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CITY OF ST. JOSEPH

St. Joseph City Council
January 5, 2026
6:00 PM

Join Zoom Meeting

<https://us06web.zoom.us/j/83245260280?pwd=VoADHkZdzLS3Xc8Dxe44YploaYgvMH.1>

Meeting ID: 862 2322 7259

Passcode: 069680

-
1. Call to order - Pledge of Allegiance
 2. Public Comments *Up to 3 speakers will be allowed for up to 3 minutes each to address the council with questions/concerns/comments (regarding an item NOT on the agenda). No Council response or action will be given/taken other than possible referral to Administration.*
 3. Approve Agenda
 4. Consent Agenda
 - a. Minutes – **Requested Action:** Approve the minutes of December 15, 2025.
 - b. Bills Payable – **Requested Action:** Approve Check Numbers 62663-62725, Payroll & Account Payable EFT #3557-3584; ACH Accounts Payable #2400053-2400100; Regular Pay Period 26.
 - c. 2026 Pay Equity Report – **Requested Action:** Approve 2026 Pay Equity Report.
 - d. Payment Application #3, Final Payment – **Requested Action:** Approve the final payment application for the 2024 Street Improvement Project in the amount of \$49,740.44 to Knife River Corporation.
 - e. Payment #7, CSAH 133 Roundabout – **Requested Action:** Approve the 7th payment application for the CSAH 133 roundabout/Elm St Extension in the amount of \$6,874.33.
 - f. Payment #5, CSAH 2 and MN Street Roundabout – **Requested Action:** Approve the 5th payment application for the CSAH 2 and MN Street Roundabout in the amount of \$6,051.27.
 - g. Quarterly Gambling Reports – **Requested Action:** Accept the 3rd quarter 2025 gambling reports.
 - h. CSB/SJU Community Engagement Intern – **Requested Action:** Approve CSB Intern, Betsy Solis Rosas, as the Community Engagement Liaison Intern for the 2026 spring semester.
 5. Nomination and Appointment of Acting Mayor for 2026
 6. Approval of the 2026 Annual Designations, Appointments, Depositories
 7. YMCA Community Center
 - a. Resolution 2026-001 Terminating Amended and Restated Facility Lease Agreement with St. Cloud Area Family Y.M.C.A
 - b. Resolution 2026-002 Terminating Contract with Ruis Consulting for Fundraising Efforts
 - c. Resolution 2026-003 Terminating Contract Between City and HMA Architects, Ltd for St. Joseph Community Center
 - d. Resolution 2026-004 Terminating Contract Between City and W. Gohman Construction for St. Joseph Community Center
 - e. Authorization for staff to contact the State of MN to close Bonding Award for St. Joseph Recreation Center
 8. Department Reports
 9. Mayor and Council Reports/Updates
 10. Adjourn

75 Callaway Street East | Saint Joseph, Minnesota 56374

Email: cityoffices@cityofstjoseph.com | Phone: 320.363.7201 | Fax 320.363.0342

Pursuant to due call and notice thereof, the City Council for the City of St. Joseph met in regular session on Monday, December 15, 2025, at 6:00PM in the St. Joseph Government Center.

Members Present: Mayor Adam Scepaniak, Councilmembers Adam Schnettler, Andrew Mooney, Kevin Kluesner, Kelly Beniek

City Representatives Present: City Administrator David Murphy, Finance Director Lori Bartlett, Public Works Director Ryan Wensmann, Police Chief Dwight Pfannenstien, City Engineer Randy Sabart, Community Development Director Nate Keller, City Clerk, Kayla Klein

Public Comments: None

Approve Agenda: **Schnettler moved to approve the agenda; seconded by Kluesner and passed unanimously.**

Consent Agenda: **Scepaniak moved to approve the consent agenda, pulling item i; seconded by Kluesner and passed unanimously.**

- a. Minutes – **Requested Action:** Approve the minutes of December 1, 2025
 - b. Bills Payable – **Requested Action:** Approve Check Numbers 63323-63352, Payroll & Account Payable EFT #3896-3911; ACH Accounts Payable #2400745-2400783.
 - c. Financial Report – **Requested Action:** Accept the November 2025 financial reports as presented.
 - d. Donations – **Requested Action:** Approve Resolution 2025-080 accepting donations.
 - e. TA Grant Resolution – **Requested Action:** Approve Resolution 2025-077 Approving Submittal of Transportation Alternatives Program Grant and Agreeing to Maintain Facility.
 - f. Tri-County Humane Society Agreement – **Requested Action:** Approve the Tri-Council Humane Society Agreement as presented.
 - g. Open Applications for Firefighters – **Requested Action:** Allow Fire Chief to open applications for new members to fill upcoming vacancies in the department.
 - h. Appointment of Fire Department Officers for 2026-2027 – **Requested Action:** Approve David Salzer as Assistant Fire Chief for a 2-year term and Andrew Kremer, Jake Richter, and Jack Taufen as Captains for 2-year terms.
 - i. Resolution 2025-078 Receiving Report and Calling for Public Improvement Hearing on the 2026 Street & Utility Improvement Project – **Requested Action:** Approve Resolution 2025-078 as presented.
 - j. Resolution 2025-079 Benefit Level Increase in the Statewide Volunteer Firefighter Plan – **Requested Action:** Approve Resolution 2025-079 as presented.
 - k. Personnel Policy Amendment - **Requested Action:** Approve the amendment to the city's personnel policy as presented.
 - l. Minnesota Paid Family Leave and Medical Leave Policy – **Requested Action:** Approve the Minnesota Paid Family and Medical Leave Policy as presented.
 - m. Lobbying Contract - **Requested Action:** Approve the contract between the City and Flaherty & Hood for lobbying services.
- i. Resolution 2025-078 Receiving Report and Calling for Public Improvement Hearing on the 2026 Street & Utility Improvement Project – the hearing date will be January 20th, 2026. **Kluesner moved to approve item 4i. with the change to the date of the Public Improvement Hearing to January 20, 2026; seconded by Mooney and passed unanimously.**

MPBC Property Management Conditional Use Permit and Variance Requests: The property owner is proposing to conduct outside storage of cars, trucks, trailers, watercraft, motorcycles/ATVs, lawn mowers, tractor, golf carts and items associated with Bee Line Auto and Sport. The Planning Commission held a public hearing on the Conditional Use Permit request and it was approved 6-0.

The CUP proposal of outside storage includes a request to deviate from required surfacing standards. The request is to allow the applicant to put crushed granite surfacing on the site. The crushed granite surface will only be placed within the site where the storage of vehicles will occur.

One condition of the CUP states that if the variance is approved, the crushed granite surface must be upgraded to asphalt, concrete, or other approved hard surface at the time a future building is constructed, and a site plan is submitted.

Scepaniak moved to approve Resolution 2025-075 Conditional Use Permit Approval for Outdoor Storage MPBC Property Management, LLC; seconded by Beniek and passed unanimously.

Scepaniak moved to approve Resolution 2025-076 A Resolution Adopting Findings of Fact to Approve a Variance to the Minimum Parking Lot Standards; seconded by Beniek and passed unanimously.

Fire Services Agreement with the College of Saint Benedicts: City Administrator Murphy reported that staff met with representatives of the College of Saint Benedicts and they have requested that the city's Fire Department respond to all fire alarms, CO alarms, hazardous materials responses, etc. The agreement states the College will pay the City \$20,750 for the first year beginning December 2025.

Beniek moved to approve the Fire Services Agreement with the College of Saint Benedicts; seconded by Kluesner and passed unanimously.

Department Reports: Keller reported that he received submittals for the new monastery project which will go before the Planning Commission and then to the council in January.

Mayor and Council Reports/Updates: None

Adjourn: **Kluesner made a motion to adjourn the meeting at 6:15PM; seconded by Beniek and passed unanimously.**

Kayla Klein
City Clerk



STAFF MEMO

Prepared by: Debbie Kulzer, Finance Tech	Meeting Date: 1/5/26	☒ Consent Agenda Item ☐ Regular Agenda Item	Agenda Item # 4b
Reviewed by:	Item: Bills Payables		
Priority	N/A		

ACTION REQUESTED

Approve the bills payable as presented.

BOARD/COMMISSION/COMMITTEE RECOMMENDATION

none

PREVIOUS COUNCIL ACTION

See below

REFERENCE AND BACKGROUND

The council approved staff to make the following payments through the payroll contracts, regular monthly invoices with due dates prior to the next scheduled council meeting, or actions taken at previous council meetings. The information here is to provide you with all checks and electronic payments made for verification of the disbursement completeness.

BUDGET IMPACT

Bills Payable – Checks Mailed Prior to Council Approval

Regular Payroll 26	\$84,016.42
Payroll & Accounts Payable EFT #3912 - #3932	\$185,291.33
ACH Accounts Payable #2400784 - #2400812	\$91,212.73
Check Numbers #63353 - #63374	\$132,968.23
Total	\$493,488.71

Bills Payable – Checks Awaiting Council Approval

Check Numbers - #63375 - #63381	\$2,145.04
Total	\$2,145.04

Total Budget/Fiscal Impact: \$495,633.55

Various Funds

STAFF RECOMMENDED ACTION

Approve the bills payable as presented.

SUPPORTING DATA/ATTACHMENTS

Bill listing by EFT, paid prior to council approval and awaiting to be paid upon council approval.



STAFF MEMO

Prepared by: Lori Bartlett, Finance Director	Meeting Date: 1/5/2026	☒ Consent Agenda Item ☐ Regular Agenda Item	Agenda Item # 4c
Reviewed by:	Item: Pay Equity Compliance		
City Priority	n/a		

ACTION REQUESTED

Motion to approve the consent agenda will automatically approve this item. If pulled, then the following motion is requested.

Acceptance of the 2026 Pay Equity report as presented.

REFERENCE AND BACKGROUND

Every three years all municipalities are required to submit pay equity reports to the Minnesota Management and Budget (MMB). MMB notifies municipalities when they are required to submit and we received notice that the report must be submitted by January 31, 2026.

Pay equity is a method of eliminating discrimination against women who are paid less than men for jobs requiring comparable levels of expertise. This goes beyond the familiar idea of “equal pay for equal work” where men and women with the same jobs must be paid equally. A policy to establish pay equity usually means: 1) that all jobs will be evaluated and given points according to the level of knowledge and responsibility required to do the job; and 2) that salary adjustments will be made if it is discovered that women are consistently paid less than men for jobs with similar points.

It is important to remember that pay equity laws in Minnesota address only sex-based wage disparities and not all types of wage disparities. Pay equity does not replace collective bargaining and does not address all compensation issues.

The above two paragraphs are taken from the pay equity law resources.

The city hire David Drown and Associates (DDA) to complete the 2026 pay equity report. Based on the tests completed, the city complies with all provisions of the Minnesota Pay Equity statute.

BUDGET IMPACT

Indirect impact with wage/benefit negotiations

STAFF RECOMMENDED ACTION

Accept the 2026 pay equity report

SUPPORTING DATA/ATTACHMENTS

2026 Pay Equity Report

Compliance Report

Jurisdiction: St. Joseph
75 Callaway St E

Report Year: 2026
Case: 1 - 2025 Test (Private (Jur Only))

St. Joseph, MN 56374

Contact: Lori Bartlett

Phone: (320) 363-7201

E-Mail: lbartlett@cityofstjoseph.com

The statistical analysis, salary range and exceptional service pay test results are shown below. Part I is general information from your pay equity report data. Parts II, III and IV give you the test results.

For more detail on each test, refer to the Guide to Pay Equity Compliance and Computer Reports.

I. GENERAL JOB CLASS INFORMATION

	Male Classes	Female Classes	Balanced Classes	All Job Classes
# Job Classes	13	8	0	21
# Employees	26	8	0	34
Avg. Max Monthly Pay per employee	8548.10	7850.77		8384.02

II. STATISTICAL ANALYSIS TEST

A. Underpayment Ratio = 76.92308 *

	Male Classes	Female Classes
a. # At or above Predicted Pay	8	4
b. # Below Predicted Pay	5	4
c. TOTAL	13	8
d. % Below Predicted Pay (b divided by c = d)	38.46	50.00

*(Result is % of male classes below predicted pay divided by % of female classes below predicted pay.)

B. T-test Results

Degrees of Freedom (DF) = 32	Value of T = -0.945
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a. Avg. diff. in pay from predicted pay for male jobs = -18

b. Avg. diff. in pay from predicted pay for female jobs = 47

III. SALARY RANGE TEST = 100.00 (Result is A divided by B)

A. Avg. # of years to max salary for male jobs = 10.00

B. Avg. # of years to max salary for female jobs = 10.00

IV. EXCEPTIONAL SERVICE PAY TEST = 0.00 (Result is B divided by A)

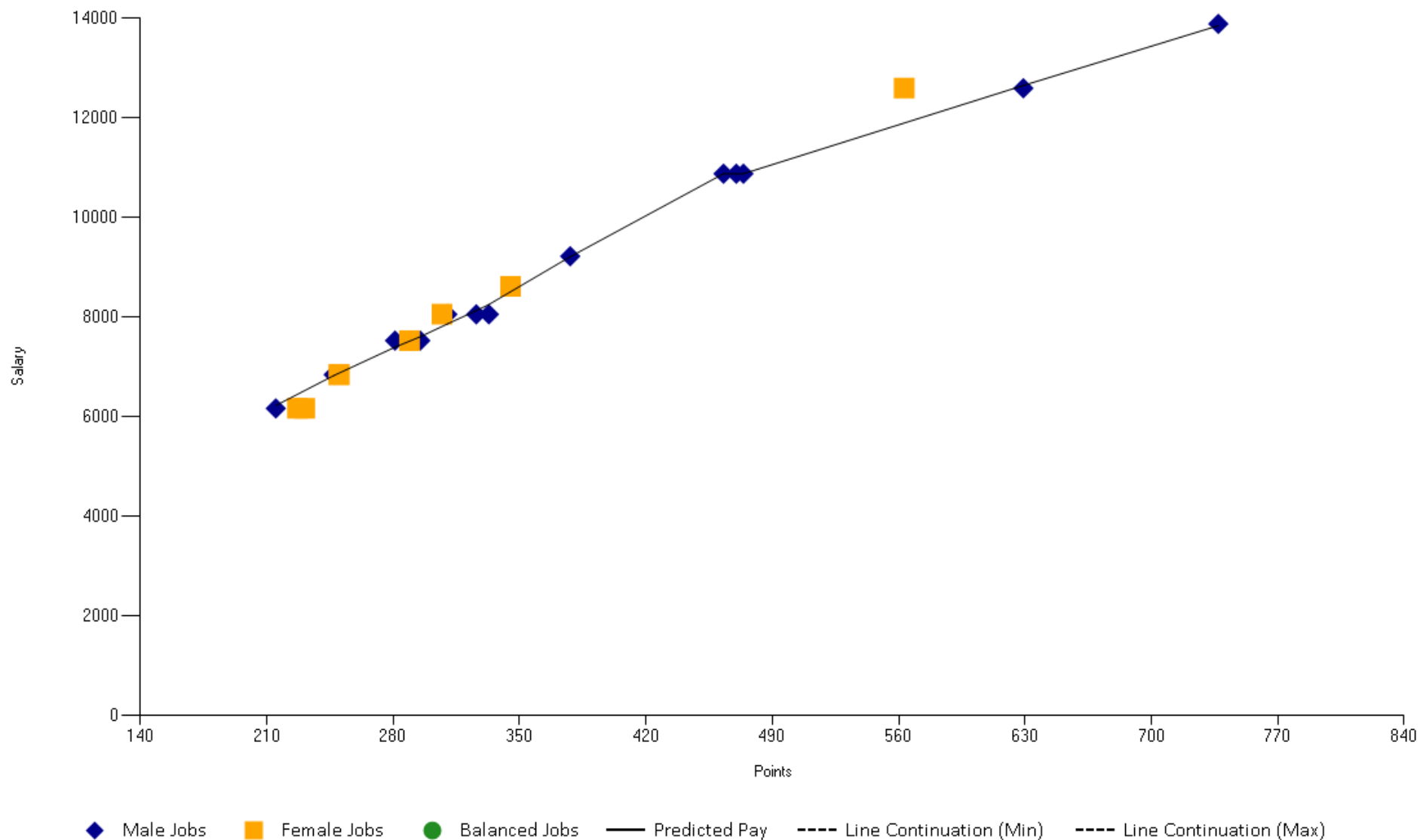
A. % of male classes receiving ESP = 0.00 *

B. % of female classes receiving ESP = 0.00

*(If 20% or less, test result will be 0.00)

Predicted Pay Report for: St. Joseph

Case: 2025 Test



Predicted Pay Report for: St. Joseph

Case: 2025 Test

Job Nbr	Job Title	Nbr Males	Nbr Females	Non- Binary	Total Nbr	Job Type	Job Points	Max Mo Salary	Predicted Pay	Pay Difference
23	Recreation Coordinator	1	0			Male	215	6164.7400	6224.2704	-59.5304
18	Administrative Assistant	0	1			Female	227	6164.7400	6448.8545	-284.1145
8	Police Clerk	0	1			Female	231	6164.7400	6524.2051	-359.4651
16	Maintenance Worker	4	0			Male	247	6843.1500	6824.1398	19.0102
5	Finance Technician	0	1			Female	250	6843.1500	6879.9188	-36.7688
6	Account Technician	0	1			Female	250	6843.1500	6879.9188	-36.7688
15	Utility Operator	2	0			Male	281	7526.9900	7394.8064	132.1836
21	Lead Records Technician	0	1			Female	289	7526.9900	7514.4724	12.5176
14	Maintenance Lead Worker	1	0			Male	295	7526.9900	7604.1246	-77.1346
19	Recreations Director	0	1			Female	307	8053.6500	7824.7682	228.8818
17	Mechanic	1	0			Male	310	8053.6500	7860.6021	193.0479
11	Police Officer	8	1			Male	326	8053.6500	8128.8626	-75.2126
13	Utility Lead Worker	1	0			Male	333	8053.6500	8251.2325	-197.5825
2	City Clerk	0	1			Female	345	8617.8200	8474.8397	142.9803
10	Sergeant	2	0			Male	378	9219.4800	9209.7576	9.7224
22	Deputy Police Chief	1	0			Male	463	10876.2300	10876.2300	0.0000
3	Community Development Director	1	0			Male	470	10876.2300	10876.2300	0.0000
12	Public Works Director	1	0			Male	474	10876.2300	10876.2300	0.0000
4	Finance Director	0	1			Female	563	12591.8900	11882.2833	709.6067
7	Police Chief	1	0			Male	629	12591.8900	12647.2589	-55.3689
20	City Administrator	1	0			Male	737	13882.7200	13847.0857	35.6343

Job Number Count: 21



STAFF MEMO

Prepared by: City Clerk	Meeting Date: 1-5-26	☒ Consent Agenda Item ☐ Regular Agenda Item	Agenda Item # 4d
Reviewed by:	Item: Pay Application 3/FINAL - 2024 Street Improvements		
Priority:	None		

ACTION REQUESTED

Authorize payment to Knife River Corporation in the amount of \$49,740.44 as final payment for the 2024 Street Improvement Project.

BOARD/COMMISSION/COMMITTEE RECOMMENDATION

none

PREVIOUS COUNCIL ACTION

The council approved the 2024 Street Improvements and this will be the final payment for the project.

REFERENCE AND BACKGROUND

Pay Application #3/FINAL is the final payment for this project.

BUDGET IMPACT

\$49,740.44

STAFF RECOMMENDED ACTION

Execute payment for Pay Application #3.

SUPPORTING DATA/ATTACHMENTS

Pay Voucher #3

Contract Number: STJOE 176063
Pay Request Number: 3 - FINAL

Project Number	Project Description
STJOE 176063	2024 Street Improvements

Contractor: Knife River Corporation - North Central 4787 Shadow Wood Drive Sauk Rapids, MN 56379	Vendor Number: N/A Up To Date: 12/11/2025
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Contract Amount

Original Contract	\$786,939.15
Contract Changes	\$0.00
Revised Contract	\$786,939.15

Work Certified To Date

Base Bid Items	\$564,977.51
Contract Changes	\$0.00
Material On Hand	\$0.00
Total	\$564,977.51

Work Certified This Request	Work Certified To Date	Less Amount Retained	Less Previous Payments	Amount Paid This Request	Total Amount Paid To Date
\$22,622.70	\$564,977.51	\$0.00	\$515,237.07	\$49,740.44	\$564,977.51
Percent: Retained: 0%			Percent Complete: 71.79%		

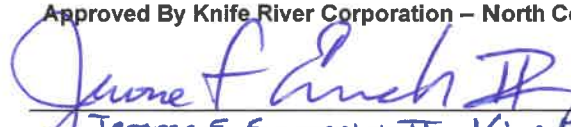
This is to certify that the items of work shown in this certificate of Pay Estimate have been actually furnished for the work comprising the above-mentioned projects in accordance with the plans and specifications heretofore approved.

Approved By Short Elliott Hendrickson Inc.



Date 12/17/2025

Approved By Knife River Corporation – North Central


Jerome F. Emmerich II, Vice President
Date 12-16-25

Approved By City of St. Joseph

Date _____

Payment Summary				
No.	Up To Date	Work Certified Per Request	Amount Retained Per Request	Amount Paid Per Request
1	2024-09-27	\$342,304.92	\$17,115.25	\$325,189.67
2	2024-10-23	\$200,049.89	\$10,002.49	\$190,047.40
3	2025-12-11	\$22,622.70	(\$27,117.74)	\$49,740.44

Funding Category Name	Funding Category No.	Work Certified to Date	Less Amount Retained	Less Previous Payments	Amount Paid this Request	Total Amount Paid to Date
STJOE 176063		\$564,977.51	\$0.00	\$515,237.07	\$49,740.44	\$564,977.51

Accounting Number	Funding Source	Amount Paid this Request	Revised Contract Amount	Funds Encumbered to Date	Paid Contractor to Date
STJOE 176063	Local	\$49,740.44	\$786,939.15	\$786,939.15	\$564,977.51

Contract Item Status										
Base/Alt	Line	Item	Description	Units	Unit Price	Contract Quantity	Quantity This Request	Amount This Request	Quantity To Date	Amount To Date
Base Bid	1	1	MOBILIZATION	LUMP SUM	\$65,000.00	1	0.25	\$16,250.00	1	\$65,000.00
Base Bid	2	2	TRAFFIC CONTROL	LUMP SUM	\$7,250.00	1	0.05	\$362.50	1	\$7,250.00
Base Bid	3	3	REMOVE SIGN ASSEMBLY	EACH	\$25.00	30	0	\$0.00	23	\$575.00
Base Bid	4	4	SALVAGE SIGN ASSEMBLY	EACH	\$25.00	5	0	\$0.00	1	\$25.00
Base Bid	5	5	REMOVE CONCRETE CURB & GUTTER	LIN FT	\$10.00	150	0	\$0.00	159	\$1,590.00
Base Bid	6	6	REMOVE CONCRETE WALK	SQ YD	\$15.00	57	0	\$0.00	50	\$750.00
Base Bid	7	7	REMOVE CONCRETE DRIVEWAY PAVEMENT	SQ YD	\$15.00	216	0	\$0.00	40	\$600.00
Base Bid	8	8	SAWING BITUMINOUS PAVEMENT (FULL DEPTH)	LIN FT	\$2.75	465	0	\$0.00	406	\$1,116.50
Base Bid	9	9	STABILIZED CONSTRUCTION EXIT	LUMP SUM	\$200.00	1	0	\$0.00	0	\$0.00
Base Bid	10	10	FULL DEPTH RECLAMATION	SQ YD	\$1.40	21139	0	\$0.00	20828	\$29,159.20
Base Bid	11	11	SUBGRADE EXCAVATION	CU YD	\$13.00	1177	0	\$0.00	0	\$0.00
Base Bid	12	12	SUBGRADE PREPARATION	ROAD STA	\$275.00	93	0	\$0.00	92	\$25,300.00
Base Bid	13	13	WATER	MGAL	\$9.00	636	0	\$0.00	0	\$0.00
Base Bid	14	14	BITUMINOUS DRIVEWAY PATCH-RESIDENTIAL	SQ YD	\$36.00	153	0	\$0.00	239	\$8,604.00
Base Bid	15	15	BITUMINOUS DRIVEWAY PATCH-COMMERCIAL	SQ YD	\$41.50	522	0	\$0.00	304	\$12,616.00
Base Bid	16	16	BITUMINOUS STREET PATCH	SQ YD	\$60.00	116	0	\$0.00	105	\$6,300.00
Base Bid	17	17	TYPE SP 9.5 WEARING COURSE MIXTURE (SPWEA230C)	TON	\$102.00	877	0	\$0.00	749.21	\$76,419.42
Base Bid	18	18	TYPE SP 9.5 WEARING COURSE MIXTURE (SPWEA340C)	TON	\$81.00	1890	0	\$0.00	1516.13	\$122,806.53
Base Bid	19	19	TYPE SP 12.5 WEARING COURSE MIXTURE (SPWEB330C)	TON	\$80.00	2061	0	\$0.00	1612.66	\$129,012.80
Base Bid	20	20	BITUMINOUS MATERIAL FOR TACK COAT	GAL	\$2.00	1155	0	\$0.00	566	\$1,132.00
Base Bid	21	21	BITUMINOUS MATERIAL FOR FOG SEAL	GAL	\$5.00	936	644	\$3,220.00	644	\$3,220.00
Base Bid	22	22	TOPSOIL SHOULDERING (LV)	CU YD	\$36.00	1422	0	\$0.00	433.7	\$15,613.20

Contract Item Status										
Base/Alt	Line	Item	Description	Units	Unit Price	Contract Quantity	Quantity This Request	Amount This Request	Quantity To Date	Amount To Date
Base Bid	23	23	AGGREGATE SHOULDERING (BITUMINOUS MILLINGS) (CV)	CU YD	\$41.00	538	0	\$0.00	239.1	\$9,803.10
Base Bid	24	24	AGGREGATE SURFACING (CV)	CU YD	\$64.00	25	0	\$0.00	12.39	\$792.96
Base Bid	25	25	AGGREGATE BASE CLASS 5 (CV)	CU YD	\$31.00	1008	0	\$0.00	0	\$0.00
Base Bid	26	26	CASTING ASSEMBLY	EACH	\$2,000.00	1	0	\$0.00	0	\$0.00
Base Bid	27	27	6" CONCRETE WALK	SQ FT	\$14.50	822	0	\$0.00	636	\$9,222.00
Base Bid	28	28	TRUNCATED DOMES	SQ FT	\$60.00	84	0	\$0.00	75	\$4,500.00
Base Bid	29	29	CONCRETE DRIVEWAY PAVEMENT-RESIDENTIAL	SQ YD	\$89.50	56	0	\$0.00	42	\$3,759.00
Base Bid	30	30	CONCRETE DRIVEWAY PAVEMENT-COMMERCIAL	SQ YD	\$98.00	160	0	\$0.00	0	\$0.00
Base Bid	31	31	CONCRETE CURB & GUTTER, DESIGN B618	LIN FT	\$40.00	150	0	\$0.00	159	\$6,360.00
Base Bid	32	32	CONCRETE VALLEY GUTTER	LIN FT	\$60.00	80	0	\$0.00	0	\$0.00
Base Bid	33	33	ADJUST FRAME & RING CASTING	EACH	\$1,000.00	1	0	\$0.00	1	\$1,000.00
Base Bid	34	34	INSTALL SIGN	EACH	\$250.00	4	3	\$750.00	4	\$1,000.00
Base Bid	35	35	F&I SIGN PANELS TYPE C	SQ FT	\$60.00	87	21.17	\$1,270.20	101.68	\$6,100.80
Base Bid	36	36	F&I STREET NAME SIGN ASSEMBLY	EACH	\$350.00	8	0	\$0.00	8	\$2,800.00
Base Bid	37	37	F&I SIGN TYPE SPECIAL-KLINEFELTER PARK	EACH	\$250.00	1	1	\$250.00	1	\$250.00
Base Bid	38	38	STREET SWEEPING TYPE WET PICKUP	HOURL	\$65.00	25	0	\$0.00	0	\$0.00
Base Bid	39	39	STORM DRAIN INLET PROTECTION	EACH	\$140.00	10	0	\$0.00	2	\$280.00
Base Bid	40	40	COMMON TOPSOIL BORROW (LV)	CU YD	\$50.00	114	0	\$0.00	0	\$0.00
Base Bid	41	41	SEEDING	ACRE	\$500.00	0.85	0.4	\$200.00	2	\$1,000.00
Base Bid	42	42	SEED MIXTURE 25-151	POUND	\$4.00	340	80	\$320.00	400	\$1,600.00
Base Bid	43	43	HYDRAULIC MATRIX TYPE BFM	POUND	\$1.50	2975	0	\$0.00	6000	\$9,000.00
Base Bid	44	44	FERTILIZER TYPE 22-5-10	POUND	\$0.70	299	0	\$0.00	600	\$420.00
Totals:								\$22,622.70		\$564,977.51

Contract Total	\$564,977.51
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STAFF MEMO

Prepared by: City Clerk	Meeting Date: 1-5-26	☒ Consent Agenda Item ☐ Regular Agenda Item	Agenda Item # 4e
Reviewed by:	Item: Pay Application 7 CSAH 133 Roundabout and Elm St Extension		
Priority:	None		

ACTION REQUESTED

Authorize payment to Stearns County Highway Dept in the amount of \$6,874.33.

BOARD/COMMISSION/COMMITTEE RECOMMENDATION

none

PREVIOUS COUNCIL ACTION

The council approved project management with Stearns County Highway Dept. City Council approved the local portion of funding for the CSAH 133 roundabout and Elm Street extension project.

REFERENCE AND BACKGROUND

Pay Application #7 is for services less 1% retainage. The payment is made to Stearns County Highway Dept. Stearns County pays the contractor, Knife River, for less retainage for the project.

BUDGET IMPACT

\$6,874.33 – construction fund

STAFF RECOMMENDED ACTION

Execute payment for Pay Application #7.

SUPPORTING DATA/ATTACHMENTS

Pay Voucher #7
Invoice 189-2025

P.O. Box 246
St. Cloud, MN 56302
320-255-6180 Fax 320-255-6186

INVOICE NO: 189-2025
DATE: 12/18/2025

To: City of St. Joseph
Attn.: dmurphy@cityofstjoseph.com; lbartlett@cityofstjoseph.com
ap@cityofstjoseph.com
P O Box 668
St. Joseph, MN 56374

SP 073-733-006 - Roundabout and Elm Street
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[illegible]

Make all checks payable to: Stearns County Highway.
If you have any questions concerning this invoice, contact Tracey Worzala, Office Manager 320-255-6180.

THANK YOU FOR YOUR BUSINESS!



STAFF MEMO

Prepared by: City Clerk	Meeting Date: 1-5-26	☒ Consent Agenda Item ☐ Regular Agenda Item	Agenda Item # 4f
Reviewed by:	Item: Pay Application 5 CSAH 2/MN St Roundabout		
Priority:	None		

ACTION REQUESTED

Authorize payment to Stearns County Highway Dept in the amount of \$6,051.27.

BOARD/COMMISSION/COMMITTEE RECOMMENDATION

none

PREVIOUS COUNCIL ACTION

The council approved project management with Stearns County Highway Dept. City Council approved the local portion of funding for the CSAH 2/MN St roundabout.

REFERENCE AND BACKGROUND

Pay Application #5 is for services less 5% retainage. The payment is made to Stearns County Highway Dept. Stearns County pays the contractor less retainage for the project.

BUDGET IMPACT

\$6,051.27 – construction fund

STAFF RECOMMENDED ACTION

Execute payment for Pay Application #5.

SUPPORTING DATA/ATTACHMENTS

Pay Voucher #5
Invoice 192-2025

P.O. Box 246
St. Cloud, MN 56302
320-255-6180 Fax 320-255-6186

INVOICE NO: 192-2025
DATE: 12/22/2025

To: City of St. Joseph
Attn.: dmurphy@cityofstjoseph.com; lbartlett@cityofstjoseph.com
ap@cityofstjoseph.com
P O Box 668
St. Joseph, MN 56374

SP 073-070-028

QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
	SP 073-070-028 Work Certified to date Local Participation Less Retainage 5% Less paid to date rounding	\$1,530,507.52 \$126,874.55	\$126,874.55 \$ (6,343.73) \$ (114,479.58) \$ 0.03
	Total Amount Due		\$6,051.27
	A copy of the pay voucher and funding by source report is attached.		
		TOTAL DUE	\$ 6,051.27

Make all checks payable to: Stearns County Highway.
If you have any questions concerning this invoice, contact Tracey Worzala, Office Manager 320-255-6180.

THANK YOU FOR YOUR BUSINESS!



STAFF MEMO

Prepared by: Lori Bartlett, Finance Director	Meeting Date: 1-5-26	☒ Consent Agenda Item ☐ Regular Agenda Item	Agenda Item # 4g
Reviewed by:	Item: 3rd Quarter 2025 Gambling Reports		

ACTION REQUESTED

Consider acceptance of the 3rd quarter 2025 gambling reports.

BOARD/COMMISSION/COMMITTEE RECOMMENDATION

None

PREVIOUS COUNCIL ACTION

Gambling Premise permits were approved for the St. Joseph Lion's, St. Joseph Jaycees, Waite Park Babe Ruth Baseball, Veterans Support Brigade, American Legion Post #328, STMA Youth Hockey and St. Joseph Booster Club. The St. Joseph Booster Club did not begin their pull tabs yet.

REFERENCE AND BACKGROUND

Per City Ordinance No. 62 each organization conducting lawful gambling within the City of St. Joseph is required to submit copies of their monthly state tax returns to City Hall on a quarterly basis. Per review of the tax returns the organizations are sufficiently supporting the local community with their gambling proceeds. Examples of how the organizations are giving back to the community include the following items:

Grizzly Hockey	Jaycees Easter Party	City of St. Joseph
St. Joseph Dollars for Scholars	St. Joseph Lab School	St. Joseph Church
Veteran's Honor Guard	River Lakes Hockey	St. Cloud Math & Science Academy
St. John the Baptist Church	Local Medical Benefits	Apollo Sports/Activities
Women of Today Bike Rodeo	Stearns County Explorer's	Rocori Sports/Activities
Holdingford Sports/Activities	St. Joseph Joes Baseball	Boy Scouts/Girl Scouts
Resurrection Church	Cathedral Sports	Legion Baseball
River Lakes Figure Skating	Joe Boys Poker Run	St. John Baptist Church
Sauk Rapids Sports/Activities	STMA Youth Hockey	Waite Park Babe Ruth Baseball
Wacosa	Acceleration Volleyball	St. Joseph Y2K Lions
Academic Scholarships	Joetown Winterwalk	Salvation Army St. Cloud
LEAF 742	Big Brothers/Big Sisters	Quiet Oaks Hospice
St. Cloud Crush Softball	St. Joseph Y2K Lions	St. Cloud Dynamo FC

Organization	Net Profits	Required Donation	St. Joseph Donations	Community % Donated
American Legion Post 328	\$150,817	\$15,082	\$13,844	9%
St. Joseph Lion's	\$251,412	\$25,141	\$16,367	7%
St. Joseph Jaycees	\$40,076	\$4,008	\$14,402	36% disbanded May 2025
STMA Youth Hockey	\$310,358	\$31,036	\$229,500	74% 0%
Veterans Support Brigade	\$30,276	\$3,028	\$0	discontinued Jan 2025
Waite Park Babe Ruth	\$165,896	\$16,590	\$15,180	9%

BUDGET IMPACT

Information only

STAFF RECOMMENDED ACTION

Accept the 3rd quarter 2025 gambling reports.

SUPPORTING DATA/ATTACHMENTS

none



STAFF MEMO

Prepared by: Rhonda Juell	Meeting Date: 1/5/25	☒ Consent Agenda Item ☐ Regular Agenda Item	Agenda Item # 4h
Reviewed by:	Item: CSB/SJU Community Engagement Liaison		
Priority:			

ACTION REQUESTED Approve the CSB Intern, Betsy Solis Rosas, as the Community Engagement liaison for spring semester 2026

BOARD/COMMISSION/COMMITTEE RECOMMENDATION

PREVIOUS COUNCIL ACTION

None

REFERENCE AND BACKGROUND CSB/SJU and the city have been exploring opportunities to get students involved on collaborative opportunities. CSB/SJU is paying the student 75% of the wage and the city will pay 25% (up to \$1400max) for help with Parks, Recreation and Community Development Departments

STAFF RECOMMENDED ACTION Nate Keller and Rhonda Juell request that council approve this position

SUPPORTING DATA/ATTACHMENTS

Intern job description

Community Engagement Fellow - City of Saint Joseph Partnership

Site: City of Saint Joseph Government Center – hybrid offered

Supervisor: Rhonda Juell (primary) and Nate Keller (secondary)

Hours: Flexible – 10/12 hours per week

Length of Position: Academic Year

Wage: \$14.08 per hour

Position Overview: The Bonner Leader will serve as a bridge between the City of St. Joseph and the College of Saint Benedict and Saint John's University community. This position focuses on strengthening relationships, supporting community programs, and bringing fresh, creative ideas to foster a more vibrant and connected city. The role offers flexibility, variety, and opportunities for leadership, community development, and hands-on experience in local government and civic engagement.

Primary duties and responsibilities

- **Youth Engagement:** Assist with recreational programming such as basketball, volleyball, and other youth sports or activities.
- **Senior Citizen Support:** Help plan and participate in programs and events that engage older adults in the community.
- **Community Programming:** Brainstorm and help implement new community events or initiatives that bring residents together and enhance quality of life in St. Joseph.

Secondary duties and responsibilities

- **Research and Administrative Projects:** Support city staff with administrative tasks, including research and writing projects such as grant proposals or reports, mailing out public hearing notices, and assisting administrative staff with various tasks.
- **City Development Support:** Contribute to city planning and development efforts—examples include researching city initiatives, Zoning ordinances, reviewing zoning or permit requests, attending occasional Planning Commission meeting, or helping respond to resident inquiries.
- **General Civic Engagement:** Serve as a community connector by fostering relationships between students, residents, and local organizations.

Qualifications

- Outgoing and personable; enjoys connecting with people of all ages and backgrounds
- Creative thinker with an interest in community engagement and development
- Reliable, adaptable, and self-motivated
- Strong written and verbal communication skills
- Comfortable working independently and collaboratively
- Willingness to take initiative and learn about local government processes



STAFF MEMO

Prepared by: City Clerk	Meeting Date: 1-5-26	☐ Consent Agenda Item ☒ Regular Agenda Item	Agenda Item # 5
Reviewed by:	Item: Nomination and Appointment of Acting Mayor for 2026		

ACTION REQUESTED

Make nominations for Acting Mayor
Motion to appoint the Acting Mayor for 2026

BOARD/COMMISSION/COMMITTEE RECOMMENDATION N/A

PREVIOUS COUNCIL ACTION

REFERENCE AND BACKGROUND Each year the Council is required by statute to nominate and appoint an acting mayor. In the Mayor's absence, the acting mayor will perform the duties of the mayor.

BUDGET IMPACT N/A

STAFF RECOMMENDED ACTION

Make nominations for Acting Mayor
Motion to appoint the Acting Mayor for 2026

SUPPORTING DATA/ATTACHMENTS N/A



STAFF MEMO

Prepared by: City Clerk	Meeting Date: 1-5-26	☐ Consent Agenda Item ☒ Regular Agenda Item	Agenda Item # 6
Reviewed by:	Item: Annual Appointments and Designations for 2026		

ACTION REQUESTED

Motion to approve the annual appointments and designations as presented for 2026.

BOARD/COMMISSION/COMMITTEE RECOMMENDATION N/A

PREVIOUS COUNCIL ACTION

REFERENCE AND BACKGROUND Minnesota statute requires that certain appointments and designations be made at the first meeting of the year. Attached is the listing of suggested designations and appointments that have been made for 2026.

Appointments that had to be made for 2026 due to terms being up at the end of 2025 are highlighted in yellow.

The two members of the Planning Commission that will be appointed to the Joint Planning Board will be decided at the Planning Commission's first meeting of the year.

BUDGET IMPACT N/A

STAFF RECOMMENDED ACTION

Motion to approve the annual appointments and designations as presented for 2026.

SUPPORTING DATA/ATTACHMENTS

2026 Appointments and Designations

2026 Appointments and Designations

All terms are one year in length unless otherwise noted. Terms end December 31st of the cited year.

Board/Commission/Position	Meeting Schedule & Term Length	Current Term	Appointed Members
Acting Mayor		2026	
APO Policy Board	2nd Thursday, 5PM	Mayor [alternate]	Adam Scepaniak Kevin Kluesner
Building Inspector & Compliance Officer			Inspectron Inc
Convention and Visitor Bureau (CVB)	2nd Monday, 9AM, City Hall 3 year term	City Council Liaison	Adam Schnettler
		2026-2028	Melissa Blenkush
		2026-2028	Mary Bruno
		2026-2028	Peter Gilitzer
		2024-2026	Aaron Rieland
		2024-2026	Carmen Welinski
		2025-2027	Ann Riesner
		2024-2026	Tamara Hennes-Vix
Economic Development Authority (EDA)	3rd Tuesday, 12PM, City Hall 6 year term	2026-2028	BriAnne Hern
		2024-2026	Pia Lopez
		2025-2027	Leslie Lane
		City Council Liaison	Kelly Beniek
		2025-2030	Ross Huls
		2024-2029	Larry Hosch
		2024-2029	Joe Bye
		City Council Liaison EDA Director	Kevin Kluesner Nate Keller
Emergency Services Director		Police Chief	Dwight Pfannenstien
Fire Department Officers	Fire Chief, 2 year term	2025-2026	Jeff Taufen
	Assistant Fire Chief, 2 year term	2026-2027	David Salzer
	Captain, 2 year term	2025-2026	Keith Louwagie
	Captain, 2 year term	2025-2026	Mike Folkerts
	Captain, 2 year term	2026-2027	Jake Richter
	Captain, 2 year term	2026-2027	Jack Taufen
	Captain, 2 year term	2026-2027	Andrew Kremer
Fire Relief Association		Mayor City Administrator	Adam Scepaniak David Murphy
Forester			Gary Donabauer

2026 Appointments and Designations

All terms are one year in length unless otherwise noted. Terms end December 31st of the cited year.

Board/Commission/Position	Meeting Schedule & Term Length	Current Term	Appointed Members
Hiring Committee (Department Heads Only)			City Council
Human Rights Advisory Board	St. Joseph Resident, 3 year term	2026-2028	Tayla DeMarce
Joint Planning Board	2nd Tuesday, 7PM, City Hall Meet As Needed	City Council Liaison Planning Commission Planning Commission City Council Liaison	Kelly Beniek Andrew Mooney
Park Board	4th Tuesday, 6:30PM, City Hall 3 year term	2025-2027	Keith Schleper
		2026-2028	Milton Hodge
		2026-2028	Andy Rennecke
		2026-2028	Jeff Buersken
		2025-2027 Park Board Director City Council Liaison	Elijah Stenman Rhonda Juell Adam Schnettler
Personnel Committee [Non Dept head]		Mayor City Council Liaison City Administrator	Adam Scepaniak Kelly Beniek David Murphy
Planning Commission	2nd Monday, 6PM 3 year term	2026-2028	Cody Evander
		2024-2026	Isabella Margli
		2025-2027	Mark Thompson
		2026-2028	Jon Hazen
		2024-2026 2025-2027 City Council Liaison	Carmie Mick Keith Louwagie Andrew Mooney
Properties Number Official		City Engineer	Randy Sabart
Safety Coordinator		Public Works Director	Ryan Wensmann
Weed Control Commissioner		Mayor [assistant]	Adam Scepaniak Eric Poissant

2026 Designations

Designations are required to be approved the 1st meeting of each year

Official Depositories

Sentry Bank
Magnifi Financial
Kensington Bank
PMA Financial Network (4M Fund)
Moreton Capital Markets
US Bank
RBC Wealth Management
Oppenheimer & Co, Inc.
UBS

Official Newspaper - Legal Notices Alternate

St. Cloud Times
The Newsleaders

Authorized Signers

Adam Scepaniak
David Murphy
Lorraine Bartlett



STAFF MEMO

Prepared by: City Administrator	Meeting Date: 1/5/2026	☐ Consent Agenda Item ☒ Regular Agenda Item	Agenda Item # 7
Reviewed by: Finance Director Bartlett City Attorney Sue Dege	Item: YMCA Community Center		

STRATEGIC PLAN PRIORITY

YMCA/Community Center Project.

ACTION REQUESTED

1. Resolution 2026-001 Terminating Amended and Restated Facility Lease Agreement with St. Cloud Area Family Y.M.C.A.
2. Resolution 2026-002 Terminating Contract with Ruis Consulting for Fundraising Efforts.
3. Resolution 2026-003 Terminating Contract Between City and HMA Architects, Ltd for St. Joseph Community Center.
4. Resolution 2026-004 Terminating Contract Between City and W. Gohman Construction for St. Joseph Community Center
5. A MOTION to Direct Staff to contact the State of Minnesota to close Bonding Award for St. Joseph Recreation Center.

BOARD/COMMISSION/COMMITTEE RECOMMENDATION

N/A

PREVIOUS COUNCIL ACTION

The Council met previously in Work Session and came to the consensus that this issue would be revisited at the end of 2025. The direction was if there was not demonstrable progress in the amounts raised and reasonable assurance that the fundraising goals were going to be met in 2026, the Council would need to make a decision on the continued efforts for the project. The timeline was selected due to the fact that the funds acquired from the State of Minnesota through the Bonding Bill would expire.

REFERENCE AND BACKGROUND

The amounts currently pledged from donors total roughly 3 million dollars, which is short of the 6 million needed to fund Phase 1 of the project. There does not appear to be a viable path to raise the 3 million dollars to close the gap.

The City currently has four different contracts related to this project that will need to be terminated to cease the efforts.

1. The City entered into a Facility Lease Agreement with St. Cloud Area Family Y.M.C.A. to operate the facility once it was built. There would be no financial obligation to the Y.M.C.A. as the agreement will be terminated prior to Commencement of Operations.
2. The City entered into an agreement with Ruis Consulting to provide fundraising work on behalf of the City. There is a three-month termination clause in the agreement, however Mr. Ruis has indicated he will not enforce that clause and the agreement and financial

obligation will terminate at the end of the month when his efforts cease.

3. The City entered into an agreement with HMA Architects, Ltd. for architectural services related to the project. The agreement termination clause states the City is responsible for any work performed up to the point of termination. I am not aware of any outstanding bills.
4. The City entered into an agreement with W. Gohman Construction for construction management services for the Community Center. The agreement termination clause states the City is responsible for any work performed up to the point of termination. I am not aware of any outstanding bills.
5. The City was awarded 4 million dollars from the State of Minnesota as part of the 2022 bonding bill. The funds are only available through December 31, 2026. City staff will need to work with the State of Minnesota to determine how to close this fund.

BUDGET IMPACT

Full impact has not been determined at this point.

STAFF RECOMMENDED ACTION

A MOTION and 2nd for each of the five items.

SUPPORTING DATA/ATTACHMENTS

Resolution 2026-001 Terminating Facility Lease Agreement with YMCA

Resolution 2026-002 Terminating Contract with Ruis Consulting Group

Resolution 2026-003 Terminating Contract with HMA Architects, Ltd.

Resolution 2026-004 Terminating Contract with W. Gohman Construction

Facility Lease Agreement between City and St. Cloud Area Family Y.M.C.A.

Agreement with Ruis Consulting

Agreement with HMA Architects

Agreement with W. Gohman Construction



RESOLUTION 2026-001

RESOLUTION TERMINATING THE AMENDED AND RESTATED FACILITY LEASE AGREEMENT WITH THE ST. CLOUD AREA FAMILY Y.M.C.A

WHEREAS, the City of St. Joseph (the “City”) entered into an Amended and Restated Facility Lease Agreement with the St. Cloud Area Family Y.M.C.A on October 28, 2025; and

WHEREAS, the City Council has determined that it is in the best interest of the City of St. Joseph to terminate the Amended and Restated Facility Lease Agreement with the St. Cloud Area Family Y.M.C.A, consistent with the terms of the Agreement; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ST. JOSEPH, MINNESOTA, THAT:

1. The Amended and Restated Facility Lease Agreement between the City of St. Joseph and the St. Cloud Area Family Y.M.C.A is hereby terminated, in accordance with the termination provisions of the Agreement.

ADOPTED by the City Council this 5th day of January, 2026.

CITY OF ST. JOSEPH

Adam Scepaniak, Mayor

ATTEST:

David Murphy, City Administrator



RESOLUTION 2026-002

RESOLUTION TERMINATING THE FUNDRAISING AGREEMENT WITH RUIS CONSULTING GROUP

WHEREAS, the City of St. Joseph (the “City”) entered into a Fundraising Agreement with Ruis Consulting Group on or about December 2, 2024; and

WHEREAS, the City Council has determined that it is in the best interest of the City of St. Joseph to terminate the Fundraising Agreement with Ruis Consulting Group, consistent with the terms of the Agreement; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ST. JOSEPH, MINNESOTA, THAT:

1. The Fundraising Agreement with Ruis Consulting Group is hereby terminated. Notice will be provided to Ruis Consulting Group in accordance with the termination provisions of the Agreement.

ADOPTED by the City Council this 5th day of January, 2026.

CITY OF ST. JOSEPH

Adam Scepaniak, Mayor

ATTEST:

David Murphy, City Administrator



RESOLUTION 2026-003

RESOLUTION TERMINATING THE CONTRACT WITH HMA ARCHITECTS, LTD FOR ST. JOSEPH COMMUNITY CENTER

WHEREAS, the City of St. Joseph (the “City”) entered into a Contract with HMA Architects, Ltd. For the St. Joseph Community Center, and

WHEREAS, the City Council has determined that it is in the best interest of the City of St. Joseph to terminate the Contract with HMA Architects, Ltd., consistent with the terms of the Contract; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ST. JOSEPH, MINNESOTA, THAT:

1. The Contract with HMA Architects, Ltd. is hereby terminated, in accordance with the termination provisions of the Contract.

ADOPTED by the City Council this 5th day of January, 2026.

CITY OF ST. JOSEPH

Adam Scepaniak, Mayor

ATTEST:

David Murphy, City Administrator



RESOLUTION 2026-004

RESOLUTION TERMINATING THE CONTRACT WITH W. GOHMAN CONSTRUCTION FOR ST. JOSEPH COMMUNITY CENTER

WHEREAS, the City of St. Joseph (the “City”) entered into a Contract with W. Gohman Construction for the St. Joseph Community Center, and

WHEREAS, the City Council has determined that it is in the best interest of the City of St. Joseph to terminate the Contract with W. Gohman Construction, consistent with the terms of the Contract; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ST. JOSEPH, MINNESOTA, THAT:

1. The Contract with W. Gohman Construction is hereby terminated, in accordance with the termination provisions of the Contract.

ADOPTED by the City Council this 5th day of January, 2026.

CITY OF ST. JOSEPH

Adam Scepaniak, Mayor

ATTEST:

David Murphy, City Administrator

AMENDED AND RESTATED FACILITY LEASE AGREEMENT

The City of St. Joseph, a municipal corporation of the State of Minnesota (the “**City**”) and the **St. Cloud Area Family Y.M.C.A.**, a Minnesota nonprofit corporation (the “**YMCA**”) enter into this Amended and Restated Facility Lease Agreement (this “**Agreement**”) effective as of October 28, 2025 (the “**Effective Date**”).

RECITALS

- A. The City and the YMCA entered into that certain Facility Lease Agreement dated effective as of May 5, 2023 (the “**Original Agreement**”).
- B. The Parties desire to completely amend and restate the Original Agreement in its entirety by this Agreement.
- C. The City is a Minnesota municipal corporation that among other things owns, maintains and operates land, facilities and programs for youth and community recreation.
- D. The City owns the Site on which the City intends on constructing a community recreational facility.
- E. Under the provisions of the City’s Statutory Authority, the City is authorized to construct the Facility on the Site and to expend funds for the operation and maintenance of the Facility and the operation of the Governmental Program as part of the City’s program of public recreation, and to directly operate such program.
- F. The City has determined that the construction, financing and operation of the Facility on the Site (i) serves a public purpose, (ii) is in the best interests of the City, (iii) provides a broad range of multigenerational civic, community, social, educational, cultural, athletic and recreational activities and programs, and (iv) is in furtherance of the Governmental Program and the City’s program of public recreation and promotion of the health and wellness of the City.
- G. Under the provisions contained in the Statutory Authority and specific language contained in the G.O. Bonding Legislation, the State awarded the City a \$4 Million grant to predesign, design, construct, furnish and equip a community recreational facility as set forth in the State Grant Agreement.
- H. Pursuant to the G.O. Bonding Legislation and the applicable provisions of the City’s Statutory Authority, the City may enter into a lease or management agreement for the operation of recreation programs and the Facility, subject to the G.O. Compliance Legislation.
- I. The YMCA is a 501(c)(3) Minnesota nonprofit corporation that operates a community recreational facility providing a broad range of multigenerational

civic, community, social, educational, cultural, athletic and recreational activities and programs promoting healthy living, youth development and social responsibility.

- J. The YMCA has substantial experience and expertise in operating and managing community recreational facilities similar to the Facility.
- K. The City has determined that the YMCA possesses the personnel and resources to assist the City in furthering the Governmental Program by leasing, managing and operating the Facility.
- L. To provide for and facilitate the planning, design, financing, development and construction of the Facility to be located on the Site, owned by the City and leased to and operated by the YMCA, the City and the YMCA have entered into a Development Agreement contemporaneously with entering into this Agreement.
- M. The City and the YMCA are executing this Agreement to provide for the YMCA's lease, use and operation of the completed Facility.

In consideration of the Recitals, which are incorporated into this Agreement, the Parties' mutual promises, undertakings and covenants in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree to amend and restate the Original Agreement in its entirety as follows:

ARTICLE 1 DEFINITIONS

Section 1.1 Defined Terms. In addition to other terms defined herein, the following capitalized terms used in this Agreement will have the following meanings unless the context indicates otherwise:

"Advertising" means, collectively, all advertising, sponsorship, and promotional activity, signage, designations, messages and displays of every kind and nature, whether now existing or developed in the future, relating to the Facility including without limitation permanent, nonpermanent, and transitory signage, or advertising displayed on permanent or non-permanent advertising panels or on structures, fixtures, or equipment, audio and video advertising, all other print and display advertising on or in the Facility.

"Advertising Rights" means the right to display, control, conduct, lease, license, permit, sell and enter into agreements regarding the display of Advertising in any portions of the Facility's interior or exterior.

"Agents" means the directors, officers, employees, agents and representatives of either Party or a specific Party.

"Agreement" means this Facility Lease Agreement by and between the City and the YMCA, as it may be amended, modified or supplemented from time to time.

“Alterations” means any alterations, additions, modifications or improvements, including signage, to or on any part of the Facility that requires a Permit.

“Annual Report” means as provided in Section 2.7.

“Architect” means HMA Architects, Ltd., a Minnesota corporation.

“Assign” or **“Assignment”** means any sale, conveyance, assignment, subletting, transfer, pledge, mortgage, encumbrance or lien of any kind.

“Building” means the approximately 45,000 square foot community recreational facility, including a gymnasium, indoor walking track, sport courts, locker rooms, fitness center (cardio, strength and fitness studio), youth program studio and kidzone, wellness center, social space, swimming pool and related improvements, components and amenities to be constructed and located on the Site, and any other improvements thereafter constructed on the Site.

“Building Systems” means all of the lines, pipes, conduit, services, improvements and other facilities located on and at the Facility providing or utilized for Utilities and other building systems, including, without limitation, all utility lines; fire protection/sprinkler systems; alarm and security systems; HVAC; mechanical systems; electrical and lighting systems; plumbing systems and fixtures; operating systems; water heaters; circuit breakers; elevators; swimming pool and aquatic mechanical equipment (if applicable), and other systems.

“Business Day” means any day other than a Saturday, Sunday or other day on which banks are required or authorized to close in St. Cloud, Minnesota.

“Capital Improvements” means capital modifications, replacements or additions to the Facility.

“Capital Improvement Plan” means the short-term and long-term capital improvement plan for the Facility identifying the Capital Improvements to be performed during upcoming and succeeding fiscal years, including (a) the items of work to be performed, (b) cost estimates for each item of work, and (c) a timetable for completion of each item of work, to ensure the Facility remains a first-class and up-to-date facility for the Permitted Use.

“Certificate of Substantial Completion” means as defined in the Development Agreement.

“City” means the City of St. Joseph, Minnesota, a municipal corporation of the State.

“City Council” means the city council of the City.

“City Event of Default” shall have the meaning set forth in Section 11.2.

“City Indemnified Persons” means the City and its elected officials, appointed officials, council members, officers, employees, agents, representatives and attorneys.

“City Representative” means the City’s administrator, the administrator’s designee, or any successor Person designated by the City Council upon written notice to the YMCA.

“City’s Statutory Authority” means Minnesota Statutes, Sections 412.211; 412.221, Subd. 3; 412.221, Subd. 32; 412.491; 471.15; 471.16; 471.17 and 471.191.

“Claim” means any claim, demand, action, proceeding or dispute between or among the Parties or other Persons relating to this Agreement or the Facility.

“Code” means the Internal Revenue Code of the United States of America.

“Commencement Date” means the date that is the earlier of (a) the date on which the YMCA has commenced occupancy of the Facility pursuant to this Agreement, or (b) the date on which both of the following have occurred regarding the Facility: (i) the Architect has issued a Certificate of Substantial Completion, and (ii) the City has issued a certificate of occupancy.

“Commissioner” means the commissioner of Minnesota Management and Budget, and any designated representatives thereof.

“Commissioner’s Order” means that certain “Fourth Order Amending Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property” executed by the Commissioner of Minnesota Management and Budget and dated July 30, 2012, as amended.

“Condemnation” means any taking of property by exercise of the power of eminent domain, whether by formal condemnation proceedings or by purchase under the threat of the exercise of the power of eminent domain.

“Contamination” means the presence or release or threat of release of Regulated Substances in, on, under or emanating to or from the Site, which pursuant to Environmental Laws requires notification or reporting to any Governmental Authority, or which pursuant to Environmental Laws requires the identification, investigation, cleanup, removal, remediation, containment, control, abatement, monitoring of or other Response Action to such Regulated Substances, or which otherwise constitutes a violation of Environmental Laws.

“Damages” means any loss, liability, claim, damage, demand, action, cost and expense, including costs of investigation and defense and reasonable attorneys’ fees, whether the action is for money damages, or for equitable or declaratory relief. In no event shall Damages against either Party include incidental or consequential damages.

“Declaration” means a declaration in the form required by the State Grant Agreement indicating that the City’s ownership interest in the Real Property and the Facility is bond financed property within the meaning of the G.O. Compliance Legislation and is subject to certain restrictions imposed thereby.

“Default Interest Rate” means an amount equal to the then current prime interest rate as published by the Wall Street Journal, or its successor publication, as that rate may change from time to time, and added to it an amount equal to two percent (2%) per annum.

“Development Agreement” means that certain Development Agreement between the Parties, dated as of the Effective Date, as the same may be amended, modified or supplemented from time to time.

“Donor Recognition Program” means a program established by the YMCA recognizing private donations in support of the Facility by placing such donors’ names on or in such area or areas of the Facility approved by the YMCA.

“Effective Date” has the meaning set forth in the preamble.

“Emergency Repairs” means any repairs, maintenance, modifications or improvements which, if not immediately made, would endanger the health and safety of the people working in, using or occupying the Facility, would cause imminent damage to any material component of the Facility, or would render any material portion of the Facility or the Building Systems unusable.

“Encumbrance” means any easement, lease, mortgage, deed of trust, pledge, security interest, collateral assignment, financing statement or other encumbrance or lien of any kind.

“Environmental Law(s)” means all Laws, including, without limitation, any consent decrees, settlement agreements, judgments, or orders, issued by or entered into with a Governmental Authority pertaining or relating to the presence, use, management, generation, processing, treatment, recycling, transport, storage, collection, disposal or release or threat of release of Regulated Substances or Contamination.

“Expiration Date” means the date that is the last day of the Term.

“Extended Term(s)” means the First Extended Term and the Second Extended Term.

“Extension Notice” means the YMCA’s written notice to the City that the YMCA desires to extend the First Extended Term given to Landlord at least one hundred eighty (180) days before the end of the First Extended Term.

“Exterior Area” means the parking lots, access drives, sidewalks, trails, patios, lawn and landscaped areas, open spaces, stormwater ponds, utility lines, and other exterior areas and improvements located on the Site outside of the Building.

“Facility” means the Building, the Exterior Area and the FF&E, and any alterations, additions, modifications or replacements thereto.

“FF&E” means all improvements, fixtures, furnishings, equipment and other personal property constructed, installed or placed in or upon (and constituting part of) the Building and the Exterior Area and owned by the City, and all repairs, modifications or replacements thereof and thereto. The FF&E shall not include any of the YMCA Personal Property.

“First Extended Term” means the first extended term of fifteen (15) Lease Years following the Initial Term.

“Force Majeure” means acts of God, accidents, fire or other casualty, earthquake, hurricane, tornadoes, named storms, flood, war, riot, intervention by civil or military authorities of government, insurrection or other civil commotion, governmental action (excluding any governmental action or inaction with respect to the granting or withholding of any governmental approvals or Permits needed for the construction or operation of the Facility), material shortages, strikes, boycotts, lockouts or labor disputes (but not including player labor stoppages, whether attributable to strikes or lockouts), or any other similar or like event or occurrence beyond the reasonable control of a Party, that causes such Party to be delayed or hindered in, or prevented from, the performance of any covenant or obligation hereunder. Unavailability of funds shall not constitute Force Majeure.

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be in general use by significant segments of the accounting profession, which are applicable to the circumstance as of the date of determination.

“G.O. Bonding Legislation” means specific language contained in 2020 Minnesota Laws, Fifth Special Session, Chapter 3, Article 1, Section 21, Subdivision 37, as it may be amended, modified or replaced from time to time.

“G.O. Compliance Legislation” means Minnesota Statutes, Section 16A.695, as it may be amended, modified or replaced from time to time.

“Governmental Authority” means any federal, state, county, city, local or other government or political subdivision or any agency, authority, board, bureau, commission, department or instrumentality thereof.

“Governmental Program” means the operation, management, maintenance and use of the Facility in furtherance of the City’s program of public recreation and promotion of the health and wellness of the City pursuant to the City’s Statutory Authority.

“HVAC” means all heating, ventilation and air conditioning equipment and related systems.

“Initial Term” means this Agreement’s initial term which shall be for a period of fifteen (15) Lease Years beginning on the Commencement Date, unless earlier terminated as provided in this Lease.

“Law” or “Laws” means any law, statute, code, ordinance, rule, regulation, standards, permits, requirements orders or constitutional or charter provision that have been duly enacted, adopted, implemented, ordered, issued, entered or deemed applicable by or under authority of any Governmental Authority and are applicable to this Agreement, the Parties’ performance of their obligations under this Agreement, the Facility or its use, occupancy, possession, maintenance or operation.

“Lease Year” means each period of twelve (12) consecutive calendar months occurring during the Term, commencing on the Commencement Date; provided, however, that if the Commencement Date is not the 1st day of a month, then the first Lease Year shall commence on the 1st day of the first month immediately following the Commencement Date. Each succeeding Lease Year will commence on the anniversary date of the previous Lease Year.

“Major Repair” means any individual repair, replacement or improvement of \$10,000 or more in any one instance, or any repairs, replacement and improvements of \$50,000 or more in the aggregate in any calendar year.

“Major Repair Reserve Fund” means the repair and replacement reserve fund to be utilized for the funding of Major Repairs as provided in this Agreement.

“Minor Repair” means any individual repair, replacement or improvement of less than \$10,000 in any one instance, or any repairs, replacement and improvements of less than \$50,000 in the aggregate in any calendar year.

“MPCA” means the Minnesota Pollution Control Agency.

“Naming Rights” means the right to grant the privilege to, or to license or sell to, any third party or parties the right to name and rename any portions of the Facility’s interior or exterior or the Exterior Area.

“Operate” or **“Operation”** means manage, coordinate, control, operate and supervise the conduct and operation of the ordinary and usual business and affairs pertaining to or necessary for the operation and management of the Facility.

“Operating Expenses” means all ordinary and necessary business expenses incurred in Operating the Facility.

“Party” or **“Parties”** means either or both of the City and the YMCA, as applicable.

“Permit(s)” means any permit, license or approval to be issued by any Person required for the operation of the Facility or for the installation, alteration, repair or replacement of any improvements or Alterations related in any manner to the Facility.

“Permitted Encumbrances” means only the following liens and encumbrances on the Site’s title: (a) this Agreement, (b) the Declaration, (c) platted easements in effect as of the Effective Date, (d) liens and encumbrances granted or caused by the City, with the YMCA’s written consent, and (e) and easements that do not materially restrict or interfere with the YMCA’s use, possession or Operation of the Facility.

“Permitted Use” means the Facility’s use as a regional community recreational facility providing a broad range of multigenerational civic, community, social, educational, cultural, athletic and recreational activities and programs promoting healthy living, youth development and social responsibility.

“Person” means any natural person, sole proprietorship, corporation, partnership, trust, limited liability company, limited liability association, unincorporated association, joint venture, Governmental Authority, or any other entity.

“Real Property” means the real property located in and owned by the City identified as PID#84.53797.0952 and legally described on the attached **Exhibit A**.

“Real or Personal Property Taxes” means all real estate taxes, personal property taxes, assessments, street light, utility or similar fees, and other governmental levies, charges or fees, general and special, ordinary and extraordinary, of any kind or nature, lawfully levied or assessed by federal, state, county or municipal government, upon or with respect to the Facility and any and all other improvements constituting a part of the Facility.

“Regulated Substances” means any pollutant, toxic or hazardous waste or substance, petroleum product, oil, asbestos, PCB or other substance regulated, prohibited, restricted or controlled by any Laws related to the protection of health or the environment or posing a risk to a person’s health and safety.

“Rent” shall have the meaning given in Section 4.1.

“Repairs” means any maintenance, repair or replacement for which either Party is responsible for and required to make or perform pursuant to this Agreement’s terms.

“Representative” or **“Representatives”** means one or more of the City Representative or the YMCA Representative.

“Response Action” means the investigation, cleanup, removal, remediation, containment, control, abatement, monitoring of or any other response action to the presence of Regulated Substances or Contamination in, on, at under or emanating from the Site, including the abatement or correction of any violation required pursuant to Environmental Laws or by a Governmental Authority.

“Second Extended Term” means the second extended term of fifteen (15) Lease Years following the First Extended Term.

“Site” means that portion of the Real Property where the Facility will be constructed and located as shown on the Site Plan.

“Site Plan” means the site and building plan attached as **Exhibit B**, as it may be amended by the Parties.

“State” means the State of Minnesota.

“State Entity” means the Minnesota Department of Employment and Economic Development.

“State Grant” means \$4,000,000 allocated to the City by the State pursuant to the G.O. Bonding Legislation.

“State Grant Agreement” means that certain General Obligation Bond Proceeds Grant Agreement – Construction Grant entered into between the City and the State Entity.

“Statutory Authority” means Minnesota Statutes, Sections 471.15 through 471.191, as may be amended.

“Substantial Completion” means as defined in the Development Agreement.

“Term” means the Initial Term and any Extended Term, as the case may be.

“Utilities” means heat, water, sanitary sewer, gas, electricity, telephone, cable, internet, telecommunications, refuse and other utilities serving the Facility.

“Utility Costs” means all deposits, charges and fees due for Utilities, and any other utility charges and fees in connection with the Facility’s use and occupancy; provided, however, that Utility Costs shall not include any charges or fees for water, sanitary sewer, storm sewer, refuse or street lights.

“YMCA” means the St. Cloud Area Family Y.M.C.A., a Minnesota nonprofit corporation.

“YMCA Board” means the YMCA’s board of directors.

“YMCA Event of Default” shall have the meaning set forth in Section 11.1.

“YMCA Indemnified Persons” means the YMCA and its members, directors, board members, officers, employees, agents and attorneys.

“YMCA Personal Property” means all of the inventory, furniture, furnishings, equipment, trade fixtures, fitness equipment, signage, computers, telephones, office equipment and other personal property which is owned by the YMCA, as the same may be repaired, replaced, modified or supplemented from time to time.

“YMCA Representative” means the YMCA’s executive director/chief executive officer (currently Greg Gack), the executive director’s designee, or any successor Person designated by the YMCA upon written notice to the City.

Section 1.2 Construction of Terms. As the context of this Agreement may require, terms in the singular shall include the plural (and vice versa) and the use of feminine, masculine or neuter genders shall include each other. Wherever the word “including” or any variation thereof is used herein, it shall mean “including, without limitation” and shall be construed as a term of illustration, not a term of limitation. Wherever the word “or” is used herein, it shall mean “and/or.”

ARTICLE 2 FACILITY LEASE

Section 2.1 Facility Ownership. The City owns the Site and will own the Facility constructed on the Site pursuant to the Development Agreement, and all right, title, and interest thereto and therein. The Site and the Facility is and shall be the property of and owned by the City, subject, however, to the YMCA's rights to lease, use and Operate the Facility pursuant to this Agreement's terms and conditions. The Parties acknowledge that the City's interest in the Real Property and the Facility will be subject to the State Grant Agreement and Declaration and that the YMCA's rights in the Facility will be subject thereto.

Section 2.2 Facility Lease. In consideration of the YMCA's payments and covenants contained in this Agreement, the City leases and grants to the YMCA, and the YMCA leases and accepts from the City, the exclusive right to occupy, use and Operate the Facility, subject to the terms and conditions of this Agreement and the Development Agreement. The City shall defend title to the Site and the Facility and to the YMCA's use, occupancy and Operation of the Facility against any and all claims of all Persons whatsoever and will defend, indemnify and hold the YMCA harmless from and against any and all losses, costs, expenses and liabilities due or attributable to the City's breach of this Section's warranties.

Section 2.3 Quiet Enjoyment. Upon the YMCA paying the Rent and observing and performing all of the covenants, conditions, and provisions on the YMCA's part to be observed and performed under this Agreement, the YMCA shall peaceably and quietly hold and enjoy the Facility for the Term without hindrance or interruption by the City or any other Person lawfully or equitably claiming by, through or under the City, subject nevertheless to this Agreement's terms and conditions.

Section 2.4 Title and Permitted Encumbrances. The City has good and marketable title to the Site free and clear of all Encumbrances except the Permitted Encumbrances. Except for the Permitted Encumbrances, the City shall not impose or permit to be imposed any Encumbrance or amendment thereto on any portion of the Site or the Facility which materially restricts or interferes with the YMCA's use, possession or Operation of the Facility or its rights under this Agreement, without the YMCA's prior, written consent, which consent shall not be unreasonably withheld. The City shall defend, indemnify and hold the YMCA harmless from and against any and all claims, costs, expenses, damages and liabilities relating to the City's breach or default under any Encumbrance on the Site. The City assigns to the YMCA all of the City's rights and remedies to pursue enforcement of the Permitted Encumbrances on the City's behalf in the event the City fails to commence such enforcement within thirty (30) days after receipt of notice from the YMCA requesting the City to pursue its remedies and enforce the terms of such Permitted Encumbrances. In the event of a default by the City of any of its obligations set forth in the Permitted Encumbrances, the YMCA may pursue enforcement against the City for compliance with the requirements of such Permitted Encumbrances.

Section 2.5 Purpose. The Parties acknowledge that the City is a public body with authority under the G.O. Compliance Legislation to own the Facility and operate the Governmental Program. The City believes that the Governmental Program serves the City's public interest and believes that the Facility furthers the Governmental Program. This Agreement

is being entered into in accordance with the provisions of the G.O. Bonding Legislation, the G.O. Compliance Legislation, and the rules, regulations, and orders issued pursuant thereto in order to carry out this public purpose and it is the Parties' intent that the YMCA shall implement the City's goals in serving the public purpose as herein provided.

Section 2.6 State Grant Agreement.

a. The Parties acknowledge that the costs of design and construction of the Facility will be funded, in part, through the proceeds of the State Grant made to the City pursuant to the terms of the State Grant Agreement. The Parties acknowledge and recognize that this Agreement is subject to the terms and conditions of the State Grant Agreement. Accordingly, this Agreement must be approved in writing by the Commissioner, and absent such approval it is null and void and of no force or effect. The Parties agree to cooperate to obtain all necessary approvals and signatures under the State Grant Agreement.

b. The Parties acknowledge and recognize that the terms, conditions and provisions of the State Grant Agreement control over any inconsistent provisions in this Agreement.

c. The YMCA is prohibited from creating or allowing any voluntary lien or encumbrance or any involuntary lien or encumbrance upon the Facility or Real Property, except with the advance written consent of the Commissioner.

d. The City agrees to comply with all terms and conditions of the State Grant Agreement and the YMCA agrees to reasonably cooperate with the City in so complying. The Parties further agree that in the event that the City fails to comply with any provision in the State Grant Agreement then, if the City fails to cure such failure within ten (10) days of the City's receipt of the YMCA's written demand or the State's notice of default, the YMCA shall have the right to take whatever action may be necessary to cure such default.

e. The City shall not agree to any amendment, modification or waiver of any condition, provision or term of the State Grant Agreement unless the same is first approved, in writing, by the YMCA, which approval shall not be unreasonably withheld.

f. The City agrees that it will provide the YMCA with copies of all notices that are provided to the City under the State Grant Agreement in accordance with Section 13.5 hereof.

Section 2.7 Reporting and Program Oversight. Prior to the Commencement Date, the YMCA shall provide the City with an initial program implementation plan and, at least annually, a program evaluation report and a program budget showing program revenues and expenses. The City Representative shall be a member of the YMCA's St. Joseph YMCA advisory board.

Section 2.8 Compliance with G.O. Compliance Legislation and Commissioner's Order. YMCA acknowledges and agrees that the Facility is "state bond financed property", as such term is used in the Compliance Legislation and Commissioner's Order, and that therefore, the provisions contained therein apply to the Facility and this Agreement. The Parties acknowledge and agree that the City will not receive any money from the YMCA pursuant to this Agreement, and as a result thereof the Commissioner does not reasonably expect to receive any monies as contemplated by Section 4.02, paragraph (f) of the Commissioner's Order.

ARTICLE 3

TERM

Section 3.1 Initial Term. Unless sooner terminated as provided in this Agreement, this Agreement's Initial Term will be for a period of fifteen (15) Lease Years commencing on the Commencement Date. Notwithstanding the fact that the Initial Term commences on the Commencement Date, all of this Agreement's terms and conditions, and all of the Parties' rights and obligations as provided in this Agreement, are binding and of full force and effect from and after the Effective Date. The Parties shall execute, acknowledge and deliver an addendum, acknowledgment or other instrument setting forth the Commencement Date and the expiration date of the Initial Term. The Parties acknowledge that the Initial Term is less than 50% of the useful life of the Facility.

Section 3.2 Extended Terms. Provided that this Agreement has not been earlier terminated as provided herein and subject to the conditions set forth herein, the YMCA shall have the option, subject to the conditions of this paragraph, to renew and extend this Agreement's Term for each of the successive Extended Terms by providing an Extension Notice to the City for each such Extended Term. All of this Agreement's terms will be the same for each Extended Term as for the Initial Term. At either Party's request, the Parties shall execute, acknowledge and deliver an addendum, acknowledgment or other instrument setting forth the commencement and expiration of such Extended Term. As a condition precedent to such renewal, the City shall have determined by action of the City Council within three (3) months of receipt of an Extension Notice from the YMCA that the YMCA has demonstrated that such renewal continues to carry out the Governmental Program and that the YMCA is suited and able to perform the functions contained in this Agreement and upon such demonstration the City shall act in good faith to renew this Agreement. In no event shall the YMCA be entitled to renew the Term hereof even though such confirmation notice is timely given, if (a) this Agreement has been terminated, or (b) an Event of Default has occurred and is continuing as of the date of the expiration of the Initial Term or an Extended Term. The YMCA's right to the Second Extended Term is conditioned upon the Term of this Agreement having been extended by the First Extended Term. Notwithstanding anything to the contrary contained herein, the City is not required to renew this Agreement with the YMCA, and may at the expiration of the Initial Term or any Extended Term, in the City's sole option and discretion (i) decide to self-operate the Governmental Program in the Facility, (ii) contract with some other entity to operate the Governmental Program in the Facility, or (iii) determine that the Facility is no longer needed or useful for the operation of the Governmental Program and sell its interest in the Facility.

Section 3.3 Statutory Termination. Notwithstanding any other provisions of this Agreement to the contrary, if the Governmental Program is terminated or changed in response to changes in State law in such a manner as to (a) cause this Agreement and the operation of the Facility to be inconsistent with the changed Governmental Program, or (b) remove the statutory authority for the City to operate the Governmental Program, then this Agreement shall be terminated by 485 days written notice to the YMCA, provided however that the City agrees that it will not terminate or change the Governmental Program unless required to do so by applicable State law. Any termination must be approved by the City Council, and provided further that any termination pursuant to this Section 3.3 will be deemed automatically rescinded and of no force or effect if within said 485 day period (i) the State law requiring the Governmental Program to

be terminated or changed or precluding the City's operation of the Governmental Program is repealed or modified in such a manner as to permit the Governmental Program to continue in a form that does not cause this Agreement and operation of the Facility to be inconsistent therewith, or (ii) the YMCA conforms its operation of the Facility to the changed Governmental Program. The Parties shall cooperate in good faith to attempt to obtain State legislation that permits the Governmental Program and this Agreement to continue.

Section 3.4 Payment of Investment. Notwithstanding Sections 7.2 and 7.3, in the event that (a) this Agreement is terminated prior to the end of the Term or is not renewed pursuant to Section 3.2 of this Agreement, (b) the Facility is subject to the State Grant Agreement, the Declaration, and G.O. Compliance Legislation, and (c) the City has determined to continue to carry out the Governmental Program in the Facility, then, at the time of the termination or nonrenewal, the City shall reimburse the YMCA for its Capital Improvements investment in the Facility (which investment is the amount of money or like-kind contributions contributed initially and subsequently to the acquisition and betterment of the Facility by the YMCA) based upon the remaining useful life of such Capital Improvements. The remaining useful life will be determined by the City's Capital Asset Policy if addressed therein, and failing that, by mutual agreement of the Parties in good faith. The sums to be paid by the City to the YMCA for reimbursement of their investment shall be due and payable on the termination or expiration date of this Agreement, except those sums which cannot be determined as of such date shall be due and payable upon determination and shall earn interest from and after the date until paid in full at the Default Interest Rate.

ARTICLE 4 RENT

Section 4.1 Rent. Beginning on the Commencement Date and continuing during the Term, the YMCA shall pay as rent (a) the sum of \$1.00 per Lease Year payable to the City on or before the 1st day of each Lease Year, and (b) any other sums and charges required to be paid to the City or by the YMCA pursuant to this Agreement's terms, including without limitation, the Utility Costs to be paid by the YMCA as provided in this Agreement (individually and collectively, the "Rent").

Section 4.2 Utility Costs. As part of the Rent, the YMCA shall pay all Utility Costs directly to the applicable utility providers as and when due. Notwithstanding the foregoing or anything in this Agreement apparently to the contrary, the City shall provide and pay for any and all charges, fees, costs and expenses for water, sanitary sewer, storm sewer, refuse and street lighting Utilities serving the Facility.

Section 4.3 Real or Personal Property Taxes. The Parties believe and expect that the Facility, including the Tenant's use and occupancy of the Facility, is and will be exempt from Real or Personal Property Taxes. In the event the Facility or any part of it becomes subject to any Real or Personal Property Taxes, the City shall pay and be responsible for all such Real or Personal Property Taxes.

ARTICLE 5 USE AND OPERATIONS

Section 5.1 Permitted Use. The YMCA shall exclusively use, occupy and operate the Facility subject to and in compliance with all Laws and this Agreement's terms solely for the Permitted Use and for such other uses as may be necessary or incidental to such Permitted Use, and for no other use without the City's prior written consent. The City represents and warrants to the YMCA that no consents or approvals by any Governmental Authority or third party are required for the Permitted Use.

Section 5.2 Facility Operation. The YMCA will Operate the Facility in accordance with Laws and this Agreement's terms and conditions and will be responsible for performing and paying for all Operating Expenses, except as otherwise specifically provided herein. The YMCA shall have sole control over the Operation of the Facility and the direction and supervision of the YMCA's staff and employees, and shall in its sole discretion determine the hours, activities, fees, methods, means and manner of its Operation of the Facility. The YMCA shall have such rights and responsibilities and shall provide, perform and take, or cause to be provided, performed or taken, such services and actions, as it determines in its sole discretion are necessary or advisable to Operate the Facility consistent with national and local YMCA standards.

Section 5.3 Naming and Advertising Rights. The YMCA and the City will be the primary names on the Building's exterior and the City reserves the right to include the name "Jacob Wetterling" on the Building's exterior; provided, however, that all of the Building's exterior signage and use of the YMCA's name and logo must meet all local and national YMCA guidelines for such use as well as comply with all building code and zoning requirements. The YMCA will have the exclusive right to exercise, market, license and sell all Naming Rights and Advertising Rights and to receive all revenues therefrom, subject to City's approval of Naming Rights, which approval will not be unreasonably withheld, conditioned or delayed. The City grants to the YMCA a non-exclusive royalty free license to make any lawful use of the name, identity and image of all or part of the Facility.

Section 5.4 Environmental. The City shall deliver the Facility to the YMCA free of any Contamination, shall not cause any Contamination on the Site and shall comply with applicable Environmental Laws related to the Site and the Facility. The YMCA shall not cause any Contamination on the Site and shall comply with applicable Environmental Laws relating to its use and occupancy of the Facility.

Section 5.5 City Use. The YMCA shall make the Facility available at reasonable times to the City for such public events and activities that do not compete or interfere with the YMCA's recreational and other programs or otherwise conflict or interfere with the YMCA's use and operation of the Facility. The parties shall in good faith cooperate in the scheduling of these events and activities. Such use of the Facility by the City shall be at no charge to the City.

Section 5.6 Donations. The City shall have the right to solicit and accept private donations to support the Facility and the City's operations (included in Article 6 below and providing water, sewer, stormwater, refuse and street lighting utilities), and the YMCA shall

have the right to establish and implement a Donor Recognition Program. Donor recognition will encompass ¼ of 1% of the facility space.

ARTICLE 6

REPAIRS, MAINTENANCE, ALTERATIONS AND CAPITAL IMPROVEMENTS

Section 6.1 Maintenance of Exterior Area and Building Structure. The City, at its sole cost and expense and without charging the YMCA any direct or indirect fees or charges of any nature whatsoever, shall maintain, repair and replace as necessary the Exterior Area and the Building's exterior and structure, in good condition and repair, clean and free of all debris and in a safe, clean, attractive, high-quality and first-class manner in accordance with Laws, including without limitation all of the following:

- a. mowing, weed control, fertilizing, watering, pruning and other maintenance of all lawn, shrubs, trees, groundcover and landscaped areas;
- b. maintenance, repair and replacement of irrigation and sprinkler systems;
- c. cleaning, sweeping, repairing, striping, restriping, sealcoating and resurfacing of parking areas, roadways, trails, sidewalks, curbs, plazas, entryways and patios;
- d. de-icing, salting and removal of snow and ice from parking areas, roadways, trails, sidewalks, curbs and entryways;
- e. maintenance, repair, re-lamping and rewiring of all parking lot and exterior lighting facilities and surveillance equipment (if any), entrance, exit and directional signs, markers, lights and lines; and
- f. maintenance and repair of the Building's roof, roof skin and roof structure including beams, supports and decking and girders; footings; foundation and structural support; floor slab and structural portions of the floor; Building structure and structural elements; exterior and load-bearing walls, beams and columns; façade; siding and facing; awnings and canopies; down spouts and gutters; exterior windows, cladding and bricks; and the Building name and logo attached to the Building.

Section 6.2 Maintenance of Building Systems and Interior.

a. **Routine Maintenance and Minor Repairs.** Except for the City's obligations under Section 6.1 of this Agreement and this Section, the YMCA, at its sole cost and expense, shall provide for routine maintenance and all Minor Repairs of the Building's interior and the Building Systems, in good condition and repair, ordinary wear and tear and casualty damage excepted, clean and free of all debris and in a safe, clean, attractive, high-quality and first-class manner, including without limitation all of the following:

- i. routine maintenance of plumbing, electrical, fire suppression/safety equipment and lighting fixtures;

- ii. routine and periodic cleaning, lubrication and changing of filters, light bulbs, fuses, batteries or similar consumable components for Building Systems;
- iii. cleaning the Building's interior and washing windows;
- iv. routine painting and maintenance of carpeting; tiling; interior doors, windows and walls; interior signage and exterior signage that is not attached to the Building;
- v. exterior doors and security system; and
- vi. any other Building Systems.

b. **Major Repairs.** The City and the YMCA shall provide for all Major Repairs of the Building's interior and Building Systems as provided in Section 6.2(a), in good condition and repair, ordinary wear and tear and casualty damage excepted, clean and free of all debris and in a safe, clean, attractive, high-quality and first-class manner, as follows:

- i. The City and the YMCA shall each be responsible for 50% of the cost of all such Major Repairs up to a total of \$250,000 (\$125,000 for each of the City and the YMCA) during any calendar year.
- ii. The City shall be responsible for the cost of all Major Repairs which exceeds \$250,000 during any calendar year.

Section 6.3 Failure to Make Repairs. If either Party fails to complete any Repairs for which it is responsible under this Agreement within 30 days after written notice from the other Party, or such longer period not to exceed 90 days if such Party cannot reasonably complete such Repairs within 30 days provided that such Party promptly commences and diligently pursues completion of such Repairs within such 30-day period, the non-defaulting Party shall have the right to make such Repairs. Upon the non-defaulting Party's completion of any of such Repairs, such non-defaulting Party shall send the defaulting Party statements setting forth the cost of such Repairs and the defaulting Party shall pay such costs within ten (10) days after receipt. In the event of Emergency Repairs, the YMCA may immediately make such Emergency Repairs without written notice to the City, so long as the YMCA has made reasonable efforts to contact the City.

Section 6.4 Major Repairs Reserve Fund. The Parties will establish the Major Repairs Reserve Fund. The Major Repairs Reserve Fund will have a total combined target balance of \$250,000 with each Party contributing \$125,000. Each of the Parties will begin contributing to the Major Repairs Reserve Fund beginning in the 1st Lease Year, so that by the end of the 5th Lease Year, each Party will have contributed at least \$125,000 to the Major Repairs Reserve Fund. If the Major Repairs Reserve Fund balance falls below \$250,000 following the end of the 5th Lease Year, then each of the Parties will equally contribute to replenish the Major Repairs Reserve Fund as soon as practical by each Party contributing an amount of up to \$25,000 per year until the combined balance of the Major Repairs Reserve Fund is equal to \$250,000. Each Party must maintain their own separate account for their portion of the Major Repairs Reserve

Fund, and upon request each Party shall submit evidence of such account and its balance to the other Party. The City's contribution to the Major Repairs Reserve Fund is from separate City resources that are separate from this Agreement, and no Rent collected from the YMCA will be used to contribute to the Major Repairs Reserve Fund. All funds in the Major Repairs Reserve Fund shall be utilized for Major Repairs and shall be released and disbursed only upon the written consent of both Parties. The City and YMCA will retain each of their balances in the Major Repairs Reserve Fund at the end of the Term, or termination of this Agreement.

Section 6.5 Alterations. The YMCA will not make any Alterations to the Facility without the City's prior, written consent, which shall not be unreasonably withheld, conditioned or delayed. Before commencing any Alterations requiring the City's approval, the YMCA shall provide plans and specifications for such Alterations to the City for its review and approval. All Alterations will be at the YMCA's sole cost and expense and shall be made in accordance with all Laws and will be performed in a good and workmanlike manner. All Alterations will become the City's property upon this Agreement's expiration or termination and will remain upon and be surrendered with the Facility without disturbance or injury. The City shall cooperate and assist the YMCA in obtaining any Permits necessary for any permitted Alterations, including executing any necessary documents, provided such Alterations comply with building code and zoning code requirements. The YMCA shall be responsible for building permit fees related to the Alterations.

Section 6.6 Capital Improvement Plan. The YMCA and the City shall jointly and in good faith develop on an annual basis a Capital Improvement Plan to guide and identify the Facility's capital needs. It is the shared goal of the Parties to ensure that the Facility's capital funding needs and priorities provided in the Capital Improvement Plan are timely and sufficiently addressed in order to maintain the Facility in a first class condition and to prevent the facilities and amenities of the Facility from becoming materially outdated or obsolete. The joint Capital Improvement Plan will be included in the City administration's budget proposal which is ultimately subject to the review, consideration and approval of the City Council. If the City Council approves Capital Improvements the City shall select an architect or engineer to prepare any necessary plans or specifications for the Capital Improvements, which architect, engineer, plans and specifications shall be subject to the YMCA's prior review and approval, which approval shall not be unreasonably withheld. All Capital Improvements made to the Facility shall become a part of the Facility, shall be the property of the City, and shall remain upon and be surrendered with the Facility upon this Agreement's termination or expiration.

Section 6.7 Notice of Conditions. If either Party knows of or discovers any Laws necessitating performance of Capital Improvements or any condition or defect in, damage to, or alteration of the physical structure, fixtures, appurtenances, machinery, equipment, systems, surfaces or any other capital component of the Facility necessitating performance of Capital Improvements, or which, in such Party's opinion, makes such Capital Improvements necessary or advisable, such Party shall promptly notify the other of such matter.

Section 6.8 Liens. The City and the YMCA shall keep the Facility free from any mechanic's or other liens arising out of any construction or other work performed by or on behalf of such Party, including any Alterations, materials furnished by or on such Party's behalf or any other obligations such Party incurs. If any such lien is filed against any part of the Facility, such

applicable Party shall cause the lien to be discharged of record by payment, bond, order of a court of competent jurisdiction or otherwise, within sixty (60) days after the lien's imposition. The City may post or otherwise notice the Facility pursuant to applicable law to protect the Facility and the City against liens. Either party may at its option contest the validity or amount of any lien or claim of lien if such Party posts an appropriate and sufficient bond, pays the appropriate sum into court or provide such other adequate security, if permitted by and in compliance with applicable Laws. The YMCA shall have no responsibility for any Encumbrance on the Facility imposed by the City or as a result of the City's actions. The YMCA may grant a mortgage in its leasehold interest provided such mortgage is subject to and subordinate to this Agreement's terms and the City's interest in the Facility. The City shall have no responsibility for any mortgage on the YMCA's leasehold interest or for any Encumbrance that results from the YMCA's actions

Section 6.9 YMCA Personal Property. The YMCA may, at its cost and expense, from time to time during the Term install, alter, repair, replace, remove and finance on and in the Facility such YMCA Personal Property as the YMCA deems necessary for its operations and activities. All YMCA Personal Property, whether or not located in or on the Facility and without regard to the means by which or the person who installed or attached the same to the Facility, shall at all times during and after the Term be solely the YMCA's property, shall not constitute a part of the Facility and the City shall have no claim or right of any kind in and to any of the YMCA Personal Property. The YMCA shall have the right at any time and from time to time to remove any and all YMCA Personal Property from the Facility, and shall make all necessary repairs caused by such removal. The YMCA may grant a security interest in the YMCA Personal Property. The City shall not mortgage, pledge or encumber any of the YMCA's Personal Property or other property, waives and releases any lien or claim thereon and agrees to deliver confirming lien waivers to the YMCA upon request.

ARTICLE 7 INSURANCE, RESTORATION AND CONDEMNATION

Section 7.1 Insurance. The Parties shall, carry and maintain in full force and effect the following insurance during the Term:

a. **Property Insurance.** The City shall maintain "all risk" property insurance against loss by fire, lightning and risks customarily covered by a standard extended coverage endorsement, including the cost of debris removal, all in an amount of not less than the full replacement cost of all structures and improvements on the Site, including the Facility, together with a waiver of subrogation endorsement. If the Site is located in a designated flood zone, the City shall also maintain flood insurance. All insurance policies shall name the YMCA as an additional loss payee.

b. **YMCA Liability Insurance.** The YMCA shall maintain commercial general liability insurance, providing coverage on an "occurrence" rather than a "claims made" basis, with a combined single policy limit of not less than \$4,000,000 per occurrence applying to bodily injury, death, property damage and personal injury occurring on, in or about the Facility, or as a result of the YMCA's Operation of the Facility or claims arising from the negligence of the YMCA and its officials, employees and agents. An umbrella or excess liability insurance

policy may be used to supplement the policy limits on a follow-form basis to satisfy the full policy limits. All such policies shall name the City as an additional insured. The YMCA agrees that it shall maintain liability insurance coverage for at least three years beyond the last day of the Term.

c. **City Liability Insurance.** The City shall maintain commercial general liability insurance, or its equivalent, providing coverage on a “claims made” basis, with a combined single policy limit of not less than \$2,000,000 per occurrence applying to bodily injury, death, property damage and personal injury occurring on, in or about the Site or the Facility, or as a result of the City’s ownership, use and maintenance of the Site or the Facility. An umbrella or excess liability insurance policy may be used to supplement the policy limits on a follow-form basis to satisfy the full policy limits. All such policies shall name the YMCA as an additional insured.

d. **Insurance Requirements.** Before the Commencement Date and thereafter upon request, each Party will deliver to the other Party, certificates of insurance evidencing that the insurance this Agreement requires is in full force and effect. All evidence of insurance will contain sufficient information to enable a determination as to whether the insurance complies with this Agreement’s requirements. All of the insurance policies used to provide the coverage this Agreement requires will: (a) be endorsed to require the insurer to provide at least thirty (30) days written notice to the other party before material modification, cancellation or non-renewal; and (b) be issued by financially sound companies qualified to do business in Minnesota. Each party shall be responsible for payment of all deductibles, retentions, coinsurance, uninsured amounts or any amount in excess of the policy limits on their respective policies, and in no event shall such amounts be paid by the other party. The required minimum limits of liability shall be reevaluated at least every 5 years.

e. **Waiver of Subrogation.** The City and the YMCA for themselves and on behalf of their insurers mutually release each other from liability and waive all right of recovery against each other for any loss or damage to the Site or the Facility, or their contents, to the extent the loss or damage is or would be covered by insurance required to be maintained by each respective party under this Agreement whether or not the required insurance is actually maintained. It is understood that this waiver applies to any loss or damage regardless of the cause, including, without limitation, if caused by the negligence of the City, the YMCA or their respective employees, agents, assigns, sublessees, occupants, or permittees, except with regard to any deductible, which shall be allocated between the parties based upon comparative negligence or fault.

Section 7.2 Restoration. In case of any damage to or destruction of the Facility, or any portion thereof, by fire, casualty or any other cause, the City shall, at its sole cost and expense, promptly commence and proceed with due diligence to repair, restore, rebuild or replace the same in as good a condition as existed prior to such damage or destruction, which work shall be completed within six (6) months, or other reasonable period as agreed upon by the Parties, following such damage or destruction without diminution or change of location. The YMCA, at its sole cost and expense, shall be responsible for all repair of damage to any YMCA Personal Property located on or about the Facility. The Parties each shall be entitled to their separate insurance proceeds for the purpose of restoration and the City’s restoration shall proceed first.

From the date of damage or destruction and during the period of restoration, reconstruction or repair, the Term shall toll and all Rent payable hereunder shall be abated, or equitably abated in the case of partial destruction, until such restoration or repair is completed. If the City fails to commence, diligently pursue or complete such repairs, restoration, rebuilding or replacement as provided in this Section, the YMCA, in addition to any other legal or equitable right, may terminate this Agreement upon thirty (30) days written notice to the City. Upon any such termination, the YMCA shall be released from any further liability and obligations under this Agreement.

Section 7.3 Condemnation. In the event of the Condemnation of the entire Building or Exterior Area, then, except as provided otherwise below, this Agreement shall terminate and expire as of the date of such taking and the YMCA shall thereupon be released from any further liability and obligations under this Agreement. If the event of the Condemnation of ten percent (10%) or more of the Building or of the drive aisles and parking area, or of access to the Facility, the YMCA shall have the right to cancel and terminate this Agreement effective as of the date of such Condemnation upon giving the City written notice of such election. In the event of such cancellation the YMCA shall thereupon be released from any further liability and obligations under this Agreement. The City, immediately after having knowledge or notice of any such Condemnation, shall give written notice to the YMCA.

The YMCA shall have the right to an award or compensation for, to the extent permitted by law, including the right to apply for and to take account on behalf of the YMCA, damage to or loss of value of any YMCA Personal Property owned by the YMCA (including removal costs), loss of business and good will, moving and relocation expenses, and any other separate claim which the YMCA may be permitted to make under applicable Law. The YMCA's right to receive compensation or damages for YMCA Personal Property shall not be affected in any manner hereby. If a portion of the Facility shall have been Condemned and if this Agreement shall continue, then in that event, the City agrees, at its cost and expense, to immediately restore the Facility to a complete unit of like quality and character as existed prior to such appropriation or taking and to restore the remaining portion of the access or parking areas so as to provide access, parking and services to the Facility in a manner as nearly as possible to the condition thereof prior to such taking, all Rent shall abate proportionately, based upon the proportion of the Facility not occupied by the YMCA during the period of demolition and restoration, and thereafter the rent shall be reduced in the ratio that the ground floor area of the part of the Facility taken bears to the ground floor area of the Facility before such taking, or in the case of taking of the access or parking area, Rent shall be equitably abated.

ARTICLE 8 ASSIGNMENT

Section 8.1 Assignment. Neither the YMCA nor the City may Assign this Agreement or the entire Facility without the prior written consent of the other Party; provided, however, that the YMCA may collaterally assign this Agreement and the YMCA's rights hereunder to a lender to provide a loan without the City's consent but subject to this Agreement's terms and conditions, including the Declaration. The YMCA may license, sublease or rent portions of the Facility for nonexclusive use for terms of thirty (30) days or less without the City's prior consent. The YMCA may license, sublease or rent portions of the Facility for terms longer than

thirty (30) days only with the City's prior consent, which consent shall not be unreasonably withheld, conditioned or delayed. All subleases and licenses of portions of the Facility shall be subject to all of this Agreement's terms and conditions including the Permitted Use. Notwithstanding any Assignment by the YMCA, the YMCA shall continue to be liable for the performance of all of the YMCA's obligations hereunder to the same extent as though no Assignment had been made.

Any permitted assignee or sublessee of the YMCA, upon payment of amounts due and performance of all obligations pursuant to this Agreement, shall be entitled to all the benefits due or accruing to the YMCA under this Agreement and the City, without releasing the YMCA from liability therefor, and such assignee or sublessee agrees to accept actual performance of the YMCA's obligations by any such assignee or sublessee. Any permitted assignee shall be required to operate the Facility in a manner consistent with the YMCA's established standards. Regardless of any assignment or subletting by the YMCA, the City shall not change, modify or amend this Lease without the YMCA's prior written consent.

ARTICLE 9 SURRENDER

Section 9.1 Surrender of Facility. Upon this Agreement's expiration or termination (by lapse of time or otherwise), the YMCA shall surrender the Facility to the City in a condition consistent with the YMCA's maintenance and repair obligations under this Agreement, reasonable wear and tear and damage in connection with casualty or taking under power of eminent domain excepted, and otherwise on an "as is, where is" basis. The YMCA shall deliver to the City all keys, access cards or similar devices providing access to the Facility. The YMCA shall have the right to remove any and all YMCA Personal Property prior to, or within two (2) months after this Agreement's expiration or termination, and the YMCA shall repair any damage caused to the Facility by reason of such removal, ordinary wear and tear excepted. Any YMCA Personal Property remaining in the Facility and not removed by the YMCA within two (2) months after this Agreement's expiration or termination shall be deemed to be abandoned by the YMCA, shall become the City's property and may be disposed of by the City in its discretion. The City, and its employees, contractors and assigns, shall have the right to occupy the Facility during the two (2) month period to perform maintenance and improvements it deems necessary to reopen the Facility.

ARTICLE 10 INDEMNIFICATION

Section 10.1 YMCA Indemnification. To the maximum extent permitted by law, the YMCA shall defend, indemnify and hold harmless the City Indemnified Persons from and against any and all Damages of any nature whatsoever whether or not involving a third-party claim arising, directly or indirectly, from or in connection with:

a. the acts or omissions of the YMCA or any of its Agents representatives or anyone for whose acts they are liable;

b. any breach of any representation or warranty made by the YMCA in this Agreement or in any schedule or exhibit attached hereto or any other certificate or document delivered by the YMCA to the City pursuant to this Agreement;

c. any breach by the YMCA of any covenant or obligation of the YMCA in this Agreement; and

d. any claim by any Person for Damages in connection with the violation by the YMCA or its agents of any Laws.

Notwithstanding the foregoing, this Section does not require the YMCA to indemnify and defend the City for Damages resulting from willful or negligent acts or omissions of the City or its Agents. If the YMCA fails to make any payment of any sums payable by the YMCA to the City Indemnified Persons on the date due, which failure shall continue for thirty (30) days, then such payment shall bear interest at the Default Interest Rate, payable from the date such payment was due to the date of payment thereof. This Section shall survive this Agreement's expiration or termination.

Section 10.2 City Indemnification. To the maximum extent permitted by law, the City shall defend, indemnify and hold harmless the YMCA Indemnified Persons from and against any and all Damages, whether or not involving a third-party claim arising, directly or indirectly, from or in connection with:

a. the acts or omissions of the City or any of its Agents or anyone for whose acts they are liable;

b. any breach of any representation or warranty made by the City in this Agreement or in any schedule or exhibit attached hereto or any other certificate or document delivered by the City to the YMCA pursuant to this Agreement;

c. any breach by the City of any covenant or obligation of the City in this Agreement;

d. any claim by any Person for Damages in connection with the violation by the City or its agents of any Laws.

Notwithstanding the foregoing, this Section does not require the City indemnify and defend the YMCA for Damages resulting from willful or negligent acts or omissions of the YMCA or its Agents. If the City fails to make any payment of any sums payable by the City to the YMCA Indemnified Persons on the date due, which failure shall continue for thirty (30) days, then such payment shall bear interest at the Default Interest Rate, payable from the date such payment was due to the date of payment thereof. This Section shall survive this Agreement's expiration or termination.

ARTICLE 11 DEFAULT AND REMEDIES

Section 11.1 YMCA Event of Default. Each of the following shall constitute a “YMCA Event of Default” under this Agreement:

- a. the YMCA’s failure to pay any Rent or any other amount due to the City hereunder on or before the date due, where such failure shall continue for a period of thirty (30) days after receipt of written notice by the City of such failure;
- b. the YMCA’s failure to Operate the Facility for a period of thirty (30) consecutive days, except where such failure to Operate is due to event of Force Majeure, casualty damage, Condemnation, Alterations, repairs, or Capital Improvements;
- c. the YMCA’s violation or failure to perform or observe any other covenant or condition of this Agreement, which failure or violation shall continue for thirty (30) days after receipt of written notice to the YMCA by the City identifying with particularity the failure or violation; provided, however, that so long as such failure or violation is of a non-monetary nature susceptible to cure, but is not reasonably capable of being cured within such thirty (30) day period, no YMCA Event of Default shall exist if the YMCA promptly advises the City of the YMCA’s intention to duly institute all steps necessary to cure such default and the YMCA promptly commence cure of such failure or violation within such thirty (30) day period and diligently pursue such cure to completion, but such additional time for cure shall not exceed one hundred eighty (180) days after receipt of the initial written notice to the YMCA by the City; or
- d. the YMCA’s uncured default under the Development Agreement.

Section 11.2 City Events of Default. Each of the following shall constitute a “City Event of Default” under this Agreement:

- a. the City’s failure to pay any amounts owed to the YMCA hereunder on or before the date due, where such failure shall continue for a period of thirty (30) days after receipt of written notice by the YMCA of such failure;
- b. the City’s violation or failure to perform or observe any other covenant or condition of this Agreement, which failure or violation shall continue for thirty (30) days after receipt of written notice to the City by the YMCA identifying with particularity the failure or violation; provided, however, that so long as such failure or violation is of a non-monetary nature susceptible to cure, but is not reasonably capable of being cured within such thirty (30) day period, no City Event of Default shall exist if the City promptly advises the YMCA of the City’s intention to duly institute all steps necessary to cure such default and the City promptly commences cure of such failure or violation within such thirty (30) day period and diligently pursues such cure to completion but such additional time for cure shall not exceed one hundred eighty (180) days after receipt of the initial written notice to the City by the YMCA;
- c. the City’s uncured default under the Development Agreement.

Section 11.3 Remedies Upon YMCA Event of Default. Upon the occurrence of a YMCA Event of Default, the City will have the right to exercise any one or more of the following remedies:

- a. terminate this Agreement upon written notice to the YMCA and lease to or allow use of the Facility by another Person;
- b. re-enter and take possession of the Facility and lease to or allow use of the Facility by another Person, or cause the Facility to be managed by the City; or
- c. seek specific performance or other equitable relief;
- d. correct such default whereupon all of the City's costs and expenses, including reasonable attorneys' fees and costs, incurred in curing such breach (together with interest at the Prime Rate from the date of payment) shall be immediately due and payable by the City on demand.

In the event that the City re-enters and takes possession of the Facility, whether or not it has terminated this Agreement, the City will use commercially reasonable efforts to mitigate its own damages, costs and expenses. In the event that the City secures another user of the Facility or sells the Facility, after the City has been reimbursed or made whole for all of its damages, costs and expenses, including the cost to the City of such action, incurred due to the YMCA Event of Default, the City will apply the balance of any rent or use payment, or any sales proceeds remaining to mitigate and minimize any amount due and owing by the YMCA under this Section 11.3.

Section 11.4 Remedies Upon City Event of Default. Upon the occurrence of a City Event of Default, the YMCA will have the right to exercise any one or more of the following remedies:

- a. terminate this Agreement upon written notice to the City;
- b. seek specific performance or other equitable relief;
- c. obtain payments and costs from the City as liquidated damages; or
- d. correct such default whereupon all of the YMCA's costs and expenses, including reasonable attorneys' fees and costs, incurred in curing such breach (together with interest at the Prime Rate from the date of payment) shall be immediately due and payable by the City on demand.

Section 11.5 Injunctive Relief; Specific Performance. The Parties acknowledge that the rights conveyed by this Agreement, and the covenants of the Parties are of a unique and special nature, and that a violation of this Agreement may result in immediate and irreparable harm to the City or the YMCA, as applicable, and that in the event of any such actual or threatened breach or violation of this Agreement caused by such actions, the Party so harmed shall be entitled as a matter of right to an injunction or a decree of specific performance from any equity court of competent jurisdiction without the posting of any bond. The Parties waive the

right to assert the defense that a breach of this Agreement which results in the failure or inability can be compensated adequately in damages in an action at law.

Section 11.6 Remedies Cumulative; Waiver. All rights and remedies set forth in this Agreement are cumulative and in addition to the Parties' rights and remedies at law or in equity. A Party's exercise of any such right or remedy shall not prevent the concurrent or subsequent exercise of any other right or remedy. A Party's delay or failure to exercise or enforce any rights or remedies shall not constitute a waiver of any such rights, remedies, or obligations. No Party shall be deemed to have waived any default unless such waiver is expressly set forth in an instrument signed by such Party. If a Party waives in writing any default, then such waiver shall not be construed as a waiver of any covenant or condition set forth in this Agreement, except as to the specific circumstances described in such written waiver. Neither payment of a lesser amount than the sum due hereunder nor endorsement or statement on any check or letter accompanying such payment shall be deemed an accord and satisfaction, and the other Party may accept the same without prejudice to the right to recover the balance of such sum or to pursue any other remedy. In no event shall either Party be entitled to consequential or incidental damages against the other Party and in no event shall either Party have any liability or responsibility for consequential or incidental damages to any Person.

Section 11.7 No Liability of Members, Directors or Officers. All covenants, stipulations, promises, agreements, and obligations of the Parties contained herein shall be deemed to be covenants, stipulations, promises, agreements, and obligations of the Parties and not of any member, director, officer, employee, or agent of the Parties in his or her individual capacity, and no recourse shall be had for any Claim hereunder against any member, director, officer, employee, or agent of the Parties in such capacity.

ARTICLE 12 REPRESENTATIONS AND WARRANTIES

Section 12.1 City's Representations and Warranties. The City represents and warrants to the YMCA as follows as of the Effective Date:

- a. **Organization.** The City is a municipal corporation, duly organized, validly existing, and in good standing under the Laws of the State.
- b. **Authorization, Validity and Enforceability.** The City is authorized and empowered by Minnesota law, including the City's Statutory Authority, to construct, operate and maintain the Facility, to enter into this Agreement and to perform the transactions contemplated hereby and thereby, and to carry out its obligations under this Agreement. The City has all requisite power and authority to enter into this Agreement and to carry out the actions contemplated hereby. The execution, delivery, and performance by the City of this Agreement have been duly authorized and approved by all necessary City action. This Agreement, when executed, shall constitute the valid and legally binding obligations of the City, enforceable against it in accordance with its terms.
- c. **No Conflicts.** The execution, delivery, and performance of this Agreement shall not result in a violation of, in any material respect, any provision of any other agreements,

charters, instruments, contracts, judgments, or decrees to which the City is a party or by which the City or its assets may be bound or affected.

d. **No Violation of Laws.** The City has complied in all material respects with all Laws and is not in default with respect to any judgment, order, injunction, or decree of any court, administrative agency, or other Governmental Authority that is in any respect material to the transactions contemplated in and by this Agreement.

e. **Litigation.** There is no action, suit, proceeding, or investigation at law or in equity or by or before any Governmental Authority now pending or threatened against the City seeking to restrain or prohibit, or seeking Damages or other relief in connection with, the execution of this Agreement and the performance of the transactions contemplated herein or the performance of the City hereunder.

f. **Facility.** The City will use its best efforts to cause the Facility to be completed pursuant to the Development Agreement, subject to Force Majeure and the City obtaining full funding for the costs of constructing the Facility. The Facility will be constructed in a good and workmanlike manner, will meet all applicable building codes and Law and will be approved for occupancy and operation by all officials having jurisdiction over the Facility before the YMCA commences operations at the Facility.

Section 12.2 YMCA's Representations and Warranties. The YMCA represents and warrants to the City as follows as of the Effective Date:

a. **Organization.** The YMCA is a nonprofit corporation duly organized, validly existing, and in good standing under the Laws of the State, and is an organization exempt from federal income tax under Code Section 501(c)(3).

b. **Authorization, Validity and Enforceability.** The YMCA has all requisite power and authority to enter into this Agreement and to carry out the actions contemplated hereby. The execution, delivery, and performance of all obligations of the YMCA under this Agreement have been duly authorized and approved by all necessary YMCA action. All corporate action necessary for the authorization, execution, delivery, and performance of all obligations of the YMCA under this Agreement has been taken. All consents and approvals of any Person required in connection with the execution of this Agreement have been obtained. This Agreement, when executed, shall constitute the valid and legally binding obligations of the YMCA, enforceable against it in accordance with its terms.

c. **No Conflicts.** The execution, delivery, and performance of this Agreement shall not result in a violation of, in any material respect, any provision of any other agreements, charters, instruments, contracts, judgments, or decrees to which the YMCA are a party or by which the YMCA or their assets may be bound or affected, including any by-laws, rules, regulations or other agreements of the YMCA, nor shall the execution, delivery, and performance of this Agreement result in the breach of or constitute a default under any loan or credit agreement, or other agreement or instrument to which the YMCA are a party or by which the YMCA or its assets may be bound or affected.

d. No Violations of Laws. The YMCA have complied in all material respects with all Laws and are not in default with respect to any judgment, order, injunction, or decree of any court, administrative agency, or other Governmental Authority that is in any respect material to the transactions contemplated in and by this Agreement.

e. Litigation. There is no action, suit, proceeding, or investigation at law or in equity or by or before any Governmental Authority now pending or threatened against the YMCA seeking to restrain or prohibit, or seeking Damages or other relief in connection with, the execution of this Agreement and the performance of the transactions contemplated herein or the performance of the YMCA hereunder.

ARTICLE 13 MISCELLANEOUS

Section 13.1 Memorandum of Agreement. This Agreement shall not be recorded, but at the request of either Party, the Parties shall promptly execute, acknowledge and deliver to each other a memorandum of agreement in the form of **Exhibit C** (and a memorandum of modification of agreement in respect of any modification of this Agreement) sufficient for recording. Such memoranda shall not be deemed to change or otherwise affect any of the obligations or provisions of this Agreement.

Section 13.2 Further Actions. The Parties, whenever and as often as each shall be reasonably requested to do so by the other Party, shall execute or cause to be executed any further documents and take any further actions as may be reasonably necessary or expedient in order to consummate the transactions provided for in, and to carry out the purpose and intent of, this Agreement. Furthermore, the Parties shall take all actions and proceedings reasonably necessary or appropriate to remedy any apparent invalidity, lack or defect in authorization, or illegality, or to cure any other defect that has been asserted or threatened. The Parties further covenant and agree to cooperate and assist each other in the creation, establishment, granting or conveying, either by easement, declaration, license or any other instrument or agreements (whether recorded or unrecorded) as the Parties may deem necessary or reasonably advisable, to provide for the continued and uninterrupted use of Utilities, ingress/egress, and other easements necessary for the operation of the Facility.

Section 13.3 Good Faith. In exercising its rights and fulfilling its obligations under this Agreement, each of the Parties shall act in good faith. Notwithstanding the foregoing, each Party acknowledges that in each instance under this Agreement where a Party is obligated to exercise good faith or to use good faith, diligent or other similar efforts, such Party shall not be required to expend any funds or grant any other consideration of any kind in the performance of such undertaking, and each Party further acknowledges that the obligation of any Party to act in good faith or undertake good faith, diligent or other similar efforts does not constitute a warranty, representation or other guaranty that the result that the Parties are attempting to achieve shall be successfully achieved and no Party shall be liable for any failure to achieve the result or results intended so long as the Party has complied with its obligation to act in good faith.

Section 13.4 Notice of Matters. In the event that any Party receives knowledge about any matter that may constitute a breach of any of its warranties or covenants set forth in this

Agreement that arises after the date of this Agreement, it shall promptly notify the other Party of the same in writing.

Section 13.5 Form of Notices: Addresses.

All notices, requests, consents, or other communications required under this Agreement shall be in writing and shall be deemed to have been properly given if served personally or if sent by United States registered or certified mail or overnight delivery service to the Parties as follows (or at such other address as a Party may from time to time designate by notice given pursuant to this Section):

To the YMCA:	St. Cloud Area Family YMCA 2001 Stockinger Drive St. Cloud, MN 56303 Attn: Executive Director
With a copy to:	Rinke Noonan 1015 West St. Germain, Suite 300 P.O. Box 1497 St. Cloud, MN 56302 Attn: Scott G. Hamak
To the City:	City of St. Joseph 75 Callaway St. E St. Joseph, MN 56374 Attn: City Administrator
With a copy to:	Susan Dege Jovanovich, Dege & Athmann 1010 W. Saint Germain, Suite 420 St. Cloud, MN 56301

Each notice shall be deemed given and received on the date delivered if served personally or by overnight delivery service or, if sent by United States registered or certified mail, then one (1) Business Day after its delivery to the address of the respective Party, as provided in this Article, except that with respect to the notices pertaining to matters that are to be accomplished within less than three (3) Business Days (e.g., requests for consent when the Person whose consent is sought has one (1) Business Day to respond in the granting or denying of such consent), notice shall be deemed given simultaneously with its delivery. Notices sent by a Party's counsel shall be deemed notices sent by such Party.

Section 13.6 Force Majeure. The non-occurrence of any condition under this Agreement shall not give rise to any right otherwise provided in this Agreement when such failure or non-occurrence is due to the occurrence of a Force Majeure condition and without the fault of the Party claiming an extension of time to perform. An extension of time for any such cause, if any, shall be limited to the period of delay due to such cause, which period shall be deemed to commence from the time of the commencement of the cause; provided, however, that

if notice by the Party claiming such extension is sent to the other Party more than thirty (30) days after the commencement of the cause, the period shall be deemed to commence thirty (30) days prior to the giving of such notice. Times of performance under this Agreement also may be extended as mutually agreed upon in writing by the City and the YMCA. However, failure to agree to a proposed extension of time for performance shall not be deemed grounds for delay or failure to timely cure a YMCA Event of Default or City Event of Default under this Agreement.

Section 13.7 Calculation of Time. Unless otherwise stated, all references to “day” or “days” shall mean calendar days. If any time period set forth in this Agreement expires on other than a Business Day, such period shall be extended to and through the next succeeding Business Day.

Section 13.8 Time is of the Essence. Time is of the essence with respect to the performance of each of the covenants and obligations contained in this Agreement to which time is a factor.

Section 13.9 Incorporation by Reference. All exhibits, schedules, or other attachments referenced in this Agreement are hereby incorporated into this Agreement by such reference and are deemed to be an integral part of this Agreement.

Section 13.10 Entire Agreement. Except as otherwise provided in this Agreement, this Agreement contains the sole and entire agreement between the Parties with respect to its subject matter and supersedes any and all other prior written or oral agreements between them with respect to such subject matter.

Section 13.11 Amendment. No amendment, modification, or termination of this Agreement shall be valid unless in writing and duly executed by the Parties. Any changes, alterations, or modifications to this Agreement must be agreed to, in writing, by the Commissioner.

Section 13.12 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the City and the YMCA, and their respective successors and assigns.

Section 13.13 Headings. The headings contained in this Agreement are for convenience of reference only and shall not limit, extend, or otherwise affect the meaning hereof.

Section 13.14 No Presumption Against Drafter. This Agreement has been negotiated at arm’s length and between Persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Agreement shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Agreement.

Section 13.15 Severability. If any term or provision of this Agreement or the application thereof to any Person or circumstance shall, to any extent, be inconsistent with, invalid or unenforceable under any Laws or Legal Requirements, the remainder of this Agreement or the application of such term or provision to Persons or circumstances, other than those as to which it was held invalid or unenforceable, shall not be affected thereby and each

term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by such Laws or Legal Requirements.

Section 13.16 Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to (a) confer upon any Person other than the Parties and their permitted successors and assigns any rights or remedies under or by reason of this Agreement as a third-party beneficiary or otherwise except as specifically provided in this Agreement, or (b) authorize anyone not a Party to this Agreement to maintain an action pursuant to or based upon this Agreement.

Section 13.17 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the Laws of the State of Minnesota, notwithstanding its conflicts of law or choice of law provisions. All matters, whether sounding in tort or in contract, relating to the validity, construction, performance, or enforcement of this Agreement shall be controlled by and determined in accordance with the laws of the State of Minnesota, and the Parties agree that all legal actions with respect to or arising from any provision contained in this Agreement shall be initiated, filed and venued exclusively in the State of Minnesota, Stearns County, District Court and shall not be removed therefrom to any other federal or state court.

Section 13.18 Counterparts. This Agreement may be executed and delivered in one or more counterparts, each of which shall be deemed to be an original and all of which, taken together, shall be deemed to be one agreement. Facsimile, emailed pdf and electronic signatures shall be sufficient for all purposes.

Section 13.19 Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed as creating a partnership or joint venture among the Parties.

Section 13.20 Estoppel Certificate. Each of the City and the YMCA, respectively, agrees that at any time and from time to time within fourteen (14) Business Days after receipt of a written request by the other Party, the YMCA or the City, as the case may be, shall execute, acknowledge and deliver to the other Party a statement in writing certifying: (a) that this Agreement is unmodified and in full force and effect or, if there have been modifications, that the same is in full force and effect as modified and identifying the modifications; (b) that the City or the YMCA, as the case may be, are not, to knowledge of the City or the YMCA, as the case may be, in default under any provisions of this Agreement or, if there has been a default, the nature of such default; (c) that all work with respect to the Facility to be performed by the City or the YMCA, as the case may be, under this Agreement has been performed or, if not so performed, specifying the work to be performed; and (d) any other matter that the City or the YMCA, as the case may be, or such prospective mortgagee or other lender shall reasonably request.

Section 13.21 Termination Prior to Commencement Date. Prior to the Commencement Date, this Agreement shall automatically terminate concurrently and in connection with the termination of the Development Agreement.

Section 13.22 Development Agreement. Prior to the Commencement Date, the provisions of the Development Agreement which differ from those in this Agreement shall be

interpreted as complementing those in this Agreement where they do not conflict and as superseding those in this Agreement where they do conflict. This Agreement supersedes the Development Agreement after the Commencement Date.

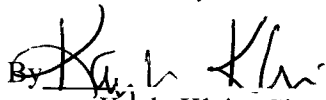
Section 13.23 Dispute Resolution. The Representatives of the City and the YMCA shall endeavor to first resolve any disputes by negotiation in good faith to achieve a mutually acceptable resolution of the matter. In the event such Representatives are unable to resolve the dispute in a mutually acceptable manner within 60 days of the commencement of such negotiations or if an impasse in such negotiations is declared by a Representative within such time period, then the Parties will submit the matter to mediation. The mediation shall be conducted by a single third-party neutral mediator mutually acceptable to the Parties using procedures to be determined by the mediator. If the Parties are unable to agree on a mediator within 15 calendar days (or such longer period as is agreed upon by such Parties) after an impasse has been declared or the time period has expired under this Section, each Party shall nominate a proposed mediator and such nominated mediators shall mutually agree on a neutral mediator. If the Party-nominated mediators are unable to agree on a neutral mediator within 10 calendar days after being asked to do so, the Parties may submit the selection to the Chief Judge of the District Court of the State Courts of Minnesota, 7th Judicial District (or such other court of competent jurisdiction as may be established), who shall select the neutral. All mediations shall be conducted in compliance with the Minnesota Civil Mediation Act, over such period of time and at such times and locations as the neutral mediator determines until the earlier of (i) the dispute is resolved as agreed upon by the involved Parties, (ii) the mediator determines that the dispute cannot be resolved through mediation, or (iii) 90 days after commencement of the mediation. Except as hereinafter provided, the Parties shall share the mediator's fees equally and the mediation shall be held in Stearns County, Minnesota. Attorneys' fees and costs advanced as part of the dispute resolution process shall be addressed as part of the mediation. If the parties do not resolve the dispute through mediation, the dispute may proceed to litigation.

Section 13.24 Amendment and Restatement. This Agreement amends, restates, supersedes, and replaces in its entirety the Original Agreement, which shall hereafter be of no further force or effect.

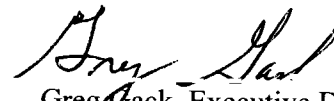
[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

The City of St. Joseph, a municipal
corporation of the State of Minnesota

By 
Adam Scepanski, Mayor

By 
Kayla Klein, City Clerk

St. Cloud Area Family Y.M.C.A., a
Minnesota nonprofit corporation

By 
Greg Gack, Executive Director

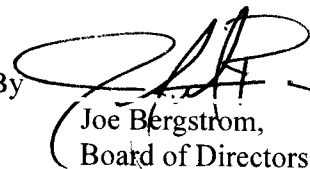
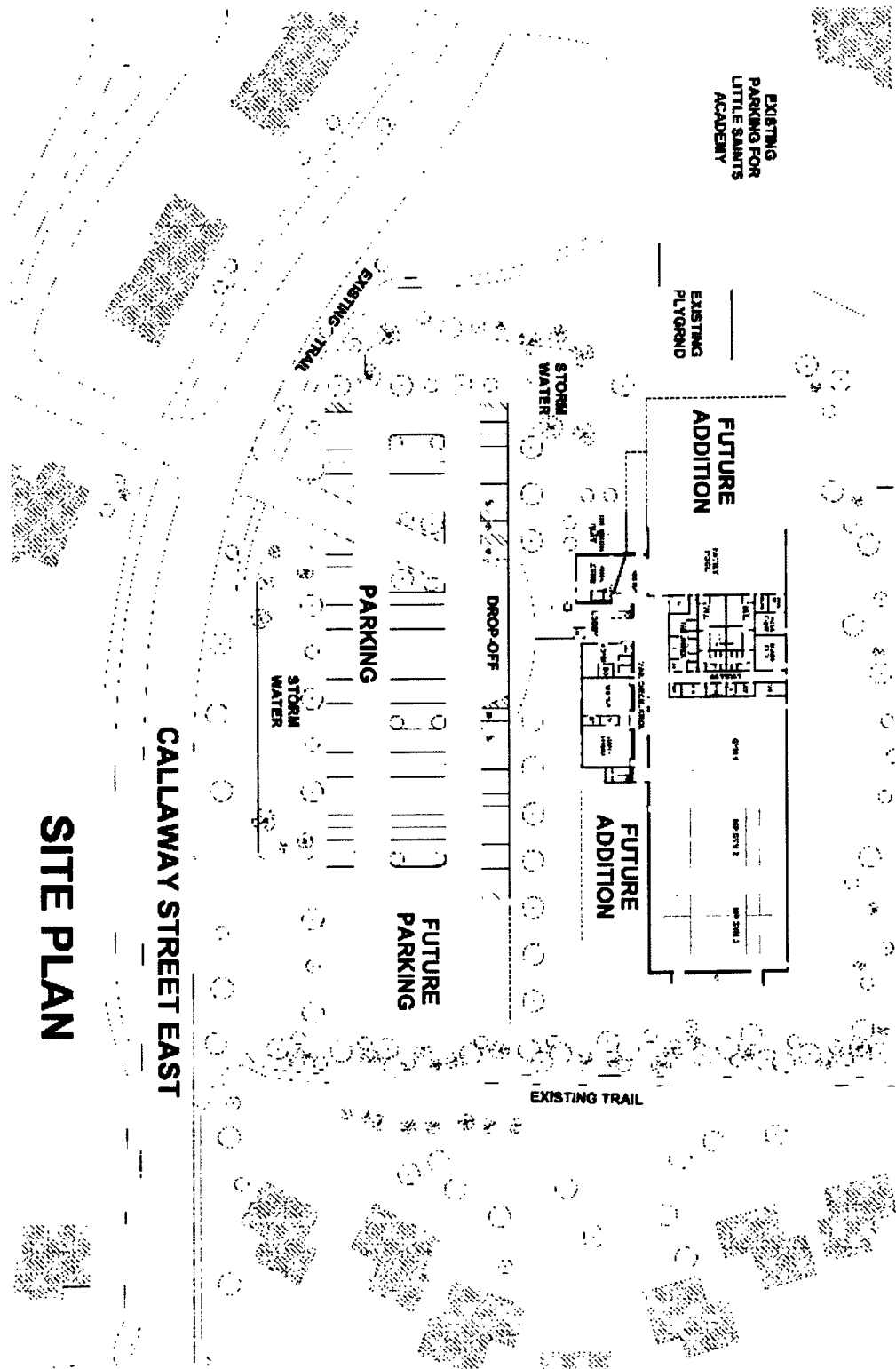
By 
Joe Bergstrom,
Board of Directors President

EXHIBIT A
REAL PROPERTY

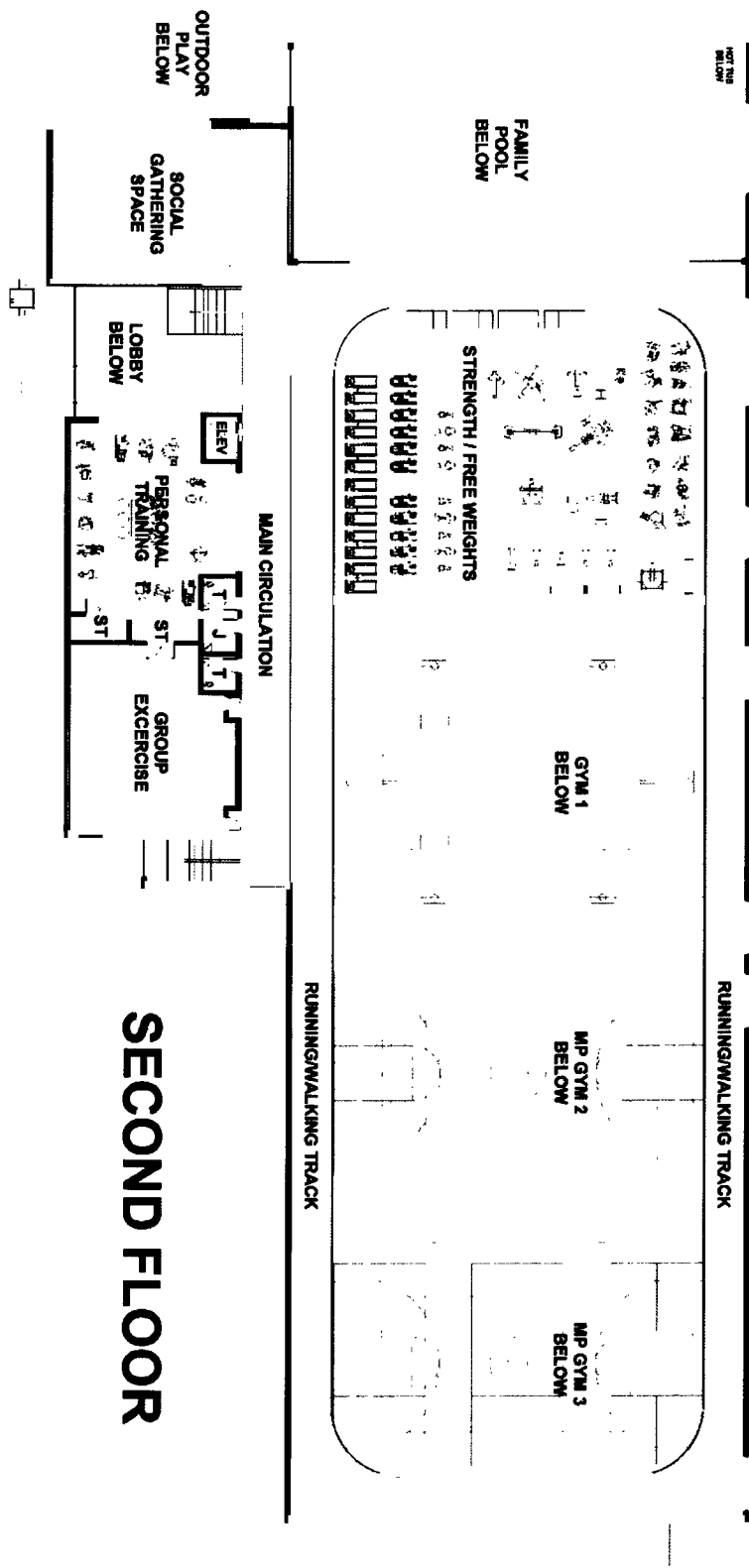
Lot 3, Block 1, St. Joseph City Hall Addition, Stearns County, Minnesota

EXHIBIT B
SITE PLAN

(attached)



SITE PLAN



SECOND FLOOR

EXHIBIT C

MEMORANDUM OF AGREEMENT

The City of St. Joseph, a municipal corporation of the State of Minnesota, with an address of 75 Callaway Street E, St. Joseph MN 56374 (the “**City**”), and **St. Cloud Area Family Y.M.C.A.**, a Minnesota nonprofit corporation, with an address of 2001 Stockinger Drive, St. Cloud, MN 56303 (the “**YMCA**”), make this Memorandum of Agreement (this “**Memorandum**”) effective as of _____, 2025 (the “**Effective Date**”).

1. **Lease of Facility.** Pursuant to the terms and conditions of that certain Amended and Restated Facility Lease Agreement dated _____, 2025, between the City and the YMCA (the “**Lease**”), the City has leased to the YMCA the Facility (as defined in the Lease) located on a portion of the real property in the City of St. Joseph, Minnesota, legally described as Lot 3, Block 1, St. Joseph City Hall Addition, Stearns County, Minnesota.

2. **Initial Term and Extended Terms.** The Lease’s initial term is for a period of fifteen (15) Lease Years commencing on _____, 20____, and ending on _____, 20____ (the “**Initial Term**”). Subject to the terms and conditions of the Lease, the YMCA has the right to extend the Initial Term for two (2) consecutive additional periods of fifteen (15) Lease Years each following the Initial Term (each, an “**Extended Term**”).

3. **Lease Terms.** The terms and conditions of the Lease are incorporated by reference into this Memorandum as if set forth fully herein at length. Capitalized terms that are not defined herein shall have the meanings given them in the Lease. This Memorandum is not a complete summary of the Lease, does not modify the Lease’s terms and none of this Memorandum’s provisions shall be used in interpreting the Lease’s provisions. In the event of any conflict between this Memorandum and the Lease, the Lease shall control. The Lease may be amended by the City and the YMCA from time to time without the preparation or filing of an additional memorandum or an amendment to this Memorandum.

4. **Counterparts.** This Memorandum may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signature pages follow]

The City of St. Joseph, a municipal corporation of
the State of Minnesota

By EXHIBIT ONLY – DO NOT SIGN
Adam Scepaniak, Mayor

By EXHIBIT ONLY – DO NOT SIGN
Kayla Klein, City Clerk

STATE OF MINNESOTA)
)
COUNTY OF) SS

On this _____ day of _____, 2025, before me, a Notary Public for this County,
personally appeared Adam Scepaniak, who, being by me duly sworn, did say that he is the
Mayor of The City of St. Joseph, a municipal corporation of the State of Minnesota, and that this
instrument was signed on behalf of said corporation by authority of its Board of Directors and
acknowledged said instrument to be the free act and deed of said corporation.

EXHIBIT ONLY – DO NOT SIGN
Notary Public

STATE OF MINNESOTA)
)
COUNTY OF) SS

On this _____ day of _____, 2025, before me, a Notary Public for this County,
personally appeared Kayla Klein, who, being by me duly sworn, did say that she is the City
Clerk of The City of St. Joseph, a municipal corporation of the State of Minnesota, and that this
instrument was signed on behalf of said corporation by authority of its Board of Directors and
acknowledged said instrument to be the free act and deed of said corporation.

EXHIBIT ONLY – DO NOT SIGN
Notary Public

**St. Cloud Area Family Y.M.C.A., a
Minnesota nonprofit corporation**

By **EXHIBIT ONLY – DO NOT SIGN**
Greg Gack, Executive Director

By **EXHIBIT ONLY – DO NOT SIGN**
Joe Bergstrom, Board of Directors President

STATE OF MINNESOTA)
)
COUNTY OF) SS

On this _____ day of _____, 2025, before me, a Notary Public for this County, personally appeared Greg Gack, who, being by me duly sworn, did say that he is the Executive Directory of St. Cloud Area Family Y.M.C.A., a Minnesota nonprofit corporation, and that this instrument was signed on behalf of said corporation by authority of its Board of Directors and acknowledged said instrument to be the free act and deed of said corporation.

EXHIBIT ONLY – DO NOT SIGN
Notary Public

STATE OF MINNESOTA)
)
COUNTY OF) SS

On this _____ day of _____, 2025, before me, a Notary Public for this County, personally appeared Joe Bergstrom, who, being by me duly sworn, did say that he is the Board of Directors President of St. Cloud Area Family Y.M.C.A., a Minnesota nonprofit corporation, and that this instrument was signed on behalf of said corporation by authority of its Board of Directors and acknowledged said instrument to be the free act and deed of said corporation.

EXHIBIT ONLY – DO NOT SIGN
Notary Public

THIS INSTRUMENT DRAFTED BY:

Rinke Noonan (HAM)
1015 W. St. Germain St., Suite 300
P.O. Box 1497
St. Cloud, MN 56302-1497
(320) 251-6700
File No. 00868-0003

CORE BELIEFS:

PASSION: In order for any fundraising project to be successful, a passion for the project must be evident by all stakeholders. A strong passion will help stakeholders reluctant to help in the project overcome fears and doubts. Passion will empower volunteers and energize donors. As a campaign consultant, I can help bring energy and drive to the stakeholders, but the passion must come from the team. I have seen the passion that stakeholders have for this project. It is easy to have passion for a project such as this for many reasons. Passion is one of the most important aspects, but it is not the only thing that is needed.

PLANNING: Although planning and setting objectives takes time, I believe it is an important step to achieving any objective. I will bring my years of strategic and organizational planning along with my fundraising experience to help build and guide the plan that allows everyone to know what their role is, and all stakeholders will understand what needs to be done. The plan will help set aggressive but realistic expectations that can be followed. A good plan that includes a good case, sets realistic dollar goals, and positive timeline for achieving the needed goals.

PERSISTENCE: A capital campaign can be a daunting but rewarding endeavor. There can be many highs and lows throughout the process. The stakeholders must have the persistence to overcome the obstacles and curveballs that will happen. Building relationships takes time and effort. Having years of experience, understanding, and knowledge of the tricks and opportunities that can happen is an essential benefit when you have never experienced them before. I can serve as a voice of reason and optimism because I have seen much of it before. I have worked through the disappointments that make the successes even more exciting.

ROLES & EXPECTATIONS:

MY ROLE & RESPONSIBILITY:

- Coach
- Planning/Consulting
- Organization & Tracking:
 - Prospects/Donors/Calls
- Accountability of volunteers
- Stewardship tracking
- Connection between volunteers & YMCA
- Visit support (attend if needed)
 - Donation follow-up support
- At no time will consultant have access or custody of donations.

VOLUNTEER RESPONSIBILITY:

- Prospect Identification
- Prospect calls & asks
 - Donation follow-up
- Prospecting meetings
- Volunteer meetings
- Activity reporting
- Stewardship/Engagement attendance
- YMCA will be responsible for accepting and custody of all donations
- Political capital

CAMPAIGN SUPPORT:

Monthly Time Commitment:

- 4-5 days per month
 - Avg. 35-45 hours per month

Length of Commitment:

- 24-month contract (Estimation of campaign timeline)
 - Contact Dates: Jan 1, 2025-Dec. 31, 2026
 - At the end of 24 months, renegotiate the contract if needed.

Activities:

- Coaching and advice throughout the campaign.
- Build & execute plan to raise \$10M to \$12M for the Community Center campaign.
 - Monitor and develop fundraising plans and expectations.
- Work with lead volunteers to drive success.
 - Accountability and planning adjustments
 - Bi-Weekly meetings
 - Activity check-ins
- Prospect and donor tracking
 - Stewardship/Connecting/Follow-up
- Support with volunteer management and training.
 - Training exercises for existing and new volunteers
- Strategizing and planning donor relationships and appropriate asks.



CONFIDENTIALITY & TERMINATION AGREEMENT:

Ruis Consulting Group (RCG) understands that while performing work on behalf of the City of St. Joseph principals & employees may have access to confidential and/or proprietary information belonging to City of St. Joseph or YMCA, including, without limitation, information relating to finances, budgets, and personnel. RCG agrees that neither it nor any of its principals or employees will disclose or use, either directly or indirectly, at any time during or following the term of this Agreement and RCG's relationship with City of St. Joseph, any such confidential or proprietary information except for the purpose of fulfilling RCG's responsibilities hereunder to City of St. Joseph. RCG will take all reasonable and necessary steps to ensure that any of its principals or employees are aware of and abide by the confidentiality terms set forth in this Agreement.

This Agreement will commence on the date set forth above and shall continue for a period of two years until terminated by either party as set forth herein. Either party may terminate this Agreement for any reason or no reason upon three (3) months written notice to the other party. In addition, City of St. Joseph shall have the right to terminate this Agreement immediately upon the provision of written notice to Consultant in the event that (a) Consultant or any of its employees or agents engages in any conduct in breach of the terms of this Agreement; (b) Consultant or any of its employees or agents engages in any conduct that may constitute theft, fraud, or other violations of local, state, or federal criminal laws; or (c) Consultant or any of its employees or agents engages in any conduct that, in the discretion of City of St. Joseph, may cause harm to the reputation of City of St. Joseph.

If these terms are acceptable, please sign this agreement and return to Ruis Consulting Group.

City of St. Joseph

Signature: _____

Printed Name: _____

Date: _____

Ruis Consulting Group

Signature: _____

Printed Name: _____

Date: _____



Document B133™ – 2019

Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition

AGREEMENT made as of the Fifth day of August in the year 2021
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address, and other information)

City of St. Joseph
75 Callaway Street E.
St. Joseph, MN 56374

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

HMA Architects, Ltd.
700 West St. Germain Street
Suite 200
St. Cloud, MN 56301

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

St. Joseph Community Center
St. Joseph, MN

The Construction Manager (if known):
(Name, legal status, address, and other information)

The Owner and Architect 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.

This document is intended to be used in conjunction with AIA Documents A201–2017™, General Conditions of the Contract for Construction; A133–2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price; and A134–2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price. AIA Document A201™–2017 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	SUPPLEMENTAL AND ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

The program for the project has not been fully determined at this point but will in general include recreation spaces such as gymnasium, fitness, walking/running track, cardio, weights, etc. It will also include the necessary support spaces for the facility.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

The project will be located in the City owned property directly to the east and south of the existing "Kennedy School Building"

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

The budget for the project has not been fully determined at this point but is anticipated to be between \$10M-\$18M. That is project budget figures with actual construction budget figures to be approximately 15% less.

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

.1 Design phase milestone dates, if any:

Init.

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User Notes:

(894058873)

Not Determined

.2 Construction commencement date:

Not Determined

.3 Substantial Completion date or dates:

Not Determined.

.4 Other milestone dates:

§ 1.1.5 The Owner intends to retain a Construction Manager pursuant to the following agreement:
(Indicate agreement type.)

- ☒ [X] AIA Document A133–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.
- ☐ [] AIA Document A134–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price.

§ 1.1.6 The Owner's requirements for accelerated or fast-track design and construction, or phased construction are set forth below:
(List number and type of bid/procurement packages.)

Fast tracking not anticipated and not included in the scope of work or fees at this point.

§ 1.1.7 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

The project will meet the State of Minnesota B3 standards.

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

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:
(List name, address, and other contact information.)

Ms. Therese Haffner, City Administrator

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:

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User Notes: (894058873)

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

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

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

.1 Construction Manager:

(The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention. If the Architect is to assist the Owner in selecting the Construction Manager, complete Section 4.1.1.1)

Not Determined

.2 Land Surveyor:

SEH Civil Engineering

.3 Geotechnical Engineer:

Not Determined

.4 Civil Engineer:

SEH Engineers

.5 Other consultants and contractors:

(List any other consultants and contractors retained by the Owner.)

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.4:

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

Murray A. Mack, Principal, Design Architect

Tim Gillet, President, Project Architect

Both of HMA Architects, Ltd.

§ 1.1.12 The Architect shall retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:

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

§ 1.1.12.1 Consultants retained under Basic Services:

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Init.

.1 Structural Engineer:

IMEG
3001 Broadway Street NE
Suite 601
Minneapolis, MN 55413

.2 Mechanical Engineer:

IMEG

.3 Electrical Engineer:

IMEG

Also included under IMEG Engineering Services is:

Plumbing
Fire Protection
Low Voltage Design

.4 Landscape Architect:

Confluence
530 N. Third Street
Suite 120
Minneapolis, MN 55401

§ 1.1.12.2 Consultants retained under Supplemental Services:

If a pool consultant is required they shall be retained by the Owner or the Architect as additional services

§ 1.1.13 Other Initial Information on which the Agreement is based:

RFP dated May 20, 2021 and subsequent scope of services and fee proposal submitted to the City dated July 28, 2021 and incorporated as a part of this contract under Appendix A

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 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

Init.

Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 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 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in the agreement identified in Section 1.1.5. The Architect shall not be responsible for actions taken by the Construction Manager.

§ 2.4 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.5 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.6 Insurance. The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.6.1 Commercial General Liability with policy limits of not less than One Million (\$ 1,000,000) for each occurrence and One Million (\$ 1,000,000) in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million (\$ 1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.6.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.6.1 and 2.6.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.6.4 Workers' Compensation at statutory limits.

§ 2.6.5 Employers' Liability with policy limits not less than One Hundred Thousand (\$ 100,000) each accident, One Hundred Thousand (\$ 100,000) each employee, and Five Hundred Thousand (\$ 500,000) policy limit.

§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than Two Million (\$ 2,000,000) per claim and Two Million (\$ 2,000,000) in the aggregate.

Init.

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

§ 2.6.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.6.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit, for the Construction Manager's review and the Owner's approval, a schedule for the performance of the Architect's services. The schedule shall include design phase milestone dates, as well as the anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the Construction Manager's review, for the performance of the Construction Manager's Preconstruction Phase services, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services.

§ 3.1.5 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming work, made or given without the Architect's written approval.

§ 3.1.6 The Architect shall, in coordination with the Construction Manager, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.7 The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, or the Owner's approval of the Construction Manager's Control Estimate, as applicable, the Architect shall consider the Construction Manager's requests for substitutions and, upon written request of the Construction Manager, provide clarification or interpretations pertaining to the Drawings, Specifications, and other documents submitted by the Architect. The Architect and Construction Manager shall include the Owner in communications related to substitution requests, clarifications, and interpretations.

§ 3.2 Review of the Construction Manager's Guaranteed Maximum Price Proposal or Control Estimate

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare, for review by the Owner and Architect, and for the Owner's acceptance or approval, a Guaranteed Maximum

Price proposal or Control Estimate. The Architect shall assist the Owner in reviewing the Construction Manager's proposal or estimate. The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies; for the assumption of any responsibility for the Construction Manager's proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimates of cost or estimated cost proposals. In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager.

§ 3.2.2 Upon authorization by the Owner, and subject to Section 4.2.1.14, the Architect shall update the Drawings, Specifications, and other documents to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment or Control Estimate.

§ 3.3 Schematic Design Phase Services

§ 3.3.1 The Architect shall review the program, and other information furnished by the Owner and Construction Manager, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.3.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.3.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.3.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, to the Owner and Construction Manager, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.3.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for Construction Manager's review and the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.3.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.

§ 3.3.5.2 The Architect shall consider with the Owner and the Construction Manager the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.3.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

§ 3.3.7 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.3.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

§ 3.4 Design Development Phase Services

§ 3.4.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Construction Manager's review and the Owner's approval. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.4.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.

§ 3.4.3 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

§ 3.5 Construction Documents Phase Services

§ 3.5.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Construction Manager's review and the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Construction Manager will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.5.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.5.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and Construction Manager in the development and preparation of (1) the Conditions of the Contract for Construction (General, Supplementary and other Conditions) and (2) a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include sample forms.

§ 3.5.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents.

§ 3.5.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7, and request the Owner's approval of the Construction Documents.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Construction Manager as set forth below and in AIA Document A201™-2017, General Conditions of the Contract for Construction. If the Owner and Construction Manager modify AIA Document A201-2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 3.6.1.2 Subject to Section 4.2, the Architect's responsibility to provide Construction Phase Services commences upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Owner's approval of the Construction Manager's Control Estimate, or by a written agreement between the Owner and Construction Manager which sets forth a description of the Work to be performed by the Construction Manager prior to such acceptance or

approval. Subject to Section 4.2, and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.1.3 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Construction Manager's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager or of any other persons or entities performing portions of the Work.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, 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 shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall 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 Construction Manager, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, 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 Construction Manager, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Construction Manager, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Construction Manager designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2017, the Architect shall render initial decisions on Claims between the Owner and Construction Manager as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Construction Manager

§ 3.6.3.1 The Architect shall review and certify the amounts due the Construction Manager and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Construction Manager's 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 Construction Manager is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall 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 Construction Manager's right to payment, or (4) ascertained how or for what purpose the Construction Manager has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule 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.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Construction Manager'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. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Construction Manager's responsibility. The Architect's review shall not constitute approval of safety precautions or 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.

§ 3.6.4.3 If the Contract Documents specifically require the Construction Manager to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Construction Manager's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 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. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;

- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Construction Manager; and
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to (1) check conformance of the Work with the requirements of the Contract Documents and (2) verify the accuracy and completeness of the list submitted by the Construction Manager of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Construction Manager, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Construction Manager: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Construction Manager under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.1 Assistance with Selection of Construction Manager	Architect/Owner
§ 4.1.1.2 Programming	Architect/Owner
§ 4.1.1.3 Multiple Preliminary Designs	Architect
§ 4.1.1.4 Measured drawings	Not Required
§ 4.1.1.5 Existing facilities surveys	Not Required
§ 4.1.1.6 Site evaluation and planning (beyond identified site)	Architect
§ 4.1.1.7 Building Information Model management responsibilities	Architect
§ 4.1.1.8 Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.9 Civil engineering	Owner
§ 4.1.1.10 Landscape design	Architect
§ 4.1.1.11 Architectural interior design	Architect
§ 4.1.1.12 Value analysis	Not Required
§ 4.1.1.13 Cost estimating	Construction Manager
§ 4.1.1.14 On-site project representation	Not Provided
§ 4.1.1.15 Conformed documents for construction	Not Provided
§ 4.1.1.16 As-designed record drawings	Not Provided
§ 4.1.1.17 As-constructed record drawings	Not Provided
§ 4.1.1.18 Post-occupancy evaluation	Not Provided
§ 4.1.1.19 Facility support services	Not Provided
§ 4.1.1.20 Tenant-related services	Not Provided
§ 4.1.1.21 Architect's coordination of the Owner's consultants	Architect
§ 4.1.1.22 Telecommunications/data design	Architect / IMEG
§ 4.1.1.23 Security evaluation and planning	Not Provided
§ 4.1.1.24 Commissioning	Not Provided (Owner Req.)
§ 4.1.1.25 Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.26 Historic preservation	Not Provided
§ 4.1.1.27 Furniture, furnishings, and equipment design	Architect
§ 4.1.1.28 Other services provided by specialty Consultants	Not Provided
§ 4.1.1.29 Other Supplemental Services	B3 by IMEG

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

4.1.1.1: The Architect will assist the Owner with the process of securing a CM for the project. The selection of the CM will be by the Owner.

4.1.1.2: The Architect will assist the Owner with the space programming along with the YMCA if they partner on the project.

4.1.1.3: The Architect will create various schematic options for City review.

4.1.1.6: The Architect will provide various site layout options for the specific site identified by not for multiple sites.

4.1.1.7: The Architect will utilize REVIT for the creation of the project documentation.

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4.1.1.10: The Architect will provide Landscape Architecture through the consulting services of Confluence.
 4.1.1.11: The Architect will provide interior design services as part of basic services.
 4.1.1.21: The Architect will provide coordination of the Owner retained Civil Engineer SEH. This means that we will coordinate their work with ours but take no responsibility for their design services.
 4.1.1.22: Telecommunications and low voltage design is provided for by IMEG under the Architect's basic services.
 4.1.1.27: The Architect will assist the owner in the selection of (FFE). The owner / YMCA will be responsible for selecting / securing all fitness equipment and pool elements.
 4.1.1.29: The Architect and IMEG will provided B3 consulting services as required by the State of MN in our basic services.

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

4.1.1.1: The Owner shall be responsible for selecting and retaining the Construction Manager. The Architect will assist in that process.

4.1.1.2: The Owner shall be responsible for working with the Architect in the determination of the project space programming requirements.

4.1.1.9: The Owner shall retain a Civil Engineer (SEH). The Owner's consultant shall be required to work with the Architect as required to achieve all civil engineering requirements including but not limited to: surveying, utility design, paving/parking areas, stormwater design.

4.1.1.24: The Owner will be responsible for retaining any commissioning services that may be required for the project according to the State of MN code and/or B3 requirements.

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or bid packages in addition to those listed in Section 1.1.6;
- .2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work, Guaranteed Maximum Price proposal, or Control Estimate exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes, or equipment;
- .3 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .4 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;

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- .6 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner- authorized recipients;
- .7 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or Construction Manager;
- .8 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .9 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect;
- .12 Services necessitated by replacement of the Construction Manager or conversion of the Construction Manager as constructor project delivery method to an alternative project delivery method;
- .13 Services necessitated by the Owner's delay in engaging the Construction Manager;
- .14 Making revisions to the Drawings, Specifications, and other documents resulting from agreed-upon assumptions and clarifications included in the Guaranteed Maximum Price Amendment or Control Estimate; and
- .15 Making revisions to the Drawings, Specifications, and other documents resulting from substitutions included in the Guaranteed Maximum Price Amendment or Control Estimate.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice:

- .1 Reviewing a Construction Manager's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Construction Manager's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Construction Manager from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Construction Manager-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders, and Construction Change Directives that require evaluation of the Construction Manager's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or
- .5 Evaluating substitutions proposed by the Owner or Construction Manager and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Construction Manager
- .2 Twenty Four (24) visits to the site by the Architect during construction
- .3 Four (4) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two (2) inspections for any portion of the Work to determine final completion

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within Thirty Six (36) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties, and responsibilities as described in the agreement selected in Section 1.1.5.

§ 5.3 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect and Construction Manager. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Construction Manager to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.5 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.6 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.7 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

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

§ 5.9 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.10 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

Init.

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

§ 5.12 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.13 The Owner shall include the Architect in all communications with the Construction Manager 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 Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.14 The Owner shall coordinate the Architect's duties and responsibilities set forth in the Agreement between the Owner and the Construction Manager with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager, including the General Conditions of the Contract for Construction.

§ 5.15 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.16 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Construction Manager's general conditions costs, overhead, and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the compensation of the Construction Manager for Preconstruction Phase services; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in the Initial Information, and shall be adjusted throughout the Project as required under Sections 5.3 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates, or due to market conditions the Architect could not reasonably anticipate. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

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

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Construction Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.5 If the Construction Manager's estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;

Init.

- .2 terminate in accordance with Section 9.5;
- .3 in consultation with the Architect and Construction Manager, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .4 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.3, the Architect, without additional compensation, shall incorporate the revisions in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's revisions in the Construction Documents Phase shall be the limit of the Architect's responsibility under this Article 6.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by the Construction Manager's subsequent cost estimates, the Guaranteed Maximum Price proposal, or Control Estimate that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 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 shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due, pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Construction Manager, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this 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 Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's obligation to indemnify and hold the Owner and the Owner's officers and employees harmless does not include a duty to defend. The Architect's duty to indemnify the Owner under this Section 8.1.3 shall be limited to the available proceeds of the insurance coverage required by this Agreement.

§ 8.1.4 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them 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 this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution 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 proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 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.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box.)

☐ Arbitration pursuant to Section 8.3 of this Agreement

☒ Litigation in a court of competent jurisdiction

☐ Other: *(Specify)*

Init.

If the Owner and Architect 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, the dispute will be resolved in a court of competent jurisdiction.

§ 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement 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 this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 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, dispute or other matter in question 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, dispute or other matter in question.

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

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

§ 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Either party, at its sole discretion, 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).

§ 8.3.4.2 Either party, at its sole discretion, 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.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 Termination Fee:

NA

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

NA

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement 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 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction, except as modified in this Agreement. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at

least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement 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 Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows: (See Appendix A: A/E Scope and Revised Fee Information)

.1 Stipulated Sum
(Insert amount)

.2 Percentage Basis
(Insert percentage value)

() % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

.3 Other
(Describe the method of compensation)

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:

Init.

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

On an hourly basis or fixed fee and with Owner's approval before the commencement of additional services.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

On an hourly basis or fixed fee and with Owner's approval before the commencement of additional services

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus percent (%), or as follows:

(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

On an hourly basis or fixed fee and with Owner's approval before the commencement of additional

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows: (See Appendix A)

Schematic Design Phase	percent (	%)
Design Development Phase	percent (	%)
Construction Documents Phase	percent (	%)
Construction Phase	percent (	%)
Total Basic Compensation	one hundred percent (	100 %)

The Owner acknowledges that with an accelerated Project delivery, multiple bid package process, or Construction Manager as constructor project delivery method, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category

Rate (\$0.00)

§ 11.8 Compensation for Reimbursable Expenses: (not to exceed \$2,500 not including any permitting or state fees per No. 3 below)

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

.1 Transportation and authorized out-of-town travel and subsistence; (Local transportation included in fee)

- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and
- .12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants at cost not to exceed \$2,500.

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.6 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:
(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.6, and for which the Owner shall reimburse the Architect.)

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of Ten Thousand (\$ 10,000) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of (\$) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

(Insert rate of monthly or annual interest agreed upon.)

%

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

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 User Notes: (894058873)

(Include other terms and conditions applicable to this Agreement.)

ARTICLE 13 SCOPE OF THE AGREEMENT

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

§ 13.2 This Agreement is comprised of the following documents identified below:

.1 AIA Document B133™-2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Constructor Edition

.2 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below, if completed, or the following:

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

.3 Exhibits:

(Check the appropriate box for any exhibits incorporated into this Agreement.)

☐ AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition dated as indicated below.

(Insert the date of the E234-2019 incorporated into this agreement.)

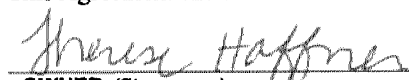
☐ Other Exhibits incorporated into this Agreement:

(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

.4 Other documents:

(List other documents, if any, forming part of the Agreement.)

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


OWNER (Signature)


ARCHITECT (Signature)

Therese Haffner, City Administrator
(Printed name and title)

Tim Gillet, President, HMA Architects, Ltd.
(Printed name, title, and license number, if required)

Init.

Additions and Deletions Report for

AIA® Document B133™ – 2019

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 09:48:51 CT on 09/03/2021.

PAGE 1

AGREEMENT made as of the Fifth day of August in the year 2021

...

City of St. Joseph
75 Callaway Street E.
St. Joseph, MN 56374

...

HMA Architects, Ltd.
700 West St. Germain Street
Suite 200
St. Cloud, MN 56301

...

St. Joseph Community Center
St. Joseph, MN

PAGE 2

The program for the project has not been fully determined at this point but will in general include recreation spaces such as gymnasium, fitness, walking/running track, cardio, weights, etc. It will also include the necessary support spaces for the facility.

...

The project will be located in the City owned property directly to the east and south of the existing "Kennedy School Building"

...

The budget for the project has not been fully determined at this point but is anticipated to be between \$10M-\$18M. That is project budget figures with actual construction budget figures to be approximately 15% less.

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Not Determined

...

Not Determined

...

Not Determined.

...

[☒] AIA Document A133–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.

...

Fast tracking not anticipated and not included in the scope of work or fees at this point.

...

The project will meet the State of Minnesota B3 standards.

...

Ms. Therese Haffner, City Administrator
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Not Determined

...

SEH Civil Engineering

...

Not Determined

...

SEH Engineers

...

Murray A. Mack, Principal Design Architect
Tim Gillet, President, Project Architect
Both of HMA Architects, Ltd.
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IMEG
3001 Broadway Street NE
Suite 601
Minneapolis, MN 55413

...

IMEG

...

.3 Electrical Engineer:

IMEG

Also included under IMEG Engineering Services is:

Plumbing

Fire Protection

Low Voltage Design

.4 Landscape Architect:

Confluence

530 N. Third Street

Suite 120

Minneapolis, MN 55401

...

If a pool consultant is required they shall be retained by the Owner or the Architect as additional services

...

RFP dated May 20, 2021 and subsequent scope of services and fee proposal submitted to the City dated July 28, 2021 and incorporated as a part of this contract under Appendix A

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§ 2.6.1 Commercial General Liability with policy limits of not less than One Million (\$ 1,000,000) for each occurrence and One Million (\$ 1,000,000) in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million (\$ 1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

...

§ 2.6.5 Employers' Liability with policy limits not less than One Hundred Thousand (\$ 100,000) each accident, One Hundred Thousand (\$ 100,000) each employee, and Five Hundred Thousand (\$ 500,000) policy limit.

...

§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than Two Million (\$ 2,000,000) per claim and Two Million (\$ 2,000,000) in the aggregate.

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§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2, responsibility. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

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§ 4.1.1.1 Assistance with Selection of Construction Manager	<u>Architect/Owner</u>
§ 4.1.1.2 Programming	<u>Architect/Owner</u>
§ 4.1.1.3 Multiple Preliminary Designs	<u>Architect</u>
§ 4.1.1.4 Measured drawings	<u>Not Required</u>
§ 4.1.1.5 Existing facilities surveys	<u>Not Required</u>
§ 4.1.1.6 Site evaluation and planning (beyond identified site)	<u>Architect</u>
§ 4.1.1.7 Building Information Model management responsibilities	<u>Architect</u>
§ 4.1.1.8 Development of Building Information Models for post construction use	<u>Not Provided</u>
§ 4.1.1.9 Civil engineering	<u>Owner</u>
§ 4.1.1.10 Landscape design	<u>Architect</u>
§ 4.1.1.11 Architectural interior design	<u>Architect</u>
§ 4.1.1.12 Value analysis	<u>Not Required</u>
§ 4.1.1.13 Cost estimating	<u>Construction Manager</u>
§ 4.1.1.14 On-site project representation	<u>Not Provided</u>
§ 4.1.1.15 Conformed documents for construction	<u>Not Provided</u>
§ 4.1.1.16 As-designed record drawings	<u>Not Provided</u>
§ 4.1.1.17 As-constructed record drawings	<u>Not Provided</u>
§ 4.1.1.18 Post-occupancy evaluation	<u>Not Provided</u>
§ 4.1.1.19 Facility support services	<u>Not Provided</u>
§ 4.1.1.20 Tenant-related services	<u>Not Provided</u>
§ 4.1.1.21 Architect's coordination of the Owner's consultants	<u>Architect</u>
§ 4.1.1.22 Telecommunications/data design	<u>Architect / IMEG</u>
§ 4.1.1.23 Security evaluation and planning	<u>Not Provided</u>
§ 4.1.1.24 Commissioning	<u>Not Provided (Owner Req.)</u>
§ 4.1.1.25 Sustainable Project Services pursuant to Section 4.1.3	<u>Not Provided</u>
§ 4.1.1.26 Historic preservation	<u>Not Provided</u>
§ 4.1.1.27 Furniture, furnishings, and equipment design	<u>Architect</u>
§ 4.1.1.28 Other services provided by specialty Consultants	<u>Not Provided</u>
§ 4.1.1.29 Other Supplemental Services	<u>B3 by IMEG</u>

...

4.1.1.1: The Architect will assist the Owner with the process of securing a CM for the project. The selection of the CM will be by the Owner.

4.1.1.2: The Architect will assist the Owner with the space programming along with the YMCA if they partner on the project.

4.1.1.3: The Architect will create various schematic options for City review.

4.1.1.6: The Architect will provide various site layout options for the specific site identified by not for multiple sites.

4.1.1.7: The Architect will utilize REVIT for the creation of the project documentation.

4.1.1.10: The Architect will provide Landscape Architecture through the consulting services of Confluence.

4.1.1.11: The Architect will provide interior design services as part of basic services.

4.1.1.21: The Architect will provide coordination of the Owner retained Civil Engineer SEH. This means that we will coordinate their work with ours but take no responsibility for their design services.

4.1.1.22: Telecommunications and low voltage design is provided for by IMEG under the Architect's basic services.

4.1.1.27: The Architect will assist the owner in the selection of (FFE). The owner / YMCA will be responsible for selecting / securing all fitness equipment and pool elements.

4.1.1.29: The Architect and IMEG will provided B3 consulting services as required by the State of MN in our basic services.

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User Notes:

(894058873)

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4.1.1.1: The Owner shall be responsible for selecting and retaining the Construction Manager. The Architect will assist in that process.

4.1.1.2: The Owner shall be responsible for working with the Architect in the determination of the project space programming requirements.

4.1.1.9: The Owner shall retain a Civil Engineer (SEH). The Owner's consultant shall be required to work with the Architect as required to achieve all civil engineering requirements including but not limited to: surveying, utility design, paving/parking areas, stormwater design.

4.1.1.24: The Owner will be responsible for retaining any commissioning services that may be required for the project according to the State of MN code and/or B3 requirements.

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- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Construction Manager
- .2 Twenty Four (24) visits to the site by the Architect during construction
- .3 Four (4) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two (2) inspections for any portion of the Work to determine final completion

...

§ 4.2.5 If the services covered by this Agreement have not been completed within Thirty Six (36) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

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☒ [X] Litigation in a court of competent jurisdiction

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NA

...

NA

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§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows: (See Appendix A: A/E Scope and Revised Fee Information)

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On an hourly basis or fixed fee and with Owner's approval before the commencement of additional services.

...

On an hourly basis or fixed fee and with Owner's approval before the commencement of additional services

...

On an hourly basis or fixed fee and with Owner's approval before the commencement of additional

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows: (See Appendix A)

...

~~§ 11.8 Compensation for Reimbursable Expenses~~

~~§ 11.8 Compensation for Reimbursable Expenses: (not to exceed \$2,500 not including any permitting or state fees per No. 3 below)~~

- ~~.1 Transportation and authorized out-of-town travel and subsistence; (Local transportation included in fee)~~

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~~§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus percent (— %) of the expenses incurred at cost not to exceed \$2,500.~~

...

~~§ 11.10.1.1 An initial payment of Ten Thousand (\$ 10,000) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.~~

...

~~§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.~~

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Tim Gillet President HMA Architects Ltd.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Murray A Mack, 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 09:48:51 CT on 09/03/2021 under Order No. 7929379265 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B133™ – 2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.


(Signed)

PRINCIPAL
(Title)

9.1.21
(Dated)



Document A133™ – 2019

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

AGREEMENT made as of the 17th day of February in the year 2022
(In words, indicate day, month, and year.)

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

City of St. Joseph
75 Callaway Street E
St. Joseph, MN 56374

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

W. Gohman Construction
815 E County Road 75, PO Box 250
St. Joseph, MN 56374

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

St. Joseph Community Center
St. Joseph, MN

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

HMA Architects, Ltd.
700 West St. Germain Street
Suite 200
St. Cloud, MN 56301

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

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

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

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EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

(Provide total and, if known, a line item breakdown.)

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

.1 Design phase milestone dates, if any:

TBD

.2 Construction commencement date:

TBD

.3 Substantial Completion date or dates:

TBD

.4 Other milestone dates:

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

Fast tracking not anticipated and not included in the scope of work or fees at this point.

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

The project will meet the State of Minnesota B3 standards.

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

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

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

Ms. Therese Haffner, City Administrator

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:
(List name, address and other contact information.)

Init.

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

.1 Geotechnical Engineer:

Not Determined

.2 Civil Engineer:

SEH Civil Engineering

.3 Other, if any:

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

SEH Civil Engineering – Land Surveying

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

Murray A. Mack, Principal, Design Architect
Tim Gillet, President, Project Architect
Both of HMA Architects, Ltd.

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

Mark Wolvert, Project Manager
W. Gohman Construction

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

Mike Gohman, Denis Anderson and Mark Wolvert will be attending meetings during the Preconstruction period

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

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

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

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

§ 2.2 Relationship of the Parties

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

§ 2.3 General Conditions

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

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

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant

or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

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

§ 3.1.3 Consultation

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

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

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

§ 3.1.4 Project Schedule

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

§ 3.1.5 Phased Construction

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

§ 3.1.6 Cost Estimates

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

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

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

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

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

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

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

§ 3.1.11 Subcontractors and Suppliers

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

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

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

§ 3.1.12 Procurement

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

§ 3.1.13 Compliance with Laws

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

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

§ 3.2 Guaranteed Maximum Price Proposal

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

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

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

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

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

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

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

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

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

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

§ 3.3 Construction Phase

§ 3.3.1 General

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

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The

written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration

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

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

§ 3.3.2.3 Monthly Report

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

§ 3.3.2.4 Daily Logs

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

§ 3.3.2.5 Cost Control

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

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

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

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

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

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

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

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

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

§ 4.2 Owner's Designated Representative

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

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

§ 4.3 Architect

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

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

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

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

\$60,000

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

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Individual or Position	Rate
Project Manager	\$87.00/hr
Assistant Project Manager	\$58.00/hr.,
Site Superintendent	\$87.00/hr.

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

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

§ 5.2 Payments

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

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid 30 (thirty) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

8 % eight

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

CM fee is 2.6% of the cost of work, if the project proceeds past the preconstruction phase of the work, all preconstruction phase services, fees, and changes will be included as part of the 2.6% Construction Management fee. Travel costs and storage at our office will not be charged to the project.

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

Based on fee schedule provide in Section 6.1.2

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

As allowed per specifications

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

§ 6.1.6 Liquidated damages, if any:

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

§ 6.1.7 Other:

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

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the

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Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3 Changes in the Work

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

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

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

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

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

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

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

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

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

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

§ 7.2 Labor Costs

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

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

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

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

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

§ 7.3 Subcontract Costs

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

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

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

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

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

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

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

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

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

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

§ 7.6 Miscellaneous Costs

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

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

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

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

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

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

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

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

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

§ 7.6.7 Costs of document reproductions and delivery charges.

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

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

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

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

§ 7.7 Other Costs and Emergencies

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

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

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

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

§ 7.8 Related Party Transactions

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

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

§ 7.9 Costs Not To Be Reimbursed

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

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

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and,

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subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

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

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

ARTICLE 10 ACCOUNTING RECORDS

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

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

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

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the last day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the 25th day of the next 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 twenty five (25) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

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

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

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

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

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

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

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

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

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

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

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

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

5% five percent

Init.

§ 11.1.8.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

Owner purchased items performed under the tax exempt purchasing agent agreement

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

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

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

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

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

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

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

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

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

§ 11.3 Interest

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

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

8 % eight

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

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

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

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

§ 12.2 Binding Dispute Resolution

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

(Check the appropriate box.)

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

Mediation shall be conducted by a mediator mutually agreeable to the parties and not under the American Arbitration Association. The parties shall be equally responsible for the mediator's fees.

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

ARTICLE 13 TERMINATION OR SUSPENSION

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

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

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

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

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

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

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

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

under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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

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

§ 13.2.1 Termination

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

§ 13.2.2 Termination by the Owner for Cause

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

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

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

§ 13.2.3 Termination by the Owner for Convenience

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

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

§ 13.3 Suspension

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

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase See attached Insurance Certificate

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

§ 14.3.1.1 Commercial General Liability with policy limits of not less than (\$) for each occurrence and (\$) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than (\$) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than (\$) each accident, (\$) each employee, and (\$) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage

Limits

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

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and

Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 14.5 Other provisions:

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

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

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

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

☐ Supplementary and other Conditions of the Contract:

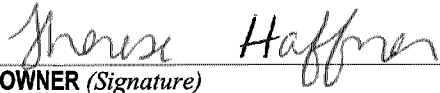
Document	Title	Date	Pages
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- .7 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions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

Init.

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

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



OWNER (Signature)

Therese Haffner City Administrator
(Printed name and title)



CONSTRUCTION MANAGER (Signature)

Michael Gohman President
(Printed name and title)

Init.

Additions and Deletions Report for

AIA® Document A133™ – 2019

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:46:04 CT on 03/11/2022.

PAGE 1

AGREEMENT made as of the 17th day of February in the year 2022

...

City of St. Joseph
75 Callaway Street E
St. Joseph, MN 56374

...

W. Gohman Construction
815 E County Road 75, PO Box 250
St. Joseph, MN 56374

...

St. Joseph Community Center
St. Joseph, MN

...

HMA Architects, Ltd.
700 West St. Germain Street
Suite 200
St. Cloud, MN 56301

PAGE 3

TBD

...

TBD

...

TBD

...

Fast tracking not anticipated and not included in the scope of work or fees at this point.

...

The project will meet the State of Minnesota B3 standards.

...

Ms. Therese Haffner, City Administrator

PAGE 4

Not Determined

...

SEH Civil Engineering

...

SEH Civil Engineering – Land Surveying

...

Murray A. Mack, Principal, Design Architect

Tim Gillet, President, Project Architect

Both of HMA Architects, Ltd.

...

Mark Wolvert, Project Manager

W. Gohman Construction

...

Mike Gohman, Denis Anderson and Mark Wolvert will be attending meetings during the Preconstruction period

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\$60,000

...

<u>Project Manager</u>	<u>\$87.00/hr</u>
<u>Assistant Project Manager</u>	<u>\$58.00/hr.</u>
<u>Site Superintendent</u>	<u>\$87.00/hr.</u>

PAGE 11

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

...

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid 30 (~~thirty~~) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

...

8 % eight

...

CM fee is 2.6% of the cost of work, if the project proceeds past the preconstruction phase of the work, all preconstruction phase services, fees, and changes will be included as part of the 2.6% Construction Management fee. Travel costs and storage at our office will not be charged to the project.

...

Based on fee schedule provide in Section 6.1.2

...

As allowed per specifications

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

PAGE 16

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the last day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the 25th day of the next 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 twenty five (25) days after the Architect receives the Application for Payment.

PAGE 17

5% five percent

PAGE 18

Owner purchased items performed under the tax exempt purchasing agent agreement

PAGE 19

8 % eight

PAGE 20

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

...

Mediation shall be conducted by a mediator mutually agreeable to the parties and not under the American Arbitration Association. The parties shall be equally responsible for the mediator's fees.

PAGE 22

§ 14.3.1 Preconstruction Phase See attached Insurance Certificate

PAGE 24

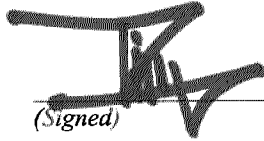
Therese Haffner City Administrator

Michael Gohman President

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Tim Gillet, 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 11:46:04 CT on 03/11/2022 under Order No. 2114281040 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.


(Signed)
(Title)
(Dated)