



Board of Commissioners

Agenda

15 West Kellogg Blvd.
Saint Paul, MN 55102
651-266-9200

May 23, 2023 - 9 a.m.

Council Chambers - Courthouse Room 300

ROLL CALL

PLEDGE OF ALLEGIANCE

LAND ACKNOWLEDGEMENT

1. **Agenda of May 23, 2023 is Presented for Approval** [2023-096](#)

Sponsors: County Manager's Office

Approve the agenda of May 23, 2023.

2. **Minutes from May 16, 2023 are Presented for Approval** [2023-097](#)

Sponsors: County Manager's Office

Approve the May 16, 2023 Minutes.

ADMINISTRATIVE ITEMS

3. **Proposed Ramsey County Commissioner's Salary Ordinance for 2024 - Waive First Reading and Set Public Hearing Date** [2023-189](#)

Sponsors: Human Resources

1. Waive the First Reading of the proposed Ramsey County Commissioner's Salary Ordinance for 2024.
2. Set the Public Hearing date of June 13, 2023 at 9 a.m. or as soon as possible thereafter, in the Council Chambers, third floor of Ramsey County Courthouse - 15 West Kellogg Boulevard, Saint Paul, MN, 55102 to afford the public an opportunity to comment on the proposed Ramsey County Commissioner's Salary Ordinance for 2024.

4. **Detour Agreement with the Minnesota Department of Transportation** [2023-196](#)

Sponsors: Public Works

1. Approve the agreement with the Minnesota Department of Transportation, 1500 County Road B2 West, Roseville, MN, 55113, related to routing traffic from state roadways to county roadways on a posted detour during construction along Trunk Highway 5.
2. Authorize the Chair and Chief Clerk to execute the agreement.

5. **Agreement with Urban Companies for Ramsey County Law Enforcement Center Campus Exterior and Grounds Improvements Project** [2023-198](#)

Sponsors: Property Management

1. Approve the selection of an agreement with Urban Companies, LLC, 3781 Labore Road, Saint Paul, MN, 55110, for the Ramsey County Law Enforcement Center Campus Exterior and Grounds Improvements project, for the period of May 23, 2023 through May 22, 2024, in the not-to-exceed amount of \$2,085,000.
2. Authorize the Chair and the Chief Clerk to execute the agreement.
3. Authorize the County Manager to execute amendments to the agreement in accordance with the county's procurement policies and procedures, provide the amounts are within the limits of available funding.

6. Sale of the Ramsey County Care Center Property to NUWAY Alliance

[2023-195](#)

Sponsors: Property Management

1. Approve the sale of and Purchase and Sale Agreement for the Ramsey County Care Center property on Parcel #142922320001 with NUWAY Alliance, 2217 Nicollet Avenue South, Minneapolis, MN, 55404, in the amount of \$5,250,000.
2. Authorize the County Manager to create a Holding Project as a project budget in the 2023 Capital Projects Fund.
3. Authorize the County Manager to approve and execute the Purchase and Sale Agreement, settlements, closing documents, and other related real estate documentation associated with the disposition of the Ramsey County Care Center (Parcel #142922320001), in a form approved by the Ramsey County Attorney's Office.
4. Authorize the County Manager to execute amendments that do not have a financial impact on the disposition of the Ramsey County Care Center (Parcel #142922320001).
5. Authorize the County Manager to create a Ramsey County Care Center Closure Project within the Property Management budget.
6. Authorize the County Manager to reallocate up to \$340,000 from the Ramsey County Care Center 2022-2023 Capital Improvement Program Project budget to the Ramsey County Care Center Closure Project for one-time costs to complete the closure activities.
7. Approve the closure of the Ramsey County Care Center Capital Improvement Program Projects, with the remaining balances directed to the Capital Improvement Program contingent account.

7. Agreement with Sheehy Construction Company for Ramsey County 360 Wabasha Construction Project

[2023-199](#)

Sponsors: Property Management

1. Approve the selection of an agreement with Sheehy Construction Company, 360 W. Larpenteur Avenue, Suite 200, Saint Paul, MN, 55401, for the Ramsey County 360 Wabasha Street North Construction project, for the period of May 23, 2023 through May 22, 2024, in the not-to-exceed amount of \$13,957,300.
2. Authorize the Chair and the Chief Clerk to execute the agreement.
3. Authorize the County Manager to execute amendments to the agreement in accordance with the county's procurement policies and procedures, provide the amounts are within the limits of available funding.

8. Second Amendment to Lease Agreement with Lowry Building LLC for Office Space

[2023-202](#)

Sponsors: Property Management, County Attorney's Office

1. Approve the second amendment to the lease agreement with Lowry Building LLC, 375 Jackson Street, Suite 700W, Saint Paul, MN, 55101, for office space at the Lowry Building, 345 Wabasha Avenue, Saint Paul, MN, 55102, for the period from September 1, 2023, through January 31, 2024, with all other material terms remaining in effect.
2. Authorize the Chair and Chief Clerk to execute the second amendment to the lease agreement.
3. Authorize the County Manager to execute lease amendments to extend the lease at negotiated rates, with the same general terms and conditions.

9. Lease Agreement with the City of Saint Paul for Office Space

[2023-203](#)

Sponsors: Property Management, Sheriff's Office

1. Approve the lease agreement with the city of Saint Paul, 15 West Kellogg Boulevard, Suite 700, Saint Paul, MN, 55102, for office space in the City Hall Annex, 25 West 4th Street, Suite 150, Saint Paul, MN, 55102, for the period of July 1, 2023, through June 30, 2025, in the total amount of \$179,721.
2. Authorize the Chair and Chief Clerk to execute the lease agreement.
3. Authorize the County Manager to execute lease amendments to renew the lease at negotiated rates, with the same general terms and conditions.

LEGISLATIVE UPDATE

COUNTY CONNECTIONS

OUTSIDE BOARD AND COMMITTEE REPORTS

BOARD CHAIR UPDATE

ADJOURNMENT

Following County Board Meeting:

10:30 a.m. (est.) Board Workshop: Racial and Health Equity Update - Council Chambers, Courthouse Room 300

Advance Notice:

- May 30, 2023 No County board meeting – 5th Tuesday
- June 6, 2023 County board meeting – Council Chambers
- June 13, 2023 County board meeting – Council Chambers
- June 20, 2023 County board meeting – Council Chambers



Board of Commissioners

Request for Board Action

15 West Kellogg Blvd.
Saint Paul, MN 55102
651-266-9200

Item Number: 2023-096

Meeting Date: 5/23/2023

Sponsor: County Manager's Office

Title

Agenda of May 23, 2023 is Presented for Approval

Recommendation

Approve the agenda of May 23, 2023.



Board of Commissioners

Request for Board Action

15 West Kellogg Blvd.
Saint Paul, MN 55102
651-266-9200

Item Number: 2023-097

Meeting Date: 5/23/2023

Sponsor: County Manager's Office

Title

Minutes from May 16, 2023 are Presented for Approval

Recommendation

Approve the May 16, 2023 Minutes.

Attachments

1. May 16, 2023 Minutes



Board of Commissioners

Minutes

15 West Kellogg Blvd.
Saint Paul, MN 55102
651-266-9200

May 16, 2023 - 9 a.m.

Council Chambers - Courthouse Room 300

The Ramsey County Board of Commissioners met in regular session at 9:03 a.m. with the following members present: Frethem, Moran, Ortega, Reinhardt, Xiong and Chair MatasCastillo. Also present were Ryan O'Connor, County Manager, and Jada Lewis, Civil Division Director, Ramsey County Attorney's Office.

ROLL CALL

Present: Frethem, MatasCastillo, Moran, Ortega, Reinhardt, and Xiong
Absent: McGuire

PLEDGE OF ALLEGIANCE

LAND ACKNOWLEDGEMENT

Read by Commissioner Moran.

1. Agenda of May 16, 2023 is Presented for Approval [2023-094](#)

Sponsors: County Manager's Office

Approve the agenda of May 16, 2023.

Motion by Frethem, seconded by Xiong. Motion passed.

Aye: Frethem, MatasCastillo, Moran, Ortega, Reinhardt, and Xiong

Absent: McGuire

2. Minutes from May 9, 2023 are Presented for Approval [2023-095](#)

Sponsors: County Manager's Office

Approve the May 9, 2023 Minutes.

Motion by Moran, seconded by Frethem. Motion passed.

Aye: Frethem, MatasCastillo, Moran, Ortega, Reinhardt, and Xiong

Absent: McGuire

PROCLAMATION

3. Proclamation: Asian American and Pacific Islanders Heritage Month [2023-135](#)

Sponsors: County Manager's Office

Presented by Commissioner Frethem.

ADMINISTRATIVE ITEMS

4. Rice Creek Commons Annual Financial Report and Combined Project Budget [2023-183](#)

Sponsors: Community & Economic Development

1. Accept the 2022 Rice Creek Commons Annual Financial Report.
2. Approve the 2023 Rice Creek Commons Combined Project Budget for infrastructure design services.

Motion by Moran, seconded by Frethem. Motion passed.

Aye: Frethem, MatasCastillo, Moran, Ortega, Reinhardt, and Xiong

Absent: McGuire

Resolution: [B2023-073](#)

5. Agreement with Morcon Construction Co., Inc. for Ramsey County Courthouse/City of Saint Paul City Hall Entries Project

[2023-175](#)

Sponsors: Property Management

1. Approve the selection of and agreement with Morcon Construction Co., Inc., 5151 Industrial Boulevard Northeast, Fridley, MN 55421, for the Ramsey County Courthouse/City of Saint Paul City Hall Entries Renovation Project, for the period of May 16, 2023 through May 15, 2024, in the not-to-exceed amount of \$518,150.
2. Authorize the Chair and the Chief Clerk to execute the agreement.
3. Authorize the County Manager to execute amendments to the agreement in accordance with the county's procurement policies and procedures, provide the amounts are within the limits of available funding.

Motion by Moran, seconded by Frethem. Motion passed.

Aye: Frethem, MatasCastillo, Moran, Ortega, Reinhardt, and Xiong

Absent: McGuire

Resolution: [B2023-074](#)

6. Support for Nominations to National Association of Counties' 2023 Presidential Leadership Positions

[2023-214](#)

Sponsors: Board of Commissioners

1. Support the candidacy of Commissioner Nicole Frethem for: Member of the Large Urban County Caucus and Member of the Arts and Culture Commission.
2. Support the candidacy of Commissioner Trista MatasCastillo for: Chair of the Veterans and Military Services Committee; Member of the Large Urban County Caucus; and Member of the Transportation Steering Committee.
3. Support the candidacy of Commissioner Mary Jo McGuire for: Member of the Healthy Counties Advisory Board; Member of the Programs and Services Committee; Member of the Large Urban County Caucus and Member of the Arts and Culture Commission.
4. Support the candidacy of Commissioner Rena Moran for: Member of the Large Urban County Caucus; and Member of the Justice & Public Safety Committee.
5. Support the candidacy of Commissioner Rafael Ortega for: Member of the Large Urban County Caucus; Member of the Large Urban County Caucus Steering Committee; and Member of the Transportation Committee.
6. Support the candidacy of Commissioner Victoria Reinhardt for: Chair of the Resilient Counties Advisory Board; Vice-Chair of the Environment, Energy and Land Use Steering Committee; Member of the IT Standing Committee; and Member of the Large Urban County Caucus.
7. Support the candidacy of Commissioner Xiong for Member of the Human Services & Education Steering Committee; and Member of the Large Urban County Caucus.

Motion by Moran, seconded by Frethem. Motion passed.

Aye: Frethem, MatasCastillo, Moran, Ortega, Reinhardt, and Xiong

Absent: McGuire
Resolution: B2023-075

LEGISLATIVE UPDATE

Presented by Commissioner MatasCastillo. Discussion can be found on archived video.

COUNTY CONNECTIONS

Presented by County Manager, Ryan O'Connor. Discussion can be found on archived video.

OUTSIDE BOARD AND COMMITTEE REPORTS

Discussion can be found on archived video.

BOARD CHAIR UPDATE

Presented by Chair MatasCastillo. Discussion can be found on archived video.

ADJOURNMENT

Chair MatasCastillo declared the meeting adjourned at 9:50 a.m.

Board of Commissioners

Request for Board Action

Item Number: 2023-189

Meeting Date: 5/23/2023

Sponsor: Human Resources

Title

Proposed Ramsey County Commissioner's Salary Ordinance for 2024 - Waive First Reading and Set Public Hearing Date

Recommendation

1. Waive the First Reading of the proposed Ramsey County Commissioner's Salary Ordinance for 2024.
2. Set the Public Hearing date of June 13, 2023 at 9 a.m. or as soon as possible thereafter, in the Council Chambers, third floor of Ramsey County Courthouse - 15 West Kellogg Boulevard, Saint Paul, MN, 55102 to afford the public an opportunity to comment on the proposed Ramsey County Commissioner's Salary Ordinance for 2024.

Background and Rationale

The Ramsey County Home Rule Charter section 5.01.A.1 requires that certain acts of the Ramsey County Board shall be by ordinance. The provisions of the Ramsey County Home Rule Charter relating to compensation for the Board of Commissioners in section 2.01.D state that:

- a. The Ramsey County Board may determine the amount of the annual salary of its members by passage of a salary ordinance; and
- b. The salary ordinance must be passed by July 1 of the year prior to the effective date of the ordinance; and
- c. The ordinance shall not become effective until the first business day of the following year (January 1, 2024).

Ramsey County employees with settled bargaining agreements and unrepresented employees received a general wage increase of 2.25% in 2023. It is the intent of the Ramsey County Board of Commissioners that future salary increases for the Ramsey County Board of Commissioners be set at a rate that matches the general increase in wages given to employees in the previous year. An increase of 2.25% for the Ramsey County Board of Commissioners will result in a salary increase equivalent to the general wage increase given to employees in the calendar year 2023. The current annual salary of the Board of Commissioners is \$99,052 for County Board Members, and \$102,149 for the County Board Chair. The proposed salary ordinance would increase commissioners' salary by 2.25% to \$101,280 for County Board Members and to \$104,448 for the County Board Chair.

The Ramsey County Home Rule Charter section 5.02 states each proposed ordinance shall receive two readings: first, at the time it is presented, and second, at the time of the public hearing as required by law. Both readings may be waived if a copy of the ordinance is supplied to each member of the Ramsey County Board prior to its introduction. In accordance with these requirements, the proposed Ramsey County Commissioner's Salary Ordinance for 2024 was provided to each commissioner prior to its introduction on May 23, 2023. Therefore, the first reading may be waived by duly made motion and majority vote.

The Ramsey County Home Rule Charter section 5.02 states that every proposed ordinance shall hold a public

hearing as required by law. A notification of the public hearing, which includes the draft ordinance will be publicized in advance of the public hearing.

This action sets the date of the Public Hearing as June 13, 2023 at 9 a.m., or as soon thereafter as possible, in the Council Chambers. Persons who intend to testify are encouraged to sign up online at [ramseycounty.us/chiefclerk](https://www.ramseycounty.us/chiefclerk) or contact the Chief Clerk at 651-266-9200 prior to June 13, 2023. If in-person testimony is not feasible, comments may alternatively be provided via the following methods:

- Email: chiefclerk@ramseycounty.us
- Phone: 651-266-9200
- Written letter to: Chief Clerk, 15 West Kellogg Blvd, 250 Courthouse, Saint Paul, MN 55102

The entire proposed Ordinance can be found on Ramsey County's website

<https://www.ramseycounty.us/sites/default/files/Ordinances/Proposed%20Commissioners%20Salary%20for%202024%20v2.pdf>

County Goals (Check those advanced by Action)

- Well-being Prosperity Opportunity Accountability

Racial Equity Impact

There is no specific racial equity impact associated with the proposed action.

Community Participation Level and Impact

This action is strictly operational and internal facing. It is the intent of the Ramsey County Board of Commissioners that future salary increases for the commissioners be set at a rate that matches the general increase in wages given to employees in the previous year.

- Inform Consult Involve Collaborate Empower

Fiscal Impact

Additional increases for this action will be included in the 2024 proposed budget.

Last Previous Action

On June 21, 2022, the Ramsey County Board adopted the Ramsey County Commissioners' Salary Ordinance for 2023 (Ordinance Resolution B2022-147).

Attachments

1. Salary Ordinance
2. 2023 Metro Area Comparisons
3. Public Hearing Notice
4. Schedule of Events

1 Proposed Salary Ordinance

2
3 WHEREAS, the provisions of the Ramsey County Home Rule Charter (Charter) relating to
4 compensation for the Board of Commissioners state that:

- 5 a) The Board may determine the annual salary of its members by passage of a salary
6 ordinance; and,
7 b) The salary ordinance must be passed by July 1 of the year prior to the effective date of
8 the ordinance; and,
9 c) The ordinance shall not become effective until the first business day of the following year
10 (January 1, 2024); and,
11

12 WHEREAS, The Charter requires that per diem payments be made to the County and that,
13 with the exception of fees, payments and other compensation paid to an officer of the
14 Association of Minnesota Counties, the County will not add these payments to the
15 Commissioners' salary when payments are received from the various boards, committees and
16 other governmental agencies; and
17

18 WHEREAS, The current annual salary of the Board of Commissioners is \$99,052 for County
19 Board Members, and \$102,149 for the County Board Chair; and,
20

21 WHEREAS, In 2023 Ramsey County employees received a general wage increase of
22 2.25%; and,
23

24 WHEREAS, It is the intent of the Ramsey County Board of Commissioners that future salary
25 increases for the Board of Commissioners be set at a rate that matches the general increase in
26 wages given to employees in the previous year; and,
27

28 WHEREAS, An increase of 2.25% for the Board of Commissioners will result in a salary
29 increase equivalent to the general wage increase given to employees in the calendar year 2023;
30 Now, Therefore, The Board of Commissioners for the County of Ramsey Does,
31

32 ORDAIN, That the annual salary for the Ramsey County Board of Commissioners for
33 calendar year 2024 shall increase by 2.25% to \$101,280 for County Board Members and by
34 2.25% to \$104,448 for the County Board Chair; and Be it Further
35

36 ORDAINED, With the exception of fees, payments and other compensation paid to an
37 officer of the Association of Minnesota Counties, the Board voted to decline fees, payments and
38 other compensation paid to County Board members in exchange for representing the County on
39 outside boards, committees and other governmental agencies and any subcommittees thereof,
40 and that any funds received by the County would remain within the County's General Fund; and
41 Be It Further
42

43 ORDAINED, That the Commissioners are eligible to receive fees, payments and other
44 compensation paid from the following boards, committees and other governmental agencies
45 and any subcommittees thereof;
46

47 Association of Minnesota Counties (if serving as an Officer)
48

49 And Be It Further
50

51 ORDAINED, That all appointments of County Commissioners to various boards,
52 committees and other governmental agencies shall be ratified by County Board resolution
53 before per diems shall be paid; and Be It Further
54

55 ORDAINED, That any subsequent new appointments or changes in appointments to
56 new or existing boards, committees or governmental agencies, and any subsequent

57 establishment of new per diem rates or increase in current per diem rates shall be ratified by
58 County Board resolution before per diems shall be paid; And Be It Further

59

60 ORDAINED, That any increase in per diems or new per diems which are approved by
61 the above described process, shall be included in the next annual salary ordinance, and Be It
62 Further

63

64 ORDAINED, That the Ramsey County Board of Commissioners shall be allowed to
65 receive actual and necessary expenses for attendance at conferences, seminars, etc., in
66 connection with their official County Commissioner duties as do all other Ramsey County
67 employees; and Be It Further

68

69 ORDAINED, That unless a valid referendum petition is filed within 45 days after the
70 publication of this ordinance, this ordinance shall:

71

72 a) Become effective on January 1, 2024 and replace the previous salary ordinance (Ordinance
73 B2022-147); and,

74 b) Continue in effect throughout calendar year 2024 and subsequent years until changed by a
75 subsequent County Board ordinance.

76

77

METRO AREA COUNTY COMPARISONS 2023

	Hennepin County	Ramsey County	Dakota County	Anoka County	Washington County	Scott County	Carver County
Population	1,320,307	536,413	442,038	367,361	270,805	153,199	108,626
2023 Budget	\$2,606,003,227	\$783,166,239	\$438,013,875	\$373,236,664	\$316,079,900	\$197,733,557	\$134,633,523
Number of Employees (1)							
Full Time	8,241	3,579	1,820	1,849	1,180	661	662
Part Time	308	574	160	118	85	74	56
Reimbursements							
Per Diem	No	No	No	Yes	No	n/a (4)	Yes
Administrative Allowance inside metro area	n/a	\$7,200	n/a	\$7500/\$8500 (2)	n/a	n/a	\$8580/\$7680/\$7380
Expense Reimbursement inside metro area	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Expense Reimbursement outside metro area	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Expense and/or Mileage Reimbursement	Yes	Yes	Yes	n/a	Yes (3)	Yes	n/a
2023 Base Salary							
Commissioner	\$119,244	\$99,052	\$93,328	\$87,984	\$72,500	\$77,630	\$77,786
Chair	\$119,244	\$102,149	\$93,328	\$87,984	\$73,500	\$79,430	\$77,786
Vice Chair			\$93,328	\$87,984	\$72,500	\$78,530	\$77,786
2023 Total Compensation							
Commissioner	\$119,244	\$106,252	\$93,328	\$95,484	\$95,200 (3)	\$77,630	\$85,166
Chair	\$119,244	\$109,349	\$93,328	\$96,484	\$95,200 (3)	\$79,430	\$85,166
Vice Chair			\$93,328	\$95,484	\$95,200 (3)	\$78,530	\$85,166

Official salary rates shown. Some individual members of these county boards may choose to receive lesser amounts.

- (1) Number of employees excludes temporary employees.
- (2) Allowance for Anoka Co. Commissioner/Chair, only added to base pay if not claimed as an expense otherwise.
- (3) Washington County - Per diems paid by Association of Minnesota Counties for AMC meetings, Metropolitan Emergency Services Board, Solid Waste Coordinating Board; non-County payment; not received by all commissioners.
- (4) Scott County no longer has per diems; it was built into their salary in 2020.

PUBLIC HEARING NOTICE

NOTICE IS HEREBY GIVEN that the Ramsey County Board of Commissioners will hold a public hearing at 9:00 a.m., or as soon thereafter as possible, on Tuesday June 13, 2023, in the Ramsey County Courthouse – Saint Paul City Hall (Council Chambers, Room 300), 15 West Kellogg Boulevard, Saint Paul, MN 55102.

This public hearing will be conducted in order to afford the public an opportunity to comment on the proposed Ramsey County Board of Commissioners Salary Ordinance for 2024.

The entire proposed Ordinance can be found on Ramsey County's web site <https://www.ramseycounty.us/sites/default/files/Ordinances/Proposed%20Commissioners%20Salary%20for%202024%20v2.pdf> or obtained by calling the Chief Clerk – County Board 651-266-9200.

Persons who intend to testify are requested to contact the Chief Clerk prior to Tuesday, June 13, 2023.

If in-person testimony is not feasible, comments may alternatively be provided via the following methods:

- Virtually via Zoom webinar:
<https://zoom.us/j/91427462889?pwd=YlpQTUFHTENleG1DdG96aVhmS2ZyUT09>
Webinar ID: 914 2746 2889 | Passcode: 226083 | Phone: 651-372-8299
- Email: chiefclerk@ramseycounty.us
- Office Phone: 651-266-9200
- Written Letter: Chief Clerk, 15 West Kellogg Blvd, 250 Courthouse, Saint Paul, MN 55102

SCHEDULE OF EVENTS

May 23, 2023	First Reading of Ordinance Set Date for Public Hearing
May 31, 2023	Publication of Public Hearing Notice
June 13, 2023	Second Reading of Ordinance Hold Public Hearing
June 20, 2023	Action on Adoption of Ordinance
January 1, 2024	Effective date of Ordinance

Item Number: 2023-196

Meeting Date: 5/23/2023

Sponsor: Public Works

Title

Detour Agreement with the Minnesota Department of Transportation

Recommendation

1. Approve the agreement with the Minnesota Department of Transportation, 1500 County Road B2 West, Roseville, MN, 55113, related to routing traffic from state roadways to county roadways on a posted detour during construction along Trunk Highway 5.
2. Authorize the Chair and Chief Clerk to execute the agreement.

Background and Rationale

The Minnesota Department of Transportation (MnDOT) plans to perform grading, bituminous mill and overlay, ADA improvements, pond, and signal construction upon, along, and adjacent to Trunk Highway 5 (TH 5) from Mendota Street to Trunk Highway 120 (Century Avenue). It has been assigned a State Project Number of 6229-37 (T.H. 5 = 109).

To safely construct these improvements, a detour route is needed to carry TH 5 traffic on County State Aid Highway 64 (Johnson Parkway) and County State Aid Highway 65 (White Bear Avenue) during the construction.

MnDOT Contract Number 1051905, between Ramsey County and MnDOT, identifies the detour route will be in place for 30 days. MnDOT will compensate the county for the road life consumed by the detour based on the "Gas Tax Method" and has estimated the cost to be \$1,664.

MnDOT will be responsible for maintaining the detour route on county roadways as part of the agreement. Ramsey County Public Works staff support the proposed county road detours identified in the agreement.

County Goals (Check those advanced by Action)

- Well-being Prosperity Opportunity Accountability

Racial Equity Impact

The project area and detour are in racially diverse neighborhoods of Saint Paul and Maplewood. Rerouting of traffic as part of this construction detour maintains traffic within these neighborhoods, so racial equity impact is unchanged at a neighborhood level.

Community Participation Level and Impact

While MnDOT has engaged the community about the project, including managing traffic via a detour, this detour agreement has not been part of any engagement.

- Inform Consult Involve Collaborate Empower

Fiscal Impact

The fiscal impact will be a payment of \$1,664 to the county associated with the roadway life consumed by the

additional traffic during construction. Revenue is accounted for in the 2023 Public Works budget.

Last Previous Action

None.

Attachments

1. MnDOT Contract No: 1051905

**STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION
And
RAMSEY COUNTY
DETOUR AGREEMENT
For Trunk Highway No. 5 Detour**

State Project Number (S.P.):	<u>6229-37</u>	Original Amount Encumbered
Trunk Highway Number (T.H.):	<u>5=109, 5=45</u>	<u>\$1,664.41</u>
State Aid Project Number (S.A.P.):	<u>164-010-075</u>	
State Aid Project Number (S.A.P.):	<u>164-010-082</u>	
State Project Number (S.P.):	<u>6230-30</u>	
State Project Number (S.P.):	<u>6211-110</u>	
State Project Number (S.P.):	<u>6212-197</u>	
Trunk Highway Number (T.H.):	<u>36=118</u>	
Fed. Project Number:	<u>STBG-HSIP 6223(187)</u>	

This Agreement is between the State of Minnesota, acting through its Commissioner of Transportation ("State") and Ramsey County acting through its Board of Commissioners ("County").

Recitals

1. The State is about to perform Grading, Bituminous Mill & Overlay, ADA Improvements, Ponds and Signal construction upon, along, and adjacent to Trunk Highway (T.H.) No. 5 from Mendota Street to Trunk Highway No. 120 under State Project No. 6229-37 (T.H. 5=109); and
2. The State requires a detour to carry Trunk Highway No. 5 traffic on County State Aid Highway (C.S.A.H.) No. 64 (Johnson Parkway) and County State Aid Highway No. 65 (White Bear Avenue) during the construction; and
3. The State is willing to reimburse the County for the road life consumed by the detour as hereinafter set forth; and
4. Minnesota Statutes § 471.59, subdivision 10, § 161.25, and § 161.20, subdivision 2(b), authorize the parties to enter into this Agreement.

Agreement

1. Term of Agreement

- 1.1. **Effective Date.** This Agreement will be effective on the date the State obtains all signatures required by Minnesota Statutes § 16C.05, subdivision 2.
- 1.2. **Expiration Date.** This Agreement will expire when the State removes all detour signs, returns the temporary Trunk Highway detour to the County, and pays for the detour compensation.

2. Agreement Between the Parties

2.1. Detour.

- A. **Location.** The State will establish the T.H. 5 detour route on the following County roads as detailed in the project plans or Special Provisions:

C.S.A.H. 64 (Johnson Parkway) and C.S.A.H. 65 (White Bear Avenue) for a total distance of 1.4 miles.

- B. *Modification of the Detour Route.*** The State may modify the detour route or may add additional roadways to the official detour during construction. The State will request concurrence from the County for changes to the detour route. If such change increases the States total payment amount over the maximum obligation in Article 3.2, the Agreement will be amended.
- C. *Axle Loads and Over-Dimension Loads.*** The County will permit 10-ton axle loads on the detour route.
- D. *Traffic Control Devices.*** The State may install, maintain, and remove any traffic control devices it considers necessary to properly control the detoured traffic. The State may paint roadway markings, such as the centerline, edge lines, and necessary messages.
- E. *Detour Maintenance.*** The State will perform any necessary bituminous patching and ordinary maintenance on the roadway or shoulder of the County roads used for the detour, at no cost or expense to the County. Bituminous patching is defined as any work, including continuous full width overlays, less than 100 feet in length. All State expenditures beyond those required for bituminous patching and ordinary maintenance will be credited against the road life consumed reimbursement due the County.
- F. *Duration.*** The State will provide the County with advance notice identifying the dates the State intends to place and remove the detour signing.

2.2. *Basis of State Cost (Road Life Consumed).* The State will reimburse the County for the road life consumed by the detour using the following methods, as set forth in the Detour Management Study Final Report dated January 1991, and updated by MnDOT's Policy on Cost Participation for Cooperative Construction Projects and Maintenance Responsibilities between MnDOT and Local Units of Government.

- A.** The "Gas Tax Method" formula, multiplies the Combined Tax Factor per mile times the Average Daily Traffic ("ADT") count of vehicles diverted from the Trunk Highway times the county road length in miles times the duration of the detour in days to determine the State's cost for the road life consumed by the detour. If an ADT changes, the parties will amend the Agreement.
- B.** The County may, at its option, perform an "Equivalent Overlay Method" analysis. A State-approved firm, at no cost or expense to the State, must perform the testing and analysis. The County will keep records and accounts to verify any claim it might bring against the State for additional costs using the "Equivalent Overlay Method".

3. Payment

3.1. *For Road Life Consumed.* \$1,664.41 is the State's estimated cost for the road life consumed by the detour based on the data below:

<u>Route</u>	<u>Tax Factor</u>	<u>ADT</u>	<u>Road Length (Miles)</u>	<u>Duration (Days)</u>	<u>Cost</u>
Route 1 - C.S.A.H. 64	0.00513	3,700	0.7	30	\$398.60
Route 2 - C.S.A.H. 64	0.00513	3,900	0.7	30	\$420.14
Route 2 - C.S.A.H. 65	0.00513	3,900	0.7	30	\$420.14

<u>Route</u>	<u>Tax Factor</u>	<u>ADT</u>	<u>Road Length (Miles)</u>	<u>Duration (Days)</u>	<u>Cost</u>
Route 3 - C.S.A.H. 65	0.00513	3,950	0.7	30	\$425.53

Road Life Consumed Amount: \$1,664.41

The State's total payment for the road life consumed by the detour is equal to the amount computed by using the "Gas Tax Method" formula plus any amount determined by using the "Equivalent Overlay Method" analysis that is in excess of twice the "Gas Tax Method" amount.

- 3.2. *Maximum Obligation.* \$5,000.00** is the maximum obligation of the State under this Agreement and must not be exceeded unless the maximum obligation is increased by execution of an amendment to this Agreement.
- 3.3. *Conditions of Payment.*** The State will pay the County the State's total road life consumed payment amount after performing the following conditions.
- A.** Execution of this Agreement and the County's receipt of the executed Agreement.
 - B.** State's encumbrance of the State's total payment amount.
 - C.** State's removal of all detour signs.
 - D.** State notifies the County of the removal of the detour signs, and the number of days the detour was in effect.
 - E.** State's receipt of a written request from the County for payment.

4. Release of Road Restoration Obligations

By accepting the State's road life consumed payment plan and total payment amount, the County releases the State of its obligation, under Minnesota Statutes § 161.25, to restore the county roads used as a T.H. 5 detour to as good of condition as they were before designation as temporary trunk highways.

5. Authorized Representatives

Each party's Authorized Representative is responsible for administering this Agreement and is authorized to give and receive any notice or demand required or permitted by this Agreement.

5.1. The State's Authorized Representative will be:

Name, Title: Greg Kern, MnDOT Metropolitan District Traffic Engineering (or successor)
 Address: 1500 County Road B2 West, Roseville, MN 55113
 Telephone: (651) 234-7877
 E-Mail: gregory.kern@state.mn.us

5.2. The County's Authorized Representative will be:

Name, Title: Brad Estochen, County Traffic Engineer (or successor)
 Address: 1425 Kirkwood Drive, Arden Hills, MN 55112
 Telephone: (651) 266-7100
 E-Mail: bradley.estochen@co.ramsey.mn.us

6. Assignment; Amendments; Waiver; Contract Complete

- 6.1. *Assignment.*** No party may assign or transfer any rights or obligations under this Agreement without the prior consent of the other party and a written assignment agreement, executed and approved by the same parties who executed and approved this Agreement, or their successors in office.
- 6.2. *Amendments.*** Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Agreement, or their successors in office.
- 6.3. *Waiver.*** If a party fails to enforce any provision of this Agreement, that failure does not waive the provision or the party's right to subsequently enforce it.
- 6.4. *Contract Complete.*** This Agreement contains all prior negotiations and agreements between the State and the County. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

7. Liability

The County and State will be responsible for their own acts and omissions, to the extent authorized by law. Minnesota Statutes § 3.736 governs the State's liability. Minnesota Statutes, Chapter 466 governs the liability of the County.

8. State Audits

Under Minnesota Statutes § 16C.05, subdivision 5, the County's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by the State and the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement.

9. Government Data Practices

The County and State must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by the State under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the County under this Agreement. The civil remedies of Minnesota Statutes § 13.08 apply to the release of the data referred to in this clause by either the County or the State.

10. Governing Law; Jurisdiction; Venue

Minnesota law governs the validity, interpretation, and enforcement of this Agreement. Venue for all legal proceedings arising out of this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

11. Termination; Suspension

- 11.1. *By Mutual Agreement.*** This Agreement may be terminated by mutual agreement of the parties or by the State for insufficient funding as described below.
- 11.2. *Termination for Insufficient Funding.*** The State may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the County. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the County will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be

assessed any penalty if this Agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds.

11.3. *Suspension.* In the event of a total or partial government shutdown, the State may suspend this Agreement and all work, activities, performance, and payments authorized through this Agreement. Any work performed during a period of suspension will be considered unauthorized work and will be undertaken at the risk of non-payment.

12. Force Majeure

No party will be responsible to the other for a failure to perform under this Agreement (or a delay in performance), if such failure or delay is due to a force majeure event. A force majeure event is an event beyond a party's reasonable control, including but not limited to, unusually severe weather, fire, floods, other acts of God, labor disputes, acts of war or terrorism, or public health emergencies.

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STATE ENCUMBRANCE VERIFICATION

Individual certifies that funds have been encumbered as required by Minnesota Statutes § 16A.15 and 16C.05.

Signed: _____

Date: _____

SWIFT Purchase Order: 3000679780

RAMSEY COUNTY

The undersigned certify that they have lawfully executed this contract on behalf of the Governmental Unit as required by applicable charter provisions, resolutions, or ordinances.

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

INCLUDE COPY OF THE RESOLUTION APPROVING THE AGREEMENT AND AUTHORIZING ITS EXECUTION.

DEPARTMENT OF TRANSPORTATION

Approved:

By: _____
(District Engineer)

Date: _____

COMMISSIONER OF ADMINISTRATION

By: _____
(With Delegated Authority)

Date: _____

RAMSEY COUNTY

RESOLUTION

IT IS RESOLVED that Ramsey County enter into MnDOT Agreement No. 1051905 with the State of Minnesota, Department of Transportation for the following purposes:

To provide for payment by the State to the County for the use of County State Aid Highway No. 64 and County State Aid Highway No. 65 as a detour route during the construction to be performed upon, along, and adjacent to Trunk Highway No. 5 from Mendota Street to Trunk Highway No. 120 under State Project No. 6229-37 (T.H. 5=109).

IT IS FURTHER RESOLVED that the _____
(Title)

and the _____
(Title)

are authorized to execute the Agreement and any amendments to the Agreement.

CERTIFICATION

I certify that the above Resolution is an accurate copy of the Resolution adopted by the Board of Commissioners of Ramsey County at an authorized meeting held on the _____ day of _____, 20__, as shown by the minutes of the meeting in my possession.

Subscribed and sworn to me this
_____ day of _____, 20__

Notary Public _____

My Commission Expires _____

(Signature)

(Type or Print Name)

(Title)

Board of Commissioners

Request for Board Action

Item Number: 2023-198

Meeting Date: 5/23/2023

Sponsor: Property Management

Title

Agreement with Urban Companies for Ramsey County Law Enforcement Center Campus Exterior and Grounds Improvements Project

Recommendation

1. Approve the selection of an agreement with Urban Companies, LLC, 3781 Labore Road, Saint Paul, MN, 55110, for the Ramsey County Law Enforcement Center Campus Exterior and Grounds Improvements project, for the period of May 23, 2023 through May 22, 2024, in the not-to-exceed amount of \$2,085,000.
2. Authorize the Chair and the Chief Clerk to execute the agreement.
3. Authorize the County Manager to execute amendments to the agreement in accordance with the county's procurement policies and procedures, provide the amounts are within the limits of available funding.

Background and Rationale

The Ramsey County Law Enforcement Center Campus houses several Ramsey County facilities across the 425 Grove Street, 388 East 13th Street and 402 University Avenue East locations in Saint Paul. Across the campus improvements and repairs are needed to wayfinding signage, landscaping, parking lots and sidewalks. For project management efficiencies and coordination of work to minimize impacts on employees and residents accessing these facilities, these items have been combined into a project to be awarded to a single prime contractor, who will manage all aspects of the project. On March 17, 2023, McMonigal Architects provided the project specifications and plans to Ramsey County Property Management which were included in the solicitation. The project has a tentative start date of June 12, 2023, and a substantial completion date of September 22, 2023.

On April 5, 2023, in accordance with county procurement policies and procedures, a competitive solicitation for the project was issued. Below is the competitive solicitation summary:

- Request for Bids Title: Law Enforcement Center Campus Exterior and Grounds Improvements
- Request for Bids Release Date: April 5, 2023
- Request for Bids Response Due Date: May 4, 2023
- Number of Contractors Notified: 1,839
- Number of Request for Bids Responses Received: 1
- Contractor Recommended: Urban Companies, LLC

Ramsey County Property Management recommends Urban Companies for the project award. It has been determined that a Project Labor Agreement will not be required for this project.

County Goals (Check those advanced by Action)

- Well-being Prosperity Opportunity Accountability

Racial Equity Impact

The racial equity impact of this project is not fully known. The project will include workforce inclusion goals of 32% minority and 20% women, as well as a goal of utilizing 32% certified small businesses (SBEs) found in the CERT directory recognized by the county as the acceptable source for SBE subcontractors and suppliers in conformance with the county's approved policy on workforce inclusion and contracting goals.

Community Participation Level and Impact

The Capital Improvement Program Advisory Committee (CIPAC), made up of Ramsey County residents appointed by the Ramsey County Board, reviews the projects submitted for the Capital Improvement Program Fund. This project is a part of the larger Welcoming Facilities CIPAC project approved with the 2020-2025 Capital Improvement Program Plan, and the solicitation was issued in accordance the county's procurement policies and procedures.

Inform Consult Involve Collaborate Empower

Fiscal Impact

The project is funded by \$2,085,000 from the 2020-2021 Welcoming Facilities Capital Improvement Program budget. The remaining Welcoming Facilities Capital Improvement Program budget will be \$2,300,000.

Last Previous Action

None.

Attachments

1. Agreement with Urban Companies

RAMSEY COUNTY PROCUREMENT CONTRACT

Property Management

PROPERTY MANAGEMENT
 SUITE 2200
 121 SEVENTH PLACE EAST
 ST. PAUL MN 55101
 USA

Supplier 0000216120
 G URBAN COMPANIES INC
 3781 LABORE ROAD
 SAINT PAUL MN 55110-4129
 USA

Open **Dispatch via Print**

Contract ID CC003148		Page 1 of 1	
Contract Dates 05/23/2023 to 05/22/2024	Currency USD	Rate Type CRRNT	Rate Date PO Date
Description: LEC Exterior Improvements		Contract Maximum 2,085,000.00	

Tax Exempt? N Tax Exempt ID:

Contract Lines:

Line #	Supplier Item	Item Desc	UOM	Minimum Order		Maximum / Open	
				Qty	Amt	Qty	Amt
1		Remodeling Construction Services	EA	1.00	0.00	0.00	0.00

The Ramsey County General Contract/Agreement Terms and Conditions is attached hereto and incorporated by reference. This Ramsey County Procurement Contract, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties.

PROVIDE ALL SUPPLIES, EQUIPMENT, MATERIALS AND LABOR REQUIRED FOR LAW ENFORCEMENT CENTER EXTERIOR AND GROUNDS IMPROVEMENTS IN ACCORDANCE WITH THE SOLICITATION RFB-PRMG28422 RELEASED 4/5/23 (WHICH INCORPORATES THE PROJECT MANUAL AND CONSTRUCTION PLANS) AND ALL ADDENDA, AND CONTRACTOR SOLICITATION RESPONSE DATED 05/4/2023. THE BID PROPOSAL FORM IN THE CONTRACTOR SOLICITATION SETS FORTH THE LIST OF CONTRACT TERMS AND PRICING.

PERIOD OF PERFORMANCE:
 ORIGINAL TERM: 05/23/2023 through 05/22/2024

APPROXIMATE VALUE OF ORIGINAL TERM: \$2,085,000.00

CONTRACTOR CONTACT: Greg Urban
 CONTRACTOR PHONE#: 651-248-9830
 CONTRACTOR EMAIL: gurban@urbancompaniesusa.com

COUNTY CONTACT: Nick Fahey
 COUNTY PHONE#: 612-499-0385
 COUNTY EMAIL: Nicholas.fahey@co.ramsey.mn.us

REQ# PRMG28422

All shipments, shipping papers, invoices and correspondence must be identified with our Contract ID Number. Price increases will not be honored. Errors: In case of error in calculating or typing, the quoted unit price will be used as basis for correction of this order. Freight: Unless otherwise specified herein, prices are F.O.B. destination, with freight prepaid and included. Tax: Unless otherwise specified herein, prices are inclusive of applicable taxes.

Unauthorized



1. Contracting for Equity

1.1. Commitment to Advancing Racial Equity

The county is committed to advancing racial equity for its residents. The commitment is captured in the county's Advancing Racial Equity policy which states that "Racial equity is achieved when race can no longer be used to predict life outcomes, and outcomes for all are improved."

Consistent with the Advancing Racial Equity policy, contractors will take all reasonable measures to advance racial equity during contract performance. Contractors will recognize and acknowledge this requires deconstructing barriers and changing systems, structures, policies and procedures. Contractors will be equitable, inclusive, transparent, respectful and impactful in serving and engaging residents. Contractors will have meaningful and authentic engagement with community and employees to strengthen the administration, development and implementation of policies and procedures to advance racial equity and ensure that all residents in need have awareness of and access to contracted services.

Please review Ramsey County's [Advancing Racial Equity policy](#) to learn more about Ramsey County's commitment to racial equity.

1.2. Non-Discrimination (In accordance with Minn. Stat. § 181.59)

Contractors will comply with the provisions of Minn. Stat. § 181.59 which require:

"Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the contractor agrees:

(1) that, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;

(2) that no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;

(3) that a violation of this section is a misdemeanor; and

(4) that this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract."

1.3. Equal Employment Opportunity and Civil Rights

1.3.1.

Contractors agree that no person shall, on the grounds of race, color, religion, age, sex, sexual orientation, disability, marital status, public assistance status, criminal record

(subject to the exceptions contained in Minn. Stat. §§299C.67 to 299C.71 and Minn. Stat. §144.057), creed or national origin, be excluded from full employment rights in, participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program, service, or activity under the provisions of any and all applicable federal and state laws against discrimination, including the Civil Rights Act of 1964. Contractors will furnish all information and reports required by the county or by Executive Order No. 11246 as amended, and by the rules and regulations and orders of the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

1.3.2.

Contractors shall comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

1.3.3.

Contractors shall agree that no qualified individual with a disability as defined by the Americans with Disabilities Act, 42 U.S.C. §§12101-12213 or qualified handicapped person, as defined by United States Department of Health and Human Services regulations, Title 45 Part 84.3 (j) and (k) which implements Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, under Executive Order No. 11914 (41FR17871, April 28, 1976) shall be:

1.3.3.1.

Denied access to or opportunity to participate in or receive benefits from any service offered by contractors under the terms and provisions of this agreement; nor

1.3.3.2.

Subject to discrimination in employment under any program or activity related to the services provided by contractors.

1.3.3.3.

If it is discovered that a contractor is not in compliance with applicable regulations as warranted, or if the contractor engages in any discriminatory practices, as described above, then the county may cancel said agreement as provided by the cancellation clause of this agreement.

1.4. Utilization of Certified Vendors

The county has adopted the Principles for Inclusiveness in Contracting Program ("IICP") in order to increase the participation of small businesses ("SBEs") in the county's purchasing activities. The contracting inclusion goal for this Project is: 32%.

1.5. Diverse Workforce Initiative

The county has a goal of continuing to increase participation of qualified minorities and women in each county construction project. The county has established a goal of 20% women and 32% minority goal for site workforce utilization for the project.

1.6. Workforce and Contracting Inclusion Reporting

1.6.1. Contracting Inclusion

Contractors shall complete and submit Attachment **XXX** -- Contracting Inclusion Reporting Forms with monthly applications for payment or as otherwise directed by the county project manager.

The report shall specify the project and contract number and include:

Ownership: Including but not limited to CERT small business enterprises (SBEs), minority owned enterprises (SMBEs), women owned enterprises (SWBEs), minority women owned enterprises (SWMBEs) and veteran enterprises (SVBEs).

- a. All certifications of the prime contractor.
- b. Name of sub-contractor and all certifications of each sub-contractor along with amounts paid to each sub-contractor to date.

1.6.2. Workforce Inclusion

Contractor (and all appropriate subcontractors) shall utilize County's LCP Tracker software system for submission of completed certified payroll reports and the LCP Tracker workforce inclusion 'Goal Report' with monthly applications for payment or as otherwise directed by the county project manager. County shall provide LCP Tracker training to Contractor if requested.

1.7. Diverse Workforce Inclusion Resources

For information and assistance in increasing the participation of women and minorities, contractors are encouraged to access the websites below:

1. <http://www.ramseycounty.us/jobconnect>
2. <http://www.ramseycounty.us/constructionconnect>

Job Connect and the Construction Connect provide a recruiting source for employers and contractors to post job openings and source diverse candidates.

Ramsey County's Job Connect links job seekers, employers and workforce professionals together through our website, networking events and community outreach. The network includes over 10,000 subscribed job seekers ranging from entry-level to highly skilled and experienced professionals across a broad spectrum of industries.

Employers participate in the network by posting open jobs, meeting with workforce professionals and attending hiring events. Over 200 Twin Cities community agencies, all working with job seekers, participate in the network.

Ramsey County's Construction Connect is an online and in-person network dedicated to the construction industry. Construction Connect connects contractors and job seekers with employment opportunities, community resources and skills training related to the construction industry. Construction Connect is a tool for contractors to help meet diversity hiring goals. Additional assistance is available through askworkforcesolutions@ramseycounty.us or by calling 651-266-9890.

2. General Contract/Agreement Terms and Conditions

2.1.

The Contract resulting from this solicitation shall contain the following terms and conditions stated in this Section 3.

2.2. Definitions

AGREEMENT

The entire and integrated written document between the Owner and the Contractor concerning the Work. The Agreement contains all Contract Documents, as defined below, and supersedes prior representations, and agreements, whether written or oral, and sets forth the parties

obligations, including but not limited to, the performance of the Work, the furnishing of labor and materials, and all other requirements in the Contract Documents.

AGGREGATE

Natural materials such as sand, gravel, crushed rock, or taconite tailings, and crushed concrete or salvaged bituminous mixtures, usually with a specified particle size, for use in base course construction, paving mixtures, and other specified applications.

BID

The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

BIDDER

The individual or entity who submits a Bid to Owner.

CALENDAR DAY

Every day shown on the calendar, being 24 hours in length measured from midnight to the next midnight.

CONTRACTOR

The selected Bidder, an individual, firm, or corporation, contracting for and undertaking the completion of the prescribed Work; acting directly or through a duly authorized representative.

CONTRACT DOCUMENTS

Includes the Request for Bids (RFB), addenda, contractor bid, response forms, bonds, general terms and conditions, specifications, supplemental specifications, special provisions, plans, detail plans, Notice to Proceed, supplemental plans, change orders, supplemental agreements, field orders and shop plans.

CONTRACT PRICE

The total monetary amount to be paid to the Contractor for completion of the work in accordance with the Contract Documents as stated in the Agreement, including any approved Change Orders that have increased or decreased the original total monetary amount to be paid the Contractor.

CONTRACT TIME

The Substantial Completion date or number of calendar days allowed for substantial completion of the Work, including approved time extensions.

DETOUR

A road or system of roads, usually existing, designated as a temporary route by the Owner's Representative or Contractor to divert through traffic from a section of roadway being improved.

EASEMENT

A right acquired to use or control property for a designated purpose.

FIELD ORDER

A written order effecting change in the work not involving an adjustment in the contract price or an extension of the contract time, issued by the Owner's Representative to the Contractor during construction.

GUARANTEED ANALYSIS

A guarantee from a manufacturer, producer or supplier of a product that the product complies with the ingredients or specifications as indicated on the product label.

HOLIDAYS

The days of each year set aside by legal authority for public commemoration of special events, and on which no public business shall be transacted except as specifically provided in cases of necessity. Unless otherwise noted, holidays shall be as established in Min. Stat. Section 645.44.

INDUSTRY STANDARD

An acknowledged and acceptable measure of quantitative or qualitative value or an established procedure to be followed for a given operation within the given industry. This will generally be in the form of a written code, standard or specification by a creditable association.

MATERIALS

Any substances specified for use in the construction of the Project and its appurtenances.

PAY, BID OR CONTRACT ITEM

A specifically described unit of work for which a price is provided for in the Agreement.

NOTICE TO PROCEED

A written notice given to the Contractor by the Owner or Owner's Representative to proceed with the Work including, stating when applicable the date of the beginning of the Contract Time and the days until Substantial Completion is required or stating the date upon which Substantial Completion is to be achieved.

OWNER

The Owner of the Project is Ramsey County, and the term "Owner" shall mean the County.

OWNERS REPRESENTATIVE

An architect, designer, engineer, construction manager, or other person designated by the Owner to act on the Owner's behalf.

PLAN(S)

The plans, profiles, typical cross sections, and supplemental plans that show the locations, character, dimensions, and details of the work to be completed.

PROJECT

The Work to be performed under the Contract Documents.

PUNCH LIST

A notification to the contractor, in writing, of any particulars in which an inspection revealed that the Work is defective or incomplete.

SHOP DRAWINGS

All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the Contractor, a subcontractor, manufacturer, supplier or distributor, which illustrate how specific portions of the Work shall be fabricated or installed.

SPECIFICATIONS

All directions, provisions, and requirements defining the materials and performance of the Work.

SUBCONTRACTOR

The subcontractor is an individual, firm or corporation acting for or on behalf of the Contractor in performing any part of the Work. The subcontractor has a direct contract with the Contractor or another subcontractor and not the Owner.

SUBSTANTIAL COMPLETION

That date as certified by the Owner's Representative when the construction of the Project or a specified part thereof is sufficiently completed, in accordance with the Agreement, so that the Project or specified part can be utilized for the purposes for which it is intended.

SUPPLEMENTAL AGREEMENT

A written agreement between the Owner and the Contractor, covering the performance of extra work or other alterations or adjustments to the Work or any of the Contract Documents as provided for within the general scope of the Agreement, but which extra work or Change Order constitutes a modification of the Agreement as originally executed and approved.

SUPPLIERS

Any person, supplier or organization who supplies materials or equipment for the Work, including those fabricated to a special design, but who does not perform labor at the Project site.

WORK

The furnishing of all labor, materials, equipment, and other incidentals necessary or convenient to the successful completion of the Project and the carrying out of the duties and obligations of the Contractor under the Contract Documents.

2.3. Order of Governance

2.3.1.

The Contract Documents comprise the entire agreement between the County and the Contractor and supersede prior representations, understandings or agreements, whether written or oral. The Contract Documents shall be construed in accordance with Minnesota law and shall be deemed to incorporate Laws and Regulations whether in force before or after submission of Bids, with which the Contractor is required to comply. It is the intent of the Contract Documents to describe a functionally complete Project (or portion thereof) to be constructed in accordance with the Contract Documents. Any Work, materials, or equipment, whether or not specifically called for, that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be furnished and performed by the Contractor without change in the Contract Price or Contract Time.

2.3.2.

To resolve conflicts between various portions of the Contract Documents that may arise, priority and order of precedence shall be given to the Contract Documents as follows:

1. Change Order,
2. Field Order,
3. Other Supplemental Agreement,
4. Supplemental Specification,
5. Supplemental Plan,
6. Project Manual,
7. Specifications,
8. Plans,
9. General Contract/Agreement Terms and Conditions,
10. Ramsey County Procurement Contract
11. Addenda to the RFB,
12. Request for Bids (RFB)

2.3.3.

If discrepancies exist between dimensions in the Contract documents, the following order of precedence applies:

1. Plan dimensions,
2. Calculated dimensions,
3. Scaled dimensions.

The Owner and the Contractor shall inform each other as to any discrepancy or defect they discover in the Contract Documents. Neither the Contractor nor the Owner shall take advantage of any discrepancy or defect in the Contract Documents. The Owner will review the identified discrepancy or defect to determine if a revision to the Contract Documents is necessary. The Owner will decide all issues concerning a discrepancy or defect.

2.4. Payment

2.4.1.

If this is a lump sum contract for supplies, equipment, materials and labor, or construction, invoices shall include any applicable State or Federal sales, excise or other tax. Do not itemize tax separately.

2.4.2.

If this is a contract for supplies, equipment or materials purchased for a golf course or solid waste hauling and recycling, the contractor shall itemize any applicable State or Federal sales, excise or other tax separately on the invoice.

2.4.3.

Each invoice must include a progress report on achievement of project SBE and Workforce goals. No payment will be made until the invoice and progress report have been approved by the County.

2.4.4.

Payments shall be made when the materials/services have been received in accordance with the provisions of the resulting contract.

2.5. Application for Payments

2.5.1.

The Contractor shall submit an invoice as mutually agreed upon by Contractor and the County.

2.5.2.

Invoices for any goods or services not identified in this Agreement will be disallowed.

2.5.3. Surety Deposit Requirement for Non-Minnesota Construction Contractors

For **any one contract** where the anticipated contract value of the construction portion of the contract exceeds \$50,000, the department must withhold 8 percent from payments and send the money to the Minnesota Department of Revenue. The department will hold the funds as surety for the payment of state taxes owed as a result of the contract. For more information about this law, including exceptions to the withholding requirement, visit the [MN Department of Revenue](#) or [Withholding Tax Fact Sheet 12 -- Surety Deposits for Non-Minnesota Construction Contractors](#).

2.5.4.

Each application for payment shall contain the order/contract number, an itemized list of goods or services furnished and dates of services provided, cost per item or service, and total invoice amount. Payment for Materials stored will be conditioned on the following: The Contractor shall submit evidence to establish the Owner's title to such materials; acceptable provisions have been made for storage; the Contractor is responsible for all loss, theft, vandalism, storage and similar peril for the full value of the stored Material.

2.5.5.

Payment shall be made within thirty-five (35) calendar days after the date of receipt of a detailed invoice and verification of the charges. At no time will cumulative payments to the Contractor exceed the percentage of project completion, as determined by the County.

2.5.6.

Payment of interest and disputes regarding payment shall be governed by the provisions of Minnesota Statutes §471.425.

2.5.7.

The Contractor shall pay any subcontractor within ten days of the Contractor's receipt of payment from the County for undisputed services provided by the subcontractor. The Contractor shall pay interest of 1 1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, the Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from the Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

2.5.8.

The Contractor shall pay the applicable prevailing wage rates at the time, during which, the work is being performed. Attachment B -- Statement of Compliance for Ramsey County Contractors and Attachment C -- Ramsey County Prevailing Wage Biweekly Payroll Report shall be completed and submitted per Ramsey County Prevailing Wage Ordinance No. 2013-329. See also Section 3.42.

2.5.9.

Payment for Materials stored will be conditioned on the following: The Contractor shall submit evidence to establish the Owner's title to such materials; acceptable provisions have been made for storage; the Contractor is responsible for all loss, theft, vandalism, storage and similar peril for the full value of the stored Material.

2.5.10.

The County and the Contractor must comply with Minn. Stat. § 15.72, Progress Payments on Public Contracts; Retainage. The County will reserve and release retainage in accordance with Minn. Stat. § 15.72, subd. 2. The County will reserve retainage of five percent from each progress payment on a public improvement contract. Consistent with Minn. Stat. §15.72, the Contractor shall pay all remaining retainage to its subcontractors no later than ten days after receiving payment of retainage from the County, unless there is a dispute about the work under a subcontract. If there is a dispute about the work under a subcontract, the Contractor must pay out retainage to any subcontractor whose work is not involved in the dispute, and must provide a written statement detailing the amount and reason for the withholding to the affected subcontractor.

2.5.11.

When any of the above grounds for which payment is being withheld is removed, payment shall be made for the amount withheld.

2.5.12.

At the time of Project close out, the Contractor shall submit the following listed items and the final payment and the remaining retained percentage shall become due until the Contractor submits to the Owner each of the following:

1. Contractor IC-134;
2. Subcontractor(s) IC-134;
3. An affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or its property might in any way be responsible, have been paid or otherwise satisfied (the form of affidavit for use by the Contractor and all Subcontractors will be provided by the Owner to the Contractor prior to Project close-out);
4. Consent of surety, if any, to final payment;
5. Submission of two copies of operation and maintenance manuals with provided warranty documentation for products;
6. Two copies of as-built plans identifying modifications to original plans;
7. If required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising from the Agreement, to the extent and in such form as may be designated by the Owner;
8. Temporary Certificate of Occupancy, if applicable;
9. Final Certificate of Occupancy;
10. Substantial completion on Certificate (signed by the Architect/Engineer and the Contractor);
11. Completed punch list signed by the Contractor;
12. Storm water NPDES Notice of Termination (if applicable);
13. All Prevailing Wage Reports through the completion of the Work;
14. Final SBE report;
15. Final Diverse workforce report;
16. Copies of Project records and evidence that all required operation and maintenance training has been completed and all required training manuals, videos and similar or related documents. If any Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify it against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

Before final payment is made, the Contractor shall also make a satisfactory showing that it has complied with the provisions of Minn. Stat. § 290.92 requiring the withholding of state income tax from wages paid to the Contractor's employees for Work performed under the Agreement. Receipt by the Owner of a certificate of compliance from the Commissioner of Revenue will satisfy this requirement.

The Contractor has been advised that before the certificate can be issued Contractor must first place on file with the Commissioner of Revenue, an affidavit stating that Contractor has complied with the provisions of Minn. Stat. § 290.92. Unless the Contractor has presented an affidavit to the Owner's Representative showing that all claims against Contractor by reason of the Agreement have either been paid or satisfactorily secured, final payment may be withheld or a sufficient amount may be retained there from to cover the unpaid and potential claims.

2.6. Payment for Uncorrected Work

If the Owner directs the Contractor not to correct Work that has been damaged or that has not been performed in accordance with the Contract Documents, an equitable deduction from the Contract Price shall be made by means of a change order to compensate the Owner for the uncorrected Work.

2.7. Payment for Rejected Work and Materials

The removal of Work and Materials rejected and the re-execution of acceptable Work by the Contractor shall be at the expense of the Contractor, and they shall pay the cost of replacing the Work of other contractors destroyed or damaged by the removal of the rejected Work or Materials and the subsequent replacement of acceptable Work.

2.8. Payment for Extra Work

Written notice of claims for payments for extra Work ("Extra Work") shall be given by the Contractor within three (3) days after receipt of a Field Order from the Owner's Representative to proceed with the Extra Work and the written notice shall be made before any Extra Work is commenced by the Contractor, except in emergency situations endangering life or property. No claim for payment for the Extra Work shall be valid unless the written claim is made in the manner required by this Section. The Contractor shall submit to the Owner itemized estimate sheets showing all labor and material and items of cost of the Extra Work. If the Owner approves proceeding, a Change Order for the Extra Work shall be issued specifying an extension of the Contract Time, if any, and one of the following methods of payments: unit prices or combinations of unit prices which formed the basis of the original Contract; a lump sum based on the Contractor's estimate, approved by the Owner's Representative and accepted by the Owner; or actual cost plus overhead and profit for force account work.

2.9. Payment for Samples, Testing of Materials, and Compaction Testing

2.9.1.

Unless stated otherwise in the Contract Documents, testing of samples and Materials furnished shall be arranged and paid for by the Owner, unless the tests fail, in which case they shall be paid for by the Contractor. Compaction testing will be conducted and paid for by the Owner, unless the tests fail, in which case the Contractor shall pay for them.

2.9.2.

The Contractor shall submit samples for review of kind, color, pattern, and texture for a check of these characteristics with other elements and for a comparison of these characteristics between submittal and the actual component as delivered and installed. The Contractor shall transmit samples that contain multiple, related components such as accessories together in one submittal package. The Contractor shall maintain sets of approved samples at Project site, available for quality-control comparisons throughout the course of construction activity. Sample sets may be used to determine final acceptance of construction associated with each set. The Contractor shall submit manufacturer's color charts consisting of units or sections of units showing the full range of colors, textures, and patterns available. The Contractor shall submit one full set(s) of available choices where color, pattern, texture, or similar characteristics are required to be selected from manufacturer's product line. The Owner's Representative shall return the submittal with options selected.

2.10. Release of Liens

If required by the Owner, the Contractor shall submit other data establishing payment or satisfaction of all obligations, such as receipts, releases and waivers of liens arising from the Contract, to the extent and in such form as may be designated by the Owner. If any Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may

furnish a bond satisfactory to the Owner to indemnify it against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

2.11. Materials Furnished by the Contractor

2.11.1.

All Materials used in the Work shall be new unless otherwise provided for in the Contract Documents, shall meet the requirements of the specification be in conformance with samples provided, and shall not be incorporated into the Work until reviewed by the Owner's Representative.

2.11.2.

Unless otherwise specifically indicated in the Contract Documents, all Materials necessary for the proper execution of the work shall be furnished and paid for by the Contractor, whether temporary or not and whether incorporated into the Work or not.

2.11.3.

Manufactured articles, Materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditions as specified by the manufacturer.

2.11.4.

Materials, supplied or equipment to be incorporated into the Work shall not be purchased by the Contractor or the subcontractor subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

2.11.5.

The Owner may at its option pay for Materials that are purchased and stored offsite by the Contractor prior to their incorporation into the work.

2.12. Materials Furnished by Owner

Materials specifically indicated shall be furnished by the Owner. Before incorporating any of the Materials into the Work, the Contractor shall inspect the Materials so furnished by the Owner. If the Contractor discovers any latent defects in Material furnished by the Owner, they shall notify the Owner's Representative.

2.13. Storage of Materials

Materials shall be so stored by the Contractor as to insure the preservation of their quality and fitness for the Work. Stored Materials shall be located so as to facilitate prompt inspection. Private property shall not be used for storage purposes without the written permission of the owner or lessee thereof.

2.14. Independent Contractor

The Contractor is and shall remain an independent contractor throughout the term of this Agreement and nothing herein is intended to create, or shall be construed as creating, the relationship of partners or joint ventures between the parties or as constituting the Contractor as an employee of the County.

2.15. Successors, Subcontracting and Assignment

2.15.1.

The Contractor binds itself, its partners, successors, assigns and legal representatives to the County in respect to all covenants and obligations contained in this Agreement.

2.15.2.

After award, the Contractor shall not assign or transfer any interest in this Agreement without the prior written approval of the Owner and subject to such conditions and provisions as the County may deem necessary. The Contractor shall be responsible for the performance of all Subcontractors.

2.15.3.

The Contractor may utilize the services of specialty Subcontractors on those parts of the Work, which, under normal contracting practices, are performed, by specialty Subcontractors.

2.15.4.

If while completing the Project, additional Subcontractors are required, the Contractor shall notify the Owner in writing of the Subcontractor's name, contact information and the specific Work to be performed prior to the start of the work to be completed by the Subcontractor.

2.15.5.

The Contractor is responsible to the Owner for the acts and omissions of Contractor's Subcontractors, and of their direct and indirect employees, to the same extent as the Contractor is responsible for the acts and omissions of Contractor's employees.

2.15.6.

The Contract Documents shall not be construed as creating any contractual relations between the Owner or the Owner's Representative and any Subcontractor.

2.15.7.

The Contractor agrees to bind every Subcontractor and every Subcontractor agrees to be bound by the terms of the Contract Documents as far as applicable to the Subcontractor's Work.

2.15.8.

For convenience of reference and to facilitate the letting of contracts and subcontracts, the specifications are separated into titled sections. Such separations shall not, however, operate to make the Owner or Owner's Representative an arbitrator to establish limits to the contracts between the Contractor and Subcontractors.

2.15.9.

The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor by the terms of the Contract Documents insofar as applicable to the work of Subcontractors and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provision of the Contract Documents.

2.16. Compliance With Legal Requirements

2.16.1.

The Contractor shall comply with all applicable federal, state and local laws and the rules and regulations of any regulatory body having jurisdiction with respect to the Work of the Contractor and all licenses, certifications and other requirements necessary for the execution and completion of the contract.

2.16.2.

Unless otherwise provided in the Agreement, the Contractor, at its own expense, shall secure and pay for all permits, fees, charges, duties, licenses, certifications, inspections, and other requirements and approvals necessary for the execution and completion of the Work.

2.16.3.

If the Contractor observes that the specifications or drawings are at variance with any laws, ordinances, rules and regulations applicable to the Work, the Contractor shall give the Owner's Representative prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate modification. If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without prior written notice to Owner's Representative and the Owner's Representatives approval to proceed, the Contractor shall bear all costs arising therefrom; however, it shall not be the Contractor's primary responsibility to make certain that the Specifications and drawings are in accordance with such laws, ordinances, rules and regulations.

2.16.4.

The Contractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees on the Work and other persons who may be affected thereby, all the Work and Materials or equipment to be incorporated therein, whether in storage on or off the site and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

2.16.5.

The Contractor will erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for safety and protection. The Contractor will notify the Owner of adjacent utilities when prosecution of the Work may affect them. The Contractor will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts either of them may liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the Contractor.

2.16.6.

The Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and Owner's Representative has issued a notice to Owner and Contractor that the Work is acceptable.

2.16.7.

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

The Contractor shall at all times keep the chief of police, the fire chief, the city, county, state, and the Owner's Representative, informed of current traffic detours and patterns. If, at any time, the Contractor fails to adequately maintain any of the traffic control devices, the Owner's Representative may order the Contractor to install the devices, or have the County install, replace or maintain the devices and deduct the costs thereof from any monies due the Contractor. No direct compensation will be made for any flagmen required on the project under this Agreement. All necessary signing and barricading for lane closures and street closing shall be done in conformance with the "Minnesota Manual on Uniform Traffic Control Devices" and shall be the responsibility of the Contractor.

2.16.8.

In emergencies affecting the safety of persons or the Work or property at the site of the project or adjacent thereto, the Contractor, without special instruction or authorizations from the Owner's Representative or the Owner, shall act to prevent threatened damage, injury or loss. The Contractor shall give the Owner's Representative prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby, and a Change Order shall there upon be issued covering the changes and deviations involved.

2.17. Permitting

Except for permits or fees specifically identified in the Contract Documents as responsibility of the Owner to pay, the Contractor shall secure and pay for necessary permits, approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures and for permanent changes in existing facilities. The Owner does not have information about nor is it in control of possible requirements which may be deemed necessary by permitting authorities in order for the Contractor to perform the Work. The Contractor shall plan and coordinate Work approach details with permitting officials to achieve any condition deemed necessary by the permitting authority. Additions to or changes in the Contractor's anticipated approach to the Work as the result of requirements specified by the permit authority are incidental and will not result in added cost to the Owner.

2.18. Data Practices

2.18.1.

All data collected, created, received, maintained or disseminated for any purpose in the course of the Contractor's performance under this Agreement is subject to the provisions of the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, any other applicable state statutes, any state rules adopted to implement the Act and statutes, as well as federal statutes and regulations on data privacy.

2.18.2.

The Contractor designates Greg Urban as its Responsible Designee, pursuant to the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13.02 Subdivision 6, as the individual responsible for any set of data collected to be maintained by Contractor in the execution of this Agreement.

2.18.3.

The Contractor shall take all reasonable measures to secure the computers or any other storage devices in which County data is contained or which are used to access County data in the course of providing services under this Agreement. Access to County data shall be limited to those persons with a need to know for the provision of services by the Contractor. Except where client services or construction are provided, at the end of the Project all County data will be purged from the Contractor's computers and storage

devices used for the Project and the Contractor shall give the County written verification that the data has been purged.

2.19. Security

2.19.1.

The Contractor is required to comply with all applicable Ramsey County Information Services Security Policies ("Policies"), as published and updated by Information Services Information Security. The Policies can be made available on request.

2.19.2.

Contractors shall report to Ramsey County any privacy or security incident regarding the information of which it becomes aware. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with System operations in an information system. "Privacy incident" means violation of the Minnesota Government Data Practices Act (MGDPA) and/or the HIPAA Privacy Rule (45 C.F.R. Part 164, Subpart E), including, but not limited to, improper and/or unauthorized use or disclosure of protected information, and incidents in which the confidentiality of the information maintained by it has been breached. This report must be in writing and sent to the County not more than 7 days after learning of such non-permitted use or disclosure. Such a report will at least: (1) Identify the nature of the non-permitted use or disclosure; (2) Identify the data used or disclosed; (3) Identify who made the non-permitted use or disclosure and who received the non-permitted or violating disclosure; (4) Identify what corrective action was taken or will be taken to prevent further non-permitted uses or disclosures; (5) Identify what was done or will be done to mitigate any deleterious effect of the non-permitted use or disclosure; and (6) Provide such other information, including any written documentation, as the County may reasonably request. The Contractor is responsible for notifying all affected individuals whose sensitive data may have been compromised as a result of the Security or Privacy incident.

2.19.3.

Contractors must ensure that any agents (including contractors and subcontractors), analysts, and others to whom it provides protected information, agree in writing to be bound by the same restrictions and conditions that apply to it with respect to such information.

2.19.4.

The County retains the right to inspect and review the Contractor's operations for potential risks to County operations or data. The review may include a review of the physical site, technical vulnerabilities testing, and an inspection of documentation such as security test results, IT audits, and disaster recovery plans.

2.19.5.

All County data and intellectual property stored in the Contractor's system is the exclusive property of the County.

2.20. Indemnification

The Contractor shall indemnify, hold harmless and defend the County, its officials, agents, and employees against any and all liability, losses, costs, damages, expenses, claims or actions, including reasonable attorney's fees, which the County, its officials, agents, or employees may hereafter sustain, incur or be required to pay, arising out of or by reason of any act or omission of the Contractor, or its subcontractors, and their officers, agents or employees, in the execution,

performance, or failure to adequately perform the Contractor's obligations pursuant to this Agreement.

2.21. Contractor's Insurance

2.21.1.

The Contractor shall purchase and maintain such insurance as will protect the Contractor from claims which may arise out of, or result from, the Contractor's operations under this Agreement, whether such operations are by the Contractor or by any subcontractor, or by anyone directly employed by them, or by anyone for whose acts or omissions anyone of them may be liable.

2.21.2.

Throughout the term of this Agreement, the Contractor shall secure the following coverages and comply with all provisions noted. Certificates of Insurance shall be issued to the County contracting department evidencing such coverage to the County throughout the term of this Agreement.

2.21.3.

Commercial general liability of no less than \$1,000,000 per claim, \$5,000,000 per occurrence, \$5,000,000 general aggregate, \$5,000,000 products/completed operations total limit, \$5,000,000 personal injury and advertising liability.

2.21.3.1.

All policies shall be written on an occurrence basis using ISO form CG 00 01 or its equivalent. Coverage shall include contractual liability and XCU. Contractor will be required to provide proof of completed operations coverage for 3 years after substantial completion.

2.21.4. Workers' Compensation

Contractor certifies it is in compliance with Minnesota Statutes Ch. 176 (Workers' Compensation). The Contractor's employees, subcontractors and agents will not be considered County employees. Contractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota.

Required minimum limits of \$500,000/\$500,000/\$500,000. Any claims that may arise under Minnesota Statutes Ch. 176 on behalf of these employees, subcontractors or agents and any claims made by any third party as a consequence of any act or omission on the part of these employees, subcontractors or agents are in no way the County's obligation or responsibility.

If Minnesota Statute 176.041 exempts Contractor from Workers' Compensation insurance or if the Contractor has no employees in the State of Minnesota, Contractor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Contractor from the Minnesota Workers' Compensation requirements. If during the course of the contract the Contractor becomes eligible for Workers' Compensation, the Contractor must comply with the Workers' Compensation Insurance requirements herein and provide the County with a certificate of insurance.

2.21.5.

An umbrella or excess liability policy over primary liability insurance coverages is an acceptable method to provide the required commercial general liability and employer's

liability insurance amounts. If provided to meet coverage requirements, the umbrella or excess liability policy must follow form of underlying coverages and be so noted on the required Certificate(s) of Insurance.

2.21.6.

The Contractor is required to add Ramsey County, its officials, employees, volunteers and agents as Additional Insured to the Contractor's Commercial General Liability, Auto Liability, Pollution and Umbrella policies with respect to liabilities caused in whole or part by Contractor's acts or omissions, or the acts or omissions of those acting on Contractor's behalf in the performance of the ongoing operations, services and completed operations of the Contractor under this Agreement. The coverage shall be primary and non-contributory.

2.21.7.

If the contractor is driving on behalf of the County but not transporting clients as part of the contractor's services under this contract, a minimum of \$500,000 combined single limit auto liability, including hired, owned and non-owned.

2.21.8.

Whenever work at issue under Contract involve potential pollution risk to the environment or losses caused by pollution conditions, including asbestos, that may arise from the operations of the Contractor or Contractor's subcontractors, Contractor shall include completed operations coverage for 3 years after substantial completion. Coverage shall apply to sudden and gradual pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemical, liquids, or gases, natural gas, waste materials, or other irritants, contaminants or pollutants, including asbestos.

2.21.9.

The Contractor waives all rights against Ramsey County, its officials, employees, volunteers or agents for recovery of damages to the extent these damages are covered by the general liability, worker's compensation, and employers liability, automobile liability, professional liability and umbrella liability insurance required of the Contractor under this Agreement.

2.21.10. Railroad Protective

Where the contract requires work to be performed within 50 feet of the right-of-way of a railroad, the Contractor shall provide such insurance as the railroad company may require. The cost for such insurance shall be included in the construction budget as an allowance and itemized separately without any mark up.

2.21.11.

These are minimum insurance requirements. It is the sole responsibility of the Contractor to determine the need for and to procure additional insurance which may be needed in connection with this Agreement. Copies of policies and/or certificates of insurance shall be submitted to the County upon written request and within 10 business days.

2.21.12.

Certificates shall specifically indicate if the policy is written with an admitted or non-admitted carrier. Best's Rating for the insurer shall be noted on the Certificate, and shall not be less than an A-.

2.21.13.

The Contractor shall not commence work until it has obtained the required insurance and if required by this Agreement, provided an acceptable Certificate of Insurance to the County.

2.21.14.

All Certificates of Insurance shall provide that the insurer give the County prior written notice of cancellation or non-renewal of the policy as required by the policy provisions of Minn. Stat. Ch. 60A, as applicable. Further, all Certificates of Insurance to evidence that insurer will provide at least ten (10) days written notice to County for cancellation due to non-payment of premium.

2.21.15.

Nothing in this Agreement shall constitute a waiver by the County of any statutory or common law immunities, defenses, limits, or exceptions on liability.

2.22. Omission of Express Reference

Any Work that may reasonably be inferred from the Contract Documents, as being required to produce the intended result shall be supplied whether or not it is specifically called for. Work, Materials, or equipment described in words that so applied have a well-known technical or trade meaning shall be deemed to refer to such recognized standards.

2.23. Notice to Proceed

The date of commencement of the Work is the date set forth in the Notice to Proceed. If there is no Notice to Proceed, commencement shall be the effective date of the Agreement or such other date as may be established in the Agreement as the date the Work shall commence. Thereupon, the Contractor shall begin and shall prosecute the Work regularly and without interruption, unless otherwise directed in writing by the Owner, with such manpower and equipment as is necessary to complete the Work within the time stated in the Contract Documents.

2.24. Pre-Construction Conference

2.24.1.

Prior to the start of the Work, there will be a pre-construction conference arranged by the Owner's Representative. Representatives of effected government agencies, the Owner, the Contractor (including the project superintendent), the Contractor's Subcontractors, and utility companies shall be present at this meeting.

2.24.2.

At this meeting, the Contractor shall designate a competent Project superintendent. The Contractor shall also submit a list of phone numbers for the various Subcontractors, foremen and superintendents, including numbers to use in case of emergency.

2.24.3.

Also at this meeting, the Contractor shall submit in writing to the Owner's Representative for approval, a schedule of procedure indicating the order in which the Contractor proposes to perform the various stages of the Work, the dates on which the Contractor will start the several salient features thereof (including procurement of Materials and equipment), and the contemplated dates for completing the same. This schedule shall be in the form of a bar chart of a suitable scale to indicate appropriately the percentage of Work scheduled and completed at weekly intervals. The Contractor shall not deviate from the schedule after once approved without the written permission of the Owner's

Representative. The Contractor shall also submit a schedule of payments that the Contractor anticipates it will earn during the course of the Work, based on the schedule.

2.25. Audit

Until the expiration of six years after the furnishing of services pursuant to this Agreement, the Contractor, upon request, shall make available to the County, the State Auditor, or the County's ultimate funding source, a copy of the Agreement, and the books, documents, records, and accounting procedures and practices of the Contractor relating to this Agreement.

2.26. Notices

All notices under this Agreement, and any amendments to this Agreement, shall be in writing and shall be deemed given when delivered by certified mail, return receipt requested, postage prepaid, when delivered via personal service or when received if sent by overnight courier. All notices shall be directed to the Parties at the respective addresses set forth below. If the name and/or address of the representatives changes, notice of such change shall be given to the other Party in accordance with the provisions of this section.

County:

Nick Fahey 121 7th Place East, Suite 2300 St. Paul, MN 55101

Contractor:

Greg Urban 3781 Labore Rd, St. Paul, MN 55110

2.27. Non-Conforming Services

The acceptance by the County of any non-conforming goods/services under the terms of this Agreement or the foregoing by the County of any of the rights or remedies arising under the terms of this Agreement shall not constitute a waiver of the County's right to conforming services or any rights and/or remedies in respect to any subsequent breach or default of the terms of this Agreement. The rights and remedies of the County provided or referred to under the terms of this Agreement are cumulative and not mutually exclusive.

2.28. Setoff

Notwithstanding any provision of this Agreement to the contrary, the Contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the contract by the Contractor. The County may withhold any payment to the Contractor for the purpose of setoff until such time as the exact amount of damages due the County from the Contractor is determined.

2.29. Conflict of Interest

The Contractor shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Agreement. The Contractor warrants that it is not now aware of any facts that create a conflict of interest. If the Contractor hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to the County. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this subparagraph shall be deemed a material breach of this Agreement.

2.30. Respectful Workplace and Violence Prevention

The Contractor shall make all reasonable efforts to ensure that the Contractor's employees, officers, agents, and subcontractors do not engage in violence while performing under this Agreement. Violence, as defined by the Ramsey County Respectful Workplace and Violence Prevention Policy, is defined as words and actions that hurt or attempt to threaten or hurt people; it

is any action involving the use of physical force, harassment, intimidation, disrespect, or misuse of power and authority, where the impact is to cause pain, fear or injury.

2.31. Force Majeure

Neither party shall be liable for any loss or damage incurred by the other party as a result of events outside the control of the party ("Force Majeure Events") including, but not limited to: war, storms, flooding, fires, strikes, legal acts of public authorities, or acts of government in time of war or national emergency.

2.32. Unavailability of Funding - Termination

The purchase of goods and/or labor services or professional and client services from the Contractor under this Agreement is subject to the availability and provision of funding from the United States, the State of Minnesota, or other funding sources, and the appropriation of funds by the Board of County Commissioners. The County may immediately terminate this Agreement if the funding for the purchase is no longer available or is not appropriated by the Board of County Commissioners. Upon receipt of the County's notice of termination of this Agreement the Contractor shall take all actions necessary to discontinue further commitments of funds to this Agreement. Termination shall be treated as termination without cause and will not result in any penalty or expense to the County.

2.33. Termination by the County

2.33.1.

The County may immediately terminate this Agreement if any proceeding or other action is filed by or against the Contractor seeking reorganization, liquidation, dissolution, or insolvency of the Contractor under any law relating to bankruptcy, insolvency or relief of debtors. The Contractor shall notify the County upon the commencement of such proceedings or other action.

2.33.2.

The County may terminate this Agreement if the Contractor violates any material term or condition of this Agreement or does not fulfill in a timely and proper manner its obligations under this Agreement. In the event that the County exercises its right of termination under this Paragraph, it shall submit written notice to the Contractor and its surety, if any, specifying the reasons therefore. Termination shall be immediately effective upon the failure of the Contractor to cure the default within ten (10) business days of receipt of the notice of default. Upon termination, the Contractor shall take all actions necessary to discontinue further commitments of funds, and the County shall take possession of the site and of all materials and finish the construction by whatever method the County may deem expedient.

2.33.3.

The County may terminate this Agreement without cause upon giving at least thirty (30) calendar days written notice thereof to the Contractor. In such event, the Contractor shall be entitled to receive compensation for services provided in accordance with this Agreement up to and including the effective date of termination.

2.33.4.

This Agreement may be terminated by the County upon immediate written notice to the Contractor in the event that the Project is abandoned. If such termination occurs, the County shall pay the Contractor for services completed and for proven loss sustained upon materials, equipment, tools, construction equipment and machinery.

2.33.5.

Any termination by the County shall be without prejudice to the rights of the County to pursue other remedies against the Contractor.

2.34. Interpretation of Agreement; Venue

2.34.1.

The Agreement shall be interpreted and construed according to the laws of the State of Minnesota. All litigation regarding this Agreement shall be venued in the appropriate State or Federal District Court in Ramsey County, Minnesota.

2.34.2.

The provisions of this Agreement are severable. If any part of this Agreement is rendered void, invalid or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement.

2.35. Protection of Persons and Property

2.35.1.

The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to, County employees and other persons who may be affected; the Contractor's work and materials and equipment which are under the care, custody and control of the Contractor or any of the Contractor's subcontractors; and other property at the project site or adjacent thereto.

2.35.2.

Unless otherwise directed by the County's Authorized Representative, the Contractor shall promptly remedy damage or loss to property caused in whole or in part by the Contractor, its employees, officers, or subcontractor(s), or anyone directly employed by any of them, or by anyone for whose acts any of them may be liable.

2.36. Warranty

2.36.1.

The Contractor warrants that it has the legal right to provide the goods and services identified in this Agreement and further warrants that the goods and services provided shall be in compliance with the provisions of this Agreement.

2.36.2.

The Contractor shall expressly warrant and guarantee the workmanship, equipment and materials furnished to be in compliance with the terms of the Contract Documents. The warranty shall extend for a one (1) year period from and after the date of Substantial Completion. If any of the Work is found to be defective or not in accordance with the Contract Documents, Contractor shall correct the said condition promptly after receipt of written notice from the Owner. This includes the repairs of any damage to other parts of the property or Project resulting from such defects. Prior to commencement of the corrective Work, the Contractor shall provide insurance certificate policies, so as to protect the Owner, its Owner's Representative and their agents during the performance of the warranty Work. Acceptance by the Owner for the purpose of beginning the warranty period will be deemed to be when the Work is finally accepted by the Owner.

2.36.3.

The acceptance of any of the Work, or any part of it, shall not act to waive the liability on the part of the Contractor and the Contractor's surety.

2.36.4.

In the event that the Contractor should fail to make the repairs, adjustments or other Work that may be made necessary by defects in any of the Work, the Owner may do so and charge the Contractor the cost thereby incurred. The performance bond shall remain in full force and effect through the warranty/guaranty period. The Contractor's performance and payment bond delivered to the Owner pursuant to the Contract shall cover the Contractor's obligations provided for herein.

2.36.5.

Specific products used in the construction of the Work may include warranties specific to them and of a longer term than one (1) year. The Contractor shall provide written verification from the manufacturer of the product stating what the warranty covers and the time frame in which the warranty expires.

2.37. Infringement

2.37.1.

Complementary to other "hold harmless" provisions included in this Agreement, the Contractor shall, without cost to the County, defend, indemnify, and hold the County, its officials, officers, and employees harmless against any and all claims, suits, liability, losses, judgments, and other expenses arising out of or related to any claim that the County's use or possession of the software, licenses, materials, reports, documents, data, or documentation obtained under the terms of this Agreement, violates or infringes upon any patents, copyrights, trademarks, trade secrets, or other proprietary rights or information, provided that the Contractor is promptly notified in writing of such claim. The Contractor will have the right to control the defense of any such claim, lawsuit, or other proceeding. The County will in no instance settle any such claim, lawsuit, or proceeding without the Contractor's prior written approval.

2.37.2.

If, as a result of any claim of infringement of rights, the Contractor or County is enjoined from using, marketing, or supporting any product or service provided under the agreement with the County (or if the Contractor comes to believe such enjoinderment imminent), the Contractor shall either arrange for the County to continue using the software, licenses, materials, reports, documents, data, or documentation at no additional cost to the County, or propose an equivalent, subject to County approval. The acceptance of a proposed equivalent will be at the County's sole discretion. If no alternative is found acceptable to the County acting in good faith, the Contractor shall remove the software, licenses, materials, reports, documents, data, or documentation and refund any fees and any other costs paid by the County in conjunction with the use thereof.

2.38. Title - Risk of Loss

2.38.1.

Title to goods and/or all associated documentation shall pass to the County upon payment by the County for goods and/or associated documentation; or for construction projects, upon incorporation of the goods into the Project.

2.38.2.

The County shall be relieved from all risks of loss or damage to goods, and/or all documentation prior to the time title passes to the County as described above. The Contractor shall not be responsible for loss or damage to goods and/or documentation occasioned by negligence of the County or its employees.

2.39. Submittals

No portion of the work requiring submission of a shop drawing, drawing, manufacturer's literature, test data or other information, or a sample shall be commenced until the submittal has been approved by the County.

2.40. Clean Up

The Contractor shall at all times keep County premises free from accumulation of waste materials or rubbish caused by its operations.

2.41. Prevailing Wage (Construction and Labor)

2.41.1.

Contractors and all subcontractors of the Contractor shall conform to the labor laws of the State of Minnesota, [Ramsey County Prevailing Wage Ordinance No. 2013-329](#), and all other laws, ordinances, and legal requirements affecting the work in Ramsey County and Minnesota. The minimum wage rate per hour to be paid for each classification of work shall be the union wage rate in the locality of the project for those classifications over which unions have jurisdiction and the local prevailing rate for those classifications of work in the localities over which unions do not have jurisdiction.

The terms "prevailing wage", "minimum wage rate per hour", and "prevailing rate" as used in the contract, shall mean "prevailing wage rate" as defined in Minnesota Statutes §177.42.

Pursuant to Minnesota Statutes §§177.41 to 177.44 and corresponding Rules 5200.1000 to 5200.1120, all construction contracts funded in whole or in part by state funds are subject to the prevailing wages as established by the Minnesota Department of Labor and Industry. Specifically, all Contractors and subcontractors must pay all laborers and mechanics the established prevailing wages for work performed under the contract. Failure to comply with the aforementioned may result in civil or criminal penalties.

2.41.2.

Pursuant to the Ramsey County Prevailing Wage Ordinance No. 2013-329, the Prevailing Wage Rate must be paid under any contract with Ramsey County or under a subcontract to that contract with Ramsey County with an anticipated Project completion cost or anticipated Services contract value of over \$25,000.

2.41.3.

Throughout the term of this Agreement, the Contractor shall submit Certified Payroll Records within 14 days of the end of a pay period and in accordance with the requirements of Ramsey County Prevailing Wage Ordinance No. 2013-329. Failure of the Contractor to submit the Certified Payroll Records in accordance with the Ordinance may result in criminal or civil enforcement by the County, including, but not limited to termination of the agreement for cause, withholding of payments, and assessment of liquidated damages.

2.41.4.

For the purposes of this section, prevailing wage rates and basic hourly rates in the same or more similar trade or occupation in the area, and prevailing hours of labor, shall be as contained in the Certified Prevailing Wages for *Commercial Construction* or the Certified Prevailing Wages for *Highway and Heavy Construction* established by the State of Minnesota, Department of Labor and Industry, as set forth in Attachment A. Prevailing wage rates shall mean the Total Rate, consisting of Basic Hourly Rates plus Fringe Benefits. State of Minnesota Prevailing Wage Rates, current as of the date of the project's bid release, shall apply for the entire term of the Agreement.

2.41.5.

The Contractor shall post the applicable prevailing wage rates, hourly basic rates, and prevailing hours of labor, at a conspicuous location accessible by workers at the location of the Work. The Contractor shall physically include the requirements of the article and the schedules set forth in Attachment A in applicable agreements and contracts with Subcontractors, agents, or other persons doing or contracting to do all or any part of the Work under the Agreement. Incorporation of prevailing wage rates by reference in such agreements and contracts is not acceptable.

2.41.6.

In the event of any violation of the requirement that the Contractor or Subcontractor pay not less than 1-1/2 times the basic hourly rate to each laborer or mechanic employed directly on the job site when such employee is permitted or required to work in excess of the prevailing hours of labor, the Contractor or Subcontractor shall be liable for the unpaid wages.

2.42. Debarment and Suspension

Ramsey County has enacted Ordinance 2013-330 [Ramsey County Debarment Ordinance](#) that prohibits the County from contracting with contractors who have been debarred or suspended by the State of Minnesota and/or Ramsey County.

2.43. Project Labor Agreement

The County has determined that a Project Labor Agreement will not be required for this project.

2.44. Alteration

Any alteration, variation, modification, or waiver of the provisions of this Agreement shall be valid only after it has been reduced to writing and signed by both parties.

2.45. Performance and Payment Bonds

2.45.1.

The Contractor shall furnish a Performance and Payment bond, both meeting the following conditions:

2.45.1.1.

Issued by a bonding company licensed to do business in Minnesota.

2.45.1.2.

On the current list of Companies Holding Certificates of Authority as acceptable Sureties on Federal Bonds and as acceptable reinsuring companies as published in Circular 570 (Amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department.

2.45.1.3.

All bonds signed by an agent must be accompanied by a certified copy of the authority to act.

2.45.1.4.

Duly executed, notarized and updated Acknowledgment of both the Principal and Surety and the Surety's Power of Attorney must be attached to each of the two required bonds.

2.45.1.5.

Bond amounts shall not exceed the single bond limit for the Contractor's bonding company as set forth in the Federal Register current as of the bid date.

2.45.1.6.

Checks are not accepted in lieu of a Bond.

2.45.2.

The bonds shall each be in the amount of 100% of the Contract Price. The term "contract", as used herein, shall include the original agreement plus all subsequent change orders and/or amendments. The Contract Price to which the principal is bound shall be the amount as reflected by the terms of the contract.

2.45.3.

The bonds shall cover the faithful performance of the Contract and the payments of all obligations arising thereunder. No work shall begin until the County has received the proper bonds specified under this clause.

2.45.4.

Bonds shall indemnify the County for any loss sustained by the County on account of or by reason of the acts of the Contractor or the acts of anyone else directly or indirectly employed by the Contractor in the performance of the Work for the Project.

2.46. Schedule Progress

The Owner shall, at its discretion, hold bi-weekly meetings to monitor progress and coordinate activities at the location of the Work. The Contractor and its Subcontractors shall attend these meetings, provide any required documentation of progress and anticipated construction scheduling as required by the Owner. These meetings will be held at a time and location determined by the Owner.

If, in the opinion of the County, the Contractor falls behind the progress schedule, or if it appears that the Contractor will not achieve Substantial Completion in accordance with the agreed upon schedule, the Contractor shall take any and all steps necessary to improve the progress to assure Substantial Completion in accordance with the schedule, at no additional cost to the County.

The County may require the Contractor to submit for approval and at no additional cost to the County, such supplementary progress schedules as may be deemed necessary to demonstrate the manner in which the approved progress schedule or date of Substantial Completion will be regained.

Failure of the Contractor to comply with the requirements of this subparagraph shall be grounds for determination that the Contractor is not performing the Work with such diligence as will ensure completion within the time specified in the Agreement between the County and the Contractor. Upon such determination, the County may terminate the Contractor's right to

proceed with the Work, or any separable part thereof, in accordance with other applicable provisions of the Contract or may obtain the services required to bring the Work into compliance with the schedule at the Contractor's cost.

2.47. Changes in Work

Changes in the Work may be accomplished after execution of the contract by Change Order, Construction Change Directive, or order for a minor change in the Work, subject to the limitations stated in the Contract Documents. A change in the Work that affects the Contract Price or schedule may be made only by Change Order.

A Change Order shall be based upon agreement between the County and the Contractor; a Construction Change Directive may be issued by the County without the agreement of the Contractor; an order for a minor change in the Work may be issued by the Contractor.

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

Change Orders

A Change Order is a written instrument prepared by the Contractor and signed by the County and the Contractor stating their agreement upon all of the following:

- a change in the Work;
- the amount of the adjustment, if any, in the Contract Price; and
- the extent of the adjustment, if any, in the Project Schedule.

No work consistent with the changes in the Change Order shall commence until the Change Order has been reduced to writing and signed by both parties.

Construction Change Directives

A Construction Change Directive is a written order prepared and signed by the County, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Price, schedule, or both.

2.48. Minor Changes in the Work

The Contractor shall have authority to make minor changes in the Construction Documents and construction consistent with the intent of the Contract Documents when such minor changes do not involve adjustment in the Contract Price or extension of the Project schedule. The Contractor shall promptly inform the County, in writing, of minor changes in the Construction Documents and construction.

2.49. Oral Agreements

Verbal orders and suggestions as to the performance of the work may be given from time to time by the Owner's Representative, or by other representatives of the municipality, county, state or other government or regulatory agency through the Owner's Representative. When in the opinion of the Contractor, such verbal orders or suggestions entitles the Contractor to a change in Contract Price or Contract Time or both, the Contractor must request a Change Order from the Owner. No verbal order or suggestion of any representative or employee of the municipality, county, state or other governmental or regulatory agency, or of any other person, shall be construed as authorizing any claims on the part of the Contractor for extra compensation for labor, material or other items pertaining to such work, or for damages or any other expenses incurred because of the Contractor's compliance therewith. The Contract Price and Contract Time may only be changed by Change Order.

2.50. Maintenance of Record Drawings at Site and Shop Drawings

The Contractor shall maintain at the Project site for the County one record copy of the drawings, specifications, product data, samples, shop drawings, addenda, Change Orders and other modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be delivered to the County upon completion of construction as a record of the Work as constructed prior to final payment.

2.51. Final Inspection

2.51.1.

Upon written notice from the Contractor that the Project is completed, the Owner's Representative together with the Owner, and other appropriate parties, will make a preliminary inspection with the Contractor present. Upon completion of this preliminary inspection, the Owner's Representative will notify the Contractor, in writing, of any particulars in which this inspection reveals that the work is defective or incomplete. This list shall be referred to as a "Punch List".

2.51.2.

Upon receiving the Punch List from the Owner's Representative, the Contractor shall immediately undertake the actions required to remedy defects and complete the Project to satisfaction of the Owner and the Owner's Representative.

2.51.3.

When the Contractor has corrected or completed the items as listed in the Owner's Representative's written notice, the Contractor shall inform the Owner's Representative, in writing, that the required Work has been completed. Upon receipt of this notice, the Owner's Representative, in the presence of the Contractor, Owner, and other appropriate parties shall make their final inspection of the Work.

2.51.4.

If the Owner's Representative finds all Work satisfactory at the time of this second inspection, the Contractor will be allowed to make application for final payment in accordance with the provisions of the Contract Documents. If the Owner's Representative still finds dissatisfaction with the same Work, the Owner's Representative shall inform the Contractor of the deficiencies and will deny the Contractor's request for final payment, until such time as the Contractor has satisfactorily completed the required Work. The cost of the third or subsequent inspections shall be borne by the Contractor.

2.52. Final Payment

After the final inspection and acceptance by the Owner of all Work under the Contract, the Contractor shall prepare an application for final payment and submit it to the County for approval. The total amount of final payment due the Contractor under this Agreement shall consist of the total Contract Price as adjusted in accordance with approved Change Orders, less all previous payments to the Contractor and subject to withholding of any amount due the County as liquidated damages, as provided in Section xxx below, or as otherwise due under the Contract Documents or applicable law. The Application for final payment shall be accompanied by the following:

1. final lien releases and claim waivers (in a form acceptable to the County) by the Contractor and all persons performing Work and supplying material or services to the Contractor;

2. an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the County might in any way be responsible, have been paid or otherwise satisfied;
3. consent of surety, if any, to final payment;
4. two copies of Operation & Maintenance Manuals with provided warranty documentation for products and two copies of as-built plans identifying modifications to original plans;
5. if required by the County, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Agreement, to the extent and in such form as may be designated by the County;
6. the Certificate of Project Completion form (provided by the County);
7. a copy of the completed State of Minnesota Form IC-134, signed by the State Commissioner of Taxation, for the Contractor and its subcontractors; and
8. a complete report describing efforts and outcomes of those efforts towards achievement of Project SBE and labor utilization goals; and sustainability goals, if applicable.

2.53. Liquidated Damages

All time limits stated in these Contract Documents are of the essence of the Agreement. The County and the Contractor recognize that time is of the essence with regard to completion of the Work, and that the County will suffer financial loss, and other loss if the Work is not substantially completed or completed by the respective time specified in the approved project schedule, plus any extensions thereof allowed in accordance with the provisions of the Agreement. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding, the actual loss suffered by the County if the Work is not completed on time. Accordingly, instead of requiring any such proof, the County and the Contractor agree that as liquidated damages for delay (but not as penalty), Contractor shall be assessed the sum of **xxxx** dollars (**\$xxxx**) for each working day that expires after the time specified for Substantial Completion. After Substantial Completion, if the Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time specified in the approved project schedule, plus any extensions thereof allowed in accordance with the provisions of the Agreement, the Contractor shall be assessed the sum of **xxx** dollars (**\$xxx**) for each working day that expires after Substantial Completion and readiness for Final Payment until the Work is completed and ready for Final Payment. Both parties agree that the specified amount is a reasonable approximation of the damages that would be suffered by the County, which damages are difficult precisely to calculate. Assessed liquidated damages will be withheld from progress payments. If the assessed liquidated damages exceed the amount of unpaid progress payments, the Contractor shall pay the remainder upon receipt of an invoice from the County.

2.54. Warning Signs and Barricades

The Contractor shall at all times so conduct their Work as to insure the least possible obstruction to traffic and inconvenience to the general public and the residents in the vicinity of the Work, and to insure the protection of persons and property. No road or street shall be closed to the public except with the permission of the proper governmental authority. The Contractor shall warn effected motorists, pedestrians or residents of any construction practices or situations which could be dangerous, cause personal injuries or property damage. Fire hydrants on or adjacent to the work shall be kept accessible to fire-fighting equipment at all times. Temporary provisions shall be made by the Contractor to insure the use of sidewalks and the proper

functioning of all gutters, sewer inlets, drainage ditches and irrigation ditches, which shall not be obstructed. The Owner's Representative reserves the right to require immediate backfilling of any street area which the Owner's Representative deems it required for safe traffic circulation within or adjacent to the Work.

2.55. Crossing Utilities

2.55.1.

Where the prosecution of the Work results in the crossing of highways, railroads, streets or utilities under the jurisdiction of state, county, city or other public or private entities, the Contractor shall secure written permission from the proper authority to cross said highway, railroad, street or utility before further prosecuting the Work. A copy of the written document granting permission shall be filed with the Owner and Owner's Representative before any work is done. The Contractor shall be required to obtain a written release from the applicable authority upon completion of the Work. A copy of this written release shall be filed with the Owner and Owner's Representative before final acceptance of the work is granted.

2.55.2.

The Contractor shall protect that which is to remain and shall conduct all installation operations in a manner that will not damage or jeopardize the surrounding plant life designated to remain. Equipment operating around existing trees shall use extreme caution to prevent damage to roots, trunks, and branches. The Contractor shall verify the location and elevation of existing utilities in the area of work. Any damage to utilities, trees or other existing-to-remain items shall be repaired at the Contractor's expense.

2.56. Sanitary Provisions

The Contractor shall provide and maintain such sanitary facilities for the use of Contractor's employees and its Subcontractors as may be necessary to comply with the laws, rules or regulations of the federal, state, and local governments, or agencies or departments thereof.

2.57. Preservation of Historical Objects

2.57.1.

Where historical objects of potential architectural, archeological or paleontological nature are discovered within the areas on which the Contractor's operations are in progress, the Contractor shall restrict or suspend their operations in the immediate area of the discovery as may be necessary to preserve the discovered objects until the Owner has made arrangements for their disposition or has recorded the desired data relative thereto.

2.57.2.

The Contractor shall immediately notify the Owner of any historical objects discovered as the Work is being performed, and shall aid in the preservation and salvage program decided upon, as may be requested or ordered by the Owner. Work requiring a change to the Contract Price shall not be performed without the written authorization of the Owner.

2.57.3.

The Owner shall have the right to restrict or suspend the Contractor's operations in the immediate area where historical objects are discovered for a period not to exceed 72 hours, without claim being made by the Contractor for any damages they might suffer as a result thereof.

2.58. Lands by Owner

The Owner shall provide access to the lands shown on the drawings upon which the Work is to be performed. The Owner shall also provide or obtain the right-of-way for access to the land. Any delay by the Owner in furnishing access to the land shall be deemed proper cause for consideration of adjustment in the time of completion, but not in the Contract Price.

2.59. Land by Contractor

Any additional land and access thereto not shown on the drawings that may be required for temporary construction facilities or for storage of Materials shall be provided by the Contractor with no liability to the Owner. The Contractor shall confine its apparatus, storage of Materials, and operation of its workers to those areas described in the drawings and specifications; and such additional areas that may be provided at the contractor's expense. The Contractor shall notify the Owner's Representative in writing of those lands provided at the contractor's expense. The Contractor shall not disturb any areas outside of the construction limits including wetlands, woodlands and previously restored work areas.

2.60. Private Property

The Contractor shall not enter upon private property for any purpose without obtaining permission from the owner, and shall be responsible for the preservation of all public property, trees, monuments, etc., along and adjacent to the street and/or right-of-way, and shall use every precaution necessary to prevent damage or injury thereto. The Contractor shall protect carefully from disturbance or damage all monuments and property marks until the Owner's Representative has witnessed or otherwise referenced their location and shall not remove them until directed.

2.61. Shop Drawings

2.61.1.

The Contractor shall provide Shop Drawings as may be necessary for the prosecution of the Work as required by the Contract Documents. The Owner's Representative shall promptly review all shop drawings. The Owner's Representative's review of any Shop Drawing shall not release the Contractor from responsibility for deviations from the Contract Documents. The discovery of any Shop Drawing which substantially deviates from the requirements of the Contract Documents shall be evidenced by a Change Order or corrected and resubmitted by the Contractor, at the Owner's Representative's discretion.

2.61.2.

When submitting for the Owner's Representative's review, Shop Drawings shall bear the Contractor's certification that the Contractor has reviewed, checked and approved the Shop Drawings and that they are in conformance with the requirements of the Contract Document.

2.61.3.

Portions of the Work requiring a Shop Drawing or sample submission shall not begin until the Shop Drawing or submission has been reviewed by the Owner's Representative. A copy of each approved Shop Drawing and each approved sample shall be kept in good order by the Contractor at the site and shall be available to the Owner's Representative.

2.61.4.

Prepare Project-specific information, drawn accurately to scale. Do not base Shop Drawings on reproductions of the Contract Documents or standard printed data. Fully illustrate requirements in the Contract Documents. Include the following information, as applicable:

- a. Dimensions.
- b. Identification of products.
- c. Fabrication and installation Plans.
- d. Roughing-in and setting diagrams.
- e. Wiring diagrams showing field-installed wiring, including power, signal, and control wiring.
- f. Shop work manufacturing instructions.
- g. Templates and patterns.
- h. Schedules.
- i. Notation of coordination requirements.
- j. Notation of dimensions established by field measurement.
- k. Seal and signature of professional engineer if specified.
- l. Wiring Diagrams: Differentiate between manufacturer-installed and field-installed wiring.

2.61.5.

Submit opaque (bond) and electronic copies of each submittal. The Owner's Representative will return one copy.

2.62. Substitutions After Award of Agreement

Whenever a Material, article or piece of equipment is identified in the Contract Documents by reference to brand name or catalog number, it shall be understood that this reference is for the purpose of defining the performance or other salient requirements and that other products of equivalent capacities, quality and function shall be considered. The Contractor may recommend the substitution of a Material, article, or piece of equipment of equivalent substance and function for those referred to in the Contract Documents by reference to brand name or catalog number, and if, in the opinion of the Owner's Representative, such Material, article, or piece of equipment is of equivalent substance and function to that specified, the Owner's Representative may approve its substitution and use by the Contractor. Where applicable the Owner's Representative will only approve substitutions after the Contractor has received approval from the municipality, county, state or other regulatory agencies with jurisdiction. The Owner's Representative will not lobby for the approval of the substituted Material. Any cost differential shall be deductible from the Contract Price and the Contract Documents shall be appropriately modified by Change Order. The Contractor warrants that if substitutes are approved, no major changes in the function or general design of the Project will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the Contractor without a change in the Contract Price or Contract Time. Requests for review of substitute items will not be accepted by the Owner's Representative from anyone other than the Contractor. The Contractor shall reimburse the Owner for the charges incurred by the Owner's Representative to evaluate each proposed substitution.

2.63. Submittals

2.63.1.

No portion of the Work requiring submission of a Shop Drawing, drawing, manufacturer's literature, test data or other information, or a sample shall be commenced until the submittal has been approved by the Owner.

2.63.2.

The Contractor shall furnish one copy of complete product data for every manufactured item of equipment and all components to be used to perform the Work, including specific performance data, material description, rating, capacity, working pressure, material gauge or thickness, brand name, catalog number and general type. This data shall be compiled by the Contractor and reviewed by the Owner's Representative before any of the equipment is ordered. All data shall be indexed according to specification section and paragraph for easy reference. After review, this data shall become a part of the Contract, and may not be deviated from except upon the written approval of the Owner's Representative.

2.63.3.

Product data for equipment reviewed by the Owner's Representative does not in any case supersede the Contract Documents. The review of the Owner's Representative shall not relieve the Contractor from responsibility for deviations from drawings or specifications unless the Contractor has in writing called the Owner's Representative's attention to such deviations at the time of furnishing said data. Nor shall such review relieve the Contractor from responsibility for errors of any sort in the items furnished. The Contractor shall check the work described by the product data with the Contract.

2.63.4.

It shall be the responsibility of the Contractor to insure that items to be furnished fit the space available. The Contractor shall take necessary field measurements to ascertain space requirements, including those for connections and shall order such sizes and shapes of equipment that the final installation shall suit the true intent and meaning of the Drawings and Specifications.

2.63.5.

Where equipment requiring different arrangement of connections from those shown is approved, it shall be the responsibility of the Contractor to install the equipment so as to allow for proper operation and to be in harmony with the intent of the drawings and specifications, and to make all changes in the Work required by the different arrangement of connections.

2.64. Intent of Plans and Specifications

The intent of the Plans and Specifications is that the Contractor shall furnish all labor and materials, equipment and transportation necessary for the proper execution and completion of the Work unless specifically noted otherwise. The Plans and Specifications are complementary, and what is required by one shall be as binding as if required by all. Performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results. The Contractor shall do all the Work shown on the Plans and described in the Specifications and all incidental work considered necessary to complete the Project in an acceptable manner, and to fully complete the Work, ready for use, occupancy and operation by the Owner.

2.65. Discrepancies

Any ambiguity or discrepancy drawings and Specifications, no matter how seemingly insignificant to the Contractor, shall be brought immediately to the attention of the Owner's Representative for clarification. The Owner's Representative shall promptly correct such ambiguity or discrepancy in writing. If the Contractor fails to bring any ambiguity or discrepancy in writing of which it was or should have been aware, the Contractor shall assume the risk of loss because of, and shall be allowed no claim for the misinterpretation of, the drawings and Specifications contrary to the intended interpretation of the Owner's Representative. Work done by the Contractor after the Contractor's discovery of such discrepancies, inconsistencies or ambiguities shall be done at the Contractor's risk.

2.66. Additional Instructions and Detail Drawings

The Contractor may be furnished additional instructions and detail drawings by the Owner's Representative, as necessary, to carry out the Work required by the Contract Documents. The additional drawings and instruction thus supplied will become a part of the Contract Documents. The Contractor shall carry out the Work in accordance with the additional drawings and instructions.

Item Number: 2023-195

Meeting Date: 5/23/2023

Sponsor: Property Management

Title

Sale of the Ramsey County Care Center Property to NUWAY Alliance

Recommendation

1. Approve the sale of and Purchase and Sale Agreement for the Ramsey County Care Center property on Parcel #142922320001 with NUWAY Alliance, 2217 Nicollet Avenue South, Minneapolis, MN, 55404, in the amount of \$5,250,000.
2. Authorize the County Manager to create a Holding Project as a project budget in the 2023 Capital Projects Fund.
3. Authorize the County Manager to approve and execute the Purchase and Sale Agreement, settlements, closing documents, and other related real estate documentation associated with the disposition of the Ramsey County Care Center (Parcel #142922320001), in a form approved by the Ramsey County Attorney's Office.
4. Authorize the County Manager to execute amendments that do not have a financial impact on the disposition of the Ramsey County Care Center (Parcel #142922320001).
5. Authorize the County Manager to create a Ramsey County Care Center Closure Project within the Property Management budget.
6. Authorize the County Manager to reallocate up to \$340,000 from the Ramsey County Care Center 2022-2023 Capital Improvement Program Project budget to the Ramsey County Care Center Closure Project for one-time costs to complete the closure activities.
7. Approve the closure of the Ramsey County Care Center Capital Improvement Program Projects, with the remaining balances directed to the Capital Improvement Program contingent account.

Background and Rationale

On March 1, 2022, *The Future of the Ramsey County Care Center* was presented at a Ramsey County Board workshop. The County Manager recommended the closure of the facility due to challenges posed external environmental factors that would not dissipate, and a recognition that uncertainty over the Ramsey County Care Center would remain an ever-present issue for residents and staff under potential lease scenarios.

On September 21, 2022, the Ramsey County Care Center was permanently closed. Staff wishing to remain employed by Ramsey County were able to find alternative positions, and remaining clients were able to find alternative care. Personal property throughout the facility was subsequently sold, with revenue generated from the sale serving to offset the loss of revenue from operations. Property Management assisted in the closure of the facility and has continued to maintain the vacant 70,000+ square foot facility.

Property Management has sought opportunities to sell or lease the facility. The unique nature of the facility and its deferred maintenance have presented challenges to these efforts. On March 14, 2023, a closed meeting was held to consider an offer and counteroffer for the sale of the property. The terms for pursuing a sale of the facility to NUWAY Alliance were established. Thereafter, a letter of intent was successfully negotiated, and a purchase and sale agreement followed. The sale is expected to close in the next 60 days.

With the sale of the facility, approved 2022-2023 Capital Improvement Projects totaling \$2,365,861 are no longer required for their requested purposes. Reallocation of up to \$340,000 of these funds to a new project within Property Management for the one-time costs associated with closure of the facility and parcel separation for the sale is recommended. The remaining projects are recommended to be closed with balances directed to the Capital Improvement Program contingent account.

County Goals (Check those advanced by Action)

Well-being Prosperity Opportunity Accountability

Racial Equity Impact

The racial equity impact of the sale is unknown.

Community Participation Level and Impact

There is no community engagement for the sale of this parcel.

Inform Consult Involve Collaborate Empower

Fiscal Impact

The disposition of the parcel will result in \$5,250,000 of revenue not included in the county's 2023 Capital Improvements budget. Revenue received from the disposition will be deposited into a Holding Project in the county's 2023 Capital Projects Fund. Requests for use of funds will be presented to the Ramsey County Board through the request for board action process.

Capital Improvement Program Project funding previously awarded to the Ramsey County Care Center totaling \$2,366,000 will be partially reallocated to fund the capital project associated with closure of the Ramsey County Care Center in the amount of \$340,000, with the remaining balances to be transferred to the Capital Improvement Program contingent account.

Last Previous Action

On April 18, 2023, the Ramsey County Board authorized up to \$6.5 million in General Fund Reserve for one-time costed related to the 2022 closure of the Ramsey County Care Center (Resolution B2023-059).

On March 14, 2023, the Ramsey County Board held a closed meeting to develop or consider offers or counteroffers for the purchase or sale of real property known as the Ramsey County Care Center in Maplewood, MN.

On March 8, 2022, the Ramsey County Board approved the County Manager's recommendation to close the Ramsey County Care Center (Resolution B2022-074).

Attachments

1. Purchase and Sale Agreement with NUWAY Alliance

PURCHASE AND SALE AGREEMENT

This **PURCHASE AND SALE AGREEMENT** (“Agreement”) is made and entered into as of _____, 2023 (“Effective Date”) by and between the County of Ramsey, a political subdivision of the State of Minnesota (“Seller”), and NUWAY Alliance, a Minnesota non-profit corporation (“Buyer”).

1. **Purchase and Sale.** Subject to the terms and conditions of this Agreement, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, all of the following described property (collectively, the “Property”):

A. *Real Property.* That certain real property located at 2000 White Bear Avenue North, in the City of Maplewood, County of Ramsey, State of Minnesota, and legally described on **Exhibit A** (the aforesaid real property, together with all tenements, hereditaments, easements, rights-of-way, and appurtenances are collectively referred to as the “Real Property”), and as depicted on **Exhibit B**;

B. *Improvements.* The buildings located on the Real Property together with all other structures, fixtures, and Seller’s right, title and interest, without warranty, in any underground tunnels located on the Real Property. For purposes of this Agreement, “structures” includes a garage; heating plant; water tower; enclosed passageway from the main building to the heating plant; two (2) gazebos; one (1) pavilion; one (1) monument sign on White Bear Avenue; one (1) monument sign in front of the main building; and a fence at the south and east boundary of the Real Property. All of the buildings, structures, fixtures, and the underground tunnel are, collectively, the “Improvements”;

C. *Personal Property.* All of Seller’s right, title and interest, without warranty, in that certain equipment, mechanical systems, and other tangible personal property owned by Seller located in the Improvements or on the Real Property, excluding the items listed on **Exhibit C**, which are not included in the sale (collectively, the “Personal Property”); and

D. *Intangible Property.* All of Seller’s right, title and interest, if any, without warranty and to the extent assignable without cost to Seller, in that certain intangible property owned by Seller and used solely in connection with Seller’s operation of the Real Property and the Improvements, if any, including, without limitation, (i) at no cost to Seller, all of Seller’s transferable permits, licenses, certificates and approvals issued in connection with the Real Property and the Improvements, and (ii) at no cost to Seller, all of Seller’s plans and specifications, operating manuals, guaranties and warranties with respect to the Real Property and/or the Improvements (collectively, the “Intangible Property”).

2. **Purchase Price.** Subject to the prorations and credits hereinafter provided, the purchase price (“Purchase Price”) for the Property shall be Five Million Two Hundred Fifty Thousand and 00/100 Dollars (\$5,250,000.00), which shall be payable and allocated as set forth below:

A. *Earnest Money.* Buyer shall deposit as earnest money the amount of \$50,000.00 (“Earnest Money”) into escrow (the “Earnest Money Escrow”) pursuant to a joint order escrow

agreement to be entered into by Seller and Buyer with First American Title Insurance Company, National Commercial Services, 121 South 8th Street, Suite 1250, Minneapolis, Minnesota 55402 (“Title Insurer”), as escrowee (“Escrowee”), in the form attached to this Agreement as **Exhibit D** (the “Earnest Money Escrow Agreement”). The Earnest Money shall be deposited by Buyer into the Earnest Money Escrow within five (5) business days following the execution of the Agreement by Seller and Buyer. Provided this Agreement is not otherwise terminated pursuant to its terms, the Earnest Money shall be transferred to the Closing Escrow (as defined below) upon establishment of the Closing Escrow. The Earnest Money shall be invested only upon the sole direction and at the sole cost of Buyer, and, except as specifically set forth in this this Agreement to the contrary, all interest earned on such Earnest Money shall accrue to the benefit of Buyer.

B. *Payment of Cash Balance.* On or before the Closing Date (as defined in Section 10 of this Agreement), Buyer shall deposit with Escrowee the balance of the Purchase Price by federal wire transfer, together with such additional funds for Buyer’s share of closing costs and prorations as may be required pursuant to this Agreement.

C. *Method of Payment.* All cash payments by Buyer will be in U.S. Dollars, and in the form of wire transfer, certified checks, or other immediately available funds.

3. **Title.**

A. *Conditions of Title.* Title to the Real Property shall be conveyed by Seller to Buyer by limited warranty deed (“Deed”), subject to the Permitted Encumbrances included in the Title Commitment and those listed in **Exhibit E** (collectively, “Permitted Encumbrances”).

B. *Title Insurance Commitment.* Within ten (10) days after the Effective Date, Seller shall deliver to Buyer: (i) a commitment for an ALTA 2006 Owner’s Policy of Title Insurance issued by Title Insurer (“Commitment”), showing title to the Real Property in Seller; and (ii) to the extent available, legible copies of all documents cited, raised as exceptions, or noted in the Commitment (collectively, the “Title Documents”). Buyer has the right to object to any exceptions in the Commitment during the Inspection Period by providing Seller written notice of its objections (“Title Objection”). Seller may elect to cure any such Title Objection or elect not to cure such Title Objection by written notice to Buyer within five (5) days of Seller’s receipt of Buyer’s objection. If Seller fails to provide written notice, Seller will be deemed to have elected not to cure any Title Objection. If Seller elects or is deemed to elected not to cure Buyer’s Title Objection, then Buyer will have the right to either (i) terminate this Agreement, and upon such termination, the Earnest Money will be returned to Buyer, along with any interest earned on the Earnest Money; or (ii) continue to Closing and Buyer’s Title Objection will become a Permitted Encumbrance. If Seller elects to cure Buyer’s Title Objection but fails to cure by the Closing Date, then Buyer may either (i) delay Closing until such time as the Title Objection is cured, or (ii) terminate this Agreement and upon such termination the Earnest Money will be returned to Buyer, along with any interest earned on the Earnest Money.

C. *Policy.* As a condition to Closing, Seller agrees to cause Title Insurer to issue to Buyer, as of the Closing Date, Title Insurer’s ALTA 2006 Owner’s Policy of Title Insurance

with GAP coverage (“Policy”), in the amount of the Purchase Price, based on the Commitment, showing fee simple title to the Real Property vested in Buyer, subject to the documents of record shown and accepted by Buyer on the Commitment, with extended coverage over all general exceptions. Buyer shall be responsible for the costs of and premium for the Policy with extended coverage over all general exceptions (excluding the costs of Buyer’s title endorsements), and at no cost to Seller, Seller shall use commercially reasonable efforts to cooperate with Buyer with its efforts to obtain those certain title endorsements as may be reasonably requested by Buyer.

4. **Inspections.** At Buyer’s cost, Buyer may conduct a general physical inspection of the Real Property, which shall be completed no later than thirty (30) days after execution of this Agreement. At Buyer’s cost, Buyer shall conduct an environmental inspection of the Property, which shall be completed no later than thirty (30) days after execution of this Agreement (“Inspection Period”). Buyer has the right to terminate this Agreement in its sole discretion prior to the expiration of the Inspection Period by providing written notice to Seller. If Buyer exercises its right to terminate this Agreement, this Agreement will terminate, and the Earnest Money will be returned to Buyer, along with any interest earned on the Earnest Money, without Seller having a right to object.

5. **Approvals from the City of Maplewood.**

A. *Zoning and Land Use Approvals.* Immediately upon execution of this Agreement, Buyer shall submit application(s) to the City of Maplewood (“City”) for any and all required zoning and land use approvals related to Buyer’s intended use of the Real Property. Seller shall cooperate in Buyer’s application(s), and reasonably assist Buyer in completion of the City approvals process.

B. *Establishment of New Property Boundary.* Seller and Buyer acknowledge that the Real Property is part of a larger Seller-owned property, which includes certain improvements and curtilage that are not included in the Real Property described in this Agreement. Seller and Buyer further acknowledge that Seller, at Seller’s cost, has begun the survey work necessary to subdivide the Real Property from the Seller-owned property (the “Subdivision Survey”). At Seller’s cost, Seller shall submit an application to the City to obtain approval of the subdivision/boundary adjustment. Buyer shall cooperate in Seller’s application, and reasonably assist Seller in completion of the City approvals process. Seller shall provide Buyer with a copy of the Subdivision Survey within thirty (30) days of approval of the subdivision/boundary adjustment by the City. In addition to the Subdivision Survey, Buyer shall obtain an ALTA survey for the Real Property (the “ALTA Survey”), no later than thirty (30) days after the Effective Date.

C. *Timing of Approvals.* Seller and Buyer acknowledge that certain approvals by the City shall be subject to the timeframe established in Minnesota Statutes § 15.99, which could be up to one hundred twenty (120) days from the date the City deems an application complete. Accordingly, Seller and Buyer have agreed to the following contingencies related to the timing of City approvals:

- i. Denial Prior to Closing (Buyer). If the City denies any part of Buyer's application(s) prior to Closing, and such denial renders the Property unusable for Buyer's purposes, Buyer may terminate this Agreement without any further obligation to Seller regarding the Property. If Buyer terminates this Agreement pursuant to this paragraph, the Earnest Money, along with any interest earned on the Earnest Money, will be returned to Buyer.
- ii. Denial Prior to Closing or Incomplete at Time of Closing (Seller). If the City denies Seller's application for the subdivision/boundary adjustment, or if the City's approval is not complete at the time of closing, Seller may, at its option, request a reasonable delay in Closing, or terminate this Agreement without any further obligation to Buyer regarding the Property. If Seller terminates this Agreement, the Earnest Money, along with any interest earned on the Earnest Money, will be returned to Buyer.
- iii. Incomplete at Time of Closing (Buyer). If the City approval(s) are not complete at the time of Closing, Buyer may, at its option, request a reasonable delay in Closing, or proceed to the Closing as provided in Section 9 of this Agreement. Buyer assumes all risk associated with proceeding to Closing without final City approval(s). Any improvements or alterations Buyer may make to the Property will remain with the Property at Buyer's cost.
- iv. Denial Following Closing (Buyer). If the City denies any part of Buyer's application(s) after Closing, and such denial renders the Property unusable for Buyer's purposes, Buyer may request that Seller repurchase the Property as provided in Section 9 of this Agreement.

D. The provisions of this Section 5 shall survive the Closing.

6. **Disconnection of Water Service to Adjacent Property**. Seller owns the property that is adjacent to the Property to the north, east, and south of the Property (the "Seller Property"). The "Water Service" to the Seller Property (as described in this Section 6) is connected to the Real Property through pipes that generally extend north from the Real Property, through the tunnel under the paved area on the Property and the access road between the Property and the Seller Property. Seller is required to disconnect the Water Service as follows:

A. At Seller's sole cost and expense, Seller will use reasonable efforts to complete the disconnection of the Water Service on the Real Property prior to Closing.

B. If Seller is unable to complete the disconnection of the Water Service prior to Closing, Seller will pay for Seller's portion of water costs until the disconnection project is complete.

C. In the event Seller is unable to complete all work related to the disconnection of the Water Service prior to Closing, for a period of one year following Closing, Seller shall have the right to enter onto the Property to complete the disconnection project.

D. This disconnection of the Water Service will not affect the water service to the Property.

E. The provisions of this Section 6 shall survive the Closing.

7. **Disconnection of Interconnecting Tunnel to Seller Property**. The Property is connected by a tunnel to the Seller Property (“Tunnel”), which provides access to the Water Service pipes for Seller, and access to the fuel tank pipes for Buyer. The Tunnel generally extends north from the Property, under the paved area on the Property and the access road between the Property and the Seller Property. This sale and conveyance includes only that portion of the Tunnel that is located on the Property and extends to the boundary between the Property and the Seller Property. Approximately 12 feet from the tunnel entry point located on the Property, the tunnel branches to the west for the pipes connected to the fuel tank that serves the Property. Seller is required to disconnect Tunnel access between the Property and the Seller Property as follows:

A. At Seller’s sole cost and expense, Seller will use reasonable efforts to complete a barricade project inside the Tunnel on the Real Property prior to Closing. The barricade project will include construction of a barricade on the Real Property in a location mutually agreed upon by Buyer and Seller; and a second barricade on the Seller Property.

B. In the event Seller is unable to complete the barricade project prior to Closing, for a period of one year following Closing, Seller shall have the right to enter onto the Property to continue the barricade project.

C. The provisions of this Section 7 shall survive the Closing.

8. **Additional Agreements**. Seller and Buyer shall execute the following separate agreements prior to Closing in a form reasonably acceptable to Buyer and Seller, related to the locations on the Property and the Seller Property as depicted on **Exhibit B**, and all of which shall be Permitted Encumbrances along with those set forth in **Exhibit C**:

A. A Reciprocal Easement Agreement covering the following:

- Access from Buyer to Seller, related to the emergency exit for the building located on the Seller Property to the east;
- Access from Seller to Buyer related to the emergency exit from lower level on the east side of the main building on the Real Property; for ingress and egress from the lower level of the building for Buyer’s equipment; and for limited use of the parking lot on the Seller Property for the purpose of such ingress and egress;
- Access from Seller to Buyer related to the paved access road and street between Van Dyke Street and White Bear Avenue;
- Access for gas line service to the Real Property, which connects to the Property inside the heating building, and for which the meter is located on the Seller Property;

B. A Drainage and Utility Easement allowing access from Seller to Buyer of thirty (30) feet at the south boundary of the Property for ponding and drainage of stormwater from

the Property and the Seller Property to the south;

C. A Right-of-Way Easement allowing access from Buyer to Seller for sixty (60) feet of road Right-of-Way on the west side of the Property, parallel to White Bear Avenue; and

D. Other agreements necessary to make the Property suitable to Buyer's Use and Seller's uses of adjacent properties.

9. **Seller's First Option to Repurchase; Additional Covenant.** Recognizing the interest of the public in the Property, Seller shall have the first option to repurchase the Property according to the following terms:

A. **Repurchase After City Denial.** If any part of Buyer's application(s) for City approvals are denied within the first one hundred twenty (120) days after Closing, and such denials render the Property unusable for Buyer's purposes ("City Denial"),

- i. Seller will repurchase the Property from Buyer at the Purchase Price;
- ii. Buyer will pay all closing costs related with the reconveyance to Seller;
- iii. Seller will retain all improvements or alterations made to the Property by Buyer between Closing and the date of the City Denial or the new closing date, whichever is later;
- iv. If Buyer has commenced a project to alter or improve any part of the Property, and if at the time of the City Denial such a project is incomplete and creates a dangerous condition on the Property or renders the Property unsuitable for any other user, Buyer shall, at its own cost and expense, complete that project as soon as practicable to the satisfaction of Seller; and
- v. Except as set forth in Section 9.A.iv., between the date of the City Denial and the agreed-upon date by which Buyer must quit and vacate the Property, Buyer will make no further alterations or improvements to the Property. In any event or circumstance, Buyer will commit no waste on or about the Property.

B. **Repurchase at Purchase Price.** If Buyer wishes to dispose of the Property within five years of Closing,

- i. Buyer shall notify Seller of its desire to dispose of the Property, which notice shall be delivered as set forth in Section 22.B. of this Agreement;
- ii. Seller may, at its option, subject to Section 9.A.i., repurchase the Property for the Purchase Price set forth in this Agreement;
- iii. If Seller chooses to repurchase the Property:
 1. Seller shall notify Buyer of its decision regarding this First Option to Repurchase within sixty (60) days of notice from Buyer, with such notice from Seller being delivered as set forth in Section 22.B. of this Agreement;
 2. Seller and Buyer will each pay one half of closing costs related to the reconveyance to Seller;
 3. Buyer will be responsible for the payment of all assessed and payable property taxes along with any pending or levied special assessments until such time that the Property becomes exempt due to the return to public ownership; and

4. Buyer shall convey the Property back to Seller free and clear of any mortgages, liens, or other security; and
- iv. If Seller declines to exercise this First Option to Repurchase, Buyer may dispose of the Property in its reasonable discretion for a use in conformance with applicable City Code sections. Buyer must receive Seller's notification that Seller declines to repurchase the Property, or wait sixty (60) days after delivering notice pursuant to Section 22.B. of this Agreement, whichever is longer, before offering the Property for sale to another buyer.

C. Repurchase at Fair Market Value. If Buyer wishes to dispose of the Property after 5 years have elapsed since Closing,

- i. Buyer shall notify Seller of its desire to dispose of the Property, which notice shall be delivered as set forth in Section 22.B. of this Agreement;
- ii. Seller may, at its option, repurchase the Property for the fair market value of the Property at the time of repurchase;
- iii. Fair market value at the time of repurchase will be determined by an independent appraiser at Buyer's sole cost and expense;
- iv. If Seller chooses to repurchase the Property:
 1. Seller shall notify Buyer of its decision regarding this First Option to Repurchase within sixty (60) days of notice from Buyer, with such notice from Seller being delivered as set forth in Section 22.B. of this Agreement;
 2. Seller and Buyer will each pay one half of closing costs related to the reconveyance to Seller;
 3. Buyer will be responsible for the payment of all assessed and payable property taxes along with any pending or levied special assessments until such time that the Property becomes exempt due to the return to public ownership; and
 4. Buyer shall convey the Property back to Seller free and clear of any mortgages, liens, or other security; and
- v. If Seller declines to exercise this First Option to Repurchase, Buyer may dispose of the Property in its reasonable discretion for a use in conformance with applicable City Code sections. Buyer must receive Seller's notification that Seller declines to repurchase the Property, or wait sixty (60) days after delivering notice pursuant to Section 22.B. of this Agreement, whichever is longer, before offering the Property for sale to another buyer.

D. *Additional Covenant.* Concurrent to Closing, Buyer shall execute and deliver to Seller a Declaration of Covenant that shall be recorded on title of the Property, and shall serve as a primary lien on the Property with priority over any Note or security given by Buyer to secure financing to purchase the Property. The Declaration of Covenant is attached to this Agreement as Exhibit F.

10. Closing Escrow and Closing Date. The transaction contemplated by this Agreement shall be consummated by means of Title Insurer's customary deed and money escrow (the "Closing Escrow") to be opened with the Title Insurer as Escrowee on or prior to the Closing Date, in the normal form of agreement provided by the Title Insurer (the "Closing Escrow Agreement"), with

such special provisions inserted in the Closing Escrow Agreement as may be required to conform with this Agreement or by closing escrow letters from counsel of each party with directions to Title Insurer regarding such parties' requirements for Closing. In the event of any conflict between the Closing Escrow Agreement and this Agreement, the terms of this Agreement shall prevail. If this Agreement is not otherwise terminated pursuant to this Agreement, the consummation of the transaction contemplated in this Agreement (the "Closing") shall be the earlier to occur of (i) May 31, 2023, and (ii) such other date as agreed upon in writing by and between Seller and Buyer (the "Closing Date"). The Closing shall take place via an escrow closing by delivery of the documents to the office of Title Insurer.

11. Closing Documents.

A. *Seller's Closing Documents to be Delivered on or Before the Closing Date.* Seller shall deliver to Escrowee pursuant to the Closing Escrow Agreement, or to Buyer under this Agreement, as applicable, on or before the Closing Date, the following instruments and executed documents, all of which shall be reasonably acceptable to Buyer:

- i. An original Deed for Real Property executed and notarized by Seller;
- ii. A bill of sale and assignment of the Personal Property executed by Seller in favor of Buyer;
- iii. Proof of Seller's authority to enter into and carry out this transaction;
- iv. Entity Transfer Certification confirming that Seller is a "United States Person" within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended;
- v. All keys and other rights of access to the Property;
- vi. A certificate, dated as of the date of Closing, stating that the representations and warranties of Seller contained in this Agreement are true and correct to Seller's knowledge in all material respects as of the date of Closing (with appropriate modifications of those representations and warranties made in accordance with Section 14 of this Agreement);
- vii. The applicable transfer tax forms;
- viii. Any other documentation, undertakings or agreements reasonably required of Seller by Title Insurer; and
- ix. A closing statement issued by the Title Insurer describing all prorations and other applicable credits as of the Closing Date (the "Closing Statement") executed by Seller.

B. *Deliveries by Buyer on or Before the Closing Date.* Buyer shall deliver to Escrowee pursuant to the Closing Escrow Agreement or to Seller, as applicable, on or before the Closing Date, the following monies, instruments, and documents, all of which shall be reasonably acceptable to Seller:

- i. The balance of the Purchase Price plus or minus Buyer's share of closing costs and prorations, pursuant to the terms of this Agreement;
- ii. Proof of Buyer's authority to enter into this transaction, certified by Buyer;
- iii. Information necessary to assist Seller in preparing the applicable transfer tax forms;

- iv. A certificate, dated as of the date of Closing, stating that the representations and warranties of Buyer contained in this Agreement are true and correct to Buyer's knowledge in all material respects as of the date of Closing;
- v. Any other documentation, undertakings or agreements reasonably required of Buyer by Title Insurer; and
- vi. A countersigned copy of the Closing Statement executed by Buyer.

12. Allocation of Closing Costs and Expenses.

A. Seller shall pay the cost and expense of: (i) the cost of obtaining the Commitment, which includes the Title Insurer's search and exam fees in connection with the Commitment, if any; (ii) the Minnesota state deed tax imposed on the conveyance contemplated under this Agreement; (iii) the recording of releases of any mortgages or other instruments necessary to provide clean title in accordance with the terms of this Agreement; (iv) the costs of recording the Deed, and (v) one-half of any and all of the Escrowee's fees and "New York Style" closing fee.

B. Buyer shall pay the cost and expense of: (i) the costs of and premium for the Policy with extended coverage over all general exceptions, and all of those certain title endorsements for the Policy as requested by Buyer; (ii) the cost of the ALTA Survey; (iii) any third-party inspection costs commissioned by Buyer; and (iv) one-half of any and all of the Escrowee's fees and "New York Style" closing fees.

C. Except as otherwise stated in this Agreement, each party shall pay its own legal and professional fees and fees of their consultants.

13. Prorations.

A. *Real Estate Taxes; Special Assessments.* If there are any, Buyer and Seller shall prorate the real estate taxes as of the Closing Date.

B. *Method of Proration and No Reproration.* The Closing Date shall be an income and expense date for Seller. All expenses in this section shall not be reprorated after the Closing Date, and as between Buyer and Seller, such estimated amounts shall be deemed final as of the Closing Date. The provisions of this Section 13 shall survive the Closing.

14. Representations and Warranties of Seller. Seller represents and warrants to Buyer, as of the Effective Date and as of the Closing Date, as follows:

A. *Seller's Authority.* Seller is a political subdivision of the State of Minnesota, and has all requisite power and authority to carry on its business as conducted, to execute and deliver this Agreement, and the documents entered into pursuant to this Agreement, and to carry out its obligations under this Agreement and such documents, subject to the approval of the Ramsey County Board of Commissioners as required by Section 22.A. of this Agreement.

B. *Documents.* This Agreement and the documents entered into pursuant to this Agreement have been duly authorized, executed, and delivered on behalf of Seller and constitute the valid and binding agreements of Seller, enforceable in accordance with their terms. The Documents delivered to Buyer are true and correct copies, have not been amended or modified, and if currently in full force and effect are free from default or notice of default.

C. *No Breach.* The execution, delivery, and performance by Seller of this Agreement, and the documents entered into pursuant to this Agreement, will not result in a breach or violation by Seller or constitute a default by Seller under any agreement, instrument, or order to which Seller is a party or by which Seller is bound.

D. *No Liabilities.* As of Closing, there will be no obligations or liabilities of any kind or nature whatsoever, including but not limited to, any tax liabilities, contract liabilities, or tort liabilities for which or to which Buyer or the Property will be liable or subject.

E. *OFAC.* Seller is not, nor will Seller become, a person or entity with whom United States persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control (“OFAC”) of the Department of the Treasury (including those named on OFAC’s Specially Designated and Blocked Persons List) or under any statute, executive order (including, without limitation, the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action, and is not and will not engage in any dealings or transactions or be otherwise with such person or entities.

F. *Seller Employees.* At the time of the Closing on the Closing Date, Seller will not have any employees on-site at the Property in connection with the management, operation or maintenance of all or any portion of the Property, except for Seller staff and/or contractors needed to complete the Water Service project and the Tunnel project set forth in Sections 6 and 7, respectively, of this Agreement.

G. *Litigation.* There is no litigation pending or, to Seller’s knowledge, litigation threatened in writing that pertains to the Property.

H. *No Conflicts.* Neither the execution, delivery, or performance of this Agreement by Seller, nor the consummation of the transactions contemplated by this Agreement will (a) violate or conflict with any provision of the organizational documents of Seller, or (b) violate any order, judgment, injunction, award or decree of any court or arbitration body, by or to which Seller is or may be bound or subject.

I. *Notices.* Seller has not received notice of any of the following:

- i. Notice of a violation of any building codes, fire codes, health codes, zoning codes, environmental laws, or other laws and regulations affecting the Property or the use of the Property;

- ii. Notice of a condemnation, environmental, zoning, or other regulation or proceeding being instituted or planned which would detrimentally affect the use and operation of the Property; or
- iii. Notice of hearing of a public improvement project from any governmental assessing authority, the costs of which may be assessed against the Property.

J. *Fixtures.* Seller is not aware of any non-operational fixtures or any major repairs necessary on the Property. Seller makes no warranty as to the functionality or operation of any buildings or fixtures, mechanical or otherwise, located on the Property.

K. *Wells.* Seller does not know of any wells on the Property (this statement being made pursuant to the disclosure requirements of Minnesota Statutes § 103I.235).

L. *Individual Sewage Treatment Systems.* Seller does not know of any individual sewage treatment systems on the Property or serving the Property (this statement being made pursuant to the disclosure requirements of Minnesota Statutes § 115.55).

M. *Storage Tanks.* Seller discloses that there is an 8,000-gallon underground storage tank located west of the Tunnel, on the Real Property for the purpose of storing #2 fuel oil for the boiler. Seller also discloses that there is a 2,000-gallon aboveground storage tank located east of the heating plant on the Real Property for the purpose of storing diesel fuel for the generator. Seller does not know of any release from either tank for which no corrective action was taken. The location of these tanks is as depicted on Exhibit B. Moreover, Seller does not know of any other underground or aboveground storage tanks formerly on the Property that had a release for which no corrective action was taken (this statement being made pursuant to the disclosure requirements of Minnesota Statutes § 116.48).

N. *Methamphetamine Disclosure.* To Seller's knowledge, no methamphetamine production has occurred on the Property.

O. *Hazardous Substances.* Except for the information that is disclosed in a 2007 report, which has been provided to Buyer, to Seller's knowledge, no toxic or hazardous substances or wastes, pollutants or contaminants (including, without limitation, urea formaldehyde, the group of organic compounds known as polychlorinated biphenyls, petroleum products including gasoline, fuel oil, crude oil and various constituents and such products, and any hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Section 9601-9657, as amended) have been generated, treated, stored, released or disposed of, or otherwise placed, deposited in or located on the Property, nor has any activity been undertaken on the Property that would cause or contribute to (i) the Property to become a treatment, storage or disposal facility within the meaning of, or otherwise bring the Property within the ambit of, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. Section 6901, *et seq.*, or any similar state law or local ordinance; (ii) a release or threatened release of toxic or hazardous wastes or substances, pollutants or contaminants, from the Property within the ambit of, CERCLA, or any similar state law or local ordinance; or (iii) the discharge of pollutants or effluents into any water source or system, the dredging or filling of any waters or the discharge

into the air of any emissions, that would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. Section 1251, *et seq.*, or the Clean Air Act, U.S.C. Section 7401, *et seq.*, or any similar state law or local ordinance. To Seller's knowledge, no substances or conditions exist in or on the Property that may support a claim or cause of action under RCRA, CERCLA or any other federal, state, or local environmental statutes, regulations, ordinances, or other environmental regulatory requirements, including without limitation, the Minnesota Environmental Response and Liability Act, Minnesota Statutes, Chapter 115B ("MERLA"); and the Minnesota Petroleum Tank Release Cleanup Act, Minnesota Statutes, Chapter 115C.

P. *Service Contracts.* There are no service contracts in place for the Property which will affect the Property past Closing.

Q. *No Other Interests.* Seller and the Property are not subject to any commitment, obligation, or agreement, including, but not limited to, any lease, purchase agreement, contract for deed, right of first refusal, option to purchase, or easement with a third party, which prevents the consummation of the transaction contemplated in this Agreement or which might bind Buyer subsequent to consummation of this Agreement. The Property will be free of any tenancies as of Closing and no party will be in possession of the Property.

The representations and warranties of Seller set forth in this Agreement shall be deemed remade as of Closing, provided that Seller may give Buyer on or before five (5) days before the Closing Date one or more notices of any modifications (each a "Statement of Modifications") to such representations and warranties which arise after the Effective Date of this Agreement (unless such change in a representation or warranty is the result of a willful and intentional breach by Seller, in which case Buyer shall have the right to bring a suit for such breach in accordance with the terms and conditions set forth in Section 20.B. of this Agreement, and said representations and warranties as so remade and modified shall survive Closing for a period of nine (9) months after the Closing Date, after which all of the representations and warranties of Seller shall become void and of no further force or effect. The provisions of this Section 14 shall survive the Closing.

15. Definition of Knowledge. As used in this Agreement, the term "to Seller's knowledge" or any other reference to the knowledge of Seller (a) shall mean and apply to the actual knowledge of Jean R. Krueger, Director of Ramsey County Property Management, who is authorized to act on behalf of Seller (the "Knowledge Individual"), and not to any other persons or entities, (b) shall mean the actual (and not implied or constructive) knowledge of such individual, without any duty on such individual to conduct any investigation or inquiry of any kind, and (c) shall not apply to or be construed to apply to information or material which may be in the possession of Seller generally or incidentally, but which is not actually known to the Knowledge Individual. Similarly, any reference to any written notice, claim, litigation, filing or other correspondence or transmittal to Seller set forth in this Agreement shall be limited to refer to only those actually received by or known to the Knowledge Individual in the limited manner provided in clauses (a) - (c) above. Under no circumstances shall the Knowledge Individual have any personal obligations or liabilities under this Agreement or otherwise. The provisions of this Section 15 shall survive the Closing.

16. Limitations Concerning Buyer's Knowledge. All of the representations, warranties, and certifications made by Seller set forth in this Agreement or in any of the documents or instruments

required to be delivered by Seller under this Agreement are individually, each a “Representation,” and collectively, the “Representations.” Notwithstanding anything contained in this Agreement to the contrary, there shall be no liability on the part of Seller for any breach of a Representation arising from any matter or circumstance of which Buyer had actual knowledge at Closing. The provisions of this Section 16 shall survive the Closing.

17. **Representations and Warranties of Buyer.** Buyer represents and warrants to Seller, as of the Effective Date and as of the Closing Date, as follows:

A. *Buyer’s Authority.* Buyer and the persons signing below have the legal power, right and authority to enter into this Agreement, to consummate the transactions contemplated by this Agreement, and to execute and deliver all documents and instruments to be delivered by Buyer under this Agreement.

B. *Legal Matters.* There is no pending, or to Buyer’s knowledge, action, suit, or proceeding threatened in writing against Buyer which would materially and adversely affect Buyer’s ability to carry out the transaction contemplated by this Agreement.

C. *No Conflict.* Neither the execution, delivery, or performance by Buyer of this Agreement, nor the consummation of the transaction contemplated by this Agreement will violate any order, judgment, injunction, award or decree of any court or arbitration body, or any other body, by or to which Buyer is or may be bound or subject.

D. *Bankruptcy.* No voluntary, and to Buyer’s knowledge no involuntary, attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, or other insolvency-related proceedings are pending against Buyer.

E. *OFAC.* Buyer is not, nor will Buyer become, a person or entity with whom United States persons or entities are restricted from doing business under regulations of OFAC of the Department of the Treasury (including those named on OFAC’s Specially Designated and Blocked Persons List) or under any statute, executive order (including, without limitation, the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action, and is not and will not engage in any dealings or transactions or be otherwise with such person or entities.

The representations and warranties of Buyer set forth in this Agreement shall be deemed remade as of Closing, and said representations and warranties as so remade shall survive the Closing for a period of nine (9) months. The provisions of this Section 17 shall survive the Closing.

18. Sale “As Is, Where Is”. Buyer acknowledges and agrees that upon Closing, Seller shall sell and convey to Buyer and Buyer shall accept the Property “AS IS, WHERE IS, WITH ALL FAULTS,” except to the extent expressly provided otherwise in this Agreement and any document executed by Seller and delivered to Buyer at Closing. Except as expressly set forth in this Agreement and the documents delivered by Seller to Buyer at Closing, Buyer has not relied and will not rely on, and Seller has not made and is not liable for or bound by, any express or implied

warranties, guarantees, statements, representations, or information pertaining to the Property or relating to the Property (including specifically, without limitation, Property information packages distributed with respect to the Property) made or furnished by Seller, to whomever made or given, directly or indirectly, orally or in writing. Buyer represents that it is a knowledgeable, experienced, and sophisticated Buyer of real estate and that, except as expressly set forth in this Agreement and the documents delivered by Seller to Buyer at Closing, it is relying solely on its own expertise and that of Buyer's consultants in purchasing the Property and shall make an independent verification of the accuracy of any documents and information provided by Seller. By closing the transaction contemplated by this Agreement, Buyer acknowledges that Seller has afforded Buyer a full opportunity to conduct such investigations of the Property as Buyer deemed necessary to satisfy itself as to the condition of the Property and the existence or non-existence or curative action to be taken with respect to any environmental conditions or hazardous materials on or discharged from the Property, and will rely solely upon same and not upon any information provided by or on behalf of Seller or its agents or employees with respect to the same, other than such representations, warranties and covenants of Seller as are expressly set forth in this Agreement. Upon Closing, Buyer shall assume the risk that adverse matters, including, but not limited to, adverse physical or construction defects or adverse environmental, health or safety conditions, may not have been revealed by Buyer's inspections and investigations of the Property. The provisions of this Section 18 shall survive the Closing.

19. Conditions to Obligation to Close.

A. *Seller's Condition.* Seller's obligation to close on the sale of the Property is subject to Buyer's representations and warranties being true and correct in all material respects on the Closing Date, Buyer having delivered the balance of the Purchase Price in accordance with Section 2.B.; Buyer having delivered to Title Insurer its closing deliveries in accordance with Section 11.B.; and Buyer having performed all of its material obligations under this Agreement.

B. *Buyer's Condition.* Buyer's obligation to close on the purchase of the Property is subject to Seller's representations and warranties being true and correct in all material respects on the Closing Date, Seller having delivered to Title Insurer its closing deliveries in accordance with Section 11.A., and Seller having performed all of its material obligations under this Agreement.

At any time prior to the Closing, Seller or Buyer may elect in writing to waive the benefit of any such condition to its obligations under this Agreement. By closing the transaction, Seller and Buyer shall be conclusively deemed to have waived the benefit of any remaining unfulfilled conditions set forth in this Section 19, except to the extent that the same expressly survive Closing.

20. Defaults and Remedies.

A. *Default by Buyer.* If Buyer: (i) fails to perform its material obligations in accordance with the terms of this Agreement that would prevent the Closing from occurring on the Closing Date; or (ii) materially breaches a representation or warranty in this Agreement and such failure is not cured within five (5) days of the date of Seller's written notice to Buyer,

then, Seller may elect to either (a) terminate this Agreement by written notice to Buyer and retain the Earnest Money and any interest earned on the Earnest Money; it being agreed between Buyer and Seller that the amount of the Earnest Money shall be liquidated damages for a default of Buyer under this Agreement, because of the difficulty, inconvenience and uncertainty of ascertaining actual damages for such default in view of the uncertainties of the real estate market, fluctuating property values, and differences of opinion with respect to damages for breach of a real estate transaction; or (b) waive the default or breach and proceed to Closing. Notwithstanding anything in this Section 20.A., in the event of Buyer's default or a termination of this Agreement, Seller shall have all remedies available at law or in equity in the event Buyer is asserting any claims or right to the Property that would otherwise delay or prevent Seller from having clear, indefeasible, and marketable title to the Property.

B. *Default by Seller.* If Seller: (i) fails to perform its material obligations in accordance with the terms of this Agreement that would prevent the Closing from occurring on the Closing Date in accordance with this Agreement; or (ii) materially breaches a representation or warranty in this Agreement and such failure is not cured within five (5) days of the date of Buyer's written notice to Seller, then Buyer may elect to (a) terminate this Agreement by written notice to Seller and retain the Earnest Money and any interest earned on the Earnest Money (to the extent the transaction in this Agreement has not yet been consummated) upon Title Insurer's receipt of a written joint order signed by Seller (or Seller's Counsel) and Buyer (or Buyer's Counsel); (b) waive the default or breach, and proceed to Closing; (c) enforce specific performance of Seller's obligations under this Agreement; provided, however, as a condition precedent to Buyer exercising any right it may have to bring an action for specific performance under this Agreement, Buyer must commence such an action within ninety (90) days after the scheduled Closing Date. Buyer agrees that its failure to timely commence such an action for specific performance within such ninety (90) day period shall be deemed a waiver by it of its right to commence an action for specific performance, as well as a waiver by it of any right it may have to file or record a notice of *lis pendens* or notice of pendency of action or similar notice against any portion of the Property.

21. Other Covenants and Agreements.

A. *Casualty or Condemnation.* In the event of a casualty or condemnation prior to the Closing, Seller may elect to terminate this Agreement. If Seller terminates this Agreement, the Earnest Money, along with any interest earned on the Earnest Money, will be immediately returned to Buyer.

B. *Confidentiality.* Seller shall use commercially reasonable efforts to keep confidential the content and all copies of this Agreement, related documents or amendments now or entered into after the Effective Date, and all proposals, materials, information and matters relating to the same, and not to disclose, disseminate or distribute any of the same, or permit the same to occur, except on an "as needed" basis to the extent reasonably required for proper business purposes by Seller's employees, attorneys, insurers, auditors, lenders, brokers, and assignees or subtenants, and except as may be required by the Minnesota Government Data Practices Act or other applicable state or federal law, or as ordered by a court of competent jurisdiction.

C. *Possession.* Exclusive physical possession of the Property shall be delivered to Buyer on the Closing Date.

22. Miscellaneous.

A. *Approval by Ramsey County Board of Commissioners.* This Agreement shall not be effective on Seller until approved by a majority vote of the Ramsey County Board of Commissioners.

B. *Notices Between the Parties.* All notices or other communications required or permitted under this Agreement shall be in writing, and shall be deemed to have been given and received (a) when personally delivered or sent by facsimile with a confirmation of transmission, (b) one day after being sent by a nationally recognized overnight courier, or (c) on the date of transmission if sent by electronic mail (and confirmation of completed transmission is received) prior to 5:00 p.m. Central time (and if sent later than such time, then the next business day), provided that such electronic mail shall also be followed by delivery of such notice pursuant to clause (a) or (b) above, delivered to the address of the intended recipient set forth below. Notice of change of address shall be given by written notice in the manner set forth in this section. Notices may be sent by counsel for a party, and such shall be deemed notice by the party so represented. Notices shall be deemed served as set forth above, even if such Notices are rejected by the intended recipient.

If to Seller: Ramsey County
250 Ramsey County Courthouse
15 West Kellogg Boulevard
St. Paul, MN 55102
Attn: County Manager

With a copy to: Ramsey County Property Management
121 – 7th Place East, Suite 2200
St. Paul, MN 55101
Attn: Director
Phone: (651) 266-2262
Email: jean.krueger@co.ramsey.mn.us

If to Buyer: John Miller
Chief Strategy Officer
NUWAY Alliance
Administrative Office
2217 Nicollet Avenue South
Minneapolis, MN 55404
Phone: (612) 216-5315
Email: John.Miller@nuway.org

With a copy to: B. Shane Barnes

Faegre Drinker Biddle & Reath LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Phone: (612) 766-8635

C. *Assignment.* Buyer shall not assign this Agreement without the prior written consent of Seller, except Buyer may assign this Agreement to an affiliate without Seller's consent. Seller shall not assign this Agreement without the prior written consent of Buyer.

D. *Partial Invalidity.* If any term or provision of this Agreement or the application of such term or provision to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by such holding, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

E. *Waivers.* No waiver of any breach or any covenant or provision contained in this Agreement shall be deemed a waiver of any preceding or succeeding breach or such covenant or provision, or of any other covenant or provision contained in this Agreement. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

F. *Survival.* Subject to the terms and conditions of this Agreement, the covenants, agreements, representations, and warranties made in this Agreement that expressly contemplate performance after the Closing Date shall survive the Closing and shall not be deemed to have merged into the Deed, and this Agreement shall extend to the respective successors, heirs, and assigns of Seller and Buyer.

G. *Time of Essence.* Seller and Buyer acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision of this Agreement.

H. *Governing Law; Venue.* This Agreement shall be governed by, interpreted, and construed in accordance with, the laws of the State of Minnesota. All litigation regarding, arising from, or related to this Agreement will be venued in either the state or federal court located in Ramsey County, Minnesota.

I. *Counterparts; Electronic Signatures.* This Agreement may be executed in any number of counterparts, each of such counterparts shall, for all purposes, be deemed an original, and all such counterparts shall together constitute one and the same agreement. In order to expedite the execution of this Agreement, Seller and Buyer agree that the electronic signature of a party to this Agreement will be as valid as an original signature of such party and will be effective to bind such party to this Agreement. The parties further agree that any document, including this Agreement and any attachments or exhibits to this Agreement, containing, or to which there is affixed, an electronic signature will be deemed (a) to be

“written” or “in writing,” (b) to have been signed and (c) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. For purposes of this Agreement, “electronic signature” also means a manually signed original signature that is then transmitted by any electronic means, including without limitation a faxed version of an original signature or an electronically scanned and transmitted version (e.g., via PDF) of an original signature. Any party’s failure to produce the original signature of any electronically transmitted signature will not affect the enforceability of this Agreement.

J. *Captions.* The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Agreement or the scope or content of any of its provisions.

K. *Terms.* The use of any pronoun in this Agreement shall include the singular, plural, masculine, feminine and neuter, the use of the singular or plural form shall include the plural or singular form, and the use of any gender shall include all genders, as the context may require.

L. *Business Days.* If the final day of any period, or any date of performance, or date to take action under this Agreement falls on a Saturday, Sunday or legal holiday, then the final day of the period or the date of performance shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

M. *Attorneys’ Fees.* In the event of any litigation arising out of this Agreement between Seller and Buyer, the prevailing party shall be entitled to reasonable attorneys’ fees and costs upon the issuance of a final, non-appealable judgment issued by a court of competent jurisdiction.

N. *Brokers.* It is acknowledged by the parties that neither party has been represented by a broker or salesperson in the transaction during their negotiations of this Agreement.

O. *Entire Agreement.* This Agreement contains the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior understandings with respect this Agreement, including the Letter of Intent executed by the parties and effective as of March 31, 2023. This Agreement may not be modified, changed, supplemented, or terminated, nor may any rights or obligations under this Agreement be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted in this Agreement. Other than as expressly set forth in this Agreement, the parties do not intend to confer any benefit under this Agreement on any person, firm, or entity other than the parties to this Agreement.

P. *Incorporation of Exhibits.* The following Exhibits that are attached to this Agreement are true and correct and are incorporated into this Agreement.

EXHIBIT A	Legal Description of the Property
EXHIBIT B	Depiction of the Property
EXHIBIT C	Exclusions from Personal Property

EXHIBIT D	Earnest Money Escrow Agreement
EXHIBIT E	Permitted Encumbrances
EXHIBIT F	Declaration of Restrictive Covenants

Q. *Survival of Miscellaneous Section.* The provisions of this Section 22 shall survive the Closing.

[signature page follows]

SIGNATURE PAGE TO PURCHASE AND SALE AGREEMENT

IN WITNESS WHEREOF, the parties hereby execute this Purchase and Sale Agreement as of the Effective Date.

SELLER:

COUNTY OF RAMSEY,
a political subdivision of the State of
Minnesota

By: _____
Ryan T. O'Connor
Ramsey County Manager

Approval recommended:

By: _____
Jean R. Krueger, Director
Ramsey County Property Management

Approved as to form:

By: _____
Assistant Ramsey County Attorney

BUYER:

NUWAY ALLIANCE, a Minnesota
nonprofit corporation

Tom Meier, CAO
NUWAY Alliance

EXHIBIT A

Legal Description of the Property

That part of the West 620 feet of the North 438 feet of the North half of the Southwest Quarter and of the West 620 feet of the South 235.8 feet of the Northwest Quarter all in Section 14, Township 29, Range 22, Ramsey County, Minnesota, according to the government survey thereof, described as follows:

Commencing at the northwest corner of said Southwest Quarter of Section 14, Township 29, Range 22; thence South 0 degrees 11 minutes 56 seconds East, assumed bearing, along the west line of said Southwest Quarter, a distance of 43.00 feet to the point of beginning of the property to be described; thence continuing South 0 degrees 11 minutes 56 seconds East, along said west line, a distance of 395.01 feet to the point of intersection with the south line of the North 438 feet of said North half of the Southwest Quarter; thence North 89 degrees 24 minutes 19 seconds East, along said south line of the North 438 feet, a distance of 620.02 feet to the point of intersection with the east line of the West 620 feet of said North half of the Southwest Quarter; thence North 0 degrees 11 minutes 56 seconds West, along said east line of the West 620 feet, a distance of 358.00 feet; thence North 17 degrees 09 minutes 12 seconds West a distance of 57.00 feet; thence North 27 degrees 03 minutes 22 seconds West a distance of 128.50 feet; thence South 89 degrees 59 minutes 56 seconds West a distance of 62.00 feet; thence North 0 degrees 0 minutes 04 seconds West, parallel with the west line of said Northwest Quarter, a distance of 145.50 feet to the point of intersection with the north line of said South 235.8 feet of the Northwest Quarter; thence South 89 degrees 24 minutes 19 seconds West, along said north line of the South 235.8 feet, a distance of 167.70 feet; thence South 75 degrees 13 minutes 47 seconds West, a distance of 140.91 feet; thence southwesterly a distance of 35.11 feet along a tangential curve concave to the southeast, having a radius of 50.00 feet and a central angle of 40 degrees 13 minutes 47 seconds; thence South 35 degrees 0 minutes 0 seconds West, tangent to the last described curve, a distance of 23.92 feet; thence southwesterly and southerly a distance of 91.63 feet along a tangential curve concave to the southeast, having a radius of 150.00 feet and a central angle of 35 degrees 0 minutes 04 seconds; thence South 0 degrees 0 minutes 04 seconds East, tangent to the last described curve and parallel with the west line of said Northwest Quarter, a distance of 76.72 feet to the south line of said Northwest Quarter; thence South 0 degrees 11 minutes 56 seconds East, parallel with the west line of said Southwest Quarter, a distance of 43.00 feet; thence South 89 degrees 24 minutes 19 seconds West, parallel with the north line of said Southwest Quarter, a distance of 110.00 feet to said point of beginning and there terminating.

EXHIBIT B

Depiction of the Property

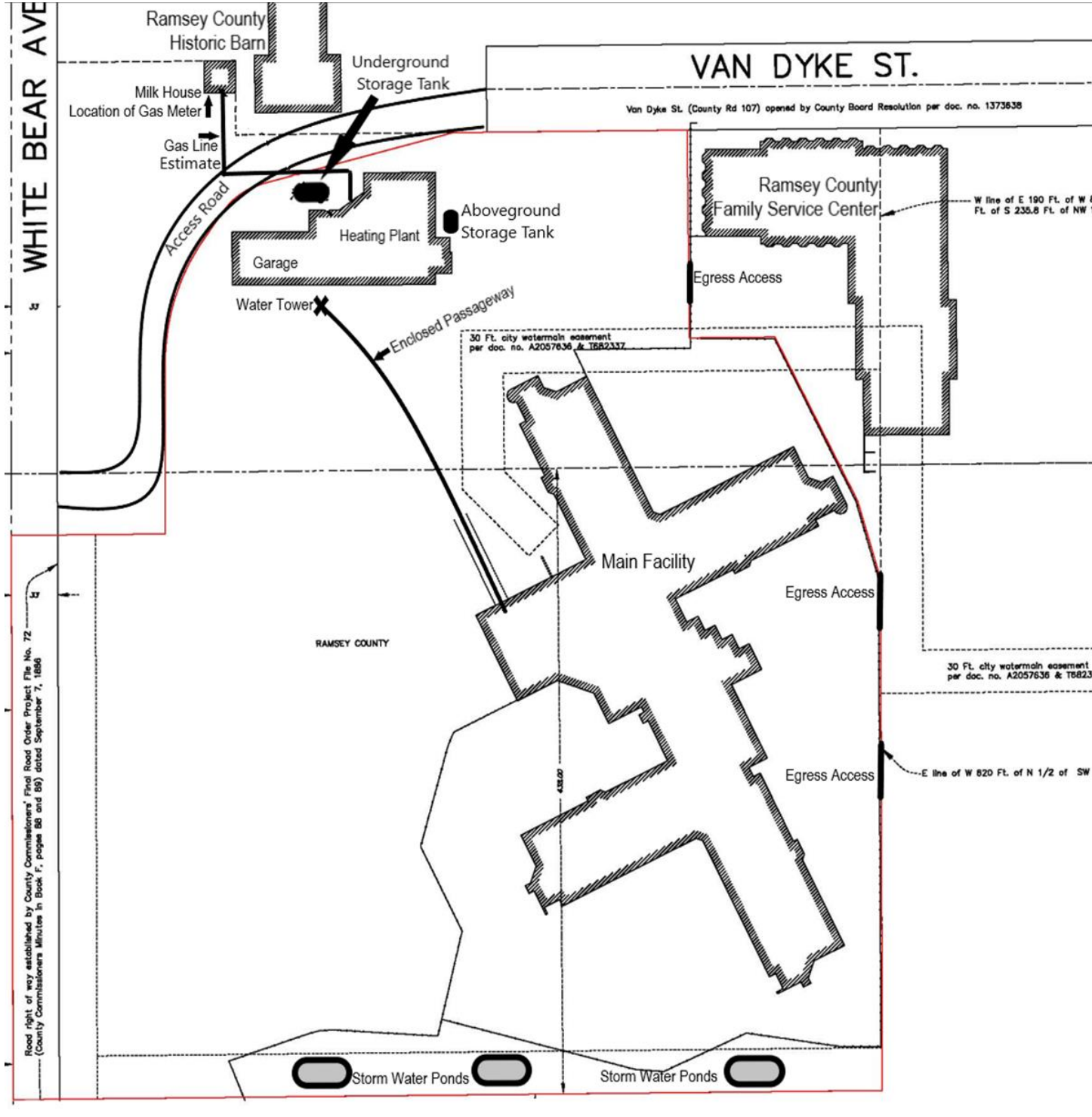


EXHIBIT C

Exclusions from Personal Property

Security Systems

- All Security Cameras, Domes, and Mounts (15 in Total)
- POE Injectors
- HDMI Splitter, Monitor, Keyboard, and Computer to Security System
- Large View Monitors at Reception and Lower-Level Nurses Stations
- Half Network Rack
- REX's (request to exits) for card access doors

Network Systems

- 9 Network Switches
- 4 Wireless Access Points
- 2 Cisco Desk Phones

EXHIBIT D

Form of Earnest Money Escrow Agreement

TO: First American Title Insurance Company
National Commercial Services
121 South 8th Street, Suite 1250
Minneapolis, Minnesota 55402
ATTN: _____

RE: Escrow Trust No. _____

DATE: _____, 2023

I. PARTIES

Seller: County of Ramsey, a political subdivision of the State of Minnesota
250 Ramsey County Courthouse
15 West Kellogg Boulevard
St. Paul, MN 55102
ATTN: County Manager

Buyer: NUWAY Alliance
Administrative Office
2217 Nicollet Avenue South
Minneapolis, MN 55404
ATTN: _____

Escrow Holder: First American Title Insurance Company
National Commercial Services
121 South 8th Street, Suite 1250
Minneapolis, Minnesota 55402
ATTN: _____

Seller's Legal Counsel: Ramsey County Attorney's Office, Civil Division
121 – 7th Place East, Suite 4500
St. Paul, MN 55101
ATTN: Property Management Attorney
Assistant Ramsey County Attorney
Phone: (651) 266-3222

Buyer's Legal Counsel: B. Shane Barnes
Faegre Drinker Biddle & Reath LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

Phone: (612) 766-8635
Email: shane.barnes@faegredrinker.com

II. PRELIMINARY STATEMENT

Concurrently with the execution and delivery of this Earnest Money Escrow Agreement, Seller and Buyer have executed and delivered that certain Purchase and Sale Agreement (the “Agreement”). Under the terms of the Agreement, Seller has agreed to sell to Buyer that certain parcel of real property commonly known as 2000 White Bear Avenue, in the City of Maplewood, County of Ramsey, State of Minnesota, as more particularly described in the Agreement.

III. DEPOSIT OF EARNEST MONEY; INVESTMENT DIRECTIONS

Within five (5) days following the date of the Agreement, Buyer shall deposit Fifty Thousand and 00/100 Dollars (\$50,000.00) with the Escrow Holder in accordance with the Agreement (“Earnest Money”).

IV. INSTRUCTIONS

- A. Beginning on the date of this Earnest Money Escrow Agreement (“Earnest Money Escrow Agreement”), Escrow Holder shall only disburse the Earnest Money, together with all interest earned thereon, (i) upon receipt of a written joint order signed by Seller (or Seller’s Counsel) and Buyer (or Buyer’s Counsel); or (ii) in obedience to the process of order of a court as described below.
- B. All notices or other communications required or permitted under this Earnest Money Escrow Agreement shall be in writing, and shall be deemed to have been given and received (a) when personally delivered or sent by facsimile with a confirmation of transmission, (b) one day after being sent by a nationally recognized overnight courier with guaranteed next day delivery, (c) three (3) days after being mailed by United States certified mail, return receipt requested, postage prepaid, to the address set forth below, or (d) on the same day if delivered by electronic mail. Notice of change of address shall be given by written notice in the manner set forth in this section.
- C. Except as otherwise expressly set forth in this Earnest Money Escrow Agreement, Escrow Holder shall disregard any and all notices or warnings given by any of the parties to this Earnest Money Escrow Agreement.
- D. If Escrow Holder obeys or complies with any order, judgment, or decree of any court with respect to the Earnest Money, Escrow Holder shall not be liable to any of the parties to this Earnest Money Escrow Agreement or any other person, firm or corporation by reason of such compliance, notwithstanding any such order, judgment or decree be entered without jurisdiction or be subsequently reversed, modified, annulled, set aside, or vacated. In case of any suit or proceeding regarding this Earnest Money Escrow Agreement to which Escrow Holder is or may be at any time a party, Seller and Buyer shall each be liable for one-half of all such costs, fees and expenses incurred or sustained by Escrow Holder and

shall forthwith pay the same to Escrow Holder upon demand; provided, however, that in the event Escrow Holder is made a party to any suit or proceeding between Seller and Buyer, the prevailing party in such suit or proceeding shall have no liability for the payment of Escrow Holder's costs, fees and expenses (all of which shall be borne by the non-prevailing party).

- E. Escrow Holder is not to be held responsible for any loss of principal or interest which may be incurred as a result of making the investments or redeeming said investment for the purposes of this Earnest Money Escrow Agreement.
- F. In no case shall the Earnest Money be surrendered except: (i) in the manner specifically described in this Earnest Money Escrow Agreement; (ii) on a joint order signed by Seller (or Seller's Counsel) and Buyer (or Buyer's Counsel); or (iii) in obedience to the process of order of a court as aforesaid.
- G. All fees of Escrow Holder shall be charged one-half to Seller and one-half to Buyer. The Escrow trust fee shall be waived if the transaction closes at First American Title Insurance Company.
- H. Except as to deposits of funds for which Escrow Holder has received express written direction from Buyer (or Buyer's Counsel) concerning investment or other handling, the parties agree that Escrow Holder shall be under no duty to invest or reinvest any deposits at any time held by it under this Earnest Money Escrow Agreement.
- I. Any order, judgment or decree requiring Escrow Holder to disburse the Earnest Money shall not be binding upon Buyer or Seller as to the ultimate disposition of the Earnest Money unless and until a final, non-appealable order, judgment, or decree is entered by a court having jurisdiction over such proceedings.
- J. This Earnest Money Escrow Agreement and all provisions of the same shall be binding upon and shall inure to the benefit of the parties to this Earnest Money Escrow Agreement and their respective legal representatives, successors and permitted assigns.

[Signature Page Follows]

SELLER:

COUNTY OF RAMSEY,
a political subdivision of the State of
Minnesota

By: _____
Ryan T. O'Connor
Ramsey County Manager

Approval recommended:

By: _____
Jean R. Krueger, Director
Ramsey County Property Management

Approved as to form:

By: _____
Assistant Ramsey County Attorney

Accepted this ____ day of _____, 2023

FIRST AMERICAN TITLE INSURANCE COMPANY

By: _____
Name: _____
Title: _____

BUYER:

NUWAY ALLIANCE, a Minnesota
nonprofit corporation

Tom Meier, CAO
NUWAY Alliance

EXHIBIT E

Permitted Encumbrances

1. Reciprocal Easement Agreement, to be entered into and recorded at time of closing.
2. Drainage & Utility Easement, to be entered into and recorded at time of closing.
3. Right-of-Way Easement, to be entered into and recorded at time of closing.

EXHIBIT F

DECLARATION OF RESTRICTIVE COVENANT

This **DECLARATION OF COVENANT AND RESTRICTION** (“Declaration”) is made this _____ day of _____, 2023, by NUWAY Alliance, a Minnesota non-profit corporation, 2217 Nicollet Avenue South, Minneapolis, MN 55404 (“Declarant”).

WITNESSETH

WHEREAS, Declarant is a Minnesota nonprofit corporation that provides treatment and recovery-supportive services to clients; and

WHEREAS, Declarant acquired from the County of Ramsey, a political subdivision of the State of Minnesota (“Ramsey County”), fee title to the real property located at 2000 White Bear Avenue, Maplewood, Minnesota, which is legally described as set forth in Exhibit A.

(the “Property”); and

WHEREAS, Ramsey County has determined that the Property is no longer needed for County services, and that it is in the public interest to dispose of the Property at fair market value; and

WHEREAS, Ramsey County owns other property adjacent to three sides of the Property, and therefore Ramsey County has further determined that the public has an interest in future ownership or use of the Property if Declarant resells the Property to a third party; and

WHEREAS, to assure protection of the public’s interests in the Property, Declarant does hereby make this Declaration of Covenant and Restriction.

NOW THEREFORE, Declarant does hereby impose upon the Property the covenant and restriction which shall be a covenant running with the land and shall be binding upon Declarant, and shall inure solely to the benefit of Ramsey County in trust for the public.

1. **First Option to Repurchase**. Declarant represents, covenants, and agrees that prior to any proposed resale of the Property to a third party, Ramsey County shall have the First Option to Repurchase the Property according to the terms set forth below. Declarant shall notify Ramsey County in writing as provided herein no fewer than one hundred twenty (120) days prior to Declarant entering into a purchase agreement or other conveyance instrument with a third-party purchaser. Upon receipt of notice, Ramsey County shall have sixty (60) days in which to consider, decide, and notify Declarant of its intention regarding the First Option to Repurchase. If Ramsey County decides to exercise its First Option to Repurchase, the parties shall move immediately to closing on the repurchase, but no later than sixty (60) days following Ramsey County’s notice to Declarant. If Ramsey County does not exercise its First Option to Repurchase or fails to close on

the repurchase within the specified timeframe, unless Ramsey County agrees to an extension of timeframe, this Declaration shall immediately terminate and become null and void without further action by Declarant or Ramsey County.

2. **Terms for Repurchase.** If Ramsey County decides to exercise its First Option to Repurchase pursuant to Section 1 above, such repurchase shall be on the following terms:

a. **Repurchase After City Denial.** If any part of Declarant’s application(s) for approvals from the City of Maplewood are denied within the first one hundred twenty (120) days after Closing, and such denials render the Property unusable for Declarant’s purposes (“City Denial”),

- i. Ramsey County will repurchase the Property from Declarant at the Purchase Price;
- ii. Declarant will pay all closing costs related with the reconveyance to Ramsey County;
- iii. Ramsey County will retain all improvements or alterations made to the Property by Declarant between Closing and the date of the City Denial or the new closing date, whichever is later;
- iv. If Declarant has commenced a project to alter or improve any part of the Property, and if at the time of the City Denial such a project is incomplete and creates a dangerous condition on the Property or renders the Property unsuitable for any other user, Declarant shall, at its own cost and expense, complete that project as soon as practicable to the satisfaction of Ramsey County; and
- v. Except as set forth in Section 2.A.iv. of this Declaration, between the date of the City Denial and the agreed-upon date by which Declarant must quit and vacate the Property, Declarant will make no further alterations or improvements to the Property. In any event or circumstance, Declarant will commit no waste on or about the Property.

b. **Repurchase at Purchase Price.** If Declarant wishes to dispose of the Property within five years of Closing,

- i. Declarant shall notify Ramsey County of its desire to dispose of the Property, which notice shall be delivered as set forth in Section 22.B. of the Purchase Agreement between Ramsey County and Declarant (the “Purchase Agreement”);
- ii. Ramsey County may, at its option, subject to Section 9.A.i., repurchase the Property for the Purchase Price set forth in the Purchase Agreement;
- iii. If Ramsey County chooses to repurchase the Property:
 1. Ramsey County shall notify Declarant of its decision regarding this First Option to Repurchase within sixty (60) days of notice from Declarant, with such notice from Ramsey County being delivered as set forth in Section 22.B. of the Purchase Agreement;
 2. Ramsey County and Declarant will each pay one half of closing costs related to the reconveyance to Ramsey County;
 3. Declarant will be responsible for the payment of all assessed and payable property taxes along with any pending or levied special assessments until such

time that the Property becomes exempt due to the return to public ownership;
and

4. Declarant shall convey the Property back to Ramsey County free and clear of any mortgages, liens, or other security; and
- iv. If Ramsey County declines to exercise this First Option to Repurchase, Declarant may dispose of the Property in its reasonable discretion for a use in conformance with applicable City Code sections. Declarant must receive Ramsey County's notification that Ramsey County declines to repurchase the Property, or wait sixty (60) days after delivering notice pursuant to Section 22.B. of this Agreement, whichever is longer, before offering the Property for sale to another buyer.
- c. Repurchase at Fair Market Value. If Declarant wishes to dispose of the Property after five years have elapsed since Closing,
- i. Declarant shall notify Ramsey County of its desire to dispose of the Property, which notice shall be delivered as set forth in Section 22.B. of the Purchase Agreement;
 - ii. Ramsey County may, at its option, repurchase the Property for the fair market value of the Property at the time of repurchase;
 - iii. Fair market value at the time of repurchase will be determined by an independent appraiser at Declarant's sole cost and expense;
 - iv. If Ramsey County chooses to repurchase the Property:
 1. Ramsey County shall notify Declarant of its decision regarding this First Option to Repurchase within sixty (60) days of notice from Declarant, with such notice from Ramsey County being delivered as set forth in Section 22.B. of the Purchase Agreement;
 2. Ramsey County and Declarant will each pay one half of closing costs related to the reconveyance to Ramsey County;
 3. Declarant will be responsible for the payment of all assessed and payable property taxes along with any pending or levied special assessments until such time that the Property becomes exempt due to the return to public ownership; and
 4. Declarant shall convey the Property back to Ramsey County free and clear of any mortgages, liens, or other security; and
 - v. If Ramsey County declines to exercise this First Option to Repurchase, Declarant may dispose of the Property in its reasonable discretion for a use in conformance with applicable City Code sections. Declarant must receive Ramsey County's notification that Ramsey County declines to repurchase the Property, or wait sixty (60) days after delivering notice pursuant to Section 22.B. of the Purchase Agreement, whichever is longer, before offering the Property for sale to another buyer.

3. **Notices.** Any notice, demand, or document which any party is required or any party desires to give or deliver to or make upon any other party shall, in the case of a notice or demand, be in writing, and may be personally delivered, delivered by a nationally recognized courier service guaranteeing overnight delivery, or given or made by United States registered or certified mail, return receipt requested, with postage prepaid, addressed as follows:

If to Declarant:

NUWAY Alliance
Administrative Office
2217 Nicollet Avenue South
Minneapolis, MN 55404
ATTN: John Miller,
Chief Strategy Officer

If to Ramsey County:

County of Ramsey
250 Ramsey County Courthouse
15 West Kellogg Boulevard
St. Paul, MN 55102
ATTN: County Manager

With a copy to:

Ramsey County Property Management
121 East 7th Place, Suite 2200
St. Paul, MN 55101
ATTN: Director

4. **Recording**. Immediately upon Closing, at its own expense, Declarant shall record this Declaration in the Office of the Ramsey County Registrar of Titles and/or Recorder. Upon receipt of the returned recorded Declaration, Declarant shall provide Ramsey County Property Management with a copy. For purposes of this communication, a copy of the recorded Declaration attached to an email sent to jean.krueger@co.ramsey.mn.us shall be sufficient notice to Ramsey County.

5. **Termination**. This Declaration shall terminate in accordance with its own terms thirty (30) years from the date of recording.

[Signature page follows]

IN WITNESS WHEREOF, Declarant has caused this declaration to be executed by its duly authorized representatives, as of the day and year first written above.

DECLARANT

NUWAY Alliance,
a Minnesota non-profit corporation

By: _____
Tom Meier
Its: CAO

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Tom Meier, the CAO of NUWAY Alliance, a Minnesota non-profit corporation, on behalf of the corporation.

Notary Public

This document was drafted by:

Ramsey County Attorney's Office (AKLS)
121 7th Place East, Suite 4500
St. Paul, MN 55101

Board of Commissioners

Request for Board Action

Item Number: 2023-199

Meeting Date: 5/23/2023

Sponsor: Property Management

Title

Agreement with Sheehy Construction Company for Ramsey County 360 Wabasha Construction Project

Recommendation

1. Approve the selection of an agreement with Sheehy Construction Company, 360 W. Larpenteur Avenue, Suite 200, Saint Paul, MN, 55401, for the Ramsey County 360 Wabasha Street North Construction project, for the period of May 23, 2023 through May 22, 2024, in the not-to-exceed amount of \$13,957,300.
2. Authorize the Chair and the Chief Clerk to execute the agreement.
3. Authorize the County Manager to execute amendments to the agreement in accordance with the county's procurement policies and procedures, provide the amounts are within the limits of available funding.

Background and Rationale

The 360 Wabasha Street North building was built in 1930 for the Northern States Power Company, and most recently served as the Ecolab Global Communication Center. Ramsey County purchased the building in March 2023 for use by the Ramsey County Attorney's Office and the Ramsey County Sheriff's Office Civil Process Service. The building consists of six stories above ground and two basement levels. Gensler and Dunham Associates completed plans to renovate the building for the needs of the Ramsey County Attorney's Office and the Ramsey County Sheriff's Office Civil Process groups. On March 31, 2023, Gensler and Dunham Associates submitted final copies of the project specifications and plans to Ramsey County Property Management to be included in the procurement process. The project timeline has a tentative start date of June 1, 2023, and a substantial completion date of October 20, 2023.

On April 5, 2023, in accordance with county procurement policies and procedures, a competitive solicitation for the project was issued. Below is the competitive solicitation summary:

- Request for Bids Title: 360 Wabasha Renovation
- Request for Bids Release Date: April 5, 2023
- Request for Bids Response Due Date: May 4, 2023
- Number of Contractors Notified: 1,173
- Number of Request for Bids Responses Received: 1
- Contractor Recommended: Sheehy Construction Company

Ramsey County Property Management recommends Sheehy Construction Company for the project award. It has been determined that a Project Labor Agreement will be required for this project.

County Goals (Check those advanced by Action)

- Well-being Prosperity Opportunity Accountability

Racial Equity Impact

The racial equity impact of this project is not fully known. The project will include workforce inclusion goals of 32% minority and 20% women, as well as a goal of utilizing 32% certified small businesses (SBEs) found in the CERT directory recognized by the county as the acceptable source for SBE subcontractors and suppliers in conformance with the county's approved policy on workforce inclusion and contracting goals.

Community Participation Level and Impact

There is no community participation associated with this action.

Inform Consult Involve Collaborate Empower

Fiscal Impact

The construction project cost of \$13,957,300 is funded by proceeds from the 2023B county bond sale and is accounted for as a project in the county's Capital Improvement Plan.

Last Previous Action

On March 21, 2023, the Ramsey County Board of Commissioners authorized the 2023B general obligation bond sale, with \$16,000,000 of funding allocated to the 360 Wabasha construction project (B2023-045).

On December 20, 2022, the Ramsey County Board of Commissioners approved the acquisition and purchase agreement for the 360 Wabasha Street North property and established a project for due diligence and design in the Property Management budget (Resolution B2022-298).

Attachments

1. Agreement with Sheehy Construction Company

RAMSEY COUNTY PROCUREMENT CONTRACT

Property Management

PROPERTY MANAGEMENT
 SUITE 2200
 121 SEVENTH PLACE EAST
 ST. PAUL MN 55101
 USA

Supplier 0000214643
 SHEEHY CONSTRUCTION COMPANY
 360 LARPEN TEUR AVE W STE 200
 SAINT PAUL MN 55113-6782
 USA

Open **Dispatch via Print**

Contract ID CC003146		Page 1 of 1	
Contract Dates 05/23/2023 to 05/22/2024	Currency USD	Rate Type CRRNT	Rate Date PO Date
Description: 360 Wabasha Renovation		Contract Maximum 13,957,300.00	

Tax Exempt? N Tax Exempt ID:

Contract Lines:

Line #	Supplier Item	Item Desc	UOM	Minimum Order		Maximum / Open	
				Qty	Amt	Qty	Amt
1		Building Construction	EA	1.00	0.00	0.00	0.00

The Ramsey County General Contract/Agreement Terms and Conditions is attached hereto and incorporated by reference. This Ramsey County Procurement Contract, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties.

PROVIDE ALL SUPPLIES, EQUIPMENT, MATERIALS AND LABOR REQUIRED TO RENOVATE 360 WABASHA IN ACCORDANCE WITH THE SOLICITATION RFB-PRMG28381 RELEASED 4/5/23 (WHICH INCORPORATES THE PROJECT MANUAL AND CONSTRUCTION PLANS) AND ALL ADDENDA, AND CONTRACTOR SOLICITATION RESPONSE DATED 05/4/2023. THE BID PROPOSAL FORM IN THE CONTRACTOR SOLICITATION SETS FORTH THE LIST OF CONTRACT TERMS AND PRICING.

PERIOD OF PERFORMANCE:
 ORIGINAL TERM: 05/23/2023 through 05/22/2024

APPROXIMATE VALUE OF ORIGINAL TERM: \$13,957,300.00

CONTRACTOR CONTACT: Daniel Krause
 CONTRACTOR PHONE#: 651-488-6691
 CONTRACTOR EMAIL: dan.krause@sheehyconstruction.com

COUNTY CONTACT: Cole Baessler
 COUNTY PHONE#: 760-808-2107
 COUNTY EMAIL: cole.baessler@co.ramsey.mn.us

REQ# PRMG28381

All shipments, shipping papers, invoices and correspondence must be identified with our Contract ID Number. Price increases will not be honored. Errors: In case of error in calculating or typing, the quoted unit price will be used as basis for correction of this order. Freight: Unless otherwise specified herein, prices are F.O.B. destination, with freight prepaid and included. Tax: Unless otherwise specified herein, prices are inclusive of applicable taxes.

Unauthorized



1. Contracting for Equity

1.1. Commitment to Advancing Racial Equity

The county is committed to advancing racial equity for its residents. The commitment is captured in the county's Advancing Racial Equity policy which states that "Racial equity is achieved when race can no longer be used to predict life outcomes, and outcomes for all are improved."

Consistent with the Advancing Racial Equity policy, contractors will take all reasonable measures to advance racial equity during contract performance. Contractors will recognize and acknowledge this requires deconstructing barriers and changing systems, structures, policies and procedures. Contractors will be equitable, inclusive, transparent, respectful and impactful in serving and engaging residents. Contractors will have meaningful and authentic engagement with community and employees to strengthen the administration, development and implementation of policies and procedures to advance racial equity and ensure that all residents in need have awareness of and access to contracted services.

Please review Ramsey County's [Advancing Racial Equity policy](#) to learn more about Ramsey County's commitment to racial equity.

1.2. Non-Discrimination (In accordance with Minn. Stat. § 181.59)

Contractors will comply with the provisions of Minn. Stat. § 181.59 which require:

"Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the contractor agrees:

(1) that, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;

(2) that no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;

(3) that a violation of this section is a misdemeanor; and

(4) that this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract."

1.3. Equal Employment Opportunity and Civil Rights

1.3.1.

Contractors agree that no person shall, on the grounds of race, color, religion, age, sex, sexual orientation, disability, marital status, public assistance status, criminal record

(subject to the exceptions contained in Minn. Stat. §§299C.67 to 299C.71 and Minn. Stat. §144.057), creed or national origin, be excluded from full employment rights in, participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program, service, or activity under the provisions of any and all applicable federal and state laws against discrimination, including the Civil Rights Act of 1964. Contractors will furnish all information and reports required by the county or by Executive Order No. 11246 as amended, and by the rules and regulations and orders of the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

1.3.2.

Contractors shall comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

1.3.3.

Contractors shall agree that no qualified individual with a disability as defined by the Americans with Disabilities Act, 42 U.S.C. §§12101-12213 or qualified handicapped person, as defined by United States Department of Health and Human Services regulations, Title 45 Part 84.3 (j) and (k) which implements Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, under Executive Order No. 11914 (41FR17871, April 28, 1976) shall be:

1.3.3.1.

Denied access to or opportunity to participate in or receive benefits from any service offered by contractors under the terms and provisions of this agreement; nor

1.3.3.2.

Subject to discrimination in employment under any program or activity related to the services provided by contractors.

1.3.3.3.

If it is discovered that a contractor is not in compliance with applicable regulations as warranted, or if the contractor engages in any discriminatory practices, as described above, then the county may cancel said agreement as provided by the cancellation clause of this agreement.

1.4. Utilization of Certified Vendors

The county has adopted the Principles for Inclusiveness in Contracting Program ("IICP") in order to increase the participation of small businesses ("SBEs") in the county's purchasing activities. The contracting inclusion goal for this Project is: 32%.

1.5. Diverse Workforce Initiative

The county has a goal of continuing to increase participation of qualified minorities and women in each county construction project. The county has established a goal of 20% women and 32% minority goal for site workforce utilization for the project.

1.6. Workforce and Contracting Inclusion Reporting

1.6.1. Contracting Inclusion

Contractors shall complete and submit Attachment B -- Contracting Inclusion Reporting Forms with monthly applications for payment or as otherwise directed by the county project manager.

The report shall specify the project and contract number and include:

Ownership: Including but not limited to CERT small business enterprises (SBEs), minority owned enterprises (SMBEs), women owned enterprises (SWBEs), minority women owned enterprises (SWMBEs) and veteran enterprises (SVBEs).

- a. All certifications of the prime contractor.
- b. Name of sub-contractor and all certifications of each sub-contractor along with amounts paid to each sub-contractor to date.

1.6.2. Workforce Inclusion

Contractor (and all appropriate subcontractors) shall utilize County's LCP Tracker software system for submission of completed certified payroll reports and the LCP Tracker workforce inclusion 'Goal Report' with monthly applications for payment or as otherwise directed by the county project manager. County shall provide LCP Tracker training to Contractor if requested.

1.7. Diverse Workforce Inclusion Resources

For information and assistance in increasing the participation of women and minorities, contractors are encouraged to access the websites below:

1. <http://www.ramseycounty.us/jobconnect>
2. <http://www.ramseycounty.us/constructionconnect>

Job Connect and the Construction Connect provide a recruiting source for employers and contractors to post job openings and source diverse candidates.

Ramsey County's Job Connect links job seekers, employers and workforce professionals together through our website, networking events and community outreach. The network includes over 10,000 subscribed job seekers ranging from entry-level to highly skilled and experienced professionals across a broad spectrum of industries.

Employers participate in the network by posting open jobs, meeting with workforce professionals and attending hiring events. Over 200 Twin Cities community agencies, all working with job seekers, participate in the network.

Ramsey County's Construction Connect is an online and in-person network dedicated to the construction industry. Construction Connect connects contractors and job seekers with employment opportunities, community resources and skills training related to the construction industry. Construction Connect is a tool for contractors to help meet diversity hiring goals. Additional assistance is available through askworkforcesolutions@ramseycounty.us or by calling 651-266-9890.

2. General Contract/Agreement Terms and Conditions

2.1.

The Contract resulting from this solicitation shall contain the following terms and conditions stated in this Section 3.

2.2. Definitions

AGREEMENT

The entire and integrated written document between the Owner and the Contractor concerning the Work. The Agreement contains all Contract Documents, as defined below, and supersedes prior representations, and agreements, whether written or oral, and sets forth the parties

obligations, including but not limited to, the performance of the Work, the furnishing of labor and materials, and all other requirements in the Contract Documents.

AGGREGATE

Natural materials such as sand, gravel, crushed rock, or taconite tailings, and crushed concrete or salvaged bituminous mixtures, usually with a specified particle size, for use in base course construction, paving mixtures, and other specified applications.

BID

The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

BIDDER

The individual or entity who submits a Bid to Owner.

CALENDAR DAY

Every day shown on the calendar, being 24 hours in length measured from midnight to the next midnight.

CONTRACTOR

The selected Bidder, an individual, firm, or corporation, contracting for and undertaking the completion of the prescribed Work; acting directly or through a duly authorized representative.

CONTRACT DOCUMENTS

Includes the Request for Bids (RFB), addenda, contractor bid, response forms, bonds, general terms and conditions, specifications, supplemental specifications, special provisions, plans, detail plans, Notice to Proceed, supplemental plans, change orders, supplemental agreements, field orders and shop plans.

CONTRACT PRICE

The total monetary amount to be paid to the Contractor for completion of the work in accordance with the Contract Documents as stated in the Agreement, including any approved Change Orders that have increased or decreased the original total monetary amount to be paid the Contractor.

CONTRACT TIME

The Substantial Completion date or number of calendar days allowed for substantial completion of the Work, including approved time extensions.

DETOUR

A road or system of roads, usually existing, designated as a temporary route by the Owner's Representative or Contractor to divert through traffic from a section of roadway being improved.

EASEMENT

A right acquired to use or control property for a designated purpose.

FIELD ORDER

A written order effecting change in the work not involving an adjustment in the contract price or an extension of the contract time, issued by the Owner's Representative to the Contractor during construction.

GUARANTEED ANALYSIS

A guarantee from a manufacturer, producer or supplier of a product that the product complies with the ingredients or specifications as indicated on the product label.

HOLIDAYS

The days of each year set aside by legal authority for public commemoration of special events, and on which no public business shall be transacted except as specifically provided in cases of necessity. Unless otherwise noted, holidays shall be as established in Min. Stat. Section 645.44.

INDUSTRY STANDARD

An acknowledged and acceptable measure of quantitative or qualitative value or an established procedure to be followed for a given operation within the given industry. This will generally be in the form of a written code, standard or specification by a creditable association.

MATERIALS

Any substances specified for use in the construction of the Project and its appurtenances.

PAY, BID OR CONTRACT ITEM

A specifically described unit of work for which a price is provided for in the Agreement.

NOTICE TO PROCEED

A written notice given to the Contractor by the Owner or Owner's Representative to proceed with the Work including, stating when applicable the date of the beginning of the Contract Time and the days until Substantial Completion is required or stating the date upon which Substantial Completion is to be achieved.

OWNER

The Owner of the Project is Ramsey County, and the term "Owner" shall mean the County.

OWNERS REPRESENTATIVE

An architect, designer, engineer, construction manager, or other person designated by the Owner to act on the Owner's behalf.

PLAN(S)

The plans, profiles, typical cross sections, and supplemental plans that show the locations, character, dimensions, and details of the work to be completed.

PROJECT

The Work to be performed under the Contract Documents.

PUNCH LIST

A notification to the contractor, in writing, of any particulars in which an inspection revealed that the Work is defective or incomplete.

SHOP DRAWINGS

All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the Contractor, a subcontractor, manufacturer, supplier or distributor, which illustrate how specific portions of the Work shall be fabricated or installed.

SPECIFICATIONS

All directions, provisions, and requirements defining the materials and performance of the Work.

SUBCONTRACTOR

The subcontractor is an individual, firm or corporation acting for or on behalf of the Contractor in performing any part of the Work. The subcontractor has a direct contract with the Contractor or another subcontractor and not the Owner.

SUBSTANTIAL COMPLETION

That date as certified by the Owner's Representative when the construction of the Project or a specified part thereof is sufficiently completed, in accordance with the Agreement, so that the Project or specified part can be utilized for the purposes for which it is intended.

SUPPLEMENTAL AGREEMENT

A written agreement between the Owner and the Contractor, covering the performance of extra work or other alterations or adjustments to the Work or any of the Contract Documents as provided for within the general scope of the Agreement, but which extra work or Change Order constitutes a modification of the Agreement as originally executed and approved.

SUPPLIERS

Any person, supplier or organization who supplies materials or equipment for the Work, including those fabricated to a special design, but who does not perform labor at the Project site.

WORK

The furnishing of all labor, materials, equipment, and other incidentals necessary or convenient to the successful completion of the Project and the carrying out of the duties and obligations of the Contractor under the Contract Documents.

2.3. Order of Governance

2.3.1.

The Contract Documents comprise the entire agreement between the County and the Contractor and supersede prior representations, understandings or agreements, whether written or oral. The Contract Documents shall be construed in accordance with Minnesota law and shall be deemed to incorporate Laws and Regulations whether in force before or after submission of Bids, with which the Contractor is required to comply. It is the intent of the Contract Documents to describe a functionally complete Project (or portion thereof) to be constructed in accordance with the Contract Documents. Any Work, materials, or equipment, whether or not specifically called for, that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be furnished and performed by the Contractor without change in the Contract Price or Contract Time.

2.3.2.

To resolve conflicts between various portions of the Contract Documents that may arise, priority and order of precedence shall be given to the Contract Documents as follows:

1. Change Order,
2. Field Order,
3. Other Supplemental Agreement,
4. Supplemental Specification,
5. Supplemental Plan,
6. Project Manual,
7. Specifications,
8. Plans,
9. General Contract/Agreement Terms and Conditions,
10. Ramsey County Procurement Contract
11. Addenda to the RFB,
12. Request for Bids (RFB)

2.3.3.

If discrepancies exist between dimensions in the Contract documents, the following order of precedence applies:

1. Plan dimensions,
2. Calculated dimensions,
3. Scaled dimensions.

The Owner and the Contractor shall inform each other as to any discrepancy or defect they discover in the Contract Documents. Neither the Contractor nor the Owner shall take advantage of any discrepancy or defect in the Contract Documents. The Owner will review the identified discrepancy or defect to determine if a revision to the Contract Documents is necessary. The Owner will decide all issues concerning a discrepancy or defect.

2.4. Payment

2.4.1.

If this is a lump sum contract for supplies, equipment, materials and labor, or construction, invoices shall include any applicable State or Federal sales, excise or other tax. Do not itemize tax separately.

2.4.2.

If this is a contract for supplies, equipment or materials purchased for a golf course or solid waste hauling and recycling, the contractor shall itemize any applicable State or Federal sales, excise or other tax separately on the invoice.

2.4.3.

Each invoice must include a progress report on achievement of project SBE and Workforce goals. No payment will be made until the invoice and progress report have been approved by the County.

2.4.4.

Payments shall be made when the materials/services have been received in accordance with the provisions of the resulting contract.

2.5. Application for Payments

2.5.1.

The Contractor shall submit an invoice as mutually agreed upon by Contractor and the County.

2.5.2.

Invoices for any goods or services not identified in this Agreement will be disallowed.

2.5.3. Surety Deposit Requirement for Non-Minnesota Construction Contractors

For **any one contract** where the anticipated contract value of the construction portion of the contract exceeds \$50,000, the department must withhold 8 percent from payments and send the money to the Minnesota Department of Revenue. The department will hold the funds as surety for the payment of state taxes owed as a result of the contract. For more information about this law, including exceptions to the withholding requirement, visit the [MN Department of Revenue](#) or [Withholding Tax Fact Sheet 12 -- Surety Deposits for Non-Minnesota Construction Contractors](#).

2.5.4.

Each application for payment shall contain the order/contract number, an itemized list of goods or services furnished and dates of services provided, cost per item or service, and total invoice amount. Payment for Materials stored will be conditioned on the following: The Contractor shall submit evidence to establish the Owner's title to such materials; acceptable provisions have been made for storage; the Contractor is responsible for all loss, theft, vandalism, storage and similar peril for the full value of the stored Material.

2.5.5.

Payment shall be made within thirty-five (35) calendar days after the date of receipt of a detailed invoice and verification of the charges. At no time will cumulative payments to the Contractor exceed the percentage of project completion, as determined by the County.

2.5.6.

Payment of interest and disputes regarding payment shall be governed by the provisions of Minnesota Statutes §471.425.

2.5.7.

The Contractor shall pay any subcontractor within ten days of the Contractor's receipt of payment from the County for undisputed services provided by the subcontractor. The Contractor shall pay interest of 1 1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, the Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from the Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

2.5.8.

The Contractor shall pay the applicable prevailing wage rates at the time, during which, the work is being performed. Attachment B -- Statement of Compliance for Ramsey County Contractors and Attachment C -- Ramsey County Prevailing Wage Biweekly Payroll Report shall be completed and submitted per Ramsey County Prevailing Wage Ordinance No. 2013-329. See also Section 3.42.

2.5.9.

Payment for Materials stored will be conditioned on the following: The Contractor shall submit evidence to establish the Owner's title to such materials; acceptable provisions have been made for storage; the Contractor is responsible for all loss, theft, vandalism, storage and similar peril for the full value of the stored Material.

2.5.10.

The County and the Contractor must comply with Minn. Stat. § 15.72, Progress Payments on Public Contracts; Retainage. The County will reserve and release retainage in accordance with Minn. Stat. § 15.72, subd. 2. The County will reserve retainage of five percent from each progress payment on a public improvement contract. Consistent with Minn. Stat. §15.72, the Contractor shall pay all remaining retainage to its subcontractors no later than ten days after receiving payment of retainage from the County, unless there is a dispute about the work under a subcontract. If there is a dispute about the work under a subcontract, the Contractor must pay out retainage to any subcontractor whose work is not involved in the dispute, and must provide a written statement detailing the amount and reason for the withholding to the affected subcontractor.

2.5.11.

When any of the above grounds for which payment is being withheld is removed, payment shall be made for the amount withheld.

2.5.12.

At the time of Project close out, the Contractor shall submit the following listed items and the final payment and the remaining retained percentage shall become due until the Contractor submits to the Owner each of the following:

1. Contractor IC-134;
2. Subcontractor(s) IC-134;
3. An affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or its property might in any way be responsible, have been paid or otherwise satisfied (the form of affidavit for use by the Contractor and all Subcontractors will be provided by the Owner to the Contractor prior to Project close-out);
4. Consent of surety, if any, to final payment;
5. Submission of two copies of operation and maintenance manuals with provided warranty documentation for products;
6. Two copies of as-built plans identifying modifications to original plans;
7. If required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising from the Agreement, to the extent and in such form as may be designated by the Owner;
8. Temporary Certificate of Occupancy, if applicable;
9. Final Certificate of Occupancy;
10. Substantial completion on Certificate (signed by the Architect/Engineer and the Contractor);
11. Completed punch list signed by the Contractor;
12. Storm water NPDES Notice of Termination (if applicable);
13. All Prevailing Wage Reports through the completion of the Work;
14. Final SBE report;
15. Final Diverse workforce report;
16. Copies of Project records and evidence that all required operation and maintenance training has been completed and all required training manuals, videos and similar or related documents. If any Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify it against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

Before final payment is made, the Contractor shall also make a satisfactory showing that it has complied with the provisions of Minn. Stat. § 290.92 requiring the withholding of state income tax from wages paid to the Contractor's employees for Work performed under the Agreement. Receipt by the Owner of a certificate of compliance from the Commissioner of Revenue will satisfy this requirement.

The Contractor has been advised that before the certificate can be issued Contractor must first place on file with the Commissioner of Revenue, an affidavit stating that Contractor has complied with the provisions of Minn. Stat. § 290.92. Unless the Contractor has presented an affidavit to the Owner's Representative showing that all claims against Contractor by reason of the Agreement have either been paid or satisfactorily secured, final payment may be withheld or a sufficient amount may be retained there from to cover the unpaid and potential claims.

2.6. Payment for Uncorrected Work

If the Owner directs the Contractor not to correct Work that has been damaged or that has not been performed in accordance with the Contract Documents, an equitable deduction from the Contract Price shall be made by means of a change order to compensate the Owner for the uncorrected Work.

2.7. Payment for Rejected Work and Materials

The removal of Work and Materials rejected and the re-execution of acceptable Work by the Contractor shall be at the expense of the Contractor, and they shall pay the cost of replacing the Work of other contractors destroyed or damaged by the removal of the rejected Work or Materials and the subsequent replacement of acceptable Work.

2.8. Payment for Extra Work

Written notice of claims for payments for extra Work ("Extra Work") shall be given by the Contractor within three (3) days after receipt of a Field Order from the Owner's Representative to proceed with the Extra Work and the written notice shall be made before any Extra Work is commenced by the Contractor, except in emergency situations endangering life or property. No claim for payment for the Extra Work shall be valid unless the written claim is made in the manner required by this Section. The Contractor shall submit to the Owner itemized estimate sheets showing all labor and material and items of cost of the Extra Work. If the Owner approves proceeding, a Change Order for the Extra Work shall be issued specifying an extension of the Contract Time, if any, and one of the following methods of payments: unit prices or combinations of unit prices which formed the basis of the original Contract; a lump sum based on the Contractor's estimate, approved by the Owner's Representative and accepted by the Owner; or actual cost plus overhead and profit for force account work.

2.9. Payment for Samples, Testing of Materials, and Compaction Testing

2.9.1.

Unless stated otherwise in the Contract Documents, testing of samples and Materials furnished shall be arranged and paid for by the Owner, unless the tests fail, in which case they shall be paid for by the Contractor. Compaction testing will be conducted and paid for by the Owner, unless the tests fail, in which case the Contractor shall pay for them.

2.9.2.

The Contractor shall submit samples for review of kind, color, pattern, and texture for a check of these characteristics with other elements and for a comparison of these characteristics between submittal and the actual component as delivered and installed. The Contractor shall transmit samples that contain multiple, related components such as accessories together in one submittal package. The Contractor shall maintain sets of approved samples at Project site, available for quality-control comparisons throughout the course of construction activity. Sample sets may be used to determine final acceptance of construction associated with each set. The Contractor shall submit manufacturer's color charts consisting of units or sections of units showing the full range of colors, textures, and patterns available. The Contractor shall submit one full set(s) of available choices where color, pattern, texture, or similar characteristics are required to be selected from manufacturer's product line. The Owner's Representative shall return the submittal with options selected.

2.10. Release of Liens

If required by the Owner, the Contractor shall submit other data establishing payment or satisfaction of all obligations, such as receipts, releases and waivers of liens arising from the Contract, to the extent and in such form as may be designated by the Owner. If any Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may

furnish a bond satisfactory to the Owner to indemnify it against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

2.11. Materials Furnished by the Contractor

2.11.1.

All Materials used in the Work shall be new unless otherwise provided for in the Contract Documents, shall meet the requirements of the specification be in conformance with samples provided, and shall not be incorporated into the Work until reviewed by the Owner's Representative.

2.11.2.

Unless otherwise specifically indicated in the Contract Documents, all Materials necessary for the proper execution of the work shall be furnished and paid for by the Contractor, whether temporary or not and whether incorporated into the Work or not.

2.11.3.

Manufactured articles, Materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditions as specified by the manufacturer.

2.11.4.

Materials, supplied or equipment to be incorporated into the Work shall not be purchased by the Contractor or the subcontractor subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

2.11.5.

The Owner may at its option pay for Materials that are purchased and stored offsite by the Contractor prior to their incorporation into the work.

2.12. Materials Furnished by Owner

Materials specifically indicated shall be furnished by the Owner. Before incorporating any of the Materials into the Work, the Contractor shall inspect the Materials so furnished by the Owner. If the Contractor discovers any latent defects in Material furnished by the Owner, they shall notify the Owner's Representative.

2.13. Storage of Materials

Materials shall be so stored by the Contractor as to insure the preservation of their quality and fitness for the Work. Stored Materials shall be located so as to facilitate prompt inspection. Private property shall not be used for storage purposes without the written permission of the owner or lessee thereof.

2.14. Independent Contractor

The Contractor is and shall remain an independent contractor throughout the term of this Agreement and nothing herein is intended to create, or shall be construed as creating, the relationship of partners or joint ventures between the parties or as constituting the Contractor as an employee of the County.

2.15. Successors, Subcontracting and Assignment

2.15.1.

The Contractor binds itself, its partners, successors, assigns and legal representatives to the County in respect to all covenants and obligations contained in this Agreement.

2.15.2.

After award, the Contractor shall not assign or transfer any interest in this Agreement without the prior written approval of the Owner and subject to such conditions and provisions as the County may deem necessary. The Contractor shall be responsible for the performance of all Subcontractors.

2.15.3.

The Contractor may utilize the services of specialty Subcontractors on those parts of the Work, which, under normal contracting practices, are performed, by specialty Subcontractors.

2.15.4.

If while completing the Project, additional Subcontractors are required, the Contractor shall notify the Owner in writing of the Subcontractor's name, contact information and the specific Work to be performed prior to the start of the work to be completed by the Subcontractor.

2.15.5.

The Contractor is responsible to the Owner for the acts and omissions of Contractor's Subcontractors, and of their direct and indirect employees, to the same extent as the Contractor is responsible for the acts and omissions of Contractor's employees.

2.15.6.

The Contract Documents shall not be construed as creating any contractual relations between the Owner or the Owner's Representative and any Subcontractor.

2.15.7.

The Contractor agrees to bind every Subcontractor and every Subcontractor agrees to be bound by the terms of the Contract Documents as far as applicable to the Subcontractor's Work.

2.15.8.

For convenience of reference and to facilitate the letting of contracts and subcontracts, the specifications are separated into titled sections. Such separations shall not, however, operate to make the Owner or Owner's Representative an arbitrator to establish limits to the contracts between the Contractor and Subcontractors.

2.15.9.

The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor by the terms of the Contract Documents insofar as applicable to the work of Subcontractors and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provision of the Contract Documents.

2.16. Compliance With Legal Requirements

2.16.1.

The Contractor shall comply with all applicable federal, state and local laws and the rules and regulations of any regulatory body having jurisdiction with respect to the Work of the Contractor and all licenses, certifications and other requirements necessary for the execution and completion of the contract.

2.16.2.

Unless otherwise provided in the Agreement, the Contractor, at its own expense, shall secure and pay for all permits, fees, charges, duties, licenses, certifications, inspections, and other requirements and approvals necessary for the execution and completion of the Work.

2.16.3.

If the Contractor observes that the specifications or drawings are at variance with any laws, ordinances, rules and regulations applicable to the Work, the Contractor shall give the Owner's Representative prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate modification. If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without prior written notice to Owner's Representative and the Owner's Representatives approval to proceed, the Contractor shall bear all costs arising therefrom; however, it shall not be the Contractor's primary responsibility to make certain that the Specifications and drawings are in accordance with such laws, ordinances, rules and regulations.

2.16.4.

The Contractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees on the Work and other persons who may be affected thereby, all the Work and Materials or equipment to be incorporated therein, whether in storage on or off the site and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

2.16.5.

The Contractor will erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for safety and protection. The Contractor will notify the Owner of adjacent utilities when prosecution of the Work may affect them. The Contractor will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts either of them may liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the Contractor.

2.16.6.

The Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and Owner's Representative has issued a notice to Owner and Contractor that the Work is acceptable.

2.16.7.

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

The Contractor shall at all times keep the chief of police, the fire chief, the city, county, state, and the Owner's Representative, informed of current traffic detours and patterns. If, at any time, the Contractor fails to adequately maintain any of the traffic control devices, the Owner's Representative may order the Contractor to install the devices, or have the County install, replace or maintain the devices and deduct the costs thereof from any monies due the Contractor. No direct compensation will be made for any flagmen required on the project under this Agreement. All necessary signing and barricading for lane closures and street closing shall be done in conformance with the "Minnesota Manual on Uniform Traffic Control Devices" and shall be the responsibility of the Contractor.

2.16.8.

In emergencies affecting the safety of persons or the Work or property at the site of the project or adjacent thereto, the Contractor, without special instruction or authorizations from the Owner's Representative or the Owner, shall act to prevent threatened damage, injury or loss. The Contractor shall give the Owner's Representative prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby, and a Change Order shall there upon be issued covering the changes and deviations involved.

2.17. Permitting

Except for permits or fees specifically identified in the Contract Documents as responsibility of the Owner to pay, the Contractor shall secure and pay for necessary permits, approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures and for permanent changes in existing facilities. The Owner does not have information about nor is it in control of possible requirements which may be deemed necessary by permitting authorities in order for the Contractor to perform the Work. The Contractor shall plan and coordinate Work approach details with permitting officials to achieve any condition deemed necessary by the permitting authority. Additions to or changes in the Contractor's anticipated approach to the Work as the result of requirements specified by the permit authority are incidental and will not result in added cost to the Owner.

2.18. Data Practices

2.18.1.

All data collected, created, received, maintained or disseminated for any purpose in the course of the Contractor's performance under this Agreement is subject to the provisions of the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, any other applicable state statutes, any state rules adopted to implement the Act and statutes, as well as federal statutes and regulations on data privacy.

2.18.2.

The Contractor designates Daniel Krause as its Responsible Designee, pursuant to the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13.02 Subdivision 6, as the individual responsible for any set of data collected to be maintained by Contractor in the execution of this Agreement.

2.18.3.

The Contractor shall take all reasonable measures to secure the computers or any other storage devices in which County data is contained or which are used to access County data in the course of providing services under this Agreement. Access to County data shall be limited to those persons with a need to know for the provision of services by the Contractor. Except where client services or construction are provided, at the end of the Project all County data will be purged from the Contractor's computers and storage

devices used for the Project and the Contractor shall give the County written verification that the data has been purged.

2.19. Security

2.19.1.

The Contractor is required to comply with all applicable Ramsey County Information Services Security Policies ("Policies"), as published and updated by Information Services Information Security. The Policies can be made available on request.

2.19.2.

Contractors shall report to Ramsey County any privacy or security incident regarding the information of which it becomes aware. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with System operations in an information system. "Privacy incident" means violation of the Minnesota Government Data Practices Act (MGDPA) and/or the HIPAA Privacy Rule (45 C.F.R. Part 164, Subpart E), including, but not limited to, improper and/or unauthorized use or disclosure of protected information, and incidents in which the confidentiality of the information maintained by it has been breached. This report must be in writing and sent to the County not more than 7 days after learning of such non-permitted use or disclosure. Such a report will at least: (1) Identify the nature of the non-permitted use or disclosure; (2) Identify the data used or disclosed; (3) Identify who made the non-permitted use or disclosure and who received the non-permitted or violating disclosure; (4) Identify what corrective action was taken or will be taken to prevent further non-permitted uses or disclosures; (5) Identify what was done or will be done to mitigate any deleterious effect of the non-permitted use or disclosure; and (6) Provide such other information, including any written documentation, as the County may reasonably request. The Contractor is responsible for notifying all affected individuals whose sensitive data may have been compromised as a result of the Security or Privacy incident.

2.19.3.

Contractors must ensure that any agents (including contractors and subcontractors), analysts, and others to whom it provides protected information, agree in writing to be bound by the same restrictions and conditions that apply to it with respect to such information.

2.19.4.

The County retains the right to inspect and review the Contractor's operations for potential risks to County operations or data. The review may include a review of the physical site, technical vulnerabilities testing, and an inspection of documentation such as security test results, IT audits, and disaster recovery plans.

2.19.5.

All County data and intellectual property stored in the Contractor's system is the exclusive property of the County.

2.20. Indemnification

The Contractor shall indemnify, hold harmless and defend the County, its officials, agents, and employees against any and all liability, losses, costs, damages, expenses, claims or actions, including reasonable attorney's fees, which the County, its officials, agents, or employees may hereafter sustain, incur or be required to pay, arising out of or by reason of any act or omission of the Contractor, or its subcontractors, and their officers, agents or employees, in the execution,

performance, or failure to adequately perform the Contractor's obligations pursuant to this Agreement.

2.21. Contractor's Insurance

2.21.1.

The Contractor shall purchase and maintain such insurance as will protect the Contractor from claims which may arise out of, or result from, the Contractor's operations under this Agreement, whether such operations are by the Contractor or by any subcontractor, or by anyone directly employed by them, or by anyone for whose acts or omissions anyone of them may be liable.

2.21.2.

Throughout the term of this Agreement, the Contractor shall secure the following coverages and comply with all provisions noted. Certificates of Insurance shall be issued to the County contracting department evidencing such coverage to the County throughout the term of this Agreement.

2.21.3.

Commercial general liability of no less than \$1,000,000 per claim, \$5,000,000 per occurrence, \$5,000,000 general aggregate, \$5,000,000 products/completed operations total limit, \$5,000,000 personal injury and advertising liability.

2.21.3.1.

All policies shall be written on an occurrence basis using ISO form CG 00 01 or its equivalent. Coverage shall include contractual liability and XCU. Contractor will be required to provide proof of completed operations coverage for 3 years after substantial completion.

2.21.4. Workers' Compensation

Contractor certifies it is in compliance with Minnesota Statutes Ch. 176 (Workers' Compensation). The Contractor's employees, subcontractors and agents will not be considered County employees. Contractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota.

Required minimum limits of \$500,000/\$500,000/\$500,000. Any claims that may arise under Minnesota Statutes Ch. 176 on behalf of these employees, subcontractors or agents and any claims made by any third party as a consequence of any act or omission on the part of these employees, subcontractors or agents are in no way the County's obligation or responsibility.

If Minnesota Statute 176.041 exempts Contractor from Workers' Compensation insurance or if the Contractor has no employees in the State of Minnesota, Contractor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Contractor from the Minnesota Workers' Compensation requirements. If during the course of the contract the Contractor becomes eligible for Workers' Compensation, the Contractor must comply with the Workers' Compensation Insurance requirements herein and provide the County with a certificate of insurance.

2.21.5.

An umbrella or excess liability policy over primary liability insurance coverages is an acceptable method to provide the required commercial general liability and employer's

liability insurance amounts. If provided to meet coverage requirements, the umbrella or excess liability policy must follow form of underlying coverages and be so noted on the required Certificate(s) of Insurance.

2.21.6.

The Contractor is required to add Ramsey County, its officials, employees, volunteers and agents as Additional Insured to the Contractor's Commercial General Liability, Auto Liability, Pollution and Umbrella policies with respect to liabilities caused in whole or part by Contractor's acts or omissions, or the acts or omissions of those acting on Contractor's behalf in the performance of the ongoing operations, services and completed operations of the Contractor under this Agreement. The coverage shall be primary and non-contributory.

2.21.7.

If the contractor is driving on behalf of the County but not transporting clients as part of the contractor's services under this contract, a minimum of \$500,000 combined single limit auto liability, including hired, owned and non-owned.

2.21.8.

Whenever work at issue under Contract involve potential pollution risk to the environment or losses caused by pollution conditions, including asbestos, that may arise from the operations of the Contractor or Contractor's subcontractors, Contractor shall include completed operations coverage for 3 years after substantial completion. Coverage shall apply to sudden and gradual pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemical, liquids, or gases, natural gas, waste materials, or other irritants, contaminants or pollutants, including asbestos.

2.21.9.

The Contractor waives all rights against Ramsey County, its officials, employees, volunteers or agents for recovery of damages to the extent these damages are covered by the general liability, worker's compensation, and employers liability, automobile liability, professional liability and umbrella liability insurance required of the Contractor under this Agreement.

2.21.10. Railroad Protective

Where the contract requires work to be performed within 50 feet of the right-of-way of a railroad, the Contractor shall provide such insurance as the railroad company may require. The cost for such insurance shall be included in the construction budget as an allowance and itemized separately without any mark up.

2.21.11.

These are minimum insurance requirements. It is the sole responsibility of the Contractor to determine the need for and to procure additional insurance which may be needed in connection with this Agreement. Copies of policies and/or certificates of insurance shall be submitted to the County upon written request and within 10 business days.

2.21.12.

Certificates shall specifically indicate if the policy is written with an admitted or non-admitted carrier. Best's Rating for the insurer shall be noted on the Certificate, and shall not be less than an A-.

2.21.13.

The Contractor shall not commence work until it has obtained the required insurance and if required by this Agreement, provided an acceptable Certificate of Insurance to the County.

2.21.14.

All Certificates of Insurance shall provide that the insurer give the County prior written notice of cancellation or non-renewal of the policy as required by the policy provisions of Minn. Stat. Ch. 60A, as applicable. Further, all Certificates of Insurance to evidence that insurer will provide at least ten (10) days written notice to County for cancellation due to non-payment of premium.

2.21.15. Property Insurance

2.21.15.1.

The County shall purchase and maintain, in a company or companies authorized to do business in the jurisdiction in which the Project is located, property insurance upon the Work to the fullest insurable value thereof on a replacement cost basis, subject to a deductible of \$100,000. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the County has an insurable interest in the property required by this Section 2) to be insured, whichever is earlier. This insurance shall include interests of the County, the Contractor, and their respective contractors and subcontractors in the Work. The Contractor shall be responsible for the deductible under this policy, and all other costs not covered by property insurance up to the date of Substantial Completion, and all such costs shall be considered as a Cost of the Work.

2.21.15.2.

Property insurance shall be on an all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, falsework, rigging & hoisting, terrorism, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the services and expenses of the Contractor's Architect and other professionals required as a result of such insured loss. Coverage for other perils shall not be required unless otherwise provided in the Contract Documents.

2.21.15.3.

Unless otherwise provided, the County shall purchase and maintain such boiler and machinery insurance required by this Agreement or by law, which shall specifically cover such insured objects during installation and until final acceptance by the County. This insurance shall include interests of the County, the Contractor, the Contractor's contractors and subcontractors in the Work, and the Contractor's Architect and other design professionals. The County and the Contractor shall be named insureds.

2.21.15.4.

A loss insured under the County's property insurance shall be adjusted by the County as fiduciary and made payable to the County as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable

mortgagee clause and of Section 2.6). The Contractor shall pay contractors their shares of insurance proceeds received by the Contractor, and by appropriate agreement, written where legally required for validity, shall require contractors to make payment to their subcontractors in similar manner.

2.21.15.5.

Before an exposure to loss may occur, the County shall file with the Contractor a copy of a Certificate of Insurance for each policy that includes insurance coverages required by this Section 2). Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least thirty (30) business days' prior written notice has been given to the Contractor.

2.21.15.6.

The County as trustee shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing, within five (5) business days after such notification of the County's intent to exercise this power; if such objection be made, the parties shall enter into dispute resolution under procedures provided in this Agreement. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

2.21.15.7.

Partial occupancy or use prior to Substantial Completion shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The County and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall not, without mutual written consent, take any action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of coverage.

2.21.16. Waiver of Subrogation

The Contractor waives all rights against the County and the Architect and other design professionals, contractors, subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extent covered by property or builders risk insurance applicable to the Work, except to such rights as they may have to proceeds of such insurance held by the Trustee. The Owner or Contractor as appropriate, shall require from contractors and subcontractors by appropriate agreements, written where legally required for validity, similar waivers each in favor of the parties enumerated in this Section. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly and whether or not the person or entity had an insurable interest in the property damaged.

2.21.17.

The County shall be responsible for purchasing and maintaining the County's usual liability insurance and/or self-insurance program.

2.21.18.

Nothing in this Agreement shall constitute a waiver by the County of any statutory or common law immunities, defenses, limits, or exceptions on liability.

2.22. Omission of Express Reference

Any Work that may reasonably be inferred from the Contract Documents, as being required to produce the intended result shall be supplied whether or not it is specifically called for. Work, Materials, or equipment described in words that so applied have a well-known technical or trade meaning shall be deemed to refer to such recognized standards.

2.23. Notice to Proceed

The date of commencement of the Work is the date set forth in the Notice to Proceed. If there is no Notice to Proceed, commencement shall be the effective date of the Agreement or such other date as may be established in the Agreement as the date the Work shall commence. Thereupon, the Contractor shall begin and shall prosecute the Work regularly and without interruption, unless otherwise directed in writing by the Owner, with such manpower and equipment as is necessary to complete the Work within the time stated in the Contract Documents.

2.24. Pre-Construction Conference

2.24.1.

Prior to the start of the Work, there will be a pre-construction conference arranged by the Owner's Representative. Representatives of effected government agencies, the Owner, the Contractor (including the project superintendent), the Contractor's Subcontractors, and utility companies shall be present at this meeting.

2.24.2.

At this meeting, the Contractor shall designate a competent Project superintendent. The Contractor shall also submit a list of phone numbers for the various Subcontractors, foremen and superintendents, including numbers to use in case of emergency.

2.24.3.

Also at this meeting, the Contractor shall submit in writing to the Owner's Representative for approval, a schedule of procedure indicating the order in which the Contractor proposes to perform the various stages of the Work, the dates on which the Contractor will start the several salient features thereof (including procurement of Materials and equipment), and the contemplated dates for completing the same. This schedule shall be in the form of a bar chart of a suitable scale to indicate appropriately the percentage of Work scheduled and completed at weekly intervals. The Contractor shall not deviate from the schedule after once approved without the written permission of the Owner's Representative. The Contractor shall also submit a schedule of payments that the Contractor anticipates it will earn during the course of the Work, based on the schedule.

2.25. Audit

Until the expiration of six years after the furnishing of services pursuant to this Agreement, the Contractor, upon request, shall make available to the County, the State Auditor, or the County's ultimate funding source, a copy of the Agreement, and the books, documents, records, and accounting procedures and practices of the Contractor relating to this Agreement.

2.26. Notices

All notices under this Agreement, and any amendments to this Agreement, shall be in writing and shall be deemed given when delivered by certified mail, return receipt requested, postage prepaid, when delivered via personal service or when received if sent by overnight courier. All notices shall be directed to the Parties at the respective addresses set forth below. If the name and/or address of the representatives changes, notice of such change shall be given to the other Party in accordance with the provisions of this section.

County:

Cole Baessler, 121 7th Place East, Suite 2200, Saint Paul, MN 55101

Contractor:

Daniel Krause, 360 Larpenteur Avenue West, Suite 200, Saint Paul, MN 55113

2.27. Non-Conforming Services

The acceptance by the County of any non-conforming goods/services under the terms of this Agreement or the foregoing by the County of any of the rights or remedies arising under the terms of this Agreement shall not constitute a waiver of the County's right to conforming services or any rights and/or remedies in respect to any subsequent breach or default of the terms of this Agreement. The rights and remedies of the County provided or referred to under the terms of this Agreement are cumulative and not mutually exclusive.

2.28. Setoff

Notwithstanding any provision of this Agreement to the contrary, the Contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the contract by the Contractor. The County may withhold any payment to the Contractor for the purpose of setoff until such time as the exact amount of damages due the County from the Contractor is determined.

2.29. Conflict of Interest

The Contractor shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Agreement. The Contractor warrants that it is not now aware of any facts that create a conflict of interest. If the Contractor hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to the County. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this subparagraph shall be deemed a material breach of this Agreement.

2.30. Respectful Workplace and Violence Prevention

The Contractor shall make all reasonable efforts to ensure that the Contractor's employees, officers, agents, and subcontractors do not engage in violence while performing under this Agreement. Violence, as defined by the Ramsey County Respectful Workplace and Violence Prevention Policy, is defined as words and actions that hurt or attempt to threaten or hurt people; it is any action involving the use of physical force, harassment, intimidation, disrespect, or misuse of power and authority, where the impact is to cause pain, fear or injury.

2.31. Force Majeure

Neither party shall be liable for any loss or damage incurred by the other party as a result of events outside the control of the party ("Force Majeure Events") including, but not limited to: war, storms, flooding, fires, strikes, legal acts of public authorities, or acts of government in time of war or national emergency.

2.32. Unavailability of Funding - Termination

The purchase of goods and/or labor services or professional and client services from the Contractor under this Agreement is subject to the availability and provision of funding from the United States, the State of Minnesota, or other funding sources, and the appropriation of funds by the Board of County Commissioners. The County may immediately terminate this Agreement if the funding for the purchase is no longer available or is not appropriated by the Board of County Commissioners. Upon receipt of the County's notice of termination of this Agreement the Contractor shall take all actions necessary to discontinue further commitments of funds to this Agreement. Termination shall be treated as termination without cause and will not result in any penalty or expense to the County.

2.33. Termination by the County

2.33.1.

The County may immediately terminate this Agreement if any proceeding or other action is filed by or against the Contractor seeking reorganization, liquidation, dissolution, or insolvency of the Contractor under any law relating to bankruptcy, insolvency or relief of debtors. The Contractor shall notify the County upon the commencement of such proceedings or other action.

2.33.2.

The County may terminate this Agreement if the Contractor violates any material term or condition of this Agreement or does not fulfill in a timely and proper manner its obligations under this Agreement. In the event that the County exercises its right of termination under this Paragraph, it shall submit written notice to the Contractor and its surety, if any, specifying the reasons therefore. Termination shall be immediately effective upon the failure of the Contractor to cure the default within ten (10) business days of receipt of the notice of default. Upon termination, the Contractor shall take all actions necessary to discontinue further commitments of funds, and the County shall take possession of the site and of all materials and finish the construction by whatever method the County may deem expedient.

2.33.3.

The County may terminate this Agreement without cause upon giving at least thirty (30) calendar days written notice thereof to the Contractor. In such event, the Contractor shall be entitled to receive compensation for services provided in accordance with this Agreement up to and including the effective date of termination.

2.33.4.

This Agreement may be terminated by the County upon immediate written notice to the Contractor in the event that the Project is abandoned. If such termination occurs, the County shall pay the Contractor for services completed and for proven loss sustained upon materials, equipment, tools, construction equipment and machinery.

2.33.5.

Any termination by the County shall be without prejudice to the rights of the County to pursue other remedies against the Contractor.

2.34. Interpretation of Agreement; Venue

2.34.1.

The Agreement shall be interpreted and construed according to the laws of the State of Minnesota. All litigation regarding this Agreement shall be venued in the appropriate State or Federal District Court in Ramsey County, Minnesota.

2.34.2.

The provisions of this Agreement are severable. If any part of this Agreement is rendered void, invalid or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement.

2.35. Protection of Persons and Property

2.35.1.

The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to, County employees and other persons who may be affected; the Contractor's work and materials and equipment which are under the care, custody and control of the Contractor or any of the Contractor's subcontractors; and other property at the project site or adjacent thereto.

2.35.2.

Unless otherwise directed by the County's Authorized Representative, the Contractor shall promptly remedy damage or loss to property caused in whole or in part by the Contractor, its employees, officers, or subcontractor(s), or anyone directly employed by any of them, or by anyone for whose acts any of them may be liable.

2.36. Warranty

2.36.1.

The Contractor warrants that it has the legal right to provide the goods and services identified in this Agreement and further warrants that the goods and services provided shall be in compliance with the provisions of this Agreement.

2.36.2.

The Contractor shall expressly warrant and guarantee the workmanship, equipment and materials furnished to be in compliance with the terms of the Contract Documents. The warranty shall extend for a one (1) year period from and after the date of Substantial Completion. If any of the Work is found to be defective or not in accordance with the Contract Documents, Contractor shall correct the said condition promptly after receipt of written notice from the Owner. This includes the repairs of any damage to other parts of the property or Project resulting from such defects. Prior to commencement of the corrective Work, the Contractor shall provide insurance certificate policies, so as to protect the Owner, its Owner's Representative and their agents during the performance of the warranty Work. Acceptance by the Owner for the purpose of beginning the warranty period will be deemed to be when the Work is finally accepted by the Owner.

2.36.3.

The acceptance of any of the Work, or any part of it, shall not act to waive the liability on the part of the Contractor and the Contractor's surety.

2.36.4.

In the event that the Contractor should fail to make the repairs, adjustments or other Work that may be made necessary by defects in any of the Work, the Owner may do so and charge the Contractor the cost thereby incurred. The performance bond shall remain in full force and effect through the warranty/guaranty period. The Contractor's performance and payment bond delivered to the Owner pursuant to the Contract shall cover the Contractor's obligations provided for herein.

2.36.5.

Specific products used in the construction of the Work may include warranties specific to them and of a longer term than one (1) year. The Contractor shall provide written verification from the manufacturer of the product stating what the warranty covers and the time frame in which the warranty expires.

2.37. Infringement

2.37.1.

Complementary to other "hold harmless" provisions included in this Agreement, the Contractor shall, without cost to the County, defend, indemnify, and hold the County, its officials, officers, and employees harmless against any and all claims, suits, liability, losses, judgments, and other expenses arising out of or related to any claim that the County's use or possession of the software, licenses, materials, reports, documents, data, or documentation obtained under the terms of this Agreement, violates or infringes upon any patents, copyrights, trademarks, trade secrets, or other proprietary rights or information, provided that the Contractor is promptly notified in writing of such claim. The Contractor will have the right to control the defense of any such claim, lawsuit, or other proceeding. The County will in no instance settle any such claim, lawsuit, or proceeding without the Contractor's prior written approval.

2.37.2.

If, as a result of any claim of infringement of rights, the Contractor or County is enjoined from using, marketing, or supporting any product or service provided under the agreement with the County (or if the Contractor comes to believe such enjoinderment imminent), the Contractor shall either arrange for the County to continue using the software, licenses, materials, reports, documents, data, or documentation at no additional cost to the County, or propose an equivalent, subject to County approval. The acceptance of a proposed equivalent will be at the County's sole discretion. If no alternative is found acceptable to the County acting in good faith, the Contractor shall remove the software, licenses, materials, reports, documents, data, or documentation and refund any fees and any other costs paid by the County in conjunction with the use thereof.

2.38. Title - Risk of Loss

2.38.1.

Title to goods and/or all associated documentation shall pass to the County upon payment by the County for goods and/or associated documentation; or for construction projects, upon incorporation of the goods into the Project.

2.38.2.

The County shall be relieved from all risks of loss or damage to goods, and/or all documentation prior to the time title passes to the County as described above. The Contractor shall not be responsible for loss or damage to goods and/or documentation occasioned by negligence of the County or its employees.

2.39. Submittals

No portion of the work requiring submission of a shop drawing, drawing, manufacturer's literature, test data or other information, or a sample shall be commenced until the submittal has been approved by the County.

2.40. Clean Up

The Contractor shall at all times keep County premises free from accumulation of waste materials or rubbish caused by its operations.

2.41. Prevailing Wage (Construction and Labor)

2.41.1.

Contractors and all subcontractors of the Contractor shall conform to the labor laws of the State of Minnesota, [Ramsey County Prevailing Wage Ordinance No. 2013-329](#), and all other laws, ordinances, and legal requirements affecting the work in Ramsey County and Minnesota. The minimum wage rate per hour to be paid for each classification of work shall be the union wage rate in the locality of the project for those classifications over which unions have jurisdiction and the local prevailing rate for those classifications of work in the localities over which unions do not have jurisdiction.

The terms "prevailing wage", "minimum wage rate per hour", and "prevailing rate" as used in the contract, shall mean "prevailing wage rate" as defined in Minnesota Statutes §177.42.

Pursuant to Minnesota Statutes §§177.41 to 177.44 and corresponding Rules 5200.1000 to 5200.1120, all construction contracts funded in whole or in part by state funds are subject to the prevailing wages as established by the Minnesota Department of Labor and Industry. Specifically, all Contractors and subcontractors must pay all laborers and mechanics the established prevailing wages for work performed under the contract. Failure to comply with the aforementioned may result in civil or criminal penalties.

2.41.2.

Pursuant to the Ramsey County Prevailing Wage Ordinance No. 2013-329, the Prevailing Wage Rate must be paid under any contract with Ramsey County or under a subcontract to that contract with Ramsey County with an anticipated Project completion cost or anticipated Services contract value of over \$25,000.

2.41.3.

Throughout the term of this Agreement, the Contractor shall submit Certified Payroll Records within 14 days of the end of a pay period and in accordance with the requirements of Ramsey County Prevailing Wage Ordinance No. 2013-329. Failure of the Contractor to submit the Certified Payroll Records in accordance with the Ordinance may result in criminal or civil enforcement by the County, including, but not limited to termination of the agreement for cause, withholding of payments, and assessment of liquidated damages.

2.41.4.

For the purposes of this section, prevailing wage rates and basic hourly rates in the same or more similar trade or occupation in the area, and prevailing hours of labor, shall be as contained in the Certified Prevailing Wages for *Commercial Construction* or the Certified Prevailing Wages for *Highway and Heavy Construction* established by the State of Minnesota, Department of Labor and Industry, as set forth in Attachment A. Prevailing wage rates shall mean the Total Rate, consisting of Basic Hourly Rates plus Fringe Benefits. State of Minnesota Prevailing Wage Rates, current as of the date of the project's bid release, shall apply for the entire term of the Agreement.

2.41.5.

The Contractor shall post the applicable prevailing wage rates, hourly basic rates, and prevailing hours of labor, at a conspicuous location accessible by workers at the location of the Work. The Contractor shall physically include the requirements of the article and the schedules set forth in Attachment A in applicable agreements and contracts with Subcontractors, agents, or other persons doing or contracting to do all or any part of the Work under the Agreement. Incorporation of prevailing wage rates by reference in such agreements and contracts is not acceptable.

2.41.6.

In the event of any violation of the requirement that the Contractor or Subcontractor pay not less than 1-1/2 times the basic hourly rate to each laborer or mechanic employed directly on the job site when such employee is permitted or required to work in excess of the prevailing hours of labor, the Contractor or Subcontractor shall be liable for the unpaid wages.

2.42. Debarment and Suspension

Ramsey County has enacted Ordinance 2013-330 [Ramsey County Debarment Ordinance](#) that prohibits the County from contracting with contractors who have been debarred or suspended by the State of Minnesota and/or Ramsey County.

2.43. Project Labor Agreement

The County has determined that it is in the best interests of the County, as an owner of real property, to have a Project Labor Agreement in place. The Contractor will enter into, and have in effect for the duration of this project, a Project Labor Agreement with the Saint Paul Building and Construction Trades Council. Failure of the awarded vendor to enter into and maintain such an agreement for the duration of the project may be grounds for termination by the County for cause. Upon execution, the Project Labor Agreement shall be incorporated into and become a part of the contract for this Project.

2.44. Alteration

Any alteration, variation, modification, or waiver of the provisions of this Agreement shall be valid only after it has been reduced to writing and signed by both parties.

2.45. Performance and Payment Bonds

2.45.1.

The Contractor shall furnish a Performance and Payment bond, both meeting the following conditions:

2.45.1.1.

Issued by a bonding company licensed to do business in Minnesota.

2.45.1.2.

On the current list of Companies Holding Certificates of Authority as acceptable Sureties on Federal Bonds and as acceptable reinsuring companies as published in Circular 570 (Amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department.

2.45.1.3.

All bonds signed by an agent must be accompanied by a certified copy of the authority to act.

2.45.1.4.

Duly executed, notarized and updated Acknowledgment of both the Principal and Surety and the Surety's Power of Attorney must be attached to each of the two required bonds.

2.45.1.5.

Bond amounts shall not exceed the single bond limit for the Contractor's bonding company as set forth in the Federal Register current as of the bid date.

2.45.1.6.

Checks are not accepted in lieu of a Bond.

2.45.2.

The bonds shall each be in the amount of 100% of the Contract Price. The term "contract", as used herein, shall include the original agreement plus all subsequent change orders and/or amendments. The Contract Price to which the principal is bound shall be the amount as reflected by the terms of the contract.

2.45.3.

The bonds shall cover the faithful performance of the Contract and the payments of all obligations arising thereunder. No work shall begin until the County has received the proper bonds specified under this clause.

2.45.4.

Bonds shall indemnify the County for any loss sustained by the County on account of or by reason of the acts of the Contractor or the acts of anyone else directly or indirectly employed by the Contractor in the performance of the Work for the Project.

2.46. Schedule Progress

The Owner shall, at its discretion, hold bi-weekly meetings to monitor progress and coordinate activities at the location of the Work. The Contractor and its Subcontractors shall attend these meetings, provide any required documentation of progress and anticipated construction scheduling as required by the Owner. These meetings will be held at a time and location determined by the Owner.

If, in the opinion of the County, the Contractor falls behind the progress schedule, or if it appears that the Contractor will not achieve Substantial Completion in accordance with the agreed upon schedule, the Contractor shall take any and all steps necessary to improve the progress to assure Substantial Completion in accordance with the schedule, at no additional cost to the County.

The County may require the Contractor to submit for approval and at no additional cost to the County, such supplementary progress schedules as may be deemed necessary to demonstrate the manner in which the approved progress schedule or date of Substantial Completion will be regained.

Failure of the Contractor to comply with the requirements of this subparagraph shall be grounds for determination that the Contractor is not performing the Work with such diligence as will ensure completion within the time specified in the Agreement between the County and the Contractor. Upon such determination, the County may terminate the Contractor's right to proceed with the Work, or any separable part thereof, in accordance with other applicable provisions of the Contract or may obtain the services required to bring the Work into compliance with the schedule at the Contractor's cost.

2.47. Changes in Work

Changes in the Work may be accomplished after execution of the contract by Change Order, Construction Change Directive, or order for a minor change in the Work, subject to the limitations stated in the Contract Documents. A change in the Work that affects the Contract Price or schedule may be made only by Change Order.

A Change Order shall be based upon agreement between the County and the Contractor; a Construction Change Directive may be issued by the County without the agreement of the Contractor; an order for a minor change in the Work may be issued by the Contractor.

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

Change Orders

A Change Order is a written instrument prepared by the Contractor and signed by the County and the Contractor stating their agreement upon all of the following:

- a change in the Work;
- the amount of the adjustment, if any, in the Contract Price; and
- the extent of the adjustment, if any, in the Project Schedule.

No work consistent with the changes in the Change Order shall commence until the Change Order has been reduced to writing and signed by both parties.

Construction Change Directives

A Construction Change Directive is a written order prepared and signed by the County, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Price, schedule, or both.

2.48. Minor Changes in the Work

The Contractor shall have authority to make minor changes in the Construction Documents and construction consistent with the intent of the Contract Documents when such minor changes do not involve adjustment in the Contract Price or extension of the Project schedule. The Contractor shall promptly inform the County, in writing, of minor changes in the Construction Documents and construction.

2.49. Oral Agreements

Verbal orders and suggestions as to the performance of the work may be given from time to time by the Owner's Representative, or by other representatives of the municipality, county, state or other government or regulatory agency through the Owner's Representative. When in the opinion of the Contractor, such verbal orders or suggestions entitles the Contractor to a change in Contract Price or Contract Time or both, the Contractor must request a Change Order from the Owner. No verbal order or suggestion of any representative or employee of the municipality, county, state or other governmental or regulatory agency, or of any other person, shall be construed as authorizing any claims on the part of the Contractor for extra compensation for labor, material or other items pertaining to such work, or for damages or any other expenses incurred because of the Contractor's compliance therewith. The Contract Price and Contract Time may only be changed by Change Order.

2.50. Maintenance of Record Drawings at Site and Shop Drawings

The Contractor shall maintain at the Project site for the County one record copy of the drawings, specifications, product data, samples, shop drawings, addenda, Change Orders and other modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be delivered to the County upon completion of construction as a record of the Work as constructed prior to final payment.

2.51. Final Inspection

2.51.1.

Upon written notice from the Contractor that the Project is completed, the Owner's Representative together with the Owner, and other appropriate parties, will make a preliminary inspection with the Contractor present. Upon completion of this preliminary inspection, the Owner's Representative will notify the Contractor, in writing, of any

particulars in which this inspection reveals that the work is defective or incomplete. This list shall be referred to as a "Punch List".

2.51.2.

Upon receiving the Punch List from the Owner's Representative, the Contractor shall immediately undertake the actions required to remedy defects and complete the Project to satisfaction of the Owner and the Owner's Representative.

2.51.3.

When the Contractor has corrected or completed the items as listed in the Owner's Representative's written notice, the Contractor shall inform the Owner's Representative, in writing, that the required Work has been completed. Upon receipt of this notice, the Owner's Representative, in the presence of the Contractor, Owner, and other appropriate parties shall make their final inspection of the Work.

2.51.4.

If the Owner's Representative finds all Work satisfactory at the time of this second inspection, the Contractor will be allowed to make application for final payment in accordance with the provisions of the Contract Documents. If the Owner's Representative still finds dissatisfaction with the same Work, the Owner's Representative shall inform the Contractor of the deficiencies and will deny the Contractor's request for final payment, until such time as the Contractor has satisfactorily completed the required Work. The cost of the third or subsequent inspections shall be borne by the Contractor.

2.52. Final Payment

After the final inspection and acceptance by the Owner of all Work under the Contract, the Contractor shall prepare an application for final payment and submit it to the County for approval. The total amount of final payment due the Contractor under this Agreement shall consist of the total Contract Price as adjusted in accordance with approved Change Orders, less all previous payments to the Contractor and subject to withholding of any amount due the County as liquidated damages, as provided in Section N/A below, or as otherwise due under the Contract Documents or applicable law. The Application for final payment shall be accompanied by the following:

1. final lien releases and claim waivers (in a form acceptable to the County) by the Contractor and all persons performing Work and supplying material or services to the Contractor;
2. an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the County might in any way be responsible, have been paid or otherwise satisfied;
3. consent of surety, if any, to final payment;
4. two copies of Operation & Maintenance Manuals with provided warranty documentation for products and two copies of as-built plans identifying modifications to original plans;
5. if required by the County, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Agreement, to the extent and in such form as may be designated by the County;
6. the Certificate of Project Completion form (provided by the County);

7. a copy of the completed State of Minnesota Form IC-134, signed by the State Commissioner of Taxation, for the Contractor and its subcontractors; and
8. a complete report describing efforts and outcomes of those efforts towards achievement of Project SBE and labor utilization goals; and sustainability goals, if applicable.

2.53. Warning Signs and Barricades

The Contractor shall at all times so conduct their Work as to insure the least possible obstruction to traffic and inconvenience to the general public and the residents in the vicinity of the Work, and to insure the protection of persons and property. No road or street shall be closed to the public except with the permission of the proper governmental authority. The Contractor shall warn effected motorists, pedestrians or residents of any construction practices or situations which could be dangerous, cause personal injuries or property damage. Fire hydrants on or adjacent to the work shall be kept accessible to fire-fighting equipment at all times. Temporary provisions shall be made by the Contractor to insure the use of sidewalks and the proper functioning of all gutters, sewer inlets, drainage ditches and irrigation ditches, which shall not be obstructed. The Owner's Representative reserves the right to require immediate backfilling of any street area which the Owner's Representative deems it required for safe traffic circulation within or adjacent to the Work.

2.54. Crossing Utilities

2.54.1.

Where the prosecution of the Work results in the crossing of highways, railroads, streets or utilities under the jurisdiction of state, county, city or other public or private entities, the Contractor shall secure written permission from the proper authority to cross said highway, railroad, street or utility before further prosecuting the Work. A copy of the written document granting permission shall be filed with the Owner and Owner's Representative before any work is done. The Contractor shall be required to obtain a written release from the applicable authority upon completion of the Work. A copy of this written release shall be filed with the Owner and Owner's Representative before final acceptance of the work is granted.

2.54.2.

The Contractor shall protect that which is to remain and shall conduct all installation operations in a manner that will not damage or jeopardize the surrounding plant life designated to remain. Equipment operating around existing trees shall use extreme caution to prevent damage to roots, trunks, and branches. The Contractor shall verify the location and elevation of existing utilities in the area of work. Any damage to utilities, trees or other existing-to-remain items shall be repaired at the Contractor's expense.

2.55. Sanitary Provisions

The Contractor shall provide and maintain such sanitary facilities for the use of Contractor's employees and its Subcontractors as may be necessary to comply with the laws, rules or regulations of the federal, state, and local governments, or agencies or departments thereof.

2.56. Preservation of Historical Objects

2.56.1.

Where historical objects of potential architectural, archeological or paleontological nature are discovered within the areas on which the Contractor's operations are in progress, the Contractor shall restrict or suspend their operations in the immediate area of the

discovery as may be necessary to preserve the discovered objects until the Owner has made arrangements for their disposition or has recorded the desired data relative thereto.

2.56.2.

The Contractor shall immediately notify the Owner of any historical objects discovered as the Work is being performed, and shall aid in the preservation and salvage program decided upon, as may be requested or ordered by the Owner. Work requiring a change to the Contract Price shall not be performed without the written authorization of the Owner.

2.56.3.

The Owner shall have the right to restrict or suspend the Contractor's operations in the immediate area where historical objects are discovered for a period not to exceed 72 hours, without claim being made by the Contractor for any damages they might suffer as a result thereof.

2.57. Lands by Owner

The Owner shall provide access to the lands shown on the drawings upon which the Work is to be performed. The Owner shall also provide or obtain the right-of-way for access to the land. Any delay by the Owner in furnishing access to the land shall be deemed proper cause for consideration of adjustment in the time of completion, but not in the Contract Price.

2.58. Land by Contractor

Any additional land and access thereto not shown on the drawings that may be required for temporary construction facilities or for storage of Materials shall be provided by the Contractor with no liability to the Owner. The Contractor shall confine its apparatus, storage of Materials, and operation of its workers to those areas described in the drawings and specifications; and such additional areas that may be provided at the contractor's expense. The Contractor shall notify the Owner's Representative in writing of those lands provided at the contractor's expense. The Contractor shall not disturb any areas outside of the construction limits including wetlands, woodlands and previously restored work areas.

2.59. Private Property

The Contractor shall not enter upon private property for any purpose without obtaining permission from the owner, and shall be responsible for the preservation of all public property, trees, monuments, etc., along and adjacent to the street and/or right-of-way, and shall use every precaution necessary to prevent damage or injury thereto. The Contractor shall protect carefully from disturbance or damage all monuments and property marks until the Owner's Representative has witnessed or otherwise referenced their location and shall not remove them until directed.

2.60. Shop Drawings

2.60.1.

The Contractor shall provide Shop Drawings as may be necessary for the prosecution of the Work as required by the Contract Documents. The Owner's Representative shall promptly review all shop drawings. The Owner's Representative's review of any Shop Drawing shall not release the Contractor from responsibility for deviations from the Contract Documents. The discovery of any Shop Drawing which substantially deviates from the requirements of the Contract Documents shall be evidenced by a Change Order or corrected and resubmitted by the Contractor, at the Owner's Representative's discretion.

2.60.2.

When submitting for the Owner's Representative's review, Shop Drawings shall bear the Contractor's certification that the Contractor has reviewed, checked and approved the Shop Drawings and that they are in conformance with the requirements of the Contract Document.

2.60.3.

Portions of the Work requiring a Shop Drawing or sample submission shall not begin until the Shop Drawing or submission has been reviewed by the Owner's Representative. A copy of each approved Shop Drawing and each approved sample shall be kept in good order by the Contractor at the site and shall be available to the Owner's Representative.

2.60.4.

Prepare Project-specific information, drawn accurately to scale. Do not base Shop Drawings on reproductions of the Contract Documents or standard printed data. Fully illustrate requirements in the Contract Documents. Include the following information, as applicable:

- a. Dimensions.
- b. Identification of products.
- c. Fabrication and installation Plans.
- d. Roughing-in and setting diagrams.
- e. Wiring diagrams showing field-installed wiring, including power, signal, and control wiring.
- f. Shop work manufacturing instructions.
- g. Templates and patterns.
- h. Schedules.
- i. Notation of coordination requirements.
- j. Notation of dimensions established by field measurement.
- k. Seal and signature of professional engineer if specified.
- l. Wiring Diagrams: Differentiate between manufacturer-installed and field-installed wiring.

2.60.5.

Submit opaque (bond) and electronic copies of each submittal. The Owner's Representative will return one copy.

2.61. Substitutions After Award of Agreement

Whenever a Material, article or piece of equipment is identified in the Contract Documents by reference to brand name or catalog number, it shall be understood that this reference is for the purpose of defining the performance or other salient requirements and that other products of equivalent capacities, quality and function shall be considered. The Contractor may recommend the substitution of a Material, article, or piece of equipment of equivalent substance and function for those referred to in the Contract Documents by reference to brand name or catalog

number, and if, in the opinion of the Owner's Representative, such Material, article, or piece of equipment is of equivalent substance and function to that specified, the Owner's Representative may approve its substitution and use by the Contractor. Where applicable the Owner's Representative will only approve substitutions after the Contractor has received approval from the municipality, county, state or other regulatory agencies with jurisdiction. The Owner's Representative will not lobby for the approval of the substituted Material. Any cost differential shall be deductible from the Contract Price and the Contract Documents shall be appropriately modified by Change Order. The Contractor warrants that if substitutes are approved, no major changes in the function or general design of the Project will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the Contractor without a change in the Contract Price or Contract Time. Requests for review of substitute items will not be accepted by the Owner's Representative from anyone other than the Contractor. The Contractor shall reimburse the Owner for the charges incurred by the Owner's Representative to evaluate each proposed substitution.

2.62. Submittals

2.62.1.

No portion of the Work requiring submission of a Shop Drawing, drawing, manufacturer's literature, test data or other information, or a sample shall be commenced until the submittal has been approved by the Owner.

2.62.2.

The Contractor shall furnish one copy of complete product data for every manufactured item of equipment and all components to be used to perform the Work, including specific performance data, material description, rating, capacity, working pressure, material gauge or thickness, brand name, catalog number and general type. This data shall be compiled by the Contractor and reviewed by the Owner's Representative before any of the equipment is ordered. All data shall be indexed according to specification section and paragraph for easy reference. After review, this data shall become a part of the Contract, and may not be deviated from except upon the written approval of the Owner's Representative.

2.62.3.

Product data for equipment reviewed by the Owner's Representative does not in any case supersede the Contract Documents. The review of the Owner's Representative shall not relieve the Contractor from responsibility for deviations from drawings or specifications unless the Contractor has in writing called the Owner's Representative's attention to such deviations at the time of furnishing said data. Nor shall such review relieve the Contractor from responsibility for errors of any sort in the items furnished. The Contractor shall check the work described by the product data with the Contract.

2.62.4.

It shall be the responsibility of the Contractor to insure that items to be furnished fit the space available. The Contractor shall take necessary field measurements to ascertain space requirements, including those for connections and shall order such sizes and shapes of equipment that the final installation shall suit the true intent and meaning of the Drawings and Specifications.

2.62.5.

Where equipment requiring different arrangement of connections from those shown is approved, it shall be the responsibility of the Contractor to install the equipment so as to allow for proper operation and to be in harmony with the intent of the drawings and

specifications, and to make all changes in the Work required by the different arrangement of connections.

2.63. Intent of Plans and Specifications

The intent of the Plans and Specifications is that the Contractor shall furnish all labor and materials, equipment and transportation necessary for the proper execution and completion of the Work unless specifically noted otherwise. The Plans and Specifications are complementary, and what is required by one shall be as binding as if required by all. Performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results. The Contractor shall do all the Work shown on the Plans and described in the Specifications and all incidental work considered necessary to complete the Project in an acceptable manner, and to fully complete the Work, ready for use, occupancy and operation by the Owner.

2.64. Discrepancies

Any ambiguity or discrepancy drawings and Specifications, no matter how seemingly insignificant to the Contractor, shall be brought immediately to the attention of the Owner's Representative for clarification. The Owner's Representative shall promptly correct such ambiguity or discrepancy in writing. If the Contractor fails to bring any ambiguity or discrepancy in writing of which it was or should have been aware, the Contractor shall assume the risk of loss because of, and shall be allowed no claim for the misinterpretation of, the drawings and Specifications contrary to the intended interpretation of the Owner's Representative. Work done by the Contractor after the Contractor's discovery of such discrepancies, inconsistencies or ambiguities shall be done at the Contractor's risk.

2.65. Additional Instructions and Detail Drawings

The Contractor may be furnished additional instructions and detail drawings by the Owner's Representative, as necessary, to carry out the Work required by the Contract Documents. The additional drawings and instruction thus supplied will become a part of the Contract Documents. The Contractor shall carry out the Work in accordance with the additional drawings and instructions.

2.66. Special Contract Terms and Conditions

2.66.1.

Per Section 1.6.2 Workforce Inclusion, the Contractor (and all appropriate subcontractors) shall utilize County's LCP Tracker software system for submission of completed certified payroll reports. Attachments B and C references in section 2.5.8 are not applicable to this Contract and can be disregarded by the Contractor.

Item Number: 2023-202

Meeting Date: 5/23/2023

Sponsor: Property Management & County Attorney's Office

Title

Second Amendment to Lease Agreement with Lowry Building LLC for Office Space

Recommendation

1. Approve the second amendment to the lease agreement with Lowry Building LLC, 375 Jackson Street, Suite 700W, Saint Paul, MN, 55101, for office space at the Lowry Building, 345 Wabasha Avenue, Saint Paul, MN, 55102, for the period from September 1, 2023, through January 31, 2024, with all other material terms remaining in effect.
2. Authorize the Chair and Chief Clerk to execute the second amendment to the lease agreement.
3. Authorize the County Manager to execute lease amendments to extend the lease at negotiated rates, with the same general terms and conditions.

Background and Rationale

On December 20, 2022, the Ramsey County Board of Commissioners approved the acquisition and purchase agreement for the 360 Wabasha Street property. The purchase and acquisition of the 360 Wabasha Street property will provide the Ramsey County Attorney's Office with the opportunity to vacate its leased space inside the Lowry Building.

The purchase and acquisition of the 360 Wabasha Street property closed on March 31, 2023. Property Management is renovating the interior of the building to provide an adequate space for the Ramsey County Attorney's Office to occupy.

The Ramsey County Attorney's Office's current lease at the Lowry Building expires August 31, 2023. The renovation of the 360 Wabasha building will not be completed by this date, and the Ramsey County Attorney's Office will need to remain at the Lowry Building prior beyond the current lease expiration date.

Property Management, with the Ramsey County Attorney's Office, is requesting a short-term extension of the existing lease for the Lowry Building, for the period of September 1, 2023, through January 31, 2024, so that the renovation of the 360 Wabasha building can be completed, and the Ramsey County Attorney's Office move can take place.

County Goals (Check those advanced by Action)

Well-being Prosperity Opportunity Accountability

Racial Equity Impact

The racial equity impact of the lease amendment is unknown.

Community Participation Level and Impact

There is no communication engagement for this lease amendment.

Inform Consult Involve Collaborate Empower

Fiscal Impact

The terms of the lease amendment include a five-month extension at a negotiated rate of \$55,821 per month or a total amount of \$279,103 for the term. This is a 3% increase. Funding for the lease is provided through the operating budget of the Ramsey County Attorney Office.

Last Previous Action

On December 20, 2022, the Ramsey County Board of Commissioners approved the acquisition of and purchase agreement for Parcel 062822120058 with Ecolab USA, Inc. in accordance with the terms in the Lease Agreement, in the amount of \$3,950,000 (Resolution B2022-298).

On August 12, 2012, the Ramsey County Board approved a lease agreement with the Lowry Building LLC for office space (Resolution 2012-234).

Attachments

1. Second Amendment to Lease

**SECOND AMENDMENT TO LEASE
BETWEEN RAMSEY COUNTY AND LOWRY BUILDING LLC**

THIS SECOND AMENDMENT TO LEASE (“Second Amendment”) is made as of the _____ day of _____, 2023, (the “Effective Date”) and is by and between Lowry Building LLC, a Minnesota limited liability company, as the managing and authorized co-tenant for Lowry Building LLC and HLV, LLC, a Minnesota limited liability company (“Landlord”), and the County of Ramsey, a political subdivision of the State of Minnesota, on behalf of the Ramsey County Attorney’s Office (“Tenant”).

RECITALS

- A. Pursuant to Ramsey County Board Resolution Number 2012-234, Landlord and Tenant entered into that certain **Lease** effective August 22, 2012, with a lease term from November 7, 2013, through August 31, 2023 (the “Original Lease”);
- B. Landlord and Tenant further agreed to that certain **Memorandum of Rent Credit Between Lowry Building LLC and the County of Ramsey** dated April 25, 2017;
- C. Landlord and Tenant further agreed to that certain **First Amendment to Lease Between Ramsey County and Lowry Building LLC**, which was approved by the Ramsey County Board of Commissioners on August 20, 2019, Res. B2012-234;
- D. The Original Lease, as amended, will terminate by its terms on August 31, 2023;
- E. Tenant has purchased and is currently renovating another property for use by the Ramsey County Attorney’s Office and other County uses;
- F. Such renovations will not be complete prior to the scheduled Lease termination date on August 31, 2023; and
- G. Tenant wishes to, and Landlord has agreed to, extend the Lease through January 31, 2024, under the same terms and conditions of the Lease, as amended, except as provided in this Second Amendment (the “Holdover Period”).

NOW THEREFORE, in consideration of the foregoing Recitals and the mutual promises in this Second Amendment and other good and valuable consideration, Landlord and Tenant agree as follows:

- 1. **Amending Section 19. Surrender and Holding Over.** Section 19 of the Original Lease is amended as follows (new language in *bold italics*, stricken language in [~~bracketed strikethrough~~]):

Section 19. Surrender and Holdover

On the last day of the Term, or upon any earlier termination of this Lease, or upon any reentry by Landlord upon the Premises, (a) Tenant shall quit and surrender the Premises to Landlord in good order, condition and repair, except for ordinary wear and tear, loss due to casualty or condemnation, permitted Alterations and such damage or destruction as Landlord is required to repair or restore under this Lease, and (b) Tenant shall remove all of Tenant's Property therefrom, except as otherwise expressly provided in this Lease. If Tenant remains in possession after the Expiration Date (as adjusted by any Extension Term) or after any earlier termination date of this lease, or after Tenant's right to possession terminates without the execution of a new Lease, with Landlord's written consent: (a) Tenant shall be deemed a tenant from month to month and shall pay [~~one hundred fifty percent (150%) of the~~] Base Rent ***in a monthly amount agreed upon by Landlord and Tenant*** [~~last prevailing hereunder~~]. If Tenant holds over without a new lease or Landlord's written consent, Tenant shall be deemed a Tenant at will, which tenancy may be terminated upon thirty (30) days' written notice from Landlord. The provisions of this Section 19 shall not constitute a waiver by Landlord of any re-entry rights of Landlord provided hereunder or by law.

2. **Amending Exhibit C. Rent Schedule.** Exhibit C of the Original Lease is amended to add the following line to the Rent Table:

<i>Lease period</i>	<i>Leased Space</i>	<i>Monthly Payment</i>	<i>Full Lease Period Amount</i>
<i>Holdover Period (9/1/2023 – 1/31/2024)</i>	<i>All spaces and square footages listed in the Original Lease, as amended</i>	<i>\$55,820.56</i>	<i>\$279,102.80</i>

3. **Other Terms and Conditions.** Except as modified by this Second Amendment, all other terms and conditions of the Original Lease, as previously amended, shall remain unchanged and in full force and effect.

4. **Incorporation of Recitals.** The parties agree that the Recitals at the beginning of this Second Amendment are true and correct, and are incorporated in this Second Amendment.

IN WITNESS WHEREOF, this Second Amendment to Lease is duly executed effective as of the Effective Date first written above.

[remainder of the page left blank intentionally; signature page follows]

Signature Page for Second Amendment to Lease

LANDLORD:

LOWRY BUILDING LLC

By: _____

Printed Name

Its: _____

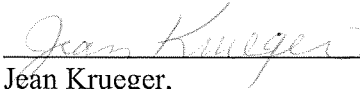
TENANT:

COUNTY OF RAMSEY

Trista MatasCastillo, Chair
Ramsey County Board of Commissioners


Mee Cheng, Chief Clerk
Ramsey County Board of Commissioners

Approval recommended:



Jean Krueger,
Director, Ramsey County Property
Management

Approved as to form:



Assistant Ramsey County Attorney

Item Number: 2023-203

Meeting Date: 5/23/2023

Sponsor: Property Management & Sheriff's Office

Title

Lease Agreement with the City of Saint Paul for Office Space

Recommendation

1. Approve the lease agreement with the city of Saint Paul, 15 West Kellogg Boulevard, Suite 700, Saint Paul, MN, 55102, for office space in the City Hall Annex, 25 West 4th Street, Suite 150, Saint Paul, MN, 55102, for the period of July 1, 2023, through June 30, 2025, in the total amount of \$179,721.
2. Authorize the Chair and Chief Clerk to execute the lease agreement.
3. Authorize the County Manager to execute lease amendments to renew the lease at negotiated rates, with the same general terms and conditions.

Background and Rationale

On December 20, 2022, the Ramsey County Board of Commissioners approved the acquisition and purchase agreement for the 360 Wabasha Street property. The purchase and acquisition of 360 Wabasha Street property will provide the Ramsey County Sheriff's Office, Civil Division, with opportunity to vacate its use of the leased space in the City Hall Annex, while the Court and Security Services Division will remain as tenants.

The purchase and acquisition of the 360 Wabasha Street property closed on March 31, 2023. Property Management is renovating the interior of the building to provide an adequate space for the Ramsey County Sheriff's Office, Civil Division, to occupy.

The Ramsey County Sheriff's Office current lease at the City Hall Annex expires June 30, 2023. The Ramsey County Sheriff's Office, Court and Security Services Division, will continue to lease space at the City Hall Annex, as the proximity to the Ramsey County Courthouse - Saint Paul City Hall is required to effectively perform its duties. Property Management, with the Ramsey County Sheriff's Office, Court and Security Services Division, is requesting the approval of a lease agreement for the period of July 1, 2023, through June 30, 2025.

County Goals (Check those advanced by Action)

Well-being Prosperity Opportunity Accountability

Racial Equity Impact

The racial equity impact of the lease amendment is unknown.

Community Participation Level and Impact

There is no communication engagement for this lease amendment.

Inform Consult Involve Collaborate Empower

Fiscal Impact

The terms of the lease agreement include a two-year lease at a negotiated rate increase of 2% per year, or a total amount of \$179,721 for the term. Funding for the lease agreement is through the operating budget of the

Ramsey County Sheriff's Office.

Last Previous Action

On December 20, 2022, the Ramsey County Board of Commissioners approved the acquisition of and purchase agreement for Parcel 062822120058 with Ecolab USA, Inc. in accordance with the terms in the Lease Agreement, in the amount of \$3,950,000 (Resolution B2022-298).

On July 7, 2020, the Ramsey County Board of Commissioners approved a lease agreement with the city of Saint Paul, for the lease of office space in the City Hall Annex for the period of July 1, 2020 through June 30, 2022, with an option for an additional one year renewal term starting on July 1, 2022 and ending on June 30, 2023 (Resolution B2020-136).

Attachments

1. Lease Agreement with the City of Saint Paul

(TMS/17)

Revised 3/21/23

Authority (C.F. or A.O.)

LEASE NO. _____ TMS/17

DATE: _____ July 1, 2023

LESSOR: _____ **CITY OF SAINT PAUL**

Office of Financial Services – Real Estate Section

25 West Fourth Street, Saint Paul, Minnesota, 55102

LESSEE: _____ **RAMSEY COUNTY – Sheriff’s Office**

25 W. 4th St., Ste. 150, Saint Paul, Minnesota, 55102



**CITY OF SAINT PAUL
LEASE
AGREEMENT**

- 1) **Leased Premises.** LESSOR, in consideration of the payment of the Basic Rent and Additional Rent hereinafter specified to be paid by LESSEE, and the covenants and agreements herein contained, does hereby lease, demise and let unto LESSEE the premises hereinafter referred to as the “Leased Premises:”

Approximately 5,700 square feet of office space located on the 1st floor of the City Hall Annex, (Rm. 150), 25 West Fourth Street, Saint Paul, Minnesota.

See Exhibit “A” depiction of the Leased Premises, which is incorporated herein by this reference.

- 2) **Term of Lease.** This Lease shall be in effect for a term commencing and ending on the dates indicated below, unless terminated earlier by LESSOR as provided herein.

Term (Months/Years)	Commencing Date	Ending Date
2 years	July 1, 2023	June 30, 2025

- 3) **Renewal.** Subject to prior written approval by LESSOR, the Lease may be renewed for a term of one additional year. The lease rate (rent/square foot) and rent escalator will be renegotiated at that time. If LESSEE desires to renew for an additional 1-year term, LESSEE will notify LESSOR at least one (1) year prior to expiration of the Lease.

- 4) **Use of Leased Premises.**

Office space, exercise room, showers/lockers, restroom

and for no other purpose without the prior written consent of LESSOR.

5) **Rent.** Rent shall consist of Basic Rent and such Additional Rent as may apply. LESSEE shall pay all rent in advance, on the first day of the term of the lease and on the first day of each payment period thereafter as indicated in the Payment Schedule below:

a) Basic Rent (5,700 SF)

Year	Basic Annual Rent	1st Qtr.	2nd Qtr.	3rd Qtr.	4th Qtr.	Rent/Sq Ft
2023 (6 mos.)	\$44,488.50			\$22,244.25	\$22,244.25	\$15.61
2024	\$89,860.50	\$22,244.25	\$22,244.25	\$22,686.00	\$22,686.00	\$15.92
2025 (6 mos.)	\$45,372.00	\$22,686.00	\$22,686.00			

Total Rent	\$179,721.00
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Annual Rent Escalator	2.0%
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b) Additional Rent. Costs that LESSEE shall pay as Additional Rent shall include, but not be limited to, construction or demolition of private office walls, painting, doors and hardware due to installation of fixed partitions or office reconfigurations, major modifications of HVAC, electrical, lighting or other special leasehold improvements or services, and additional janitorial services, if any, above typical office space cleaning.

LESSEE shall make payments of Basic Rent and Additional Rent to LESSOR at the following address:

Office of Financial Services/Real Estate, 25 W. 4th St., Rm. 1000, St. Paul, MN 55102

The applicable account number for City Finance Accounting Code is:

_____ to be determined by LESSOR

6) **Right of Entry.** At all times during the term of this Lease, LESSOR (through its Office of Financial Services – Real Estate Section) shall have the right, by itself, its agents and employees, to enter into and upon the Leased Premises during reasonable business hours or, in the event of an emergency, at any time for any legitimate purpose.

7) **LESSOR’S and LESSEE’S Insurance.** LESSOR and LESSEE shall acquire during the term of this Lease the following coverage:

a) COMPREHENSIVE GENERAL LIABILITY INSURANCE

i. LESSOR is self-insured for comprehensive general liability, pursuant to State Statute 466.

- ii. LESSEE is self-insured for comprehensive general liability, pursuant to State Statute 466.
 - b) WORKERS' COMPENSATION INSURANCE with not less than statutory minimum limits; and EMPLOYERS' LIABILITY INSURANCE with minimum limits of at least \$500,000 per accident and with an all states endorsement.
 - i. LESSOR is self-funded for such coverage
 - ii. LESSEE is self-funded for such coverage
 - c) The limits cited under each insurance requirement above establish minimums, and it is the sole responsibility of LESSOR and LESSEE to purchase and maintain additional insurance that may be necessary in relation to this Lease.
 - d) Nothing in this Lease shall constitute a waiver by LESSOR or LESSEE of any statutory limits on or exceptions to liability.
- 8) **Cancellation or Termination.** The Lease shall be subject to cancellation and termination by LESSEE at any time during the term hereof by giving LESSOR notice in writing at least ninety (90) days prior to the date when such termination shall become effective.

The Lease shall be subject to cancellation and termination by LESSOR during the term of the Lease only upon LESSEE'S default at any time during the term hereof, or ninety (90) days if a month-to-month tenancy.

- 9) **Notice.** All notices herein provided to be given shall be addressed to LESSEE at the address stated on Page (1) with a copy to Ramsey County Property Management, 121 Seventh Place East, Suite 2200, Saint Paul, Minnesota, 55101; and to LESSOR also at its address stated on Page 1.
- 10) **Assignment and Subletting.** LESSEE shall not assign this Lease or sublet the Leased Premises without the prior written consent of LESSOR.
- 11) **Maintenance and Repairs.** LESSOR agrees to furnish such heat, electricity, water, sewer, air conditioning, elevator service and janitorial service to the Leased Premises as are reasonably necessary for the comfortable use and occupancy of the Leased Premises during LESSEE'S normal business hours.

LESSOR shall keep the building in which the Leased Premises are situated in good order and the exterior of said building free from all refuse; shall keep the sidewalks free from snow, ice and all obstructions; and shall as promptly as possible remove all garbage and refuse of any kind from the premises during the term of this Lease.

LESSOR shall furnish elevator service and other access to the Leased Premises during normal business hours, 6:30 a.m. to 5:30 p.m., Monday through Friday.

LESSOR shall maintain, repair or replace all structural members, walls, footings, roofs,

floors, doorways, mechanical systems, electrical systems, heating, ventilating and air conditioning systems, elevators, utility metering equipment, wall surfaces, floor coverings, ceilings, light bulbs and lighting fixtures on the Leased Premises. All maintenance, repairs, and replacements shall be made promptly and in good and workmanlike manner so that defective components are put to good, workable and sanitary conditions.

LESSOR shall acquire and maintain property insurance coverage for the Leased Premises and contents therein.

- 12) **Payments in Case of Default.** LESSEE shall pay LESSOR all costs and expenses, including reasonable attorney's fees in any action brought by LESSOR to recover any rent due and unpaid hereunder, or for the breach or default of any of the covenants or agreements contained in this Lease, or to recover possession of said property, whether such action progresses to judgment or not.
- 13) **Surrender of Premises.** LESSEE, at the expiration of said term, or any sooner termination of this lease, shall quit peacefully and surrender possession of said property and its tenant build outs and trade fixtures to LESSOR in as good order and condition as the property was delivered to LESSEE, ordinary wear and tear and casualty loss excepted.
- 14) **Liability.**
 - A. Each party agrees that it will be responsible for its own acts and omissions and the acts and omissions of its officers and employees and any liability resulting therefrom to the extent authorized by law. No party shall be responsible for the acts of the others and the results thereof. Each party agrees to promptly notify all parties if it becomes aware of any potential claim(s) or facts giving rise to such claims.
 - B. Notwithstanding the foregoing, the terms of this Lease are not to be construed as, nor operate as, waivers of a party's statutory or common law immunities or limitations on obligations set forth in this Section and otherwise in this Lease, are expressly limited by the provisions of Minnesota Statutes Chapter 466, Minnesota Statutes Chapter 604, Minnesota Statutes Section 471.59, and any other applicable law or regulation providing limitations, defenses or immunities to the parties.
- 15) **Holdover.** Any holdover after the expiration of the term of this Lease shall be allowed only after receiving the written consent of LESSOR. Said tenancy shall be deemed to be a tenancy only from month-to-month. All other terms and conditions of this lease shall be applicable.
- 16) **Pollution and Contaminants.** LESSEE agrees to comply with all ordinances, laws, rules and regulations enacted by any governmental body or agency relating to the control, abatement or emission of air and water contaminants and the disposal of refuse, solid wastes or liquid wastes.

LESSEE shall, in the use and occupancy of this lease, bear all costs and expenses arising from compliance with said ordinances, laws, rules, or regulations and shall be fully responsible for any and all fines, forfeitures, and penalties arising from the failure by LESSEE to comply with such ordinances, laws, rules or regulations. LESSOR has the right to perform cleanup and charge LESSEE as Additional Rent for such costs should LESSEE fail to comply.

LESSOR shall bear all its costs and expenses of complying, or arising from failure by LESSOR to comply, with said ordinances, laws, rules, or regulations and shall be fully responsible for all liability, including without limitation, fines, forfeitures, and penalties arising from the failure by LESSOR to comply with such ordinances, laws, rules or regulations.

- 17) **Controlling Lease.** In the event there is any prior existing lease or rental agreement between LESSEE and LESSOR (or its predecessor in interest) covering the subject property, it is agreed and understood that this Lease shall cancel and terminate any prior leases or rental agreements as of the effective date of this Lease.
- 18) **Destruction.** In the event of damage to or destruction of the Leased Premises or in the event the Leased Premises becomes untenable or unfit for occupancy due to such damage during the term of this Lease, LESSOR may at its option:
- a) terminate the lease upon fifteen (15) days' written notice to LESSEE; or
 - b) within fifteen (15) days agree to restore the Leased Premises within a reasonable time period following the casualty, charging the costs in excess of the insurance proceeds, if any, to LESSEE as Additional Rent.

The pro-rata share of expenses to be paid during the restoration period shall be abated in proportion to the percentage of loss and impairment of the use of the Leased Premises, as determined by LESSOR, for the duration of loss or impairment.

- 19) **Events of Default.** The occurrence of any of the following events during the term of this Lease shall constitute an event of default by LESSEE:
- A. the failure by LESSEE to timely pay Basic Rent or Additional Rent as required by this Lease;
 - B. the failure by LESSEE to observe and perform any covenant, condition or agreement on its part to be observed or performed as required by this Lease; or
 - C. the failure by LESSEE or its surety to discharge, satisfy or release any lien or lien statement filed or recorded against the Leased Premises within sixty days after the date of such filing or recording, whichever date is earlier.

It is an express covenant and agreement of LESSOR and LESSEE that LESSOR may, at its election, terminate this lease in the event of the occurrence of any of the events

described in this paragraph or in Paragraph 24 relating to liens by giving not less than ten days' written notice to LESSEE; and when so terminated, LESSOR may reenter the Leased Premises. This Lease and its Leased Premises shall not be treated as an asset of LESSEE'S estate. It is further expressly understood and agreed that LESSOR shall be entitled upon such reentry, notwithstanding any other provision of this lease, to exercise such rights and remedies as are provided in Paragraph 20 of this Lease.

- 20) **Default Remedies.** In the event an Event of Default occurs under Paragraph 19 of this Lease, LESSOR may exercise any one or more of the following remedies:
- a) reenter and take possession of the Leased Premises without termination of this lease, and use its best efforts to lease the Leased Premises to or enter into an agreement with another person for the account of LESSEE;
 - b) terminate this lease, exclude LESSEE from possession of the Leased Premises, and use its best efforts to lease the Leased Premises to or enter into an agreement with another in accordance with applicable law;
 - c) take whatever action at law or in equity may appear necessary or appropriate to collect the Basic Rent and Additional Rent then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of LESSEE under this lease.

In exercising any of its remedies set forth in this Section, LESSOR may, whether or not the Lease is then in effect, hold LESSEE liable for the difference between the payments and other costs for which LESSEE is responsible under this Lease.

- 21) **Default of Payment.** LESSEE agrees that, should it default on any payment owing and due to be paid to LESSOR as provided in this agreement, including but not limited to Basic Rent and Additional Rent, then the remaining unpaid balance shall, at the option of LESSOR, immediately become due.
- 22) **Compliance with Laws.** The Leased Premises may be used for only the purposes stated herein. It is the sole and exclusive responsibility of LESSEE in the use of the Leased Premises to comply with all laws, rules, regulations or ordinances imposed by any jurisdiction affecting the use to which the Leased Premises is proposed to be put. Inability or failure by LESSEE to comply with any of said laws, rules, regulations or ordinances will not relieve LESSEE of the obligation to pay the rental provided herein.
- 23) **Non-Discrimination.** LESSEE for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that:
- a) no person, on the ground of race, sex, color, creed, religion, age, disability, marital status, familial status, status with respect to public assistance, national origin, sexual or affectional orientation or ancestry shall be excluded from participating in, be denied the benefits of or be otherwise subjected to

discrimination in the use of said facilities; sexual or affectional orientation;

- b) that in connection with the construction of any improvements on said lands and the furnishing of services thereon, no discrimination shall be practiced in the selection of employees and contractors, by contractors in the selection and retention of first tier subcontractors, and by first-tier subcontractors in the selection and retention of second-tier subcontractors;
 - c) that such discrimination shall not be practiced against the public in its access in and use of the facilities and services provided for public accommodations (such as eating, sleeping, rest and recreation) constructed or operated on the Leased Premises; and
 - d) that LESSEE shall use the premises in compliance with all other requirements imposed pursuant to the Saint Paul Legislative Code Chapter 183.
- 24) **Liens.** LESSEE shall not permit mechanic's liens or other liens to be filed or established or to remain against the Leased Premises for labor, materials or services furnished in connection with any additions, modifications, improvements, repairs, renewals or replacements made to the Leased Premises, or for any other reason.
- 25) **Eminent Domain.** In the event the entire Leased Premises are taken by eminent domain, or such portion thereof is so taken that in LESSEE'S reasonable judgment it is uneconomic thereafter to restore the Leased Premises and proceed under the terms and provisions of this Lease, LESSEE may terminate this Lease by giving to LESSOR thirty (30) days' written notice of termination, effective as of the date on which the condemning authority acquires legal title or physical possession of the Leased Premises. LESSEE hereby waives and releases any claim to or share in the Award of Compensation for the taking, notwithstanding any other provision of law, this Lease or any other agreement. LESSEE may to the extent otherwise permitted in the eminent domain proceeding, remove its own trade fixtures at its own expense.
- 26) **Alterations.** LESSEE will not make any alterations to the Leased Premises without the written consent of LESSOR, such consent shall not be unreasonably withheld. If LESSEE desires to make any such alterations, an accurate description shall first be submitted to and approved by LESSOR and such alterations shall be done by LESSEE at its own expense. All such work shall be performed under LESSOR'S supervision and any improvements made to the Leased Premises at LESSEE'S expense shall become the property of LESSOR at the end of the lease term. LESSEE agrees that all alterations will be done in a workmanlike manner and in conformance with applicable building codes, that the structural integrity and building systems of the building will not be impaired, and that no liens will attach to the premises by reason thereof.
- 27) **Amended.** This Lease may be amended only by mutual written consent of the parties hereto.
- 28) **Litigation Costs.** If LESSOR initiates action or litigation to enforce the provisions of this

Lease against LESSEE, LESSOR is entitled to reimbursement from LESSEE of all reasonable costs and expenses, including reasonable attorney's fees paid or incurred by LESSOR in connection with such action or litigation.

29) **Entire Agreement; Governing Law; Venue.** This instrument contains the entire agreement of the parties as to its subject matter. This Lease shall be subject to and governed by the laws of the State of Minnesota, and all actions shall be venued in Ramsey County District Court.

30) **Signatures and Counterparts.**

A. This Lease may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts of this Lease taken together shall constitute but one and the same instrument. Delivery of an executed counterpart of this Lease by email of a PDF file shall be equally as effective as delivery of an original of this Lease.

B. The parties agree that the electronic signature of a party to this Lease shall be as valid as an original signature of such party and shall be effective to bind such party to this Lease. The parties further agree that any document (including this Lease and any attachments or exhibits to this Lease) containing, or to which there is affixed, an electronic signature shall be deemed (i) to be "written" or "in writing," (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. For purposes hereof, "electronic signature" also means a manually signed original signature that is then transmitted by any electronic means, including without limitation a faxed version of an original signature or an electronically scanned and transmitted version (e.g., via PDF) of an original signature. Any party's failure to produce the original signature of any electronically transmitted signature shall not affect the enforceability of this Lease.

[The remainder of this page is left intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year in this Lease first above-written.

LESSOR: City of Saint Paul

Its Mayor

Its City Clerk

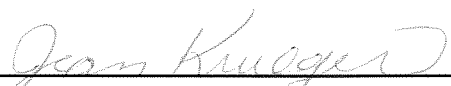
Its Director – Office of Financial Services

Assistant City Attorney
Approved as to Form

LESSEE: County of Ramsey

Its Chair, Board of County Commissioners

Its Chief Clerk, Board of County Commissioners


Its Director, Department of Property Management

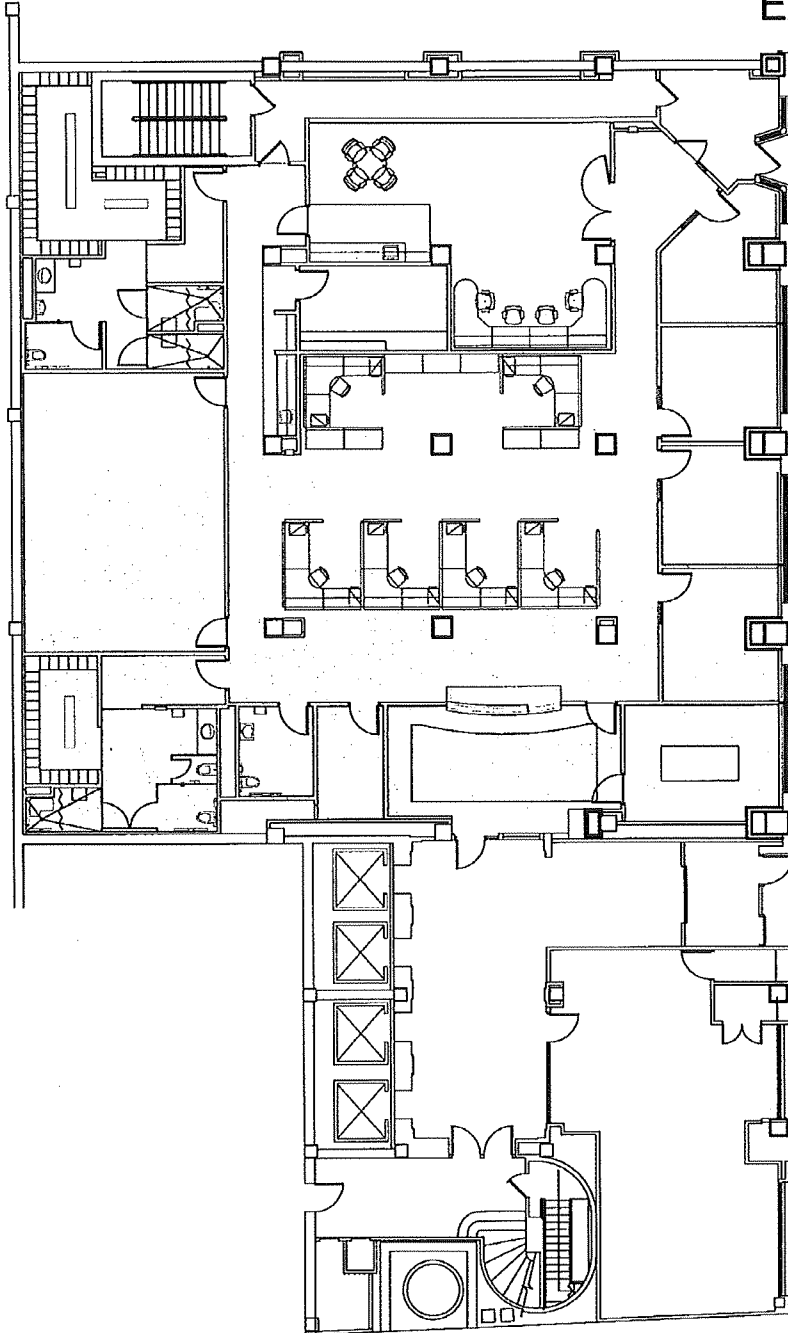
Approved as to Form:


Assistant County Attorney

EXHIBIT A

Depiction of Leased Premises

EXHIBIT A



A FIRST FLOOR CITY HALL ANNEX - ROOM 150, LEASED SPACE
NOT TO SCALE