will be publicized through the Owatonna city website, Community Chronicles newsletter, Facebook, and Owatonna Public Utilities bill newsletter/insert to reach a broad audience.

Subtask 2c: Climate Response Plan Development

Brief description of activities involved: The modeling results will be used to develop a climate response plan within the Environmental Justice Areas. The plan will assign responsibility to City departments for implementing measures to maintain access to integral community services in underserved portions of Owatonna during future flood events. The plan will also identify other partners for implementation and climate resiliency planning, including Clean River Partners, the Cannon River One Watershed-One Plan planning partnership, the Steele County Soil and Water Conservation District, local schools, businesses, and private landowners.

Task 3 of 3: Final Report and Project Deliverables

Subtask 3a: Submit Grant Final Report

Brief description of activities involved: Will provide a final grant project report using the MPCA template approximately one month prior to the end of the grant agreement on June 30, 2024, or at completion of the project, whichever occurs first. Will respond promptly to any requests by the MPCA authorized representative for additional information and/or corrections to the report.

Timeframe: May-June 2024

Subtask 3b: Submit Project Deliverables

Brief description of activities involved: Will provide electronic files of all project deliverables to the MPCA authorized representative prior to the end of the grant agreement on June 30, 2024, or at the completion of the project, whichever occurs first.

Timeframe: May-June 2024

STANDARD TERMS AND CONDITIONS FOR PUBLIC SECTOR PROJECTS

1. Scope of Services

Client and WHKS have agreed to a list of services WHKS will provide to Client as listed on the Professional Services Agreement Form.

2. Governing Law

The laws of the State of Minnesota will govern this Agreement, its interpretation and performance. Any litigation arising in any way from this Agreement shall be brought in the courts of that State.

3. Standard of Care

Services provided by WHKS under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances and locality.

4. Integration

This Agreement comprises the final and complete agreement between Client and WHKS. It supersedes all prior communications, representations, or agreements, whether oral or written, relating to the subject matter of this Agreement. Execution of this Agreement signifies that each party has read the document thoroughly. Amendments to this Agreement shall not be binding unless made in writing and signed by both Client and WHKS.

5. Guarantees and Warranties

WHKS shall not be required to sign any documents, no matter by whom requested, that would result in WHKS having to guarantee or warrant the existence of conditions whose existence WHKS cannot ascertain. Client also agrees not to

make resolution of any dispute with WHKS or payment of any amount due to WHKS in any way contingent upon WHKS signing any such guarantee or warranty.

6. Indemnification

WHKS agrees, to the extent permitted by law, to indemnify and hold Client harmless from any damage, liability or cost (including reasonable attorney's fees and costs of defense) to the extent caused by WHKS' negligent acts, errors or omissions in the performance of professional services under this Agreement and those of its subconsultants or anyone for whom WHKS is legally liable.

Client agrees, to the extent permitted by law, to indemnify and hold WHKS harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by Client's negligent acts, errors or omissions and those of Client's contractors, subcontractors or consultants or anyone for whom Client is legally liable.

Neither WHKS nor Client shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

7. Billing and Payment Provisions

Invoices shall be submitted by WHKS monthly and are due upon presentation and shall be considered PAST DUE if not paid within thirty (30) calendar days of the invoice date.

If payment is not received by WHKS within thirty (30) calendar days of the invoice date, Client shall pay as interest an additional charge of one

and one-quarter percent (1.25%) of the PAST DUE amount per month. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal.

If Client fails to make payments within sixty (60) days from the date of an invoice or otherwise is in breach of this Agreement, WHKS may, at its option, suspend performance of services upon five (5) calendar days' notice to Client. WHKS shall have no liability whatsoever to Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by Client. If Client fails to make payment to WHKS in accordance with the payment terms herein, this shall constitute a material breach of this Agreement and shall be cause for termination by WHKS.

In the event legal action is necessary to enforce the payment provisions of this Agreement, WHKS shall be entitled to collect from Client any judgment or settlement sums due, reasonable attorneys' fees, court costs and expenses incurred by WHKS in connection therewith and, in addition, the reasonable value of WHKS personnel time and expenses spent in connection with such collection action, computed at WHKS current fee schedule and expense policies.

Payment of invoices is in no case subject to unilateral discounting or set-offs by Client, and payment is due regardless of suspension or termination of this Agreement by either party.

8. Ownership of Records

All reports, plans, specifications, field data and notes and other

documents, including all documents on electronic media, prepared by WHKS as instruments of service shall remain the property of WHKS.

Client shall be permitted to retain copies, including reproducible copies, of the plans and specifications for information and reference in connection with Client's use of the completed project. The plans and specifications shall not be used by Client or by others on other similar projects except by agreement in writing by WHKS.

9. Delivery of Electronic Files

In accepting and utilizing any drawings, reports and data on any form of electronic media generated and provided by WHKS, Client covenants and agrees that all such electronic files are instruments of service of WHKS, who shall be deemed the author, and who shall retain all rights under common and statutory laws, and other rights, including copyrights. Client is aware that differences may exist between the electronic files delivered and the respective construction documents due to addenda, change orders or other revisions. In the event of a conflict between the signed construction documents prepared by WHKS and electronic files, the signed construction documents shall govern.

Client and WHKS agree that the electronic files prepared by WHKS shall conform to the current CADD software in use by WHKS or to other mutually agreeable CADD specifications defined in the Agreement. Any changes to the CADD specifications by either Client or WHKS are subject to review and acceptance by the other party. Additional efforts by WHKS made necessary by a change to the CADD specifications or other software shall be compensated for as Additional Services.

The electronic files provided by WHKS to Client are submitted for an acceptance period of 60 days. Any defects Client discovers during this period will be reported to WHKS and will be corrected as part of the Scope

of Services. Correction of defects detected and reported after the acceptance period will be compensated for as Additional Services.

Client agrees not to reuse the electronic files, in whole or in part, for any purpose or project other than the project that is the subject of this Agreement. Client agrees not to transfer the electronic files to others without the prior written consent of WHKS, except as required by law. In addition, Client agrees, to the extent permitted by law, to indemnify and hold WHKS harmless from any damage, liability or cost, including reasonable attorney's fees and costs of defense, arising from any changes made by anyone other than WHKS or from any reuse of the electronic files without the prior written consent of WHKS.

Under no circumstance shall delivery of the electronic files for use by Client be deemed a sale by WHKS and WHKS makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall WHKS be liable for any loss of profit or any consequential damages.

10. Changed Conditions

Client shall rely on the judgment of WHKS as to the continued adequacy of this agreement in light of occurrences or discoveries that were not originally contemplated by or known to WHKS. Should WHKS call for contract renegotiation, WHKS shall identify the changed conditions necessitating renegotiation and WHKS and Client shall promptly and in good faith enter into renegotiation of this Agreement. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement.

11. Permits and Approvals

WHKS shall assist Client in applying for those permits and approvals typically required by law for projects similar to the one for which WHKS services are being engaged. This assistance consists of completing

and submitting forms as to the results of certain work included in the Scope of Services.

12. Suspension of Services

If the project is suspended for more than thirty (30) calendar days in the aggregate, WHKS shall be compensated for services performed and charges incurred prior to receipt of notice to suspend and, upon resumption, an equitable adjustment in fees to accommodate the resulting demobilization and remobilization costs. In addition, there shall be an equitable adjustment in the project schedule based on the delay caused by the suspension. If the project is suspended for more than ninety (90) calendar days in the aggregate, WHKS may, at its option, terminate this Agreement upon giving notice in writing to Client.

13. Termination

Either Client or WHKS may terminate this Agreement at any time with or without cause upon giving the other party seven (7) calendar days prior written notice. Client shall within thirty (30) calendar days of termination pay WHKS for all services rendered and all costs incurred up to the date of termination, in accordance with the compensation provisions of the Agreement.

14. Unauthorized Changes

In the event Client, Client's contractors or subcontractors or anyone for whom Client is legally liable makes or permits to be made any changes to any reports, plans, specifications or other contract documents prepared by WHKS without obtaining WHKS' prior written consent, Client shall assume full responsibility for the results of such changes. Therefore, Client agrees to waive any claim against WHKS and to release WHKS from any liability arising directly or indirectly from such changes.

Client also agrees, to the extent permitted by laws, to indemnify and hold WHKS harmless from any

damage, liability or cost, including reasonable attorneys' fees and costs of defense, arising from such changes.

15. Jobsite Safety

Neither the professional activities of WHKS nor the presence of WHKS or its employees and subconsultants at a construction site, shall relieve the General Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the construction work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. WHKS and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions.

16. Additional Services

Services which are requested by Client or are required as part of the Project, but are not included in the Scope of Services, are considered Additional Services.

WHKS will notify Client in writing when Additional Services will be needed. WHKS and Client will agree on the extent of the Additional Service(s) required and will agree on the method and amount of the compensation for performance of said agreed upon Additional Services.

WHKS will not perform Additional Services which will result in additional cost to Client without documented verbal or written authority of Client.

In the event WHKS is requested or required to participate in any dispute resolution procedure which involves any aspect of the Project, Client agrees to compensate WHKS for the reasonable value of WHKS' personnel time and expenses spent

in connection with such procedures computed at WHKS' then current fee schedule and expense policies.

17. Dispute Resolution

In an effort to resolve any conflicts that arise, Client and WHKS agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.

18. Third Party Beneficiaries

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either Client or WHKS. WHKS' services under this Agreement are being performed solely for Client's benefit, and no other entity shall have any claim against WHKS because of this Agreement or the performance or nonperformance of services hereunder.

19. Extension of Protection

Client agrees to extend any and all liability limitations and indemnifications provided by Client to WHKS to those individuals and entities WHKS retains for performance of the services under this Agreement, including but not limited to WHKS officers and employees and their heirs and assigns, as well as WHKS subconsultants and their officers, employees, heirs and assigns.

20. Timeliness of Performance

WHKS will perform the services described in the Scope of Services with due and reasonable diligence consistent with sound professional practices.

21. Delays

WHKS is not responsible for delays caused by factors beyond WHKS' reasonable control, including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other

regulatory authority to act in a timely manner, failure of Client to furnish timely information or approve or disapprove of WHKS' services or work product promptly, or delays caused by faulty performance by Client or by contractors of any level. When such delays beyond WHKS' reasonable control occur, Client agrees WHKS is not responsible for damages, nor shall WHKS be deemed to be in default of this Agreement.

22. Right to Retain Subconsultants

WHKS may use the services of subconsultants when, in the sole opinion of WHKS, it is appropriate and customary to do so. Such persons and entities include, but are not limited to, aerial mapping specialists, geotechnical consultants and testing laboratories. WHKS' use of other consultants for additional services shall not be unreasonably restricted by Client provided WHKS notifies Client in advance.

23. Assignment

Neither party to this Agreement shall transfer, sublet or assign any rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party.

24. Severability and Survival

Any provision of this Agreement later held to be unenforceable for any reason shall be deemed void, and all remaining provisions shall continue in full force and effect.

25. Hazardous Materials

It is acknowledged by both parties that WHKS' Scope of Services does not include any services related to asbestos or hazardous or toxic materials. In the event WHKS or any other party encounters asbestos or hazardous or toxic materials at the jobsite, or should it become known in any way that such materials may be present at the jobsite or any adjacent areas that may affect the performance of WHKS services,

WHKS may, at its option and without liability for consequential or any other damages, suspend performance of services on the project until Client retains appropriate specialist consultant(s) or contractor(s) to identify, abate and/or remove the asbestos or hazardous or toxic materials, and warrant that the jobsite is in full compliance with applicable laws and regulations.

26. Joint Participation

The parties have participated jointly in the negotiation and preparation of all agreements between the parties. Each party has had an opportunity to obtain the advice of legal counsel and to review and comment upon this instrument. Accordingly, no rule of construction shall apply against any party or in favor of any party. This instrument shall be construed as if the parties jointly prepared it and any uncertainty or ambiguity shall not be interpreted against one party and in favor of another.

27. Record Documents

If required in the Professional Services Agreement, WHKS shall, upon completion of the Work, compile for and deliver to the Client a reproducible set of Record Documents that are based upon the marked-up record drawings, addenda, change orders and other data furnished by the Contractor or other third parties. These Record Documents may show certain significant changes from the original design made during construction. Because these Record Documents are based on unverified information provided by other parties, which the Consultant is entitled to assume as reliable, the Consultant does not warrant their accuracy.

Revised 02/23/07

Revised: 04/29/09