



Monday, July 19, 2021
7:00 p.m.

REGULAR MEETING – AGENDA #10

President Lisa Jacobson, Vice President Terry Parks, Treasurer Susan Pha,
Commissioners Boyd Morson, Wynfred Russell and Tonja West-Hafner.
Executive Director Kim Berggren, Assistant Executive Director Jay Stroebel and Secretary Breanne Rothstein

Members of the public can monitor the meeting by watching it on CCX Media Channel 16 or by livestreaming it at https://nwscce-brooklynpark.granicus.com/ViewPublisher.php?view_id=5.

Anyone who wants to address the EDA during the Public Comment period or on any Agenda Item may do so by calling 763-493-8050 or emailing Kimberly.Berggren@brooklynpark.org by 4:30 p.m. on July 16. You will be asked to provide your name, address, email and phone number. You will then be registered to speak during the meeting and will be provided a call-in number to address the EDA.

Members of the public who desire to give input or testimony during the meeting may do so by emailing the Executive Director Kim Berggren at Kimberly.Berggren@brooklynpark.org (Subject line: "EDA Testimony") or texting President Lisa Jacobson at 763-234-0315.

For reasonable accommodations or alternative formats, contact Sarah Abe by calling 763-493-8089 or emailing Sarah.Abe@brooklynpark.org. Para asistencia, 763-493-8089. Yog xav tau kev pab, hu 763-493-8089. Please provide a 72-hour notice.

Our Vision: Brooklyn Park, a thriving community inspiring pride where opportunities exist for all.

Brooklyn Park 2025 Goals:

- **United Community** • **Beautiful Places** • **Thriving Economy**
- **Healthy and Safe People** • **Increased Equity** • **Effective, Engaging Government**

I. ORGANIZATIONAL BUSINESS

1. CALL TO ORDER/ROLL CALL

2. PUBLIC COMMENT AND RESPONSE

This provides an opportunity for the public to address the EDA on items, which are not on the agenda. Open Forum will be limited to 15 minutes (if no one is in attendance for the Open Forum, the Regular Meeting may begin) and it may not be used to make personal attacks, to air personality grievances, to make political endorsements or for political campaign purposes. Commissioners will not enter into a dialogue with citizens. Questions from the EDA will be for clarification only. Open Forum will not be used as a time for problem solving or reacting to the comments made but, rather, for hearing the citizen for informational purposes only.

2A. RESPONSE TO PRIOR PUBLIC COMMENT

2B. PUBLIC COMMENT

3. APPROVAL OF AGENDA

II. STATUTORY BUSINESS AND/OR POLICY IMPLEMENTATION

4. CONSENT
None.

The following items relate to the EDA's long-range policy-making responsibilities and are handled individually for appropriate debate and deliberation. (Those persons wishing to speak to any of the items listed in this section should fill out a speaker's form and give it to the Secretary. Staff will present each item, following in which audience input is invited. Discussion will then be closed to the public and directed to the EDA table for action.)

5. Public Hearings
5.1 None.

6. General Action Items

- 6.1 Consider Authorizing Submittal of a Grant Application and Execution of an Agreement with the Metropolitan Council to the Livable Communities Demonstration Account for \$75,000 in Pre-Development Grant Funding at 7701 Brooklyn Boulevard and the Surrounding EDA-Owned Properties
 - 6.1A Resolution
 - 6.1B Location Map
- 6.2 Consider Authorizing Submittal of a Grant Application and Execution of an Agreement with the Metropolitan Council to the Livable Communities Demonstration Account for \$75,000 in Pre-Development Grant Funding at the Villas Townhouses
 - 6.2A Resolution
 - 6.2B Location Map
- 6.3 Consider Approving a Real Estate Purchase and Sale Agreement with Hargis Northwind, LLC for the Purchase of 7944-7996 Brooklyn Boulevard (Northwind Plaza)
 - 6.3A Resolution
 - 6.3B Purchase Agreement
 - 6.3C Location Map
- 6.4 Consider Authorizing a Budget Amendment of up to \$350,000 and Execute of Agreements Related to Phase 2 Professional Services for to the Purchase and Development of a Small Business Center
 - 6.4A Resolution
 - 6.4B Design by Melo Contract
 - 6.4C IAG Contract
 - 6.4D WSB supplemental letters of agreement

III. DISCUSSION - These items will be discussion items, but the EDA may act upon them during the meeting.

- 7. Discussion Items**
- 7.1 Status Update
 - 7.2 Housing Update

IV. ADJOURNMENT

Since we do not have time to discuss every point presented, it may seem that decisions are preconceived. However, background information is provided for the EDA on each agenda item in advance from City staff; and decisions are based on this information and past experiences. Items requiring excessive time may be continued to another meeting.

The Brooklyn Park Economic Development Authority's Agenda Packet is posted on the City's website. To access the agenda packet, go to www.brooklynpark.org
The Next Scheduled EDA Meeting is August 16, 2021

City of Brooklyn Park Request for EDA Action

Agenda Item:	6.1	Meeting Date:	July 19, 2021
Agenda Section:	General Action Items	Prepared By:	Sarah Abe, Development Project Coordinator
Resolution:	X	Presented By:	Breanne Rothstein, Economic Development and Housing Director
Attachments:	2		
Item:	Authorizing Submittal of a Grant Application and Execution of an Agreement with the Metropolitan Council to the Livable Communities Demonstration Account for \$75,000 in Pre-Development Grant Funding at 7701 Brooklyn Boulevard and the Surrounding EDA-Owned Properties		

Executive Director's Proposed Action

MOTION _____, SECOND _____ TO WAIVE THE READING AND ADOPT RESOLUTION #2021-___ AUTHORIZING SUBMITTAL OF A GRANT APPLICATION AND EXECUTION OF AN AGREEMENT WITH THE METROPOLITAN COUNCIL TO THE LIVABLE COMMUNITIES DEMONSTRATION ACCOUNT FOR \$75,000 IN PRE-DEVELOPMENT GRANT FUNDING AT 7701 BROOKLYN BOULEVARD AND THE SURROUNDING EDA-OWNED PROPERTIES.

Overview:

The Brooklyn Park Economic Development Authority (EDA) has owned several properties in the Village Creek/Opportunity Zone area for redevelopment since the early 2000's. In April of 2019, the EDA identified the development of these sites as a strategic priority. Since then, staff have worked with several interested developers to bring projects to the EDA for consideration. The current owner of the multi-tenant commercial building at 7701 Brooklyn Boulevard, Edoh Akakpo, has approached the EDA with an interest in redeveloping his property as well as the surrounding EDA-owned properties. Staff is recommending a Pre-Development Grant application through the Metropolitan Council (Met Council) for its Livable Communities Demonstration Account (LCDA) program to assist with early stages of developing a proposal such as a market study, community engagement, environmental testing, and exploring site options. The Met Council solicits annually for the LCDA program to fund planning, analysis, design and engagement activities to support a successful development or redevelopment project. A resolution of support is required from the city before a grant can be awarded.

Background:

In the early to mid-2000's, the EDA acquired several properties in the Village Creek area for the purpose of redevelopment, including the five currently vacant properties located on the southwest corner of Zane Avenue North and Brooklyn Boulevard. These sites are guided by various planning documents including the Village Master Plan/Shingle Creek Corridor Plan adopted in 2000 and a master development plan approved by City Council in 2005. The building located at 7701 Brooklyn Boulevard is owned by Edoh Akakpo, who has expressed interest in redeveloping the site. He has had several discussions with city staff over the past few years but has not come forward with a full proposal. Recently he has taken more steps towards redevelopment by partnering with Kaare Birkeland, an independent real estate consultant, to coordinate site visioning, planning, and feasibility work. They are interested in pursuing LCDA Pre-Development grant funding to explore commercial and housing redevelopment opportunities.

Primary Issues/Alternatives to Consider:

- **What activities will this grant fund?**

An LCDA Pre-Development grant would more fully develop and explore the feasibility of a redevelopment project through the following activities:

1. Soil and environmental testing;
2. Community engagement activities;
3. Development of preliminary site and concept plans;
4. Market studies to determine demand and commercial feasibility;
5. Development of proformas and financial modeling

The grant would allow the EDA and the property owner to explore a vision for the site and determine feasibility for the project. After the planning phase is complete, additional action would be required from the EDA in order to move the project forward.

- **What is the timeline for the grant award/project?**

- July 21, 2021 – LCDA Pre-Development spring applications due
- September 2021 – LCDA grant awards announced
- Summer/Fall 2022 – Complete grant funded work
- Winter 2022 – Consideration/action by the EDA

Budget/Fiscal Issues:

If received, the LCDA grant funds will assist with the pre-development project costs of financial and site planning analysis for this proposal. The proposal requests \$75,000 and the grant requires a 25% local match of the total project costs, or \$25,000. The EDA contribution of \$25,000 would come from a combination of staff time, developer contribution, and EDA dollars from the general fund and result in a total project cost of \$100,000.

Recommendation:

The Executive Director of the Economic Development Authority recommends approval.

Attachments:

- 6.1A Resolution
- 6.1B Location Map

THE BROOKLYN PARK ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF BROOKLYN PARK

RESOLUTION #2021-___

AUTHORIZING SUBMITTAL OF A GRANT APPLICATION AND EXECUTION
OF AN AGREEMENT WITH THE METROPOLITAN COUNCIL TO THE
LIVABLE COMMUNITIES DEMONSTRATION ACCOUNT FOR \$75,000 IN PRE-
DEVELOPMENT GRANT FUNDING AT 7701 BROOKLYN BOULEVARD AND
THE SURROUNDING EDA-OWNED PROPERTIES

WHEREAS, the Brooklyn Park Economic Development Authority (the "Authority") was created pursuant to the Economic Development Authorities Act, Minnesota Statutes, Sections 469.090 to 469.1080 (the "EDA Act"), and is authorized to transact business and exercise its powers by a resolution of the City Council of the City of Brooklyn Park, Minnesota (the "City") adopted on October 24, 1988 (the "Enabling Resolution"); and

WHEREAS the Authority of the City of Brooklyn Park is eligible to apply for LCDA funds on behalf of cities participating in the Livable Communities Demonstration Account's ("LCDA") Pre-Development Grant for 2021 as determined by the Metropolitan Council; and

WHEREAS the Authority has identified a proposed project within the City of Brooklyn Park that meet the LCDA purposes and criteria and are consistent with and promote the purposes of the Metropolitan LCA and the policies of the Metropolitan Council's adopted metropolitan development guide; and

WHEREAS the Authority has the institutional, managerial and financial capability to ensure adequate project administration; and

WHEREAS the Authority certifies that it will comply with all applicable laws and regulations as stated in the grant agreement; and

WHEREAS the Authority agrees to act as legal sponsor for the projects contained in the grant applications submitted on July 21, 2021; and

WHEREAS the Authority acknowledges LCDA grants are intended to fund projects or project components that can serve as models, examples or prototypes for development or redevelopment projects elsewhere in the region, and therefore represents that the proposed projects or key components of the proposed projects can be replicated in other metropolitan-area communities; and

WHEREAS only a limited amount of grant funding is available through the Metropolitan Council's LCDA during each funding cycle and the Metropolitan Council has determined it is appropriate to allocate those scarce grant funds only to eligible projects that would not occur without the availability of LCDA grant funding.

THEREFORE, the Authority authorizes its Executive Director to submit an application for Metropolitan Council LCDA grant funds for the project components identified in the application, and to execute such agreements as may be necessary to utilize the grant funds for the project components as authorized by the Metropolitan Council.



Map Scale = 1:2,404

200 ft  1 in

City of Brooklyn Park Request for EDA Action

Agenda Item:	6.2	Meeting Date:	July 19, 2021
Agenda Section:	General Action Items	Prepared By:	Sarah Abe, Development Project Coordinator
Resolution:	X	Presented By:	Breanne Rothstein, Economic Development and Housing Director
Attachments:	2		
Item:	Consider Authorizing Submittal of a Grant Application and Execution of an Agreement with the Metropolitan Council to the Livable Communities Demonstration Account for \$75,000 in Pre-Development Grant Funding at the Villas Townhouses		

Executive Director's Proposed Action

MOTION _____, SECOND _____ TO WAIVE THE READING AND ADOPT RESOLUTION #2021-___ AUTHORIZING SUBMITTAL OF A GRANT APPLICATION AND EXECUTION OF AN AGREEMENT WITH THE METROPOLITAN COUNCIL TO THE LIVABLE COMMUNITIES DEMONSTRATION ACCOUNT FOR \$75,000 IN PRE-DEVELOPMENT GRANT FUNDING AT THE VILLAS TOWNHOUSES.

Overview:

The Villas Townhomes are located on the northeast corner of Brookdale Boulevard and Yates Avenue. The townhomes were constructed in the 1960s. The property is aging and has experienced challenges with unit and property maintenance for several years due in part to a defunct homeowner's association. The majority owner of the six units is currently in negotiation with the other three owners to purchase their units as well as the undeveloped vacant lot on site to rehabilitate all the units to improve their livability, functionality, and safety. The majority owner also would like to explore the possibility of redeveloping the vacant lot on site through the construction of new additional eight to twelve attached townhouses that would be rental units. Staff is recommending a Pre-Development Grant application through the Metropolitan Council (Met Council) for its Livable Communities Demonstration Account (LCDA) program to assist with early stages of developing a proposal such as site a phasing plans, feasibility studies, and developing environmentally friendly landscaping plans. The Met Council solicits biannually for the LCDA program to fund planning, analysis, design and engagement activities to support a successful development or redevelopment project. A resolution of support is required from the city before a grant can be awarded.

Background:

The property is located between the Moonraker apartments and the Landings townhouses on 1.13 acres of land. The Villas Townhouses comprises of six attached three-bedroom townhomes in a single row-style building. The properties are owned by four different homeownership groups who have expressed interest in selling the commonly held land for development.

Primary Issues/Alternatives to Consider:

- **What activities will this grant fund?**

An LCDA Pre-Development grant would more fully develop and explore the feasibility of infill development at the Villas through the following activities:

1. Development of site plans
2. Phasing or staging plans for future housing development
3. Feasibility studies
4. Landscaping plans

The grant would allow the EDA and the majority owner to determine feasibility and site design for the project moving forward. After the planning phase is complete, additional financial support from the EDA would likely be requested to move the project forward.

- **What is the timeline for the grant award/project?**
 - July 21, 2021 – LCDA Pre-Development spring applications due
 - September 2021 – LCDA grant awards announced
 - Summer/Fall 2022 – Complete grant funded work
 - Winter 2022 – Further consideration/action by the EDA

Budget/Fiscal Issues:

If awarded, the LCDA grant funds will assist with the pre-development project costs of site planning and feasibility studies for this proposal. The proposal requests \$75,000 and the grant requires a 25% local match of the total project costs, or \$25,000. The EDA contribution of \$25,000 would come from a combination of staff time, developer contribution, and EDA dollars from the general fund and result in a total project cost of \$100,000.

Recommendation:

The Executive Director of the Economic Development Authority recommends approval.

Attachments:

- 6.2A Resolution
- 6.2B Location Map

THE BROOKLYN PARK ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF BROOKLYN PARK

RESOLUTION #2021-____

AUTHORIZING SUBMITTAL OF A GRANT APPLICATION AND EXECUTION
OF AN AGREEMENT WITH THE METROPOLITAN COUNCIL TO THE
LIVABLE COMMUNITIES DEMONSTRATION ACCOUNT FOR \$75,000 IN PRE-
DEVELOPMENT GRANT FUNDING AT THE VILLAS TOWNHOUSES

WHEREAS, the Brooklyn Park Economic Development Authority (the "Authority") was created pursuant to the Economic Development Authorities Act, Minnesota Statutes, Sections 469.090 to 469.1080 (the "EDA Act"), and is authorized to transact business and exercise its powers by a resolution of the City Council of the City of Brooklyn Park, Minnesota (the "City") adopted on October 24, 1988 (the "Enabling Resolution"); and

WHEREAS the Authority of the City of Brooklyn Park is eligible to apply for LCDA funds on behalf of cities participating in the Livable Communities Demonstration Account's ("LCDA") Pre-Development Grant for 2021 as determined by the Metropolitan Council; and

WHEREAS the Authority has identified a proposed project within the City of Brooklyn Park that meet the LCDA purposes and criteria and are consistent with and promote the purposes of the Metropolitan LCA and the policies of the Metropolitan Council's adopted metropolitan development guide; and

WHEREAS the Authority has the institutional, managerial and financial capability to ensure adequate project administration; and

WHEREAS the Authority certifies that it will comply with all applicable laws and regulations as stated in the grant agreement; and

WHEREAS the Authority agrees to act as legal sponsor for the projects contained in the grant applications submitted on July 21, 2021; and

WHEREAS the Authority acknowledges LCDA grants are intended to fund projects or project components that can serve as models, examples or prototypes for development or redevelopment projects elsewhere in the region, and therefore represents that the proposed projects or key components of the proposed projects can be replicated in other metropolitan-area communities; and

WHEREAS only a limited amount of grant funding is available through the Metropolitan Council's LCDA during each funding cycle and the Metropolitan Council has determined it is appropriate to allocate those scarce grant funds only to eligible projects that would not occur without the availability of LCDA grant funding.

THEREFORE, the Authority authorizes its Executive Director to submit an application for Metropolitan Council LCDA grant funds for the project components identified in the application, and to execute such agreements as may be necessary to utilize the grant funds for the project components as authorized by the Metropolitan Council.

City of Brooklyn Park Request for EDA Action

Agenda Item:	6.3	Meeting Date:	July 19, 2021
Agenda Section:	General Action Items	Prepared By:	Daniela Lorenz, Business Development Coordinator
Resolution:	X	Presented By:	Daniela Lorenz
Attachments:	3		
Item:	Consider Approving a Real Estate Purchase and Sale Agreement with Hargis Northwind, LLC for The Purchase of 7944-7996 Brooklyn Boulevard (Northwind Plaza)		

Executive Director's Proposed Action

MOTION _____, SECOND _____ TO WAIVE THE READING AND ADOPT RESOLUTION #2021-___ APPROVING A REAL ESTATE PURCHASE AND SALE AGREEMENT WITH HARGIS NORTHWIND, LLC FOR THE PURCHASE OF 7944-7996 BROOKLYN BOULEVARD (NORTHWIND PLAZA).

Overview:

At its June 21, 2021 meeting, the Economic Development Authority (EDA) directed staff to offer \$7.3 million to purchase the Northwinds Plaza Mall and the CVS land lease located at the intersection of West Broadway Avenue and Brooklyn Boulevard. The purpose of purchasing Northwinds is to repurpose the 27,000 square foot former Xperience Fitness space into a Small Business Center meant to provide affordable space and resources to entrepreneurs and small businesses in the City. The EDA directed staff to purchase the entire strip mall and the CVS land lease as a strategic opportunity to keep rents affordable for the existing 10 tenants of Northwinds and to control the future of the two parcels which are directly next to a future Blue Line Extension Light Rail Transit (LRT) Brooklyn Boulevard station.

Hargis Northwinds LLC., the seller of both parcels accepted the EDA's offer of \$7.3 million to purchase both parcels. The action before the EDA is to approve the purchase agreement between the EDA and the property owners. Once signed the EDA will transfer \$80,000 in earnest money to the seller and will have a 60-day due diligence period to analyze the buildings, the property, and the leases of existing tenants. If at the end of the 60-day period the EDA is unsatisfied with the property and accompanying materials, they can withdraw from the purchase and the earnest money would be refunded.

Background:

The community has been discussing a project like the small business center for many years. During LRT station area planning efforts in 2016, the development of a culturally specific market space was identified as a community desired amenity. Staff explored how to develop a space that was more retail and market focused through new construction. Given the expense of new construction, the EDA directed staff to explore selecting a vacant commercial space at a smaller scale. With the new direction the EDA applied for a LCDA predevelopment grant in summer of 2020. The \$100,000 grant was awarded in June 2020. Below is a timeline of work done with the LCDA grant the EDA received in 2020.

- June, July, August 2020: scoping meetings meant to provide a broad vision for the space including business types that could use the space, appropriate types of buildings and locations for the center, and general guidance on operational needs
- July 2020: Two small focus group discussions with businesses in Brooklyn Park
- September 2020: City contracts with WSB Associates to serve as owner's representative on this project
- September 2020: City begins soliciting for business owners, residents, and organization representatives to serve on the project's steering committee

- December 2020: City contracts with IAG, Inc. to serve as the project's tenant representative
- January 2021: Steering committee's first meeting
- February 2021: City contracts with Design by Melo for phase 1 architecture work
- February 2021: Request for Proposals (RFP) sent to potential location options brokers to get a sense of the cost of rent in each space
- February 2021: Survey sent to businesses in the City to understand interest in locating in this space if it were to be developed and get feedback on space needs (49 responses)
- February 2021: Second steering committee meeting to discuss location options and review survey results
- March 2021: City contracts with African Career Education and Resource, Inc to complete a feasibility study for the project
- June 2021: Submit Letter of Intent (LOI) to purchase sites, which was accepted by the seller

Primary Issues/Alternatives to Consider:

- **What due diligence will take place?**

The EDA is working with WSB and Associates, Designs by Melo, City inspectors, and IAG Inc. to complete due diligence on the property. Some of the due diligence work will be funded through the remaining LCDA pre-development grant dollars received in summer 2020. The due diligence work will include environmental review, inspections of the property, creation of as-builts to analyze the space, review of the existing leases with current tenants, and surveys of the site. These are typical items to be completed during the due diligence period. Some due diligence work has already been completed during the site analysis portion of this project including looking at the roof and other critical elements of the property such as mechanical units.

- **What additional fees will the EDA owe?**

Per the contract, the seller has agreed to pay all brokerage fees. The EDA will have to pay for typical closing items such as recording of the deed, title insurance, loan policies, mortgage registration fees, and half of any other miscellaneous closing items or escrow fees. All taxes, utilities, and other fees related to the site will be prorated to the date of sale.

- **Will this project result in any relocation of businesses?**

There is one business that will need to be relocated as a result of the purchase and construction of the Small Business Center. Currently a volleyball club occupies a small portion of the Experience Fitness space. Though the club's lease is expected to end in January 2022, the city will assist the business with relocation as a result of the purchase. The EDA is anticipating contracting with WSB and Associates to assist with relocation. There will likely be relocation expenses the EDA will need to pay to this business, in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

- **Are tenants being notified?**

Staff plans to begin meeting with existing tenants in the next several weeks. It is not anticipated that much will change in the short term for those current tenants other than the volleyball club which will need to be relocated.

Next steps:

If approved, the purchase agreement will be signed, and the due diligence period will begin. If it is determined that the property is suitable to purchase after 60 days staff will work on bidding the project for a general contractor. It is anticipated that renovation and construction could begin in winter of 2022 with an open date for the center in summer or fall of 2022. Staff will also begin engaging with businesses and entrepreneurs to gauge interest and find tenants to locate in the space once open. Some of this work has already begun through surveys and conversations with businesses and business groups such as African Career, Education, and Resource Inc (ACER) and The Liberian Business Association (LIBA). ACER also completed a feasibility study which outlined the types of businesses that entrepreneurs in Brooklyn Park are starting and growing. The community has a strong entrepreneurial spirit with a variety of businesses being started that serve a variety of needs. Some of the main business types include: personal and professional services, health care administration, retail, beauty, and importing of culturally and ethnically specific items. It is the goal of the

business center to cater to a broad range of businesses and business types. Engagement with businesses will help to better understand the needs of the different industries which will influence the design and operations of the space and resources offered.

Budget/Fiscal Issues:

The funds for the purchase will come out of the EDA general fund, which has adequate funding to support this strategic project.

Recommendation:

The Executive Director of the Economic Development Authority recommends approval.

Attachments:

- 6.3A Resolution
- 6.3B Purchase Agreement
- 6.3C Location Map

THE BROOKLYN PARK ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF BROOKLYN PARK

RESOLUTION #2021-____

APPROVING A REAL ESTATE PURCHASE AND SALE AGREEMENT WITH
HARGIS NORTHWIND, LLC FOR THE PURCHASE OF 7944-7996 BROOKLYN
BOULEVARD (NORTHWIND PLAZA)

WHEREAS, Hargis Northwind, LLC (“Hargis Northwind”) is the owner of real property located in the City of Brooklyn Park, Hennepin County, Minnesota, Property ID Numbers 20-119-21-34-0079 and 20-119-21-34-0080 with a street address of 7944-7996 Brooklyn Boulevard (Northwind Plaza), as legally described on the attached Exhibit A (the “Property”); and

WHEREAS, the Brooklyn Park Economic Development Authority (the “EDA”) wishes to purchase the Property from Hargis Northwind for the purposes of utilizing the Property for the EDA’s business incubator project.

NOW, THEREFORE, BE IT RESOLVED by the Brooklyn Park Economic Development Authority Board of Commissioners (the “Board”) as follows:

1. The EDA hereby approves the Real Estate Purchase and Sale Agreement, in substantially the form presented to the Board, together with any related documents necessary in connection therewith, including without limitation documents or certifications referenced in or attached to (the “Purchase Documents”), and hereby authorizes the Executive Director to execute, on behalf of the EDA, the Purchase Documents to which the EDA is a party and to carry out, on behalf of the EDA, the EDA’s obligations thereunder when all conditions precedent thereto have been satisfied.

2. The approval hereby given to the Purchase Documents includes approval of such additional details therein as may be necessary and appropriate and such modifications thereof, deletions therefrom and additions thereto as may be necessary and appropriate and approved by legal counsel to the EDA and by the officers authorized herein to execute said documents prior to their execution; and said officers are hereby authorized to approve said changes on behalf of the EDA. The execution of any instrument by the appropriate officers of the EDA herein authorized shall be conclusive evidence of the approval of such document in accordance with the terms hereof. This Resolution shall not constitute an offer and the Purchase Documents shall not be effective until the date of execution thereof as provided herein. In the event of absence or disability of the authorized officers, any of the documents authorized by this Resolution to be executed may be executed without further act or authorization of the Board by any duly designated acting official, or by such other officer or officers of the Board as, in the opinion of legal counsel to the EDA, may act in their behalf.

EXHIBIT A

Legal Description of the Property

Lot 1, Block 1, Northwind Plaza, according to the recorded plat thereof, County of Hennepin, State of Minnesota.

Lot 2, Block 1, Northwind Plaza, according to the recorded plat thereof, County of Hennepin, State of Minnesota.

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (this “Agreement”) is made and entered into on July ___, 2021, effective as of the date upon which this Agreement is signed by and delivered to all parties hereto (the “Acceptance Date”), by and between **HARGIS NORTHWIND, LLC**, a Minnesota limited liability company (“Seller”), and the **BROOKLYN PARK ECONOMIC DEVELOPMENT AUTHORITY**, a body corporate and politic organized under the laws of the State of Minnesota (“Purchaser”). Seller or Purchaser may be individually referred to herein as a “party” or collectively as the “parties”.

BACKGROUND

A. Seller is the owner of a fee simple interest in and to the real property located in the City of Brooklyn Park, Hennepin County, Minnesota, Property ID Numbers 20-119-21-34-0079 and 20-119-21-34-0080, with a street address of 7944-7996 Brooklyn Boulevard, as legally described on attached Exhibit B (collectively, the “Real Property”), as well as the following:

1. all improvements and structures located on the Real Property (the “Improvements”);
2. any movable thing located on the Real Property and the Improvements owned by Seller and used in connection with the Property (the “Personal Property”), including, without limitation, any Personal Property that is attached to the Property and is irremovable (the “Fixtures”);
3. to the extent in Seller’s possession, all plans and specifications, as well as all other drawings and specifications for the Improvements (the “Plans and Specifications”);
4. all governmental consents, authorizations, variances, waivers, licenses, approvals and permits relating to the Real Property, including any building certificates, to the extent assignable and to the extent in Seller’s possession (the “Permits”);
5. all warranties owned or obtained by Seller with respect to the Improvements and/or the Personal Property, if any (the “Warranties”);
6. the existing service and maintenance contracts described on attached Exhibit C, together with any amendments or modifications thereto, if any, to the extent assumed by Purchaser pursuant to the terms of this Agreement (the “Service Contracts”); and
7. all right, title and interest as lessor or landlord in the leases described on attached Exhibit D and in all security deposits and all other enhancements to or security for such leases held by Seller (collectively, the “Leases”), together with all rents and other sums due thereunder for periods from and after the Closing Date.

(the Real Property and items 1 through 7, inclusive, shall be known as the “Property”).

B. Seller desires to sell and Purchaser desires to purchase the Property on the terms set forth herein.

AGREEMENTS

The parties hereby agree as follows:

1. Purchase and Sale. Subject to the terms and conditions hereinafter set forth, Seller agrees to sell, assign, convey and transfer to Purchaser, and Purchaser agrees to purchase and accept the Property, free and clear of all Liens, except for the Permitted Exceptions.

2. Purchase Price, Manner of Payment and Pro-rations.

2.1 Purchase Price and Manner of Payment. The Purchase Price for the Property shall be Seven Million Three Hundred Thousand United States Dollars (\$7,300,000.00) (the "Purchase Price"). The Purchase Price shall be payable as follows:

2.1.1 Eighty Thousand United States Dollars (\$80,000.00) shall be payable within three (3) Business Days of the Acceptance Date as an earnest money deposit (the "Earnest Money"), to be held in escrow by Title Company pending the Closing. The Earnest Money shall be applied to the Purchase Price, and will be refundable to Purchaser if Purchaser terminates this Agreement, or payable to Seller as liquidated damages in the event of a default by Purchaser, all as set forth in this Agreement. Upon receipt of the Earnest Money, Title Company shall execute and deliver an Escrow Receipt in the form and substance attached hereto as Exhibit E.

2.1.2 At the Closing, Purchaser shall pay to Seller the sum of Seven Million Two Hundred Twenty Thousand United States Dollars (\$7,220,000.00), subject to such credits, confirmations and adjustments provided for in this Agreement (the "Purchaser Closing Payment"), in immediately available funds.

2.2 Pro-rations.

2.2.1 General. Seller and Purchaser will make the pro-rations set forth in this Agreement as a credit or debit to the Purchase Price. For purposes of calculating pro-rations, Purchaser shall be deemed to be in title to the Property, and therefore entitled to the income therefrom and responsible for the expenses thereof, for the entire day upon which the Closing Date occurs. All pro-rations shall be made on the basis of the actual number of days of the year (commencing January 1) and month that shall have elapsed prior to the Closing Date.

2.2.2 Taxes and Special Assessments. The parties shall pro-rate all taxes due and payable for the Property and special assessments (whether levied, pending or deferred) against the Property as of the Closing Date, utilizing actual final tax bills if available prior to the Closing. If final tax bills are not available, the parties shall pro-rate taxes on the basis of the projected taxes if a projection is available from the applicable taxing authority or, if a projection is not available, on the basis of the most recent final tax bills. Seller shall pay all taxes and installments of special assessments due prior to the Closing Date (including any fines, interest or penalties thereon due to the non-payment thereof), and shall, upon request, furnish evidence of such payment to Purchaser

and Title Company. Purchaser shall pay all taxes and installments of special assessments due on or after the Closing Date. If, after the Closing, either party receives a refund of any taxes that were pro-rated pursuant to this Agreement, then the parties shall equitably share the refund.

2.2.3 Adjustments Related to Leases. All utility bills, operating expenses (other than taxes and special assessments which shall be paid pursuant to Section 2.2.2), base rents and all other charges related to the Leases shall be pro-rated to the Closing Date and adjusted between the parties accordingly. To the extent operating expenses are chargeable to tenants under the Leases, Purchaser shall pay to Seller on the Closing Date the amount of all such operating expenses prepaid by Seller and which are reimbursable but not yet reimbursed by tenants, and Purchaser shall thereafter collect and retain all tenant reimbursables. Likewise, to the extent operating expenses have been prepaid by the tenants and are in the control of Seller, Seller shall provide all prepaid amounts to Purchaser at the Closing pro-rated to the Closing Date. Seller shall remit all security deposits paid by all tenants on the Property to Purchaser at Closing.

2.2.4 Other. The parties shall pro-rate such other items as are customarily pro-rated in transactions of this nature. In the event any pro-rations made pursuant hereto prove to be incorrect for any reason whatsoever, or in the event the pro-rations set forth above are estimated on the most currently available (rather than based on the actual final) bills, either party shall be entitled to an adjustment to correct the same provided that it makes written demand on the other within ninety (90) days of the Closing Date.

3. Purchaser's Due Diligence. Purchaser will be allowed to conduct the following Due Diligence:

3.1 For a period commencing on the Acceptance Date and ending at 5:00 p.m., Brooklyn Park, Minnesota time, on the date that is sixty (60) days after the Acceptance Date (the "Review Period"), Purchaser shall have the right to: (a) review the Deliverables; (b) perform, at its sole cost, physical inspections, environmental review and other due diligence; (c) obtain all approvals Purchaser deems necessary; and (d) to decide, in Purchaser's sole and absolute discretion, whether the Property is satisfactory. Within five (5) Business Days of the Acceptance Date, Seller will deliver any Deliverables in Seller's possession to Purchaser. If this Agreement is terminated for any reason, Purchaser agrees to return all hard copies of the Deliverables to Seller within five (5) Business Days of such termination.

3.2 During the pendency of this Agreement, Purchaser or its designated representatives shall, at reasonable times, have access to the Property and other due diligence materials to conduct, at Purchaser's sole cost and expense, its Due Diligence with respect to the Property; provided, however, that Purchaser will: (a) cause any consultants engaged by Purchaser that may enter upon the Property for purposes of Purchaser's Due Diligence to obtain commercial general liability insurance with coverage limits of no less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate for bodily injury, death and property damage liability; (b) indemnify, defend and hold Seller harmless from and against all costs, expenses, losses, claims, damages and/or liabilities arising from Purchaser's or any of its agents', contractors' or representatives' negligence or misconduct in connection with Purchaser's inspection of the Property; (c) promptly repair any damage resulting from any such inspections and restore the Property to its condition prior to such inspections; (d) not permit any Phase II or otherwise intrusive environmental testing; or (e) not

permit any inspections, investigations or other due diligence activities to result in any Liens being filed against the Property and will, at its sole cost and expense, promptly discharge of record any such Liens that are so filed or recorded. Purchaser's liabilities under this Section shall survive the Closing or earlier termination of this Agreement.

3.3 On or before the expiration of the Review Period, Purchaser has the right for any reason or no reason to terminate this Agreement. If Purchaser notifies Seller of the termination of this Agreement, this Agreement shall terminate upon the date of Purchaser's notification of the same to Seller, Purchaser shall be entitled to the return of the Earnest Money and neither party will have any further rights against the other except for obligations under this Agreement that expressly survive termination hereof.

3.4 On or before the end of the Review Period, Purchaser shall advise Seller, in writing, of any Service Contracts that Purchaser desires to assume as of the Closing, and any such Service Contracts so assumed shall be assigned by Seller to Purchaser at the Closing. Failure by Purchaser to notify Seller prior to the end of the Review Period shall constitute an election by Purchaser to assume all of the Service Contracts.

3.5 Within three (3) Business Days of the Acceptance Date, Purchaser shall, at Seller's cost and expense, order a commitment for the Owner's Policy (the "Title Commitment") from Title Company and provide a copy to Seller upon Purchaser's receipt thereof. Purchaser may, at its cost and expense, obtain a survey of the Property, but if it chooses to do so, for purposes of the Title Review Period, Purchaser must order said survey within ten (10) Business Days of the Acceptance Date. No later than seven (7) Business Days following Purchaser's receipt of the Title Commitment and any survey timely ordered by Purchaser (the "Title Review Period"), Purchaser will deliver to Seller, in writing, any objections to the Title Commitment and/or survey ("Objections"). Should Purchaser fail to timely notify Seller of any Objections, Purchaser will be deemed to have waived any such Objections, except any Required Removal Items.

3.6 If Purchaser notifies Seller within the Title Review Period of Objections, then within five (5) Business Days after Seller's receipt of Purchaser's notice ("Seller's Title Response Period"), Seller will notify Purchaser in writing ("Seller's Title Response Notice") of the Objections that Seller agrees to satisfy on or prior to the Closing, at Seller's sole cost and expense, and of the Objections that Seller cannot or will not satisfy. Notwithstanding the foregoing, Seller will, in any event, be obligated to cure all (a) Liens against the Property; or (b) Liens that have been voluntarily placed against the Property by Seller after the Acceptance Date and that will not otherwise be satisfied on or before the Closing ((a) and (b) collectively, the "Required Removal Items"). If Seller chooses not to satisfy all or any of the Objections that Seller is not obligated to satisfy and to which Purchaser was entitled to object, Seller may either (aa) notify Purchaser thereof within Seller's Title Response Period, or (bb) not respond to Purchaser. In that case, Purchaser has the option, to be exercised within three (3) Business Days following the sooner of (aaa) Purchaser's receipt of Seller's Title Response Notice, or (bbb) the expiration of Seller's Title Response Period, of either (x) terminating this Agreement by giving written notice of termination to Seller, whereupon this Agreement will be terminated without any obligations surviving hereunder, except those expressly stated to survive termination, and the Earnest Money shall be

returned to Purchaser, or (y) electing to close, in which case Purchaser will be deemed to have waived such Objections and such Objections will become "Permitted Exceptions".

If Purchaser does not terminate this Agreement pursuant to this Section 3, there is a presumption that Purchaser has approved all of the items set forth in this Section 3 and this Agreement will remain in full force and effect as provided for in this Agreement (unless the Agreement is otherwise terminated in accordance with the terms hereof).

4. Seller's Representations, Warranties and Covenants.

4.1 Representations and Warranties. Seller hereby represents and warrants for the benefit of Purchaser as of the date hereof and as of the Closing as follows:

4.1.1 Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Minnesota.

4.1.2 This Agreement and all documents executed by Seller that are to be delivered to Purchaser at the Closing are duly authorized, executed and delivered by Seller, are legal, valid and binding obligations of Seller, are sufficient to convey title, and do not violate any provisions of any agreement to which Seller is a party or to which it is subject.

4.1.3 Seller is not a foreign person (as defined in Section 1445 of the Internal Revenue Code of 1986, as amended, and the Regulations promulgated thereunder) and Seller is a "United States Person" as such term is defined in Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended.

4.1.4 Seller has not executed any other contracts for the sale of the Property, and Seller has not granted any rights of first refusal or options to purchase the Property or any other rights that might prevent the consummation of this Agreement.

4.1.5 There is no contract or agreement in effect for the leasing and/or management of the Property for which Purchaser will be bound or that will encumber the Property following the Closing.

4.1.6 Except for the Leases, there are no options, rights of first refusal, outstanding leases, options or rights to lease, occupancy agreements, rights of first refusal to lease, letters of intent to lease or rental agreements with respect to the use and/or occupancy of the Property.

4.1.7 To the Knowledge of Seller, there are no claims, demands, damages, actions, causes of action or claims of third parties that have been asserted, nor is there any pending or threatened litigation, condemnation, eminent domain or other proceeding against Seller or the Property or any part thereof.

4.1.8 To the Knowledge of Seller and except as noted in any environmental reports provided by Seller to Purchaser as part of Deliverables:

(a) Seller has received no citation, directive, inquiry, notice, order, summons, warning or other communication that relates to Hazardous Materials, or any alleged, actual or potential violation or failure to comply with any Environmental Law.

(b) Seller has received no notice of any claims, encumbrances or other restrictions of any nature arising under or pursuant to any Environmental Law with respect to or affecting the Real Property.

(c) To the Knowledge of Seller, during the time that Seller has owned the Property, there have been no acts or occurrences upon the Real Property that have caused there to be Hazardous Materials in the subsoil or ground water of the Real Property.

4.1.9 To the Knowledge of Seller: (a) no methamphetamine production has occurred on the Real Property; (b) no wells are located on the Real Property; (c) no abandoned individual sewage treatment systems are located on the Real Property; and (d) no underground fuel storage tanks are located on the Real Property.

4.1.10 Seller is not: (a) named on any list of persons issued by the Office of Foreign Assets Control of the United States Department of the Treasury (“OFAC”) pursuant to Executive Order 13224 or the Annex thereto issued by the President of the United States, as amended and as in effect on the Closing Date, or any similar list issued by OFAC or any other department or agency of the United States of America (collectively, the “OFAC Lists”), or any other laws, policies, lists or other requirements of any governmental entity addressing or in any way related to terrorist acts or acts of war, including the Terrorism Sanctions Regulations (31 C.F.R. Part 595), the Terrorism List Governmental Sanctions Regulations (31 C.F.R. Part 596), the Foreign Terrorist Organizations Sanctions Regulations (31 C.F.R. Part 597) and the Foreign Narcotics Kingpin Sanctions Regulations (31 C.F.R. Part 598) (collectively, the “Anti-Terrorism Laws”); (b) included in, owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or otherwise associated with any of the persons referred to or described in any OFAC Lists; or (c) otherwise in violation of any Anti-Terrorism Laws. None of the Property or interests in property of Seller is subject to being “blocked” under any Anti-Terrorism Laws. Neither the execution nor performance of this Agreement by Seller is or will be in violation of any Anti-Terrorism Laws.

Each and every warranty and representation of Seller set forth above will be true as of the date of this Agreement and as of the Closing Date and shall survive the Closing for a period of twelve (12) months.

No claim for a breach of any representation or warranty of Seller shall be actionable or payable: (a) if the breach in question results from or is based on a condition, state of facts or other matter which was known to Purchaser prior to Closing; (b) unless the valid claims for all such breaches collectively aggregate more than a sum equal to one percent (1%) of the Purchase Price, in which event the full amount of such claims shall be actionable; and (c) unless written notice containing a description of the specific nature of such breach shall have been given by Purchaser to Seller prior to the expiration of said twelve (12) month period and an action shall have been commenced by Purchaser against Seller within sixty (60) days after the termination of the survival period

provided for above in this Section. Purchaser agrees to first seek recovery under any insurance policies or Service Contracts prior to seeking recovery from Seller, and Seller shall not be liable to Purchaser if Purchaser's claim is satisfied from such insurance policies or Service Contracts.

4.2 Covenants.

4.2.1 Without Purchaser's prior written consent in each case (which consent Purchaser shall not unreasonably withhold, condition, or delay prior to the end of the Review Period and which consent shall be at the sole and absolute discretion of Purchaser after the end of the Review Period), Seller will not enter into any new easements, restrictions, agreements or other documents that would constitute an encumbrance upon the Real Property that will not terminate on or before the Closing.

4.2.2 Seller will not materially modify its property management practices or suspend or cancel any Service Contracts.

4.2.3 Seller will not enter into any new lease or contract, or amend, modify, terminate, cancel or extend any Lease or contract that cannot be terminated at or before the Closing without Purchaser's written consent (which consent Purchaser shall not unreasonably withhold, condition or delay prior to the end of the Review Period and which consent shall be at the sole and absolute discretion of Purchaser after the end of the Review Period).

5. Closing Costs. The parties will bear the following costs:

5.1 Seller will pay: (a) all costs and expenses incurred in connection with the removal of Liens, the curing of title defects and problems, and other such similar matters, subject to Section 3 herein; (b) the state deed tax, conservation fee, and any other federal, state, or local documentary or revenue stamps or transfer tax with respect to the Deed; (c) the cost of the Title Commitment and any title search or examination costs; (d) the cost of recording any documents that are needed to make title to the Real Property marketable; (e) one-half (1/2) of any other closing and/or escrow fees; and (f) all other costs and expenses that are allocated to Seller under the other provisions of this Agreement.

5.2 Purchaser will pay: (a) all costs and expenses in connection with Purchaser's Due Diligence; (b) the cost of recording the Deed; (c) the premium(s) for the Owner's Policy, any loan policy of title insurance and any endorsements to the Owner's Policy or any such loan policy; (d) mortgage registration tax, if applicable; (e) one-half (1/2) of any other closing and/or escrow fees; and (f) all other costs and expenses that are allocated to Purchaser under the other provisions of this Agreement.

5.3 Each party shall be responsible for payment of its own legal fees.

6. Closing.

6.1 Closing Conditions. The Closing will occur on the Closing Date, at which time possession of the Property shall be immediately delivered to Purchaser. The Closing will not occur

hereunder unless and until all of the following conditions precedent are satisfied (or, as to the negative covenants, continue to be true and correct), and/or waived by Purchaser or Seller, as applicable, in its sole and absolute discretion, in writing;

6.1.1 The representations and warranties of Seller made herein will be true and correct, Seller will have performed all covenants and agreements made herein and Seller will have delivered to Purchaser all of the Seller Closing Documents; and

6.1.2 The representations and warranties of Purchaser made herein will be true and correct, Purchaser will have performed all covenants and agreements made herein and Purchaser will have delivered to Seller all of the Purchaser Closing Documents.

6.2 Closing Procedures. The Closing will be an escrow closing where all Closing Documents and funds required to be paid or provided by each party pursuant to this Agreement will be delivered to Title Company in escrow on or before the Closing Date and upon receipt of all required funds and documents from the parties, Title Company will close the transaction in accordance with the provisions of this Agreement. Both parties will pay their respective costs by wire transfer from a financial institution reasonably acceptable to Title Company. At Closing, the following will occur:

6.2.1 Seller will execute and deliver, or cause to be executed and delivered (as the case may be) to Purchaser the following documents all in form reasonably acceptable to Purchaser and its counsel (collectively, the "Seller Closing Documents"):

Agreement;

(a) evidence of Seller's authority to perform its obligations under this

(b) the Deed;

(c) Seller's signed counterpart to a General Assignment in the form attached hereto as Exhibit F (the "General Assignment");

(d) Seller's signed counterpart to an Assignment and Assumption of Leases in the form attached hereto as Exhibit G (the "Assignment of Leases");

(e) a non-foreign affidavit or a qualifying statement sufficient in form and substance to relieve Purchaser of any and all obligations to deduct, withhold or pay any amount of tax pursuant to Section 1445 of the Code, or a statement from Seller authorizing Purchaser to deduct and withhold taxes as required by Section 1445 of the Code; and

(f) any and all other documentation reasonably required by Title Company to close the transaction contemplated hereunder and to cause the Owner's Policy to be issued and delivered to Purchaser.

6.2.2 Purchaser will deliver the Purchaser Closing Payment to Title Company, and shall execute and/or deliver, or cause to be executed and delivered (as the case may be) to

Seller the following documents all in form reasonably acceptable to Seller and its counsel (collectively, the “Purchaser Closing Documents”):

- (a) evidence of Purchaser’s authority to perform its obligations under this Agreement;
- (b) any documentation reasonably required by Title Company to close the transaction contemplated hereunder and to cause the Owner’s Policy to be issued and delivered to Purchaser;
- (c) Purchaser’s signed counterpart to the General Assignment; and
- (d) Purchaser’s signed counterpart to the Assignment of Leases.

7. Broker. The parties each represent and warrant to the other that there are no real estate brokers, salesmen or finders involved in this transaction except that Seller has engaged Wellington Management, Inc. (“Seller’s Broker”), as its exclusive listing agent and broker and Purchaser has engaged Integrust Advisory Group, LLC d/b/a IAG Commercial (“Purchaser’s Broker”), as its exclusive listing agent and broker in connection with the sale of the Property as contemplated by this Agreement. At the Closing, Seller will pay Seller’s Broker a commission pursuant to a separate agreement that Seller has previously entered into with Seller’s Broker. Seller will also pay Purchaser’s Broker a commission equal to three percent (3%) of the Purchase Price at Closing. If a claim for brokerage in connection with this transaction is made by any broker, salesman or finder claiming to have dealt by, through or on behalf of Seller (other than Seller’s Broker), Seller will indemnify, defend and hold harmless Purchaser and its officers, managers, partners, members, agents and representatives, from and against any and all liabilities, damages, claims, costs, fees and expenses whatsoever, including reasonable attorneys’ fees and court costs through all trial and all appellate levels with respect to said claim for brokerage. If a claim for brokerage in connection with this transaction is made by any broker, salesman or finder claiming to have dealt by, through or on behalf of Purchaser (other than Purchaser’s Broker), Purchaser will indemnify, defend and hold harmless Seller, and Seller’s officers, directors, partners, members, agents and representatives, from and against any and all liabilities, damages, claims, costs, fees and expenses whatsoever, including reasonable attorneys’ fees and court costs through all trial and all appellate levels with respect to said claim for brokerage. The provisions of this Section shall survive Closing.

8. Mutual Indemnification. Seller and Purchaser shall indemnify and defend each other against, and hold each other harmless from, all third-party claims and liabilities (including reasonable attorneys’ fees in defending against claims) arising out of the ownership, operation, or maintenance of the Property for their respective periods of ownership. Such rights to indemnification will not arise to the extent that: (a) the party seeking indemnification actually receives insurance proceeds or other cash payments directly attributable to the liability in question (excluding, however, the cost of collection, including reasonable attorneys’ fees); or (b) the claim for indemnification arises out of the act or neglect of the party seeking indemnification. If and to the extent that the indemnified party has insurance coverage, or the right to make any claim against any third-party for any amount to be indemnified against as provided in this Section, the indemnified party shall, upon full performance by the indemnifying party of its indemnification

obligations, assign such rights to the indemnifying party, or, if such rights are not assignable, the indemnified party shall diligently pursue such rights by appropriate legal action or proceeding and assign the recovery and/or right of recovery to the indemnifying party to the extent of the indemnification payment made by such party. The provisions of this Section shall survive Closing for a period of twelve (12) months.

9. Notices. All notices or other communications hereunder to either party shall be sent via (a) overnight commercial courier service or United States Express Mail, or (b) personal delivery, and in each case shall be deemed to be given on the earlier of actual receipt or one (1) Business Day after sent and addressed:

If to Seller:

Hargis Northwind, LLC
c/o First Trust Company, LLC
Attn: John R. Bultena
332 Minnesota Street, Suite W2900
St. Paul, MN 55101
jbultena@firsttrustcompany.com

With a copy to:

Nathan M. Brandenburg
Fafinski Mark & Johnson, P.A.
775 Prairie Center Drive, Suite 400
Eden Prairie, MN 55344
nathan.brandenburg@fmjlaw.com

If to Purchaser:

Brooklyn Park Economic Development
Authority
Attn: Kimberly Berggren, Executive Director
5200 85th Avenue North
Brooklyn Park, MN 55443
Kimberly.Berggren@brooklynpark.org

With a copy to:

Sarah J. Sonsalla
Kennedy & Graven, Chartered
Fifth Street Towers
150 South Fifth Street, Suite 700
Minneapolis, MN 55402
ssonsalla@kennedy-graven.com

And

IAG Commercial Real Estate
Attn: Jeff LaFavre

222 South 9th Street, Suite 1600
Minneapolis, MN 55402
jlafavre@iagcommerical.com

If to Title Company:

Commercial Partners Title
Attn: T.J. Swanson
200 South Sixth Street, Suite 1300
Minneapolis, MN 55402
tjs@cptitle.com

10. Casualty and Condemnation.

10.1 If all or any part of the Property is Substantially Damaged by fire, casualty, the elements or any other cause, Seller shall promptly give notice to Purchaser, and Purchaser shall have the right to terminate this Agreement, which right must be exercised by Purchaser within ten (10) business days of the date that Purchaser is notified of the casualty event in writing by Seller. If Purchaser notifies Seller in writing of the termination of this Agreement pursuant to this Section, this Agreement shall terminate and in such event, except for obligations under this Agreement that expressly survive termination, neither party will have any further rights against the other and the Earnest Money shall be returned to Purchaser. In the event Purchaser does not elect to terminate this Agreement, or fails to provide written notice to Seller of its intent to terminate within the ten (10) business day period provided above, Purchaser will be deemed to have elected to proceed to Closing and Seller will assign to Purchaser, at the Closing, all of Seller's rights to insurance proceeds resulting from such casualty event and the Purchaser Closing Payment shall be reduced by any insurance deductible.

10.2 In the event proceedings to condemn the Real Property or any portion thereof are commenced before the Closing Date, Seller shall promptly give notice to Purchaser, and Purchaser shall have the right to terminate this Agreement, which right must be exercised by Purchaser within ten (10) business days of the date that Purchaser is notified of such condemnation proceedings by Seller. If Purchaser notifies Seller in writing of the termination of this Agreement pursuant to this Section, this Agreement shall terminate and in such event, except for obligations under this Agreement that expressly survive termination, neither party will have any further rights against the other and the Earnest Money shall be returned to Purchaser. In the event Purchaser does not elect to terminate this Agreement, or fails to provide written notice to Seller of its intent to terminate within the ten (10) business day period provided above, Purchaser will be deemed to have elected to proceed to Closing and Seller will assign to Purchaser, at the Closing, all of Seller's rights, title, and interest in and to any condemnation proceeds payable with respect to the Real Property.

11. Purchaser's Representations, Warranties and Covenants. Purchaser hereby represents and warrants for the benefit of Seller as follows:

11.1 Purchaser is a body corporate and politic duly organized, validly existing and in good standing under the laws of the State of Minnesota.

11.2 Purchaser has full power and right to enter into and perform its obligations under this Agreement and the other agreements contemplated herein to be executed and performed by it.

11.3 The execution, delivery and performance of this Agreement and all documents to be executed by Purchaser, or its permitted assigns, in connection with the transactions contemplated herein, does not conflict with or result in a violation of any judgment, order or decree of any court or arbiter to which Purchaser is a party.

11.4 This Agreement and all documents to be executed by Purchaser, or its permitted assigns, are valid and binding obligations of Purchaser and are enforceable in accordance with their terms.

Each and every warranty and representation of Purchaser set forth above will be true as of the date of this Agreement and as of the Closing Date and shall survive the Closing for a period of twelve (12) months.

12. Remedies. If Seller fails to perform any of the covenants of this Agreement, or Seller otherwise defaults hereunder, including a failure to close, Purchaser, following thirty (30) days' written notice to Seller (a "Notice of Seller Default") (if Seller has not cured the alleged default) shall have as its sole and exclusive remedies: (a) the right of specific performance of all provisions of this Agreement; or (b) the right to terminate this Agreement in which event the Earnest Money shall be returned to Purchaser. Any action for specific performance must be served on Seller and filed with the Hennepin County (Minnesota) District Court within thirty (30) days from the delivery of the Notice of Seller Default to Seller.

If Purchaser breaches any of its obligations hereunder prior to the Closing, Seller may terminate this Agreement pursuant to Minnesota Statutes Section 559.21 upon thirty (30) days' prior written notice and retain the Earnest Money as liquidated damages as Seller's sole remedy hereunder. Notwithstanding the foregoing, with regard to any default by a party of any obligation that explicitly survives the Closing, Seller and Purchaser will have the right to specifically enforce the subject terms and provisions of this Agreement and/or recover any damages to which it may be entitled at law (including, without limitation, reasonable attorneys' fees and the reasonable costs of investigation) and/or pursue any other remedy available at law or equity.

In the event of a termination of this Agreement for any reason, within three (3) Business Days of the termination of this Agreement, the parties shall execute and deliver to each other a Purchase Agreement Cancellation Agreement.

13. Miscellaneous.

13.1 Defined Terms. Any capitalized terms set forth in this Agreement or any Exhibit or Schedule attached hereto has the meaning set forth in Exhibit A to this Agreement or as otherwise defined in this Agreement or any exhibit or schedule hereto.

13.2 Governing Law. This Agreement will be construed, governed and enforced in accordance with laws of the State of Minnesota without regard to the conflict of law provisions thereof.

13.3 Savings Clause. If any provision of this Agreement or the application thereof to any person or circumstance are to any extent held void, invalid or unenforceable, then the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held void or invalid or unenforceable will not be affected thereby and each and every other provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

13.4 Pronouns and Plurals. Unless otherwise indicated to the contrary herein by context or use thereof (a) the words “herein,” “hereto,” “hereof,” and words of similar import refer to this Agreement as a whole and not to any paragraph or section hereof; (b) the word “including” means “including, but not limited to”; (c) masculine gender also includes the feminine and neutral genders and vice versa; and (d) words importing the singular shall also include the plural, and vice versa.

13.5 Entire Agreement. This Agreement constitutes the entire purchase and sale agreement between the parties with respect to the purchase and sale of the Property and supersedes any other previous agreement, oral or written, between the parties, including but not limited to any expressions of interest or letters of intent entered into by and between the parties. This Agreement cannot be changed, modified, waived or terminated orally but only by an agreement in writing signed by the parties hereto. This Agreement will be binding upon the parties hereto and their respective heirs, executors, personal representatives and successors and permitted assigns.

13.6 Time of the Essence. Time is of the essence in regard to this Agreement and each provision hereof; provided, however, that if any date herein set forth for the performance of any obligations by Seller or Purchaser or for the delivery of any instrument or notice as herein provided should not be on a Business Day, the compliance with such obligations or delivery shall be deemed acceptable on the next following Business Day.

13.7 Counterparts. This Agreement may be executed manually or electronically in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute but one and the same instrument. Executed copies of the signature pages of this Agreement transmitted electronically in Portable Document Format (PDF) shall be treated as originals, fully binding and with full legal force and effect, and the parties waive any rights they may have to object to such treatment. The pages of any counterpart of this Agreement containing any party’s signature or the acknowledgement of such party’s signature hereto may be detached therefrom without impairing the effect of the signature or acknowledgement, provided such pages are attached to any other counterpart identical thereto except having additional pages containing the signatures or acknowledgements thereof of other parties.

13.8 Mutual Cooperation. Each of the parties agrees that upon request from the other party following the Closing and without further consideration, such party will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts or instruments as shall be reasonably requested by a party in order to effect or carryout the transactions contemplated herein provided the same do not impose any obligations or liabilities upon the party not contemplated in this Agreement.

13.9 Waiver. Failure of either party to insist, in any one or more instances, upon strict performance of any term or condition of this Agreement, will not be construed as a waiver or relinquishment of such term, condition or option in the future.

13.10 Assignment. This Agreement shall be binding upon the parties hereto and their respective heirs, successors and permitted assigns. Purchaser may, at any time, assign its rights under this Agreement to an entity under common control and ownership of Purchaser without the consent of, but with notice to, Seller, which assignment shall not relieve Purchaser of any of its obligations under this Agreement.

13.11 1031 Exchange. Seller and Purchaser agree to cooperate with reasonable requests made by the other party to effect the requesting party's like-kind exchange (whether simultaneous, deferred or reverse) of real property pursuant to Section 1031 of the United States Internal Revenue Code and similar provisions of applicable state law ("Exchange"), provided that (a) the cooperating party shall not be required to incur any costs, expenses or liability in connection with the Exchange; (b) neither party shall be allowed to delay the Closing hereunder; (c) neither party shall be obligated to execute any note, contract, deed or other document not otherwise expressly provided for in this Agreement providing for any personal liability, nor shall either party be obligated to take title to any property other than the Property as otherwise contemplated in this Agreement or incur additional expense for the benefit of the other party; and (d) the exchanging party shall not be released from any obligations or liabilities under this Agreement. Each party shall indemnify and hold the other harmless against any liability which arises or is claimed to have arisen on account of any Exchange that is initiated on behalf of the indemnifying party.

13.12 Waiver of Trial by Jury. THE PARTIES SHALL AND HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AND AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, OR FOR THE ENFORCEMENT OF ANY REMEDY UNDER ANY STATUTE OR OTHERWISE.

13.13 Condition of Property at Closing. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT FOR SELLER'S REPRESENTATIONS AND WARRANTIES IN SECTION 4 AND IN SELLER'S CLOSING DOCUMENTS ("SELLER'S WARRANTIES"), THIS SALE IS MADE AND WILL BE MADE WITHOUT REPRESENTATION, COVENANT OR WARRANTY OF ANY KIND (WHETHER EXPRESS, IMPLIED, OR, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, STATUTORY) BY SELLER. AS A MATERIAL PART OF THE CONSIDERATION FOR THIS AGREEMENT, PURCHASER AGREES TO ACCEPT THE PROPERTY AT CLOSING ON AN "AS IS" AND "WHERE IS" BASIS, WITH ALL FAULTS, AND WITHOUT ANY REPRESENTATION OR WARRANTY, ALL OF WHICH SELLER HEREBY DISCLAIMS, EXCEPT FOR SELLER'S WARRANTIES. EXCEPT FOR SELLER'S WARRANTIES, NO WARRANTY OR REPRESENTATION IS MADE BY SELLER AS TO FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY, DESIGN, QUALITY, CONDITION, OPERATION OR INCOME, COMPLIANCE WITH DRAWINGS OR SPECIFICATIONS, ABSENCE OF DEFECTS, ABSENCE OF HAZARDOUS OR TOXIC SUBSTANCES,

ABSENCE OF FAULTS, FLOODING, OR COMPLIANCE WITH LAWS AND REGULATIONS INCLUDING, WITHOUT LIMITATION, THOSE RELATING TO HEALTH, SAFETY, AND THE ENVIRONMENT. PURCHASER ACKNOWLEDGES THAT PURCHASER HAS ENTERED INTO THIS AGREEMENT WITH THE INTENTION OF MAKING AND RELYING UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC USE, COMPLIANCE, AND LEGAL CONDITION OF THE PROPERTY AND THAT PURCHASER IS NOT NOW RELYING, AND WILL NOT LATER RELY, UPON ANY REPRESENTATIONS AND WARRANTIES MADE BY SELLER OR ANYONE ACTING OR CLAIMING TO ACT, BY, THROUGH OR UNDER OR ON SELLER'S BEHALF CONCERNING THE PROPERTY, EXCEPT FOR SELLER'S WARRANTIES. THE PROVISIONS OF THIS SECTION SHALL SURVIVE INDEFINITELY ANY CLOSING OR TERMINATION OF THIS AGREEMENT AND SHALL NOT BE MERGED INTO THE CLOSING DOCUMENTS.

13.14 Relocation Benefits. Seller acknowledges that it is being displaced from the Property as a result of the transaction contemplated by this Agreement and that it may be eligible for relocation assistance and benefits and that the Purchase Price includes compensation for any and all relocation assistance and benefits for which Seller may be eligible. Seller agrees to waive any and all further relocation assistance benefits existing at this time as a result of Purchaser's acquisition of the Property. The provisions of this Section shall survive closing of the transaction contemplated by this Agreement.

[This space intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth below, effective as of the Acceptance Date.

Seller:

HARGIS NORTHWIND, LLC,
a Minnesota limited liability company

Dated: July ____, 2021.

By: John R. Bultena
Its: President

[Signature Page to Real Estate Purchase and Sale Agreement]

Purchaser:

**BROOKLYN PARK ECONOMIC
DEVELOPMENT AUTHORITY**

Dated: July ___, 2021.

By: _____

Its: President

By: _____

Its: Executive Director

**THE PARTIES ACKNOWLEDGE AND AGREE THAT THE “ACCEPTANCE DATE”
AS SET FORTH IN THIS AGREEMENT SHALL BE JULY ___, 2021.**

[Signature Page to Real Estate Purchase and Sale Agreement]

EXHIBIT A
DEFINITIONS

The following terms shall have the meanings set forth below when used in this Agreement:

“Acceptance Date” has the meaning set forth in the Preamble of this Agreement.

“Agreement” has the meaning set forth in the Preamble of this Agreement.

“Anti-Terrorism Laws” has the meaning set forth in Section 4.1.10 of this Agreement.

“Applicable Laws” means all laws, rules, regulations, requirements, statutes, codes, ordinances or orders of the United States of America, State of Minnesota, County of Hennepin, the City, or other governmental body having jurisdiction over Seller and/or the Property, which are applicable with regard thereto and any Permitted Exceptions and other recorded documents, master plan, and/or agreements with any governmental body effecting the Property.

“Business Day” means any day other than Saturday, Sunday, or other days on which commercial banks in the City are not open for business.

“City” means the City of Brooklyn Park, Minnesota.

“Closing” means the consummation of the transactions contemplated by this Agreement.

“Closing Date” means the date on which the Closing occurs, which shall occur within thirty (30) days after the end of the Review Period.

“Closing Documents” means the Seller Closing Documents and the Purchaser Closing Documents.

“Deed” means a Minnesota Uniform Conveyance Blank Limited Warranty Deed.

“Deliverables” means copies of the following documents, to the extent in Seller’s possession: existing environmental reports, existing surveys, copy of the most recent owner’s policy of title insurance, real estate tax statements (and any appeal or protest documents), any notices involving use or restrictions on the Real Property, current approvals, engineering reports, Service Contracts, utility bills (received within the twelve (12) months prior to the Acceptance Date), and the 2020 and year to date 2021 operating expense statement.

“Due Diligence” means Purchaser’s inspection of the Property, title review and review of environmental matters, all as set forth in Section 3 of this Agreement.

“Earnest Money” has the meaning set forth in Section 2.1.1 of this Agreement.

“Environmental Laws” means all laws, ordinances, statutes, codes, rules, regulations, agreements, judgments, orders or decrees, now or hereafter enacted, promulgated, or amended, of

the United States of America, the states, the counties, the cities, or any other political subdivision in which the Real Property is located, and any other political subdivision, agency or instrumentality exercising jurisdiction over Seller, the Real Property or the use of the Real Property, relating to pollution, the protection or regulation of human health, or the environment, or the emission, discharge, release or threatened release of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or waste Hazardous Materials into the environment, including without limitation, ambient air, surface water, ground water or land or soil, except as may have been generated during Seller's ordinary course of business.

“Exchange” has the meaning set forth in Section 13.11 of this Agreement.

“Fixtures” has the meaning set forth in Recital A.2 of this Agreement.

“Hazardous Materials” means (a) those substances included within the definitions of “hazardous substances,” “hazardous materials,” “toxic substances,” or “solid waste” in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*), as amended by Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499 100 Stat. 1613), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 *et seq.*), and the Hazardous Materials Transportation Act (49 U.S.C. § 1801 *et seq.*), and in the regulations promulgated pursuant to said laws, all as amended; (b) those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto)); (c) any material waste or substance which is (i) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act, 33 U.S.C. § 1251 *et seq.* (33 U.S.C. § 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. § 1317), or (ii) radioactive materials; (d) those substances included within the definitions of “hazardous substances”, “hazardous materials”, “toxic substances” or “solid waste” in the Hazardous Waste Management Act of 1978; (e) those substances identified as hazardous or toxic by the Minnesota Pollution Control Agency or other governmental agency or quasi agency; and (f) asbestos and asbestos containing materials in any form, whether friable or non-friable, polychlorinated biphenyls, radon gas; any of which substances described in clauses (a) through (f) above is present in such quantities as to require reporting, investigation or remediation under any applicable Environmental Laws, causes or threatens to cause a nuisance on the Real Property or adjacent property or poses or threatens to pose a hazard to the health or safety of persons on the Real Property or adjacent property, or which, if it emanated or migrated from the Real Property could constitute trespass.

“Improvements” has the meaning set forth in Recital A.1 of this Agreement.

“Knowledge” means the actual knowledge of John R. Bultena upon reasonable inquiry of Seller's property manager.

“Leases” has the meaning set forth in Recital A.7 of this Agreement.

“Lien” means any interest in an asset securing an obligation owed to, or a claim by, any person other than the owner of the asset, whether such interest is based on the common law, statute,

or contract whether such interest is recorded or perfected, and whether such interest is contingent upon the occurrence of some future event or events or the existence of some future circumstance or circumstances, including the lien or security interest arising from a mortgage, deed of trust, encumbrance, pledge, hypothecation, assignment, collateral assignment, deposit arrangement, security agreement, conditional sale or trust receipt, or from a lease, consignment, or bailment for security purposes and also including encroachments.

“OFAC” has the meaning set forth in Section 4.1.10 of this Agreement.

“OFAC Lists” has the meaning set forth in Section 4.1.10 of this Agreement.

“Objections” has the meaning set forth in Section 3.5 of this Agreement.

“Owner’s Policy” means an ALTA Form Owner’s Policy of Title Insurance in the amount of the Purchase Price committing to insure marketable title to the Real Property in Purchaser, subject only to the Permitted Exceptions.

“Permits” has the meaning set forth in Recital A.4 of this Agreement.

“Permitted Exceptions” means any matters that Purchaser approves in writing or is deemed to have approved pursuant to the terms of this Agreement.

“Personal Property” has the meaning set forth in Recital A.2 of this Agreement.

“Plans and Specifications” has the meaning set forth in Recital A.3.

“Property” has the meaning set forth in Recital A of this Agreement.

“Purchase Price” has the meaning set forth in Section 2.1 of this Agreement.

“Purchaser” means the Brooklyn Park Economic Development Authority, a body corporate and politic in the State of Minnesota.

“Purchaser’s Broker” has the meaning set forth in Section 7 of this Agreement.

“Purchaser Closing Documents” has the meaning set forth in Section 6.2.2 of this Agreement.

“Purchaser Closing Payment” has the meaning set forth in Section 2.1.2 of this Agreement.

“Real Property” has the meaning set forth in Recital A of this Agreement.

“Required Removal Items” has the meaning set forth in Section 3.6 of this Agreement.

“Review Period” has the meaning set forth in Section 3.1 of this Agreement.

“Seller” means Hargis Northwind, LLC, a Minnesota limited liability company.

“Seller’s Broker” has the meaning set forth in Section 7 of this Agreement.

“Seller Closing Documents” has the meaning set forth in Section 6.2.1 of this Agreement.

“Seller’s Title Response Notice” has the meaning set forth in Section 3.6 of this Agreement.

“Seller’s Title Response Period” has the meaning set forth in Section 3.6 of this Agreement.

“Seller’s Warranties” has the meaning set forth in Section 13.13 of this Agreement.

“Service Contracts” has the meaning set forth in Recital A.6 of this Agreement.

“Substantially Damaged” means the aggregate cost of repair or replacement is \$500,000.00 or more in the opinion of Seller’s engineering consultant.

“Title Commitment” has the meaning set forth in Section 3.5 of this Agreement.

“Title Company” means Commercial Partners Title, a division of Chicago Title Insurance Company, in Minneapolis, Minnesota.

“Title Review Period” has the meaning set forth in Section 3.5 of this Agreement.

“Warranties” has the meaning set forth in Recital A.5 of this Agreement.

EXHIBIT B
LEGAL DESCRIPTION

Lot 1, Block 1, Northwind Plaza, according to the recorded plat thereof, County of Hennepin, State of Minnesota.

Lot 2, Block 1, Northwind Plaza, according to the recorded plat thereof, County of Hennepin, State of Minnesota.

[Subject to final title commitment]

EXHIBIT C
SERVICE CONTRACTS

[Schedule to be included]

EXHIBIT D
LEASE AGREEMENTS

[Schedule to be included]

EXHIBIT E
FORM OF ESCROW RECEIPT

The undersigned, **COMMERCIAL PARTNERS TITLE**, a division of Chicago Title Insurance Company (“Escrow Agent”), acknowledges receipt of \$80,000.00 (the “Earnest Money”) as of July __, 2021, and agrees to hold and disburse the Earnest Money in accordance with the Real Estate Purchase and Sale Agreement dated July __, 2021, to which this Escrow Receipt is attached (the “Agreement”). Income and interest on the Earnest Money, if any, shall accrue for the benefit of the parties as set forth in the Agreement.

Escrow Agent shall have no responsibility for any decision concerning performance of effectiveness of the Agreement or to resolve any disputes concerning the Agreement or with regard to the Earnest Money. Escrow Agent shall be responsible only to refund the Earnest Money to Purchaser, pay the Earnest Money to Seller, or apply the Earnest Money to the Purchase Price, all in accordance with the Agreement, or otherwise act at the joint and mutual direction of both Purchaser and Seller, or in lieu thereof, the direction of a court of competent jurisdiction. Purchaser and Seller undertake to hold Escrow Agent harmless from all claims for damages arising out of this Escrow Receipt and agree to indemnify Escrow Agent for all costs and attorneys’ fees except for Escrow Agent’s failure to account for the funds held hereunder, or acting in conflict with the terms thereof.

This Escrow Receipt may be executed manually or electronically in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute but one and the same instrument. Executed copies of the signature pages of this Escrow Receipt sent by facsimile or transmitted electronically in Portable Document Format (PDF) shall be treated as originals, fully binding and with full legal force and effect, and the parties waive any rights they may have to object to such treatment. The pages of any counterpart of this Escrow Receipt containing any party’s signature or the acknowledgement of such party’s signature hereto may be detached therefrom without impairing the effect of the signature or acknowledgement, provided such pages are attached to any other counterpart identical thereto except having additional pages containing the signatures or acknowledgements thereof of other parties.

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Escrow Agent:

COMMERCIAL PARTNERS TITLE,
a division of Chicago Title Insurance Company

By: _____
Its: _____

Seller:

HARGIS NORTHWIND, LLC,
a Minnesota limited liability company

By: John R. Bultena
Its: President

Purchaser:

**BROOKLYN PARK ECONOMIC
DEVELOPMENT AUTHORITY,**
a body corporate and politic in the State of
Minnesota

By: _____
Its: President

By: _____
Its: Executive Director

[Signature Page to Escrow Receipt]

EXHIBIT F
FORM OF GENERAL ASSIGNMENT

THIS GENERAL ASSIGNMENT (this “Assignment”) is made, entered into and effective as of _____, 2021, by and between **HARGIS NORTHWIND, LLC**, a Minnesota limited liability company (“Assignor”), and **BROOKLYN PARK ECONOMIC DEVELOPMENT AUTHORITY**, a body corporate and politic in the State of Minnesota (“Assignee”), both of whom may be referred to herein as the “parties” and each of whom may be referred to herein as a “party”.

BACKGROUND

Assignor has simultaneously herewith conveyed to Assignee all of Assignor’s right, title and interest in and to the Property (as defined in that certain Real Estate Purchase and Sale Agreement dated as of July __, 2021, by and between Assignor and Assignee (the “Purchase Agreement”)), and in connection therewith, Assignor has agreed to assign to Assignee all of Assignor’s right, title and interest in and to the following:

1. all Improvements;
2. any Fixtures and Personal Property;
3. all Plans and Specifications;
4. all Permits;
5. all Warranties; and
6. the Service Contracts, to the extent assumed by Purchaser pursuant to the Purchase Agreement.

(collectively, the “Other Assets”).

AGREEMENTS

NOW THEREFORE, the parties hereto agree as follows:

1. Assignor hereby assigns unto Assignee, and Assignee hereby assumes, all of the right, title and interest, if any, of Assignor in and to the Other Assets.
2. This Assignment is binding upon and shall inure to the benefit of Assignor and Assignee and their respective successors, assigns and legal representatives.
3. All capitalized terms used in this Assignment, but not defined herein, will be deemed to have the respective meanings set forth in the Purchase Agreement.

4. This Assignment may be executed manually or electronically in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute but one and the same instrument. Executed copies of the signature pages of this Assignment transmitted electronically in Portable Document Format (PDF) shall be treated as originals, fully binding and with full legal force and effect, and the parties waive any rights they may have to object to such treatment. The pages of any counterpart of this Assignment containing any party's signature or the acknowledgement of such party's signature hereto may be detached therefrom without impairing the effect of the signature or acknowledgement, provided such pages are attached to any other counterpart identical thereto except having additional pages containing the signatures or acknowledgements thereof of other parties.

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IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the date first above written.

Assignor:

HARGIS NORTHWIND, LLC,
a Minnesota limited liability company

By: John R. Bultena
Its: President

Assignee:

**BROOKLYN PARK ECONOMIC
DEVELOPMENT AUTHORITY,**
a body corporate and politic in the State of
Minnesota

By: _____
Its: President

By: _____
Its: Executive Director

[Signature Page to General Assignment]

EXHIBIT G
FORM OF ASSIGNMENT AND ASSUMPTION OF LEASES

THIS ASSIGNMENT AND ASSUMPTION OF LEASES (this “Assignment”), is made, entered into and effective as of _____, 2021, by and between by and between **HARGIS NORTHWIND, LLC**, a Minnesota limited liability company (“Assignor”), and **BROOKLYN PARK ECONOMIC DEVELOPMENT AUTHORITY**, a body corporate and politic in the State of Minnesota (“Assignee”), both of whom may be referred to herein as the “parties” and each of whom may be referred to herein as a “party”.

BACKGROUND

A. Assignor and Assignee have entered into that certain Real Estate Purchase and Sale Agreement dated July ___, 2021 (the “Purchase Agreement”), for the purchase and sale of the Property (as defined therein).

B. This Assignment is being made pursuant to the Purchase Agreement for the purpose of memorializing the assignment to Assignee all of Assignor’s right, title and interest in and to the Leases (including all associated security deposits and other enhancements) as set forth on the rent roll attached hereto as Exhibit A.

AGREEMENTS

NOW, THEREFORE, the parties hereto agree as follows:

1. Subject to the provisions of the Purchase Agreement, Assignor hereby grants, assigns, transfers, conveys and delivers to Assignee, and Assignee hereby accepts the assignment of Assignor’s interest in and to the Leases and all of the right, title, estate, interest, benefits and privileges of the lessor or landlord thereunder.

2. Subject to the provisions of the Purchase Agreement, by acceptance of this Assignment, Assignee hereby assumes and agrees to perform and to be bound by all of the terms, covenants, conditions and obligations imposed upon the lessor or landlord under the Leases accruing on or subsequent to the Closing Date.

3. Assignor agrees to indemnify, defend and hold Assignee harmless from and against any claims asserted against Assignee under any of the Leases and shall reimburse Assignee for any costs and expenses incurred in connection with such claims, including reasonable attorneys’ fees related to such claims, to the extent such claims arise out of the failure of Assignor to comply with or to perform any obligation under any of the Leases accruing prior to the Closing Date. Assignee agrees to indemnify, defend and hold Assignor harmless from and against any claims asserted against Assignor under any of the Leases and shall reimburse Assignor for any costs and expenses incurred in connection with such claims, including reasonable attorneys’ fees related to such claims, to the extent such claims arise out of the failure of Assignee to comply with or to perform any obligation under any of the Leases first accruing on or after the Closing Date.

4. Nothing contained in this Assignment shall constitute a waiver of or a limitation on any of the rights and obligations of the parties to the Purchase Agreement concerning closing pro-rations.

5. This Assignment shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, heirs and legatees of the respective parties hereto.

6. In the event of the bringing of any action or suit by a party hereto against any other party hereunder by reason of any breach of any of the covenants, conditions, agreements or provisions on the part of the other party arising out of this Assignment, then in that event, the prevailing party shall be entitled to have and recover of and from the other party all costs and expenses of the action or suit, including reasonable attorneys' fees and costs.

7. This Assignment shall be governed by, interpreted under, and construed and enforceable with, the laws of the State of Minnesota.

8. All capitalized terms used in this Assignment, but not defined herein, will be deemed to have the respective meanings set forth in the Purchase Agreement.

9. This Assignment may be executed manually or electronically in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute but one and the same instrument. Executed copies of the signature pages of this Assignment transmitted electronically in Portable Document Format (PDF) shall be treated as originals, fully binding and with full legal force and effect, and the parties waive any rights they may have to object to such treatment. The pages of any counterpart of this Assignment containing any party's signature or the acknowledgement of such party's signature hereto may be detached therefrom without impairing the effect of the signature or acknowledgement, provided such pages are attached to any other counterpart identical thereto except having additional pages containing the signatures or acknowledgements thereof of other parties.

Assignor hereby agrees to and shall execute and deliver to Assignee any and all documents, agreements and instruments necessary to consummate the transactions contemplated by this Assignment.

[This space intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the date first above written.

Assignor:

HARGIS NORTHWIND, LLC,
a Minnesota limited liability company

By: John R. Bultena
Its: President

Assignee:

**BROOKLYN PARK ECONOMIC
DEVELOPMENT AUTHORITY,**
a body corporate and politic in the State of
Minnesota

By: _____
Its: President

By: _____
Its: Executive Director

[Signature Page to Assignment and Assumption of Lease]

EXHIBIT A TO ASSIGNMENT AND ASSUMPTION OF LEASES

City of Brooklyn Park Request for EDA Action

Agenda Item:	6.4	Meeting Date:	July 19, 2021
Agenda Section:	General Action Items	Prepared By:	Daniela Lorenz, Business Development Coordinator
Resolution:	X	Presented By:	Daniela Lorenz
Attachments:	4		
Item:	Consider Authorizing a Budget Amendment of up to \$350,000 and Execute of Agreements Related to Phase 2 Professional Services for to the Purchase and Development of a Small Business Center		

Executive Director's Proposed Action

MOTION _____, SECOND _____, TO WAIVE THE READING AND ADOPT RESOLUTION #2021-_____ TO AUTHORIZE A BUDGET AMENDMENT OF UP TO \$350,000 AND EXECUTION OF AGREEMENTS RELATED TO PHASE 2 PROFESSIONAL SERVICES FOR THE PURCHASE AND DEVELOPMENT OF A SMALL BUSINESS CENTER.

Overview:

At its June 21, 2021 meeting, the Economic Development Authority (EDA) directed staff to offer \$7.3 million to purchase the Northwinds Plaza Mall and the CVS land lease located at the intersection of West Broadway Avenue and Brooklyn Boulevard. In late June, Hargis Northwinds LLC, the owning entity of both parcels, accepted the offer. The purpose of purchasing Northwinds is to repurpose the 27,000 square foot former Xperience Fitness space into a Small Business Center meant to provide affordable space and resources to entrepreneurs and small businesses in the City. The EDA directed staff to purchase the entire strip mall and the CVS land lease as a strategic opportunity to keep rents affordable for the existing 10 tenants of Northwinds and to control the infill development of the parcel which is directly within a future Blue Line Extension Light Rail Transit (LRT) station area.

As part of the purchase of the center, the EDA has 60 days to perform due diligence on the property which includes analyzing the space, reading and understanding the existing leases on the property, and determining what risks exist as part of purchasing the property. To complete the due diligence work, staff recommends the EDA enter into four professional services contracts totaling about \$350,000. The table below shows the size and scope of each contract.

Primary Issues/Alternatives to Consider:

- **What contracts are recommended?**

There are four professional service contracts that will be needed to complete due diligence and phase 2 work related to the small business center. Below is a break down of each contract, its cost, and the duties to be performed:

Service Type	Name of Contractor	Cost	Duties
Architecture	Designs by Melo	\$228,000	Site analysis, design, community engagement, construction management
Owner's Representative / Project Manager	IAG, Inc.	\$70,000	Management of construction contracts and project
Due Diligence	WSB and Associates	\$31,600	Survey work, environmental work, title analysis, asbestos analysis
Relocation Services	WSB and Associates	\$6,948	Assistance with relocation of tenant

Designs by Melo and IAG were both selected at the beginning of this project after obtaining multiple proposal for services. WSB has a master contract with the City to augment staff in a variety of ways. WSB has been advising staff on construction and real estate matters since the beginning of this project in order to keep the project on track.

These contracts will be additional scopes of work added to existing contracts or new contracts.

- **What are the risks to the EDA?**

The 60-day due diligence period allows the EDA to fully understand the property it is investing in. If, at the end of the 60-days, the EDA is unsatisfied with the conditions of the property it can withdraw its purchase and get its earnest money back. However, the due diligence and at least \$22,000 of the architecture contract will need to be paid up front. That is the expenditure that should be considered at risk. Upon completion of this work, the remaining contracted work will be completed once a closing date is scheduled.

Next steps:

If approved, the contracts will be executed. The due diligence aspects of the project will be critical in the next 60-days so the EDA can determine if they are comfortable with the conditions on the property. The EDA will also work with the architect and local business organizations to start community engagement related to the project which will help influence the design and operations of the space. Upon completion of design work, the tenant build out will be publicly bid. Staff will also be working to identify a property management company and an operator for the small business center.

Budget/Fiscal Issues:

The EDA will need to authorize an amendment to spend up to \$350,000 on due diligence, design, and relocation work. The funds will come from a combination of sources including TIF 3, EDA General Fund, and grant sources including the remaining funds from the Livable Communities Development Act (LCDA) pre-development grant the EDA received in 2020. Per the EDA attorney, Kennedy and Graven, the following contracts will be funded using the funds detailed below:

- Acquisition: EDA general fund
- Due diligence: EDA general fund
- Owner's representative: EDA general fund
- Architect/relocation services: TIF #3

Staff continues to work with regional, State, and national partners to determine sources of grant funds to help with the construction and ongoing operations of the center.

Recommendation:

The Executive Director of the Economic Development Authority recommends approval.

Attachments:

- 6.4A Resolution
- 6.4B Design by Melo Contract
- 6.4C IAG Contract
- 6.4D WSB supplemental letters of agreement

THE BROOKLYN PARK ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF BROOKLYN PARK

RESOLUTION #2021-___

AUTHORIZING A BUDGET AMENDMENT OF UP TO \$350,000 AND
EXECUTION OF AGREEMENTS RELATED TO PHASE 2
PROFESSIONAL SERVICES FOR THE PURCHASE AND
DEVELOPMENT OF A SMALL BUSINESS CENTER

WHEREAS, in June 2021, Designs by Melo, WSB and Associates, and IAG, Inc. submitted professional service agreements to the City of Brooklyn Park Economic Development Authority (EDA) for a range of services needed related to the development of a Small Business Center (the project) located at 7944-7996 Brooklyn Boulevard N in the City of Brooklyn Park; and

WHEREAS, the project includes purchasing an existing commercial mall and vacant CVS for the purpose of developing a Small Business Center to provide affordable space and services to businesses and entrepreneurs in Brooklyn Park; and

WHEREAS, upon the signing of a purchase agreement for the property, the EDA has 60-days to complete due diligence on the property; and

WHEREAS, due diligence includes site analysis, environmental surveys, lease review, and other items to determine the final conditions of the property before sale; and

WHEREAS, WSB and Associates, IAG, and Designs by Melo have the technical expertise to provide due diligence services related to the property; and

WHEREAS, the purchasing the property will also include rehabilitation of the 27,000 square foot space located at 7970 Brooklyn Blvd N to develop a Small Business Center; and

WHEREAS, Designs by Melo will serve as the architect for the project and IAG, Inc will serve as the owner's representative for the construction project; and

WHEREAS, the EDA will need to amend its current General Fund Budget and Tax Increment Finance #3 Funding in order to fund these contracts.

NOW, THEREFORE, BE IT RESOLVED by the Economic Development Authority of the City of Brooklyn Park to approve a budget amendment in the amount of \$350,000 in order to enter into four separate Professional Services Agreements with Designs by Melo, IAG, Inc, and WSB and Associates for work associated with the purchase of a development of a small business center in the City of Brooklyn Park; and

1. The Executive Director and/or her designee to enter into a Professional Services Agreements for the Small Business Center project based on the proposals presented to the City of Brooklyn Park's Economic Development Authority; and
2. The Executive Director and/or her designee to execute the Agreements on behalf of the City of Brooklyn Park Economic Development Authority and to carry out, on behalf of the EDA, its obligations thereunder; and

3. The Executive Director and/or her designee to approve such modifications to the Agreements as in their judgment is consistent with the spirit and content thereof.

AIA[®] Document B101[™] – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the Eighth day of July in the year
Two Thousand Twenty One.
(In words, indicate day, month and year.)

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

City of Brooklyn Park
Economic Development Authority
5200 85th Avenue North
Brooklyn Park MN 55443

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

Design by Melo LLC
1600 Utica Ave S #900
St Louis Park MN 55416

for the following Project:
(Name, location and detailed description)
The Brooklyn Park Economic Development Authority is creating a space for nurturing small, minority-owned business in Brooklyn Park and the Northwest metropolitan area.

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

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ARTICLE 1 INITIAL INFORMATION

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

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

§ 1.1.1 The Owner's program for the Project:

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

The program for this phase of the development is:

26,000 SF of commercial space with the spaces listed below (but not limited to):

- Private Offices
- Conference Rooms
- Training Room
- Lobby
- Work Room / Printing Room
- Mail Room
- Flex Rooms Hot Desks in Open Area
- Assigned Desks IN Secured Area
- Kitchenette
- Break Room
- Restrooms
- Mother's Room
- Meditation Room

§ 1.1.2 The Project's physical characteristics:

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

This is a gut renovation of an existing commercial space.

§ 1.1.3 The Owner’s budget for the Cost of the Work, as defined in Section 6.1:
(Provide total and, if known, a line item breakdown.)

Total development cost is estimated to be Five Million Dollars (\$5,500,000)

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

.1 Design phase milestone dates, if any:

As Built/Site Verification	07/23/2021
Schematic Design	08/30/2021
Design Development	10/29/2021
Construction Drawings / Permit Set	11/30/2021

.2 Construction commencement date:

January 2022

.3 Substantial Completion date or dates:

July 2022

.4 Other milestone dates:

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

Competitive Bid

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

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™–2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner’s Sustainable Objective. If E204–2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204–2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:

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

City of Brooklyn Park
Daniela Lorenz

5200 85th Ave North

Brooklyn Park MN 55443

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

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

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

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

.1 Geotechnical Engineer:

.2 Civil Engineer:

.3 Other, if any:

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

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:

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

Damaris Hollingsworth

Principal Architect Design By Melo LLC

1600 Utica Ave S #900

St Louis Park MN 55416
damaris@designbymelo.com
612.280-8419

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:

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

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

Malta Engineering

2327 Wyclif Street Suite 230

St Paul, MN 55114

.2 Mechanical Engineer:

Steen
Engineering

5430 Douglas Sr N

Crystal, MN 55429

.3 Electrical Engineer:

Steen Engineering

5430 Douglas Sr N

Crystal, MN 55429

§ 1.1.11.2 Consultants retained under Supplemental Services:

None

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

None

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

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

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

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

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

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

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

§ 2.5.1 Commercial General Liability with policy limits of not less than One Million Dollars (\$ 1,000,000) for each occurrence and Two Million Dollars (\$ 2,000,000) in the aggregate for bodily injury and property damage.

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

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than One Million Dollars (\$ 1,000,000) each accident, One Million Dollars (\$ 1,000,000) each employee, and Two Million Dollars (\$ 2,000,000) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than Two Million Dollars (\$ 2,000,000) per claim and Five Million Dollars (\$ 5,000,000) in the aggregate.

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

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

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

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

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

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

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

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

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

§ 3.2 As-Built Drawings & Schematic Design Phase Services

§ 3.2.1 The Architect shall produce as-built drawings and as-built three dimensional model to be used as a basis for all proposed design by all disciplines

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

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

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

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

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

§ 3.2.6.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

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

§ 3.2.7 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.8 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 Design Development Phase Services

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

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 Construction Documents Phase Services

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

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

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:

- .1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 Construction Phase Services

§ 3.6.1 General

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

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

have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

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

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

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

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

§ 3.6.3 Certificates for Payment to Contractor

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

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to

payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

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

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

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

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

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

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

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,

- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect’s knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect’s inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

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

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

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

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

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

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

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Programming	
§ 4.1.1.2 Multiple preliminary designs	
§ 4.1.1.3 Measured drawings	
§ 4.1.1.4 Existing facilities surveys	
§ 4.1.1.5 Site evaluation and planning	
§ 4.1.1.6 Building Information Model management responsibilities	
§ 4.1.1.7 Development of Building Information Models for post construction use	
§ 4.1.1.8 Civil engineering	
§ 4.1.1.9 Landscape design	
§ 4.1.1.10 Architectural interior design	
§ 4.1.1.11 Value analysis	
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	
§ 4.1.1.13 On-site project representation	
§ 4.1.1.14 Conformed documents for construction	
§ 4.1.1.15 As-designed record drawings	
§ 4.1.1.16 As-constructed record drawings	

§ 4.1.1.17	Post-occupancy evaluation	
§ 4.1.1.18	Facility support services	
§ 4.1.1.19	Tenant-related services	
§ 4.1.1.20	Architect’s coordination of the Owner’s consultants	
§ 4.1.1.21	Telecommunications/data design	
§ 4.1.1.22	Security evaluation and planning	
§ 4.1.1.23	Commissioning	
§ 4.1.1.24	Sustainable Project Services pursuant to Section 4.1.3	
§ 4.1.1.25	Fast-track design services	
§ 4.1.1.26	Multiple bid packages	
§ 4.1.1.27	Historic preservation	
§ 4.1.1.28	Furniture, furnishings, and equipment design	
§ 4.1.1.29	Other services provided by specialty Consultants	
§ 4.1.1.30	Other Supplemental Services	

§ 4.1.2 Description of Supplemental Services

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

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

N/A

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

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

N/A

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect’s Additional Services

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

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

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner’s schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the

- applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
 - .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
 - .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
 - .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
 - .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
 - .9 Evaluation of the qualifications of entities providing bids or proposals;
 - .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
 - .11 Assistance to the Initial Decision Maker, if other than the Architect.

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

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

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

- .1 Three (3) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Twelve (12) visits to the site by the Architect during construction
- .3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two (2) inspections for any portion of the Work to determine final completion.

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

§ 4.2.5 If the services covered by this Agreement have not been completed within Thirty (30) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

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

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

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

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

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

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

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement.

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

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

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

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

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

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

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

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

ARTICLE 6 COST OF THE WORK

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

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise

the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

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

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

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

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

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

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

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

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

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

§ 8.2 Mediation

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

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

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

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

(Check the appropriate box.)

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other: *(Specify)*

Mediation

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

§ 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

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

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

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

§ 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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

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

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

ARTICLE 9 TERMINATION OR SUSPENSION

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

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

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

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

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

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

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

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

.1 Termination Fee:

Twenty Thousand Dollars (\$20,000)

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

Ten Percent (10%) of the Total Design
Fee

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

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

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction.

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

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

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

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

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

survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

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

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

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

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect’s Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

- .1 Stipulated Sum
(Insert amount)

Two Hundred Twenty Eight Thousand, Eight Hundred and Eighty Dollars (\$ 228,800)

- .2 Percentage Basis
(Insert percentage value)

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

- .3 Other
(Describe the method of compensation)

§ 11.2 For the Architect’s Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

N/A

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

For additional services outside of the scope under section 3, the Architect will be compensated in an hourly basis at a rate of \$150 per hour.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect’s consultants when not included in

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Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Five percent (5%), or as follows:
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

N/A

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

As Built / Schematic Design Phase	Fifteen	percent (15	%)
Design Development Phase	Twenty	percent (20	%)
Construction Documents Phase	Thirty	percent (30	%)
Procurement Phase	Ten	percent (10	%)
Construction Phase	Twenty Five	percent (25	%)
<hr/>				
Total Basic Compensation	one hundred	percent (100	%)

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

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

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category	Rate (\$0.00)
Principal Architect	\$ 180
Senior Engineer	\$ 170
Project Manager	\$ 150
Project Architect	\$ 120
Project Engineer	\$ 120
Architectural Designer	\$ 100
Mechanical Designer	\$ 80
Electrical Designer	\$ 80
Drafter	\$70

§ 11.8 Compensation for Reimbursable Expenses

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

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;

- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- .12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Five percent (5 %) of the expenses incurred.

§ 11.9 **Architect's Insurance.** If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of Twenty Two Thousand, Eight Hundred and Eighty Dollars (\$ 22,880) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

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

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Ninety (90) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

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

5 % Monthly

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

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

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

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

ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

- .1 AIA Document B101™–2017, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this agreement.)

- .3 Exhibits:
(Check the appropriate box for any exhibits incorporated into this Agreement.)

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

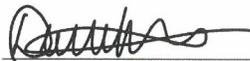
Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

- .4 Other documents:
(List other documents, if any, forming part of the Agreement.)

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

OWNER (Signature)

Kimberly Berggren, Executive Director, Economic
Development Authority, City of Brooklyn Park
(Printed name and title)



ARCHITECT (Signature)

Damaris Hollingsworth, AIA Principal Architect MN
#54097
(Printed name, title, and license number, if required)



Addendum A to Client Representation Agreement

The following is an addendum to the Client Representation Agreement by and between the Brooklyn Park Economic Development Authority (“Client”) and Integrust Advisory Group, LLC, d.b.a. IAG COMMERCIAL (“Broker”) dated January 19, 2021. Broker agrees to provide Owner’s Representation Services to Client in accordance with the following terms and conditions.

Owner’s Representation Scope of Services:

Scope of Project

Owners’ Representation Services include Broker managing the transition of the Northwinds Plaza and CVS property from the current owner to the Client. Project scope also includes assisting with the design, construction, and punch list items related to the build out by the Client of the Small Business Center that will be located in the 26,000 square foot space in Northwinds Plaza.

Schematic Design Development and Construction Document Phase (3 months)



- A. Broker will review the Client’s architect and engineer’s design documents to date and will work with Client and its architect and engineer to manage the design process through construction drawings.
- B. Broker will consult with Client’s representative with respect to any major issues or decisions to be made related to its review of the design documents and construction drawings.

Bidding Process (1 month)

- A. Broker will work with the Client’s representatives to assist in drafting the bid documents, including but not limited to, the bid advertisement, the bid specifications and instructions, the bid form, and the contract documents per City and state requirements.
- B. Broker will work with the Client’s representative to widely and transparently advertise the bid opportunities, answer questions from bidders with respect to the bid documents, and hold a pre-bid conference(s) with interested bidders.
- C. Broker will assist the Client with reviewing the bids in order to determine whether they are responsive and whether the bidder is a responsible bidder.

General Management and Coordination (Construction Phase 6 months)

- A. Broker will review the work performed by the Client’s contractors throughout the project through the project completion and final punch list stages. Broker must ensure that it requires

that the materials furnished and the work performed by the contractors are in accordance with the drawings, specifications, and contract documents.

- B.** The Broker will coordinate with the contractors with respect to the implementation of construction information systems, project time control schedules and resources analysis as they relate to materials, labor, and costs.
- C.** The Broker shall review and comment on all safety, health, and environmental protection measures proposed by each contractor and make recommendations to the Client with respect to any changes that the Broker deems necessary or appropriate.
- D.** The Broker must provide construction audits in the form of status updates and other reports for the project to the Client on a monthly basis. The Broker must review all labor and wage standards and practices to make reasonable efforts to ensure compliance by each contractor and make recommendations to the Client with respect to any issues identified with respect to compliance.
- E.** The Broker must establish with the contractors on-site organization and lines of authority in order to carry out the Client's overall plans in all phases of the project on a coordinated and efficient basis.
- F.** The Broker must require the contractors to maintain an on-site record-keeping system in sufficient detail to satisfy an audit by the Client. Such records must include, but shall not be limited to daily logs, progress schedules, labor breakdowns (daily by trade), financial reports, material quantity lists, shop drawings, and the like.
- G.** The Broker must verify that all legally required permits, licenses, and certificates have been obtained by the contractors. The Broker must also coordinate through the contractors, aspects of the work with all local municipal authorities, governmental agencies, utility companies, etc., who may be involved in the project.
- H.** The Broker must coordinate through the contractors, the work of all subcontractors until final completion and acceptance of the project by the Client. If the interpretation of the meaning and intent of the contract documents becomes necessary during construction, the Broker will ascertain the Client's architect and the Client's representatives' interpretation, make recommendations as appropriate, and transmit such information to the appropriate contractor.
- I.** The Broker must attend job meetings attended by the contractors, subcontractors, the architect and the Client's representatives, to discuss procedures, progress, problems, scheduling, and open items.
- J.** The Broker must coordinate the review, for compliance with the contract documents, all shop drawings, materials, and other items submitted by the contractors.
- K.** The Broker will review and approve, in accordance with the Client's procedures, all

applications for payments submitted by the contractors in accordance with established procedures.

- L. The Broker will receive and review change order requests from contractors or from the Client's representatives. The Broker will review unit prices, time and material charges and similar items. The Broker will also monitor and advise the Client upon request for changes required by field conditions and progress of the work and obtain approval from the Client's representatives and the Client's architect.
- M. The Broker will review the contractors' schedules and work with the contractors to ensure timely delivery of the project.

Post Construction (4 weeks)

- A. The Broker will coordinate the preparation of punch lists at the appropriate times, indicating the items of work remaining to be accomplished, and require that these items are completed in an expeditious manner.
- B. The Broker will assemble all guarantees, warranties, etc., as required by the contract documents, and provide copies of them to the Client.
- C. Provided the Client has paid all contractors and material suppliers, the Broker shall obtain all necessary receipts, releases, waivers, discharges and assurances necessary to keep the property free from mechanics and materialmen's liens and other claims to the extent permitted by applicable law.
- D. The Broker will expedite the contractors' preparation of "as-built" drawings of the entire project in accordance with the terms of the specifications.

Throughout the Project

The Broker will review all project documents, including, but not limited to, plans, drawings, and specifications, bid documents, architect and contractor agreements, certificates, draw requests, invoices, change orders, and budgets. The Broker will require such changes, as are necessary, so that all such documents are in the name of the Client, all warranties run in favor of the Client and the Client will have the right to utilize the plans and drawings during and after project construction.

The Broker must not enter into contracts or subcontracts for the services provided for by the Broker pursuant to this Agreement or contracts with any contractors performing work on the project without the prior express written consent of the Client.

Notwithstanding any provision hereof to the contrary, the Client acknowledges that the services and work product provided by its architects, engineers, consultants, design professionals and other contractors retained by the Client with respect to the project as contemplated in this Agreement are the responsibility of those professionals.

The Broker does not and shall not warrant or guarantee the performance of the Client's architects, engineers, consultants, design professionals, and other contractors.

Security and Safety

While performing the services under this Agreement, the Broker shall promptly inform the Client's representative whenever it becomes aware of any security concerns or unsafe conditions with respect to the property or the project.

Compensation

Client shall pay the Broker for the Owner's Representation Services set forth in this Addendum a stipulated lump sum of \$70,000.

Broker: Integrust Advisory Group, LLC,
d/b/a IAG Commercial

Client: Brooklyn Park Economic
Development Authority

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____



July 8, 2021

Breanne Rothstein
 Housing and Economic Development Manager
 City of Brooklyn Park
 5200 85th Ave. N.
 Brooklyn Park, MN 55443

Via email at Breanne.Rothstein@BrooklynPark.Org

Re: Supplemental Letter of Agreement #1 to the Master Contract.
 Due Diligence Services, Northwind Plaza.

Breanne:

Thank you for allowing us opportunity to partner with you on this project. This proposal identifies our professional services compensation for a Boundary and Topographic Survey, ALTA/NSPS Land Title Survey, Phase I Environmental Assessment, and a Limited Asbestos and Regulated Materials Survey for the Northwind Plaza at 7944 and 7996 Brooklyn Boulevard in Brooklyn Park, MN (the Site). We understand that the Site is approximately seven acres in size and contains three buildings consisting of a commercial strip mall building with multiple tenants, a pharmacy building, and a liquor building.

Scope of Work:

1. Boundary and Topographic Survey
 - a. Includes Site topography and utilities to centerline of adjacent roads; 10-foot overlap to adjacent sides not containing rights of way.
 - b. Storm and Sanitary inverts, pipe sizes, directions and materials.
 - c. All physical above ground structures and improvements
 - d. Building locations
 - e. All curb, sidewalks, bituminous edge and pavement type/locations
 - f. Find / set all property corners
 - g. Utilities to be supplemented with Gopher State One Call and available as-built plan sets.
2. ALTA/NSPS Land Title Survey (Based on received title commitment)
 - a. Includes the above listed items and includes Table A Items: 1, 2, 3, 4, 5, 7(a), 8, 9, 11(a), 13, 16, 17 and 18.
 - b. Building dimensions
 - c. All easement locations as contained within said Commitment
3. Phase I Environmental Site Assessment per ASTM Standard E1527-13
 - a. Review historical records
 - b. Conduct interviews with property representatives
 - c. Complete a site reconnaissance of the Site and adjoining sites
 - d. Summarize the results of the Phase I ESA in a final documentation report
 - e. It is assumed the City will provide access to the Site buildings
4. Limited Asbestos and Regulated Material (ARM) Assessments

- a. Building records and document reviews
- b. Non-destructive sampling methods and visual inspection for regulated materials
- c. Collection of limited asbestos and lead-based paint samples for laboratory analysis
 - i. It is assumed that up to 350 asbestos samples and 30 lead-based paint samples will be collected
 - ii. The lead-based paint sampling will be limited to items likely scheduled for recycle during future renovation/demolition activities
- d. Photographic documentation
- e. Reporting
 - i. One report will be generated for each building (three total reports) summarizing the Limited ARM Assessment results
 - ii. The reports will include a summary of the limited asbestos, lead-based paint results, and regulated materials inventory
- f. It is assumed that the City will provide access to the Site buildings
- g. It is assumed that further destructive sampling for the presence regulated materials will be required prior to renovation and/or demolition activities

The reason we have separated the Boundary and Topographic Survey from the ALTA/NSPS is due diligence timing and the potential that due diligence brings out site conditions that cause purchase agreement termination. We will know of the need to terminate in time not to proceed with task 2.

Our Limited ARM Assessment cost assumes we will survey each individual business within the three buildings. Each of these businesses will have a different tenant build-out with distinct materials which drives the cost higher. If the City chooses a phased approach, focusing on the incubator space only, the initial ARM Assessment cost will be significantly lower though the total cost when all the spaces are surveyed might be higher.

A Limited ARM Assessment is typically performed using non-destructive methods during the due diligence period to identify the presence/absence of regulated materials at a property. If renovation or demolition is planned, further destructive sampling will be required to ensure all building materials (including sub-layer flooring, interstitial spaces, roofing layer, etc.) are assessed and sampled for the presence of asbestos and other regulated materials. For renovation, the future destructive ARM Assessment will target building materials scheduled for disturbance.

Breanne Rothstein
July 8, 2021
Page 3

Acceptance:

This letter represents our understanding of the proposed scope of services. If this proposal is found acceptable, please sign. If you have any questions about this proposal, please feel free to call me at 651-485-1204 or email at bbarth@wsbeng.com.

We appreciate the opportunity of being considered for this project and we look forward to working with you.

Sincerely,

WSB



Bob Barth
Director of Land Development

Attachments to this Supplemental Agreement:
Attachment A Compensation
Attachment B Details on Scope of Work

ACCEPTED BY:

City of Brooklyn Park

Name: _____

Title: _____

Date: _____

**ATTACHMENT A
 COMPENSATION**

TASKS	DESCRIPTION	COST	TYPE
1.	Boundary and Topographic Survey	\$11,500	Lump Sum
2.	ALTA/NSPS Land Title Survey	\$3,500	Lump Sum
3.	Phase I ESA	\$5,250	Lump Sum
4.	Limited ARM Assessments	\$11,350	Lump Sum
	TOTAL:	\$31,600	

Lump sum tasks are billed monthly as a percent complete. Any hourly tasks will be billed according to our 2021 Rate Schedule.

Costs associated with vehicle mileage, word processing, cell phones, reproduction of common correspondence and mailing are included in the lump sum compensation.

Reimbursable expenses include costs associated with plan, specification and report reproduction, permit fee, and delivery cost, etc. Reimbursable expenses will be compensated at cost (upon documentation). We anticipate no subconsultants for this project.

Work on the project will start upon acceptance of this proposal and execution of a contract. We will discuss schedule with you during our contract preparation and execution.

ATTACHMENT B DETAILS ON SCOPE OF WORK

1. PHASE I ESA

- a. Obtain federal and state regulatory database information for the Site from a commercial regulatory vendor to evaluate for potential environmental conditions. The following historical records will be reviewed:
 - i. Sanborn Fire Insurance Maps
 - ii. Historical Aerial Photographs
 - iii. City Directories
 - iv. Historical Topographic Maps
 - v. Federal EPA-listed sites including NPL, CERCLIS, RCRA, and ERNS
 - vi. State MPCA-listed sites including UST, LUST, MERLA, VIC, spills, landfills, and others
 - vii. Regulatory file review will be conducted per ASTM E 1527-13
- b. Conduct interviews with Site representatives (via phone or in person) regarding past and current Site use activities. Any entity relying on the Phase I ESA will complete a User Questionnaire provided by WSB. The following representatives will be contacted and interviewed (if available):
 - i. Current or past Site owners
 - ii. Current Site management or maintenance staff
 - iii. City building and inspection department
 - iv. City fire department
- c. Complete a site reconnaissance of the Site and adjoining sites. All Site areas, including buildings and storage structures, will be accessed as part of the site reconnaissance. The adjoining sites will be viewed from the public right-of-way areas. The site reconnaissance will include observation and documentation of the following:
 - i. Location of visible aboveground or underground storage tanks
 - ii. Location of chemical or hazardous material storage
 - iii. Location of water bodies (if present)
 - iv. Condition of vegetation and exposed soils
 - v. General parcel topography
 - vi. Photographic documentation
 - vii. Evidence of Methamphetamine manufacturing labs
- d. Summarize the results of the Phase I ESA in a final documentation report. The report will be completed in accordance with the ASTM E1527-13 standard and shall include the following:
 - i. Supporting documentation upon which the findings and opinions are based
 - ii. Scope of services performed
 - iii. A "findings" section which will detail any RECs identified by the assessment
 - iv. The opinion of the environmental professional
 - v. Any conclusions drawn from the assessment
- e. Phase I ESA Assumptions:
 - i. The report does not include those items considered non-scope by ASTM Standard E1527-13 including asbestos, lead-based paint, radon, lead in drinking water, wetlands, regulatory compliance, cultural/historic resources, industrial hygiene, indoor air quality, biological agents, or mold sampling and analysis.
 - ii. Site access will be facilitated by the Client.
 - iii. Based on available information, no MPCA file reviews will be required for the Site or adjacent sites. .

- iv. An Environmental Lien and Activity and Use Limitations (AULs) search will not be completed as part of this scope.
- v. The Client will provide one review/comment of the Phase I ESA report.
- vi. If a reliance letter is desired, the cost is \$300 per reliance letter and \$50 for each additional entity/party listed on the letter.



July 8, 2021

City of Brooklyn Park
 Attn: Breanne Rothstein
 5200 - 85th Avenue N.
 Brooklyn Park, MN 55443

Re: Supplemental Letter of Agreement - # 2
 Relocation Services - Northwinds Mall Tenant

WSB & Associates, Inc. is pleased to submit this proposal for the relocation services required for the tenant at the Northwinds Mall in Brooklyn Park. These services will be provided in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and other applicable state and federal laws and rules.

All relocation claims would require documentation to substantiate the claim. This information would be reviewed to determine if the claims are actual, reasonable and necessary. After that review, claims would be submitted to the City for approval and processing of those claims.

Relocation benefits for a commercial business can be completed under two options:

1. Actual Cost Move:
 - a. Moving benefits – No limit for eligible benefits
 - b. Searching Expenses – up to \$2,500
 - c. Business Re-establishment – up to \$50,000
2. Fixed Payment Claim
 - a. Based on the average net income of the business over the past 2 years. This has a limit of \$40,000 and would require submittal of tax forms to determine the eligible amount.

Scope of Services -

1. Project Management -

- The project schedule, budget and all work tasks will be monitored throughout the project. Meetings will be attended, as requested, and monthly project updates will be provided to the City.

2. Relocation Services:

- **Advisory services** will be provided including meetings with the displacee to determine eligible relocation benefits. Referrals of comparable properties will be provided during the project.
- **Obtain a moving estimate** for the tenant's personal property and/or trade fixtures
- **Relocation eligibility letters** will be provided as required.
- **Relocation claims** will be reviewed and prepared on the eligible benefits.

City responsibilities include:

- Review and approval of relocation claims
- Processing of claim payment requests

TOTAL RELOCATION SERVICES ESTIMATE

\$ 6,948.00

Assumptions:

- Relocation services will be provided to one business tenant.
- Relocation activities would start upon contract execution.
- Assumes up to three relocation claims for the tenant

Thank you for the opportunity to be of service to you. If you are in agreement with the terms of this proposal, please sign below on the space provided and return one copy to us for our records. If you prefer to provide a letter of engagement, that is also acceptable.

If you would like to further discuss any aspect of our proposal, please do not hesitate to contact me at 763-231-4868 with any questions or comments.

Sincerely,

WSB



Penny Rolf
Director of Right of Way

Enclosure: Estimate

ACCEPTED BY:

City of Brooklyn Park

Name: _____

Title: _____

Date: _____

6.4D WSB SUPPLEMENTAL LETTERS OF AGREEMENT

City of Brooklyn Park
Relocation Services
Northwinds Mall Tenant
July 8, 2021

Costs associated with word processing, cell phones, reproductions of common correspondence and mailing are included in the hourly rates.

Task Description		WSB Staff		Hours	Costs
		Penny Rolf	Faye Gillespie		
1	Project Management	6	2	8	\$1,344
	General Project Management , Project Meetings, Reports, Coordination	6	2		
2	Relocation Services	6	35	41	\$5,304
	Advisory services, meetings with displacee, referrals, obtain move estimates, move coordination and determination of eligible relocation benefits	2	16		
	Notification Letters- Relocation Eligibility, 90 day notice letter	1	1		
	Claims processing	3	18		
Total Hours		12	37	49	
Average Hourly Fees (include overhead and profit)		\$184	\$120		
SUB-TOTAL: RELOCATION SERVICES					\$6,648
Professional Move Estimate					\$300.00
TOTAL: RELOCATION SERVICES					\$6,948
Assumptions:					
1. Estimate is to provide relocation services for the tenant in the Northwinds Mall.					
2. Relocation activities would start upon contract execution.					
3. Assumes up to three relocation claims.					

**MEMORANDUM**

DATE: July 15, 2021
TO: EDA Commissioners
FROM: Kim Berggren, Executive Director
SUBJECT: Status Update

BUSINESS DEVELOPMENT**SAC/WAC Reduction Program Status Update**

In 2018, the Economic Development Authority (EDA) approved a Sewer Availability Charge (SAC) and Water Access Charge (WAC) reduction program with the goal of helping small businesses in the city by alleviating up front charge related to starting or expanding a business in the community. The program allows eligible businesses to reduce their SAC and WAC charges by up to three units by no more than half of the amount owed for non-Brooklyn Park residents and up to six units for Brooklyn Park residents. Since the approval of the program seven businesses have received a fee reduction. The businesses that have received reductions include Blue Wolf Brewing (2018), Discovery Kids (2018), HSIO Technology (2018), R&J Nails (2019), Angles N' Hair (2020), Pura Vida Elite Training (2021), and N1 Motion (2021). Together the program has provided \$44,422 in fee reductions.

The program is funded through SAC and WAC credits pooled from the demolition of the former Grand Rios water park which is now a CarMax. Per the Metropolitan Council's rules related to SAC credits, a city can pool excess credits to be redistributed as desired. The program currently has a remaining balance of \$296,615 in SAC and \$41,450 in WAC.

Brooklyn Park Development Corporation (BPDC) Meeting

The Brooklyn Park Development Corporation (BPDC) held a meeting on July 15. The meeting acted as the board's annual meeting where officers are appointed for the board year. The group also considered approving a loan request for \$300,000 from Switchback Medical. The funds will come from the BPDC Revolving Loan Fund (RLF) which can award businesses up to \$300,000 to complete eligible projects such as business expansions, purchase of fixed assets, and real estate acquisitions. Switchback Medical is currently located in Maple Grove but plans to buy the building located at 7625 Boone Ave N to expand its operations. The \$300,000 was approved by BPDC and will be used as part of a larger Small Business Administration (SBA) 504 loan to purchase and renovate the facility. Switchback is also working with the City and State of Minnesota Department of Employment and Economic Development (DEED) to secure Minnesota Investment Fund (MIF) and Job Creation Fund (JCF) awards to aid in the purchase of equipment for the new facility. Switchback currently employs 70 people with the goal to add nearly 90 jobs in the next three years. Switchback is also working with the City to host BrookLynk interns in 2022 as part of its requirement for receiving MIF assistance from the City.

Black, Indigenous, and Person of Color Owned Business Maps

The Economic Development and GIS staff are collaborating to update and create additional maps showcasing the rich diversity of the Brooklyn Park business community. Last summer, staff worked to create a Black-owned Business Map (linked below) to showcase the large number of Black and African American owned businesses in Brooklyn Park. This year, staff plans to create an Asian and Pacific Islander owned and Latinx owned map. The purpose of these maps is two celebrate the Brooklyn Park business community, introduce residents to new

businesses, and to identify the many ways that diversity makes Brooklyn Park a great place to live, work, and play. The maps will likely be completed near the end of August. If there are businesses owned by People of Color (POC) that are missing, please let staff know so we can continue to keep the maps as up to date as possible.

<https://storymaps.arcgis.com/stories/bac7c36c308945079c91a5c56f785be1>

Restaurant Week 2021

Restaurant week is back! The 3rd annual restaurant week will take place September 12-18. Similar to years past, the week will feature a variety of restaurants on social media and encourage residents to get out and taste what Brooklyn Park has to offer! Recruiting for restaurant participation is beginning to take place. Last year, more than 10 restaurants participated in the week and the social media posts were reached more than 20,000 people according to data pulled directly from Instagram and Facebook. Updates will be provided as planning for the week continues through the summer.

WORKFORCE DEVELOPMENT

BrookLynk

This summer BrookLynk, the city's youth workforce development program, matched 98 youth to paid summer internships with employer partners including City of Brooklyn Park, City of Brooklyn Center, City of Golden Valley, Osseo Area Schools, Cummins Power Systems, Boston Scientific, TopLine Federal Credit Union, Accraply, Second Harvest Heartland, Brooklyn Center Community Schools, Brooklyn Bridge Alliance for Youth, Hennepin County, Three Rivers Park District, Paadio Consulting, North Hennepin Community College, and Hennepin Technical College.

BrookLynk also launched a nine-week pilot program in partnership with Construction Career Pathways and the MN Trades Academy program offering internships in construction and early exposure to trade careers. Eight BrookLynk interns are currently employed with the MN Trades Academy program and have received OSHA 10 training through Hennepin Technical College and are working on a community construction project at Brooklyn Center Community Schools.

Additionally, we are proud to announce that two BrookLynk alumni have been hired this year here at the City of Brooklyn Park. Nou Lor joined the Police Cadet program and Natalie Enriquez joined the Community Development Department as the Environmental Health Intern.

Welcome to Nou, Natalie, and all the BrookLynk interns working this summer at Brooklyn Park and beyond! The EDA is hosting two of the 16 City-employed Brooklyn Interns. Darlyn Woods is working with John Kinara on housing programs and other EDA strategic work. Tiffany Nyamao is working with Kim Berggren on the City's ARP funding planning and other special projects.

Expanded Workforce Development Planning

In response to the growing economic needs of residents in our community an expanded workforce development plan is in the works that is centered around providing programs and services to youth, adults, and businesses to promote economic empowerment and decrease individual, community, and systemic barriers. Staff will share this plan at an upcoming EDA work session for feedback and to discuss funding.

The proposed workforce development plan will give Brooklyn Park residents and businesses access to programs and services such as BrookLynk the city's youth workforce development initiative, certified training and skills development in growing industries such as healthcare and construction for adult job seekers, community job fair and job board, career pathways into high wage high demand jobs such as public works, small business technical assistance and subsidy,

large business subsidy (MIF/JCF), customized (employer specific) training for employees, employer/supervisor training, and more!

This new and improved workforce development plan will also align the city of Brooklyn Park with regional initiatives through partnerships with MN Career Force, the Perkins Consortium with North Hennepin Community College and Hennepin Technical College, Brooklyn Bridge Alliance for Youth, City of Brooklyn Center, regional economic development agencies such as Greater MSP, and Minneapolis Regional Chamber of Commerce. The proposed workforce development plan will not only provide access and opportunity to high quality employment services for residents and businesses, but could also become a key strategy in the city's efforts to decrease unemployment rates, increase income of Brooklyn Park residents, decrease violence by connecting residents to the local economy, and local businesses will connect with local talent for shared benefits.

OTHER

METRO Blue Line Extension

The Bottineau Community Works Steering Committee is kicking off! This Steering Committee is made up of elected officials and policymakers from Hennepin County, the Metropolitan Council, and corridor cities including Brooklyn Park. The purpose of the committee is to provide policymaker guidance on policy and infrastructure improvements that benefit our communities. Bottineau Community Works Steering Committee meetings were on hold for several years and will begin again on Monday, July 19 at 10:30 a.m, continuing online on the 3rd Monday of every month. Committee representatives from Brooklyn Park are Mayor Pro Tem Tonja West-Hafner and Council member Susan Pha (alternate). The METRO Blue Line Extension Business Advisory and Community Advisory Committees continue to meet monthly and this month discussed potential station locations and visualizations, which will also be discussed at the Corridor Management Committee meeting on July 15.

The Blue Line Extension Project has also issued an Anti-Displacement Request for Proposals (RFP) to address concerns of displacement and advance community visions for investment and economic development that can help residents and business build wealth and improve overall quality of life. The RFP was posted on July 2 and are due on July 27. More information is available on the Hennepin County Supplier Portal.

Plaza Park Arts Festival

On June 26, the City of Brooklyn Park held its first ever Arts Festival! The event took place from 1-4 p.m. at Plaza Park at the intersection of West Broadway and 85th Avenue North. More than 300 people attended before 3 p.m., when the event was ended early due to rain. Attendees visited 15 vendor booths of primarily Brooklyn Park residents whose artwork represented a wide variety of mediums including pottery to Minnesota pillows to paintings and woodwork. Arts Festival attendees also had the opportunity to join in painting a Welcome to Brooklyn Park art mural (EDA-funded place-making/branding project), watch performances from TKO Drumline, DJ Snuggles, Bellydonna and Afrocontigbo, and enjoy food from Mr. Ice Cream or Tacos Calentano Del Sur.

Several booths gave out information on the proposed new developments, Center for Innovation and the Arts, and the METRO Blue Transit Light Rail station as well as information on the Hennepin County Library and upcoming city events.

The event reflected the diversity of Brooklyn Park with artists and participants of many backgrounds gathering to engage in the arts together. Staff from Community Development and Recreation and Parks will continue to collaboratively host events that promote regional arts engagement and the exciting new developments proposed for that location.

West Metro Development Summit

On June 17, 2021, Breanne Rothstein moderated a panel on NW metro development, including updates on Blue Line LRT, other infrastructure investments, and significant projects in Brooklyn Park and the Northwest Metro.

Urban Court Open House

On July 14, staff attended the Urbana Court open house to signify the opening of the new apartment building.

American Rescue Plan (ARP) webinar

On June 15, 2021, staff attended an ARP webinar sponsored by the Economic Development Association of Minnesota to learn about eligible uses of ARP.



MEMORANDUM

DATE: July 19, 2021

TO: EDA Commissioners

FROM: Kim Berggren, EDA Executive Director
Breanne Rothstein, Economic Development and Housing Director

SUBJECT: Housing Update

This memo provides an update to the Economic Development Authority (EDA) on housing-related items. In addition to updating the EDA, this memo serves to keep interested stakeholders informed of this work.

COVID-19 HOUSING UPDATES

Minnesota Housing launched a rent assistance program at www.renthelpmn.org on April 20. RentHelpMN is a statewide COVID-19 Emergency Rent Assistance program that will help renters impacted by the Covid 19 pandemic cover past due rent and utility balances back to March 13 of 2020. Applicants will also be able to apply for three months of future rent if they are anticipating being unable to pay. Additionally, Minnesota Housing launched the Zero-Balance Project, which is a metro area emergency rent assistance program where rental property owners and managers lead the application process. More information can be found at [Emergency rent assistance | Hennepin County](#). The program opened on June 7 and runs through June 20. EDA staff have worked to connect with various property managers in the city through email communication, phone calls, and other methods to spread the program as widely as possible to Brooklyn Park rental communities.

EDA staff is working with Community Engagement and Communications staff to spread the word to our Brooklyn Park renter and landlord community, including a paper mailer outlining all COVID Resources, a social media campaign, and coordinating with Hennepin County Office of Multi-cultural Resources to reach cultural communities. In addition, the City of Brooklyn Park hosted a renter forum on April 29 at 6:30 p.m. to provide resources and assistance to renters, including the new Rent Help MN program. Staff continues to explore new ways to communicate information about this program to the community, including possible video content and connecting with designated community-based organizations that serve as navigators for the program.

Eviction Moratorium

On June 29, Governor Walz signed a bill to establish a timeline for lifting the eviction moratorium that was tied to the peace time emergency that was enacted due to Covid 19. Key dates for renters and property managers are listed below.

Starting June 30: Renters who have materially violated their lease can have their lease terminated. Renters who qualify but refuse to apply for rental assistance can be evicted. People can apply for assistance on renthelpmn.org or call 211.

Starting July 14: Renters can be evicted if they have materially violated their lease, [which is a different process than lease termination.](#)

Starting August 13: The lease can be terminated if a renter has not paid rent and is not eligible for emergency rental assistance.

Starting September 12: Renters can be evicted if they have not paid rent and are not eligible for emergency rental assistance.

Starting October 12: All lease termination and eviction protections are lifted unless renters are eligible for emergency rental assistance and have a pending application.

Starting June 1, 2022: All lease termination and eviction protections related to the COVID-19 pandemic are lifted.

The bill prohibits an eviction for nonpayment of rent until June 1, 2022, if the tenant has a pending application for rental assistance. A tenant (and their landlord) can verify the tenant's rent application through Minnesota Housing.

One permanent policy change is a required 15-day notice period to tenants before an eviction can be filed for non-payment of rent.

To learn more and find assistance with renting go to renthelpmn.org or call 211. For legal help go to homelinemn.org or lawhelpmn.org.

NEW HOUSING DEVELOPMENT PROJECTS

Enclave Apartments (5505 96th Ave N)

The city received a proposal from Enclave Companies to build a 146-unit market rate apartment building on the 610 corridor. The EDA considered financial assistance to support the addition of affordable units to the development to make it mixed income but decided not to partner with Enclave Companies citing concerns about the company's history related to hiring sub-contractors with wage theft and unfair labor law practices. The Council approved the land use application for a conditional use permit for the project on May 24. Construction of the new development is anticipated to start soon.

Duffy Development (6900 85th Avenue North Development - NHCC Site)

At its May 17 meeting, the EDA approved a purchase agreement with Minnesota State Colleges and Universities (Minnesota State) and North Hennepin Community College for this property. The EDA solicited qualifications for the development of this vacant land in early 2020 and approved entering into an option agreement with Minnesota State for the purchase of the site for development purposes. Duffy Development Company has proposed building two mixed-income apartment buildings with approximately 75 units each at the development site at 6900 85th Avenue North. A third building on the site is proposed as a daycare use in partnership with Women Ventures, a non-profit organization.

Also, at the May 17 meeting, the EDA approved a term sheet to provide tax increment financing for this development. The Developer is also planning to apply to Minnesota Housing's Low-Income Housing Tax Credits (LIHTC) program this July and has submitted an application to Hennepin County for additional grant funding.

Village Creek Apartments (7621 Brooklyn Boulevard)

The George Group North submitted its application to the Planning Commission for the Village Creek Apartments project on June 1. The project is expected to be on the July Planning Commission agenda to consider a conditional use permit (CUP) for the site. Staff is also working with Ehler's to establish a Tax Increment Financing (TIF) district for the project. The approvals for the TIF district are expected to take place at a City Council public hearing in late July. The EDA approved a term sheet to provide tax increment financing for the Village Creek Apartments project at its June 15, 2019, meeting. The project will be located on EDA-owned land at 7621 Brooklyn Blvd N. The proposal includes 83-units of mixed-income housing and a 10,000 square foot commercial component. The EDA first considered this project in 2018. The project has since received a Metropolitan Council's Livable Communities Development Account (LCDA) grant to assist with project costs. Village Creek Apartments also received a Hennepin County Transit Oriented Development (TOD) in fall 2020.

Cornerstone Village by Bethesda Lutheran Communities (7601 Brooklyn Boulevard)

In June 2021, the EDA approved the use of a deferred loan and tax increment financing (TIF) for Bethesda Lutheran Communities to develop housing for seniors and individuals with intellectual or developmental disabilities (IDD). The project, Cornerstone Village, will be re-applying for MN Housing tax credits in July.

RE-HABILITATION PROJECTS**Park Villa Housing Improvement Area (HIA) Project**

In December 2020, Park Villa Townhomes applied in accordance with Brooklyn Park's Housing Improvement Area (HIA) policy to establish an HIA for their Association. An HIA is a defined area within a city where housing improvements to common interest communities (such as townhome associations) are made and the cost of the improvements are paid from fees imposed on the properties within the area. The EDA gave its final approval for this project on May 17. The project is currently underway and is expected to up by this fall.

Huntington Place Apartments

In January of 2020, the EDA approved a \$5 million loan to Aeon for the acquisition and rehabilitation of Huntington Place Apartments and maintaining rents as long-term affordable. Rehabilitation and investment work under the contract is underway. Aeon recently competed for a camera installation project. Aeon has also completed several critical improvements, such as repairs to the roof, water damaged units, and leaking hot water pipes. Aeon is also currently working with an architect to design the community room pilot space. Significant discussions are underway among Aeon, the city, and the residents about immediate responses to the recent safety challenges at the property.

Autumn Ridge Apartments

In 2016, the EDA contributed a loan of \$1.2 million to assist Sherman Associates in the re-investment and rehabilitation of the property while maintaining long-term affordability. In 2019 the EDA approved an extension of the loan for Sherman Associates to complete additional rehabilitation upgrades that include the installation of the key fob system, security cameras, and exterior lighting. All Phase 1 interior and exterior rehabilitation work are complete. Of the Phase II work, Autumn Ridge has completed the installation of a key fob and security camera system, but the exterior lighting improvement project remains outstanding. Autumn Ridge management met with the city planning staff on July 8 at the property to coordinate the design and scope of the new exterior lighting installation. The management anticipates having all the city approved lighting work completed by this fall.

Brooklyn Avenues Solar Array Installation

Brooklyn Avenues is the EDA owned transitional housing facility for youth aged 16 to 21 in Brooklyn Park and the Northwestern suburbs. Avenues for Youth manages the facility and provides professional supportive services to the youth.

The Midwest Renewable Energy Association (MREA) has selected Avenues to receive a free solar array! They will provide Brooklyn Avenues with a grant for a solar array costing a total of \$25,000, including installation. The contractor selection and high-level management will be supported by the MREA. The array will be designed to maximize the grant dollars available but not to exceed the funding so that neither Avenues nor the City is expected to incur any expense to get the array installed.

The size of the array is expected to qualify for the Xcel Solar Rewards program. This program will not only provide the energy bill savings that the array will generate but will also pay an additional \$0.06 per kWh produced by the array for the first 10 years.

Urbana Court Apartments – Grand Opening

The market rate multi-family development is now complete and ready for occupancy. The apartment community is located on 9401 93rd Ave North and features 207 apartment units with a mix of studios, one, two and three bedrooms. The official grand opening is scheduled for July 14 at 4pm. City officials and staff have been invited to attend the ceremony.

OTHER HOUSING NEWS AND UPDATES

CURA Housing Project Research

The Center for Urban and Regional Affairs (CURA) research project into housing in Brooklyn Park is currently focused on analyzing data and compiling recommendations for city actions to improve housing stability in Brooklyn Park. A full report is expected in the fall of 2021. This effort is part of CURA's year-long research project in Brooklyn Park apartments to investigate the issues of community building (including tenant-management relations and tenant-tenant community building), increasing renter and management knowledge of their rights/responsibilities, and concerns surrounding safety/security. The advisory committee re-convened after interviews of tenants and property managers was complete to review the findings of community engagement. Next steps include a full report of recommendations presented to the advisory committee in June and the full EDA/Council in early Fall.

Staff Participation in Housing Groups

Staff participates regularly in various regional groups on the topic of housing, including:

- NOAH Working Group hosted by Minnesota Housing and focused on identifying strategies to advance the preservation of affordable housing regionally.
- Hennepin County's Single Room Occupancy Task Force focused on strategies to create and support single room occupancy housing.
- Housing Collaborative hosted by Twin Cities Local Initiatives Support Corporation (LISC) and focused on education, info sharing, and collaboration among city staff on housing programs and policies.
- Regional Housing Policy Work Group hosted by Urban Land Institute (ULI) Minnesota.

OVERVIEW OF RECENT EDA HOUSING POLICY, PROGRAMS, AND PROJECTS

Housing work currently underway:

- Apartment Action Plan 2.0 (2018 - current)
- Huntington Place Apartments purchase by Aeon, including physical improvements (January 2020 - current)
- Autumn Ridge Apartments Rehabilitation Project (2018-current)
- Homeowner Programs (current)
 - Senior Deferred Loan Program
 - Down Payment Assistance Program (tripled investment in 2021)
 - Code Correction Loan Program
 - Revolving Loan Program
- Affordable Housing Preservation and Development Program (July 2019)
- Brooks Landing and Brook Gardens Rehabilitation Project (2019 – 2020)
- EDA-owned former Park and Ride site at 4201 95th Ave N (planning through Corridor Development Initiative partially complete and on hold)
- Brooklyn Park Housing Research Project by CURA at UMN (2020-2021 active project)
- Housing Stability Strategy (Post-eviction and/or foreclosure moratorium planning, active work 2021)

Housing work recently completed:

- Transitional Housing Facility Rehabilitation (2018-2020)
- Fair Housing Policy (May 2019)
- Mixed-Income Housing Policy (2017)
- Tenant Notification Ordinance (October 2019)
- Rental Rehabilitation Loan Program (for 1–16-unit rental properties. Details available at www.mncee.org/services/financing/brooklynpark/-1) (April 2020)
- Community Environmental Sustainability Program (April 2020)

Projects under consideration:

- 6900 85th Ave N (North Hennepin Community College site) – Duffy Development proposes mixed income apartments and small commercial space (EDA issued request for qualification in March 2020, Duffy selected as developer on May 18, 2020, EDA meeting)
- 7601 Brooklyn Blvd (EDA-owned “Welcome 2 site”) – Bethesda Lutheran Communities mixed income apartment units for seniors and people with intellectual and developmental disabilities (EDA discussion June 21)
- 7621 Brooklyn Blvd (EDA-owned “Welcome Site”) – George North Group mixed income apartment and commercial space (EDA work session April 20, EDA approval of preliminary term sheet June 15)