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TO: Mayor and City Council  
FROM: Sandie Thone, City Administrator/Clerk  
RE: Resolution 2016-09 Architect Services Contract  
DATE: May 17, 2016

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### Background

At its December 15, 2015 regular city council meeting the City Council unanimously (5-0) Approved Resolution 2015-34 Approving Moving Forward with the Decision to Build a New City Hall Facility and Requesting Staff to Prepare a Cost Analysis of the Two Remaining Options for its Future Location. At the January 19, 2016 regular city council meeting the City Council denied a resolution approving the City Hall location to Lakeland Village (2-3). They subsequently voted to table the item to the February city council meeting for action (5-0). At its February 16, 2016 regular city council meeting the City Council approved Resolution 2016-04 Approving the Location for New City Hall to City-Owned Property at 1190 St. Croix Trail South (3-2). At the April 19, 2016 regular city council meeting the City Council interviewed seven (7) Architect firms who responded to the City's Request for Proposals for Architect Services to assist the City Council in developing and implementing a plan to add a new City Hall onto the current Public Works property.

### Discussion

At its April 19, 2016 regular city council meeting the City Council approved EAPC as the lead architect in the project and provided direction for staff to work with EAPC to bring back an official contract between EAPC and the City of Lakeland to be ratified and signed at the May city council meeting. Council provided direction to begin the project process and proceed in scheduling meetings including the initial kick-off meeting. Attached for your review is the draft of the contract for services between EAPC Architects Engineers and City of Lakeland. The contract has been reviewed by City Attorney Josh Brekken and has been revised to reflect his professional and legal recommendations. In addition, attached is Resolution 2016-09 Approving Architect Services Contract between EAPC Architects Engineers and the City of Lakeland which provides for a formal, written expression of the motion.

### Recommendation

Staff is respectfully requesting the city council approve Resolution 2016-09 Approving the Contract for Architect Services Between EAPC Architects Engineers and the City of Lakeland effective May 17, 2016 for the Lakeland City Hall project and to perform all related services described within. Motion, Second and Majority vote required.

**RESOLUTION NO. 2016-09**

**CITY OF LAKELAND  
WASHINGTON COUNTY, MINNESOTA**

**A RESOLUTION APPROVING CONTRACT FOR SERVICES BETWEEN EAPC ARCHITECTS  
ENGINEERS AND CITY OF LAKELAND FOR NEW CITY HALL PROJECT**

**WHEREAS**, The City Council approved Resolution 2015-34 Moving Forward with New City Hall at its December 15, 2015 regular city council meeting; and

**WHEREAS**, The City Council approved Resolution 2016-04 Approving the Location of the New City Hall as City-Owned Property located at 1190 St. Croix Trail South at its February 16, 2016 regular city council meeting; and

**WHEREAS**, The City Council interviewed seven (7) architect firms who responded to the City's request for proposals on at its April 19, 2016 regular city council meeting; and

**WHEREAS**, The City Council approved EAPC Architects Engineers as the lead architects for the new city hall project at its April 19, 2016 regular city council meeting; and

**WHEREAS**, The City Council directed staff to work with EAPC Architects Engineers to bring back a formal contract for services to the May 17, 2016 regular city council meeting for approval.

**BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF LAKELAND does hereby adopt Resolution 2016-09 Approving the Contract for Architect Services between EAPC Architects Engineers and the City of Lakeland.**

Passed and adopted by the City Council for the City of Lakeland this 17<sup>th</sup> day of May 2016.

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Amy Williams, Mayor

ATTEST:

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Sandie Thone, City Administrator/Clerk



**AIA**<sup>®</sup>

# Document B101<sup>™</sup> – 2007

## Standard Form of Agreement Between Owner and Architect

**AGREEMENT** made as of the 13 day of May in the year 2016

**BETWEEN** the Architect's client identified as the Owner:

City of Lakeland  
1190 St. Croix Trail South  
Lakeland, MN 55043

and the Architect:

EAPC Architects Engineers  
539 Bielenberg Drive, Suite 115  
St. Paul, MN 55125

for the following Project:

New City Hall  
Lakeland, MN

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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User Notes:

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### EXHIBIT A INITIAL INFORMATION

#### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article  
*(Paragraphs deleted)*

Full architectural and engineering design services for a new City Hall in Lakeland, MN. The owner's total project budget is set as a not-to-exceed amount of \$600,000. The City currently operates their Public Works facility at 1190 Saint Croix Trail South, and the new City Hall will share that property, either as an addition or freestanding structure. The project is anticipated to be publicly bid for construction in September 2016.

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

- .1 Commencement of construction date:  
September 15, 2016
- .2 Substantial Completion date:  
May 15, 2017

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

#### ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 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 for the duration of this Agreement.

.1 General Liability	
Each Occurrence	\$ 1,000,000
Damage to Rented Premises (each occurrence)	\$ 1,000,000
Med Exp (any one person)	\$ 10,000
Personal & Adv Injury	\$ 1,000,000
General Aggregate	\$ 2,000,000
Products – Comp/Op Agg	\$ 2,000,000
Excess / Umbrella Liability:	
Each Occurrence	\$ 5,000,000
Aggregate	\$ 5,000,000
.2 Automobile Liability	
Combined Single Limit (each accident)	\$ 1,000,000
.3 Workers' Compensation	
Statutory	
.4 Professional Liability	
Each Claim	\$ 1,000,000
Aggregate	\$ 2,000,000

### ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

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

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, 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 the accuracy and completeness 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.

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§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 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 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 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.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or 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.

§ 3.2.3 Based on the Project's 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.

§ 3.2.4 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 modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.4.1 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.

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

*(Paragraphs deleted)*

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

*(Paragraph deleted)*

### § 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 such other elements as may be appropriate. 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.

§ 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.

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### § 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 of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct 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 into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and 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.

§ 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 BIDDING OR NEGOTIATION 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 competitive bids; (2) confirming responsiveness of bids; (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 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all 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 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

*(Paragraphs deleted)*

### § 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™-2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201-2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

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§ 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 4.3, 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 4.3.3, 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 report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) 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 such 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, material and equipment 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 A201-2007, 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 and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to 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 material 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. 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 In accordance with the Architect-approved submittal schedule, 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, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 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 Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, 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 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 authorize 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 the provisions of Section 4.3, 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 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract

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Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating 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 the Work is found to be substantially complete, 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 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional 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.

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming (B202™-2009)	Architect	Included in this contract
§ 4.1.2 Multiple preliminary designs	Not Provided	
§ 4.1.3 Measured drawings	Not Provided	
§ 4.1.4 Existing facilities surveys	Not Provided	
§ 4.1.5 Site Evaluation and Planning (B203™-2007)	Not Provided	
§ 4.1.6 Building Information Modeling (E202™-2008)	Not Provided	
§ 4.1.7 Civil engineering	Architect	Included in this contract, but limited to immediate building area
§ 4.1.8 Landscape design	Not Provided	
§ 4.1.9 Architectural Interior Design (B252™-2007)	Not Provided	
§ 4.1.10 Value Analysis (B204™-2007)	Not Provided	
§ 4.1.11 Detailed cost estimating	Architect	Included in this contract; at milestones per article 3
§ 4.1.12 On-site Project Representation (B207™-2008)	Not Provided	
§ 4.1.13 Conformed construction documents	Architect	Included in this contract
§ 4.1.14 As-Designed Record drawings	Architect	Included in this contract
§ 4.1.15 As-Constructed Record drawings	Not Provided	
§ 4.1.16 Post occupancy evaluation	Not Provided	
§ 4.1.17 Facility Support Services (B210™-2007)	Not Provided	
§ 4.1.18 Tenant-related services	Not Provided	
§ 4.1.19 Coordination of Owner's consultants	Architect	Included in this contract
§ 4.1.20 Telecommunications/data design	Architect	Included in this contract
§ 4.1.21 Security Evaluation and Planning (B206™-2007)	Not Provided	
§ 4.1.22 Commissioning (B211™-2007)	Not Provided	
§ 4.1.23 Extensive environmentally responsible design	Not Provided	
§ 4.1.24 LEED® Certification (B214™-2012)	Not Provided	
§ 4.1.25 Fast-track design services	Not Provided	

§ 4.1.26	Historic Preservation (B205™-2007)	Not Provided	
§ 4.1.27	Furniture, Furnishings, and Equipment Design (B253™-2007)	Not Provided	

(Row deleted)

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

Additional services noted as provided under base contract are specific to the building or addition, not large scale utility services or surveying.

§ 4.3 Additional Services may be provided 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 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 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 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, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .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 data 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 bidders or persons providing 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.

§ 4.3.2 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 the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to 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;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or

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- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

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

- .1 Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 Twelve ( 12 ) visits to the site by the Architect over the duration of the Project 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 One ( 1 ) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within twelve ( 12 ) 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 developing with the architect 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. 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.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the 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 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 but are not limited to 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 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 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 maintain professional liability insurance as appropriate to the services provided.

§ 5.7 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.

§ 5.8 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.

§ 5.9 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.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.11 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.

§ 5.12 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.

#### 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 does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, 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 may 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, 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 make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. 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 requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, 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;

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- .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, without additional compensation, 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. 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. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 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 Upon execution of this Agreement, 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, including prompt payment of all sums when due, under this Agreement. 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 material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service 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 author 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.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement 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 A201-2007, 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 the Agreement. A request for mediation shall be made in writing, delivered to the other party to the 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:

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction  
(Paragraphs deleted)

## § 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.

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§ 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.

#### 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 Architect shall be paid 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 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

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§ 9.8 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 11.9.

#### ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that 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 A201-2007, 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.

§ 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.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

#### ARTICLE 11 COMPENSATION

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

*(Paragraph deleted)*

Lump-sum fee of \$38,500.00; billed monthly in accordance with completion percentage of the scope of work.

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

*(Paragraph deleted)*

Hourly per attached rate chart.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

*(Paragraph deleted)*

Hourly per attached rate chart.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus percent ( %), or as otherwise stated below:  
No external consultants anticipated for this project.

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

Schematic Design Phase	Twenty-five	percent (	25	%)
Design Development Phase	twenty	percent (	20	%)
Construction Documents Phase	Thirty-five	percent (	35	%)
Bidding or Negotiation Phase	two	percent (	2	%)
Construction Phase	eighteen	percent (	18	%)
<i>(Row deleted)</i>				
Total Basic Compensation	one hundred	percent (	100	%)

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

See attached hourly rate schedule

*(Table deleted)*

*(Paragraphs deleted)*

**§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES**

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

- .1 *(Paragraphs deleted)*  
Fees paid for securing approval of authorities having jurisdiction over the Project;
- .2 Printing, reproductions, plots, standard form documents;
- .3 Postage, handling and delivery;
- (Paragraph deleted)*
- .4 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- (Paragraph deleted)*
- .5 All taxes levied on professional services and on reimbursable expenses;
- (Paragraphs deleted)*

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ten percent ( 10 %) of the expenses incurred.

**§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE**

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

As negotiated upon termination of this agreement.

**§ 11.10 PAYMENTS TO THE ARCHITECT**

§ 11.10.1 An initial payment of zero (\$ 0 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 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 sixty ( 60 )

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.

18 % per annum

§ 11.10.3 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.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to 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:

None

#### 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 Owner and Architect.

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

- .1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect  
AIA A201 General Conditions

*(Paragraph deleted)*

- .2 Other documents:  
Hourly Rate Chart fy2016

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

**OWNER**

**ARCHITECT**

*(Signature)*

Amy Williams, Mayor of Lakeland

*(Printed name and title)*

*(Signature)*

Jim Tyler, Partner

*(Printed name and title)*

**ATTEST**

*(Signature)*

Sandie Thone, City Administrator

*(Printed name and title)*

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# FEE PROPOSAL

## HOURLY BILLING RATES

### HOURLY RATE STRUCTURE FOR FISCAL YEAR 2016

#### ARCHITECTURAL/ENGINEERING SERVICES

Principal Architect/Engineer .....	\$190.00/hour
Associate Architect/Engineer .....	\$182.00/hour
Department Manager.....	\$177.00/hour
Project Manager .....	\$173.00/hour
Senior Architect/Engineer/Designer .....	\$167.00/hour
Architect/Engineer/Designer .....	\$156.00/hour
Architect/Engineer/Designer Intern I .....	\$144.00/hour
Architect/Engineer/Designer Intern II .....	\$132.00/hour
Architect/Engineer Technician Level I .....	\$123.00/hour
Architect/Engineer Technician Level II .....	\$118.00/hour
CAD Technician Level I .....	\$104.00/hour
CAD Technician Level II .....	\$95.00/hour
Intern .....	\$61.00/hour

#### CONSTRUCTION SERVICES

Associate Construction Specialist.....	\$156.00/hour
Construction Specialist Level I .....	\$132.00/hour
Construction Specialist Level II.....	\$123.00/hour
Construction Technician Level I.....	\$112.00/hour
Construction Technician Level II .....	\$100.00/hour

#### OFFICE SUPPORT SERVICES

Secretarial Level I .....	\$82.00/hour
Secretarial Level II .....	\$75.00/hour
Office Assistant.....	\$61.00/hour

### EXPENSE CHARGES FOR FISCAL YEAR 2016

#### PRODUCTION RUN RATES (Plotter/Opaq)

11x17 .....	\$1.65/ea
24x36 .....	\$2.00/ea
28x42 .....	\$3.45/ea
30x42 .....	\$3.45/ea
44x34 .....	\$3.80/ea
36x48 .....	\$4.10/ea

#### INDIVIDUAL SHEET PRINTING RATE

11x17 .....	\$3.00/ea
24x36 .....	\$3.75/ea
Other (larger than 24x26).....	\$7.00/ea

#### XEROX PHOTOCOPIER

8.5x11 .....	\$0.12/ea
8.5x14 .....	\$0.15/ea
11x17 .....	\$0.18/ea

SPEC ASSEMBLY (Bound) ..... \$20.00/ea

#### LAMINATING (two sided)

24x36 .....	\$16.50/ea
24" wide x __ ft.....	\$5.65/ft

#### COLOR REPRODUCTION

##### Color Plots (non-EAPC disc)

8.5x11 .....	\$3.60/ea
8.5x14 .....	\$3.60/ea
11x17 .....	\$6.75/ea
24x36 .....	\$24.00/ea

##### Color Plots (in-house drawing)

8.5x11 .....	\$1.25/ea
8.5x14 .....	\$1.25/ea
11x17 .....	\$2.00/ea
24x36 .....	\$7.75/ea

MILEAGE (follows current federal rate) .... \$0.54/mile

BD



## Public Works Department

1190 St Croix Trail South  
Lakeland MN 55043  
Voice: 651-436-8044  
Fax: 651-436-3949  
E-mail: [waterdept@ci.lakeland.mn.us](mailto:waterdept@ci.lakeland.mn.us)

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To: Lakeland City Council  
From: Matt Kline, Director of Public Works  
Date: May 17<sup>th</sup>, 2016  
RE: Easement Vacation/Replacement

### Background

In a recent variance application for 1067 Quixote Ave No, a discrepancy was presented from the builder/property owners in regards to the location of an easement on their property compared to the actual location of the water main and road that the easement should have been associated with. Please see the attached map as an indication of this discrepancy. The existing right of way is listed as such. As indicated, the current easement does not provide for complete access to the road for maintenance in the southern half of the parcel due to the location of the easement. The proposed easement (as indicated on the map) would alleviate this discrepancy.

### Discussion

This easement is in place to allow the city to provide road maintenance to Quixote Avenue and allow the city access to the water main that is underneath the road. Without the correct easement, the city would be performing work on private property instead of land that was granted to them in an easement.

### Recommendation

The relocation process was started last month when the city council passed Resolution No. 2016-06 directing staff to move forward with the vacation of the easement located on the property of 1067 Quixote. Staff has published, posted, and mailed notice for the current public hearing as required by law. After the public hearing has been held, staff recommends making two motions:

Motion to adopt Resolution 2016-07 vacating the current easement on said property. Motion, second, and 4/5ths vote required. Roll call.

Motion to adopt the new easement agreement with the property owners of 1067 Quixote. Motion, second, majority vote.

Attached: Resolution 2016-07, Survey Map with Revised Easement, Easement Agreement

## **PERMANENT UTILITY AND PUBLIC WAY EASEMENT AGREEMENT**

THIS PERMANENT UTILITY AND PUBLIC WAY EASEMENT AGREEMENT (“Agreement”) shall be effective as of the date that the last party executes this Agreement, is made by and between the City of Lakeland, a Minnesota municipal corporation (“City”), and Scott Johnson and Sandra Boe, individuals (“Owners”).

The Owners own the real property situated within Washington County, Minnesota as described on the attached **Exhibit A** (hereinafter “Owners’ Property”).

The Owners in consideration of one dollar (\$1.00) and other good and valuable consideration do hereby grant and convey to the City, its successors and assigns, the following:

1. **A permanent easement for trunk utility and public way purposes; including all rights of a “drainage easement”, “public way”, and a “utility easement” as defined by Minn. Stat. § 505.01, Subd. 3(b), 3(h), and 3(j); and, all such purposes ancillary, incident or related thereto** (hereinafter “Permanent Easement”) under, over, across, through and upon that real property identified and legally described on **Exhibit B**, (hereinafter the “Permanent Easement Area”) attached hereto and incorporated herein by reference.

**The Permanent Easement rights granted herein are forever and shall include, but not be limited to, the construction, maintenance, inspection, repair and replacement of any roadway, sanitary sewer, storm sewer, storm sewer ponds, rain gardens, water mains, any utilities, underground pipes, conduits, other utilities and mains, and all facilities and improvements ancillary, incident or related thereto, under, over, across, through and upon the Permanent Easement Area.**

### **EXEMPT FROM STATE DEED TAX**

The rights of the City also include the right of the City, its contractors, agents and servants:

- a.) to enter upon the Permanent Easement Area at all reasonable times for the

purposes of construction, reconstruction, inspection, repair, replacement, grading, sloping, and restoration relating to the purposes of this Permanent Easement; and

b.) to maintain the Permanent Easement Area, any City improvements and any underground pipes, conduits, or mains, together with the right to excavate and refill ditches or trenches for the location of such ponds, rain gardens, pipes, conduits or mains; and

c.) to remove from the Permanent Easement Area trees, brush, herbage, aggregate, undergrowth and other obstructions interfering with the location, construction and maintenance of the pipes, conduits, or mains and to deposit earthen material in and upon the Permanent Easement Area; and

d.) to remove or otherwise dispose of all earth or other material excavated from the Permanent Easement Area as the City may deem appropriate.

e.) to prohibit obstructions or interference with its use of the Easement Area.

The City shall not be responsible for any costs, expenses, damages, demands, obligations, penalties, attorneys' fees and losses resulting from any claims, actions, suits, or proceedings based upon a release or threat of release of any hazardous substances, petroleum, pollutants, and contaminants which may have existed on, or which relate to the Permanent Easement Area or the Owners' Property prior to the date hereof.

Nothing contained herein shall be deemed a waiver by the City of any governmental immunity defenses, statutory or otherwise. Further, any and all claims brought by the Owners, or their successors or assigns, shall be subject to any governmental immunity defenses of the City and the maximum liability limits provided by Minnesota Statute, Chapter 466.

The Owners, for themselves and their successors and assigns, do hereby warrant to and covenant with the City, its successors and assigns, that they are well seized in fee of the Owners' Property described on Exhibit A, and the Permanent Easement Area described on Exhibit B, and has good right to grant and convey the Permanent Easement herein to the City. In addition, the Owners, for themselves and their successors and assigns, do hereby warrant to and covenant with the City, its successors and assigns, the right of after acquired title to the Permanent Easement granted and conveyed in this Agreement provided that the Owners receive title to all or part of the Permanent Easement Area after the recording of this Agreement.

This Permanent Easement Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**IN TESTIMONY WHEREOF**, the Owners and the City have caused this Permanent Easement Agreement to be executed as follows:

**Owners:**

\_\_\_\_\_  
Scott Johnson

\_\_\_\_\_  
Sandra Boe

STATE OF MINNESOTA            )  
  ) ss.  
COUNTY OF \_\_\_\_\_        )

On this \_\_\_\_ day of \_\_\_\_\_, 2016, the foregoing instrument was acknowledged before me, a Notary Public, within and for said County and State, personally appeared Scott Johnson and Sandra Boe, individuals, who signed the foregoing instrument and acknowledged said instrument to be their free act and deed.

\_\_\_\_\_  
Notary Public

**CITY OF LAKELAND**

By: \_\_\_\_\_  
Amy Williams, Mayor

ATTEST:

\_\_\_\_\_  
Sandie Thone, City Administrator/Clerk

STATE OF MINNESOTA            )  
  )  
COUNTY OF WASHINGTON        )        ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2016, before me a Notary Public within and for said County, personally appeared Amy Williams and Sandie Thone, to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and City Administrator/Clerk of the City of Lakeland, a Minnesota municipal corporation, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed on behalf of said municipality by authority of its City Council and said Mayor and City Administrator/Clerk acknowledged said instrument to be the free act and deed of said municipality.

\_\_\_\_\_  
Notary Public

**This instrument was drafted by:**  
Joshua N. Brekken, City Attorney  
Johnson / Turner Legal  
56 East Broadway Avenue, Suite 206  
Forest Lake, MN 55025  
651-464-7292

**EXHIBIT A**  
**LEGAL DESCRIPTION OF OWNERS' PROPERTY**

THE NORTH 80.00 FEET OF THE SOUTH 398.00 FEET OF GOVERNMENT LOT 4, SECTION 26, TOWNSHIP 29 NORTH, RANGE 20 WEST, LYING EASTERLY OF THE EASTERLY BOUNDARY LINE OF LOTS 4 AND 5, BLOCK 1, RIVER CREST ESTATES, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER, WASHINGTON COUNTY, MINNESOTA, BEING A STRIP OF LAND 80.00 FEET WIDE, NORTH AND SOUTH, AND EXTENDING EASTERLY FROM THE EASTERLY BOUNDARY LINE OF SAID LOTS 4 AND 5, TO LAKE ST. CROIX. THE WEST BOUNDARY OF THIS PARCEL IS ALSO THE CENTERLINE OF THE FORMER CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY RIGHT-OF-WAY.

SUBJECT TO AN EASEMENT FOR ROADWAY AND UTILITY PURPOSES OVER, UNDER AND ACROSS THE EASTERLY 33.00 FEET OF THE WESTERLY 83.00 FEET OF THE ABOVE DESCRIBED PARCEL AS MEASURED RADially FROM THE WESTERLY LINE OF SAID ABOVE DESCRIBED PARCEL

AND THE NORTH 60.00 FEET OF THE SOUTH 318.00 FEET OF GOVERNMENT LOT 4, SECTION 26, TOWNSHIP 29 NORTH, RANGE 20 WEST, LYING EASTERLY OF THE EASTERLY BOUNDARY LINE OF LOT 4, BLOCK 1, RIVER CREST ESTATES, BEING A STRIP OF LAND 60.00 FEET WIDE, NORTH AND SOUTH, AND EXTENDING EASTERLY FROM THE EASTERLY BOUNDARY LINE OF SAID LOT 4, TO LAKE ST. CROIX THE WEST BOUNDARY OF THIS PARCEL IS ALSO THE CENTERLINE OF THE FORMER CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY RIGHT-OF-WAY.

SUBJECT TO AN EASEMENT FOR ROADWAY AND UTILITY PURPOSES OVER, UNDER AND ACROSS THE EASTERLY 33.00 FEET OF THE WESTERLY 83.00 FEET OF THE ABOVE DESCRIBED PARCEL AS MEASURED RADially FROM THE WESTERLY LINE OF SAID ABOVE DESCRIBED PARCEL

TOGETHER WITH THE RIGHT TO USE THE ROAD RIGHT-OF-WAY ALONG THE EASTERLY SIDE OF THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY RIGHT-OF-WAY FROM THE NORTH LINE OF THE SOUTH 258.00 FEET OF SAID GOVERNMENT LOT 4 TO THE SOUTH LINE OF SAID GOVERNMENT LOT 4. SECTION 26 TOWNSHIP 029 RANGE 020

**EXHIBIT B**  
**LEGAL DESCRIPTION OF**  
**THE PERMANENT EASEMENT AREA**

A PARCEL OF LAND LOCATED IN PART OF GOVERNMENT LOT 4 OF SECTION 26, T29N, R20W, CITY OF LAKELAND, WASHINGTON COUNTY, MINNESOTA BEING PART OF PARCEL 1 AND PARCEL 2 IDENTIFIED IN TORRENS REGISTRATION - FILE #CO-92-3790, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID PARCEL 2; THENCE ALONG THE SOUTH LINE OF SAID PARCEL 2 N89°55'21"E 35.91' TO THE POINT OF BEGINNING (*BEARINGS REFERENCED TO THE SOUTH LINE OF GOVERNMENT LOT 4, LINE BEARS N89°52'04"E WASHINGTON COUNTY COORDINATE SYSTEM-2007 ADJUSTMENT*); THENCE N08°30'15"W 134.20' TO A POINT ON A CURVE OF THE EXISTING WESTERLY RIGHT OF WAY OF QUIXOTE AVENUE NORTH; THENCE 7.58' ALONG SAID RIGHT OF WAY BEING A CURVE (NOT TANGENT TO PREVIOUS CALL) WITH A 1859.57' RADIUS CONCAVE TO THE WEST WHOSE CHORD BEARS N17°05'51"W, 7.58' TO THE NORTH LINE OF SAID PARCEL 1; THENCE ALONG SAID NORTH LINE N89°55'21"E, 34.50' TO THE INTERSECTION WITH THE EXISTING EASTERLY RIGHT OF WAY OF QUIXOTE AVENUE NORTH; THENCE S08°30'15"E 135.39' TO A POINT ON A CURVE THAT IS PARALLEL AND WEST 15' OF THE EXISTING EASTERLY RIGHT OF WAY OF QUIXOTE AVENUE NORTH; THENCE 6.22' ALONG SAID CURVE (NOT TANGENT TO PREVIOUS CALL) WITH A 1877.57' RADIUS CONCAVE TO THE WEST WHOSE CHORD BEARS S12°43'15"E, 6.22' TO THE SOUTH LINE OF SAID PARCEL 2. THENCE ALONG THE SOUTH LINE OF SAID PARCEL 2 S89°55'21"W 33.82' TO THE POINT OF BEGINNING, CONTAINING 4,676 SQUARE FEET (0.11 ACRES) MORE OR LESS AND BEING SUBJECT TO ANY EASEMENTS, RESTRICTIONS OR COVENANTS OF RECORD.

**RESOLUTION NO. 2016-07**

**CITY OF LAKELAND  
WASHINGTON COUNTY, MINNESOTA**

**A RESOLUTION VACATING AN EASEMENT ON THE PROPERTY OF 1067  
QUIXOTE AVE NO**

**THE CITY COUNCIL OF THE CITY OF LAKELAND, MINNESOTA DOES HEREBY  
RESOLVE AS FOLLOWS:**

**WHEREAS**, the City Council previously passed Resolution No. 2016-06 noting its interest in vacating pursuant to Minnesota Statute §412.851 a utility/roadway easement on the property of 1067 Quixote Ave No legally described as:

THE NORTH 80.00 FEET OF THE SOUTH 398.00 FEET OF GOVERNMENT LOT 4, SECTION 26, TOWNSHIP 29 NORTH, RANGE 20 WEST, LYING EASTERLY OF THE EASTERLY BOUNDARY LINE OF LOTS 4 AND 5, BLOCK 1, RIVER CREST ESTATES, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER, WASHINGTON COUNTY, MINNESOTA, BEING A STRIP OF LAND 80.00 FEET WIDE, NORTH AND SOUTH, AND EXTENDING EASTERLY FROM THE EASTERLY BOUNDARY LINE OF SAID LOTS 4 AND 5, TO LAKE ST. CROIX. THE WEST BOUNDARY OF THIS PARCEL IS ALSO THE CENTERLINE OF THE FORMER CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY RIGHT-OF-WAY.

SUBJECT TO AN EASEMENT FOR ROADWAY AND UTILITY PURPOSES OVER, UNDER AND ACROSS THE EASTERLY 33.00 FEET OF THE WESTERLY 83.00 FEET OF THE ABOVE DESCRIBED PARCEL AS MEASURED RADially FROM THE WESTERLY LINE OF SAID ABOVE DESCRIBED PARCEL

AND THE NORTH 60.00 FEET OF THE SOUTH 318.00 FEET OF GOVERNMENT LOT 4, SECTION 26, TOWNSHIP 29 NORTH, RANGE 20 WEST, LYING EASTERLY OF THE EASTERLY BOUNDARY LINE OF LOT 4, BLOCK 1, RIVER CREST ESTATES, BEING A STRIP OF LAND 60.00 FEET WIDE, NORTH AND SOUTH, AND EXTENDING EASTERLY FROM THE EASTERLY BOUNDARY LINE OF SAID LOT 4, TO LAKE ST. CROIX THE WEST BOUNDARY OF THIS PARCEL IS ALSO THE CENTERLINE OF THE FORMER CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY RIGHT-OF-WAY.

SUBJECT TO AN EASEMENT FOR ROADWAY AND UTILITY PURPOSES OVER, UNDER AND ACROSS THE EASTERLY 33.00 FEET OF THE WESTERLY 83.00 FEET OF THE ABOVE DESCRIBED PARCEL AS MEASURED RADially FROM THE WESTERLY LINE OF SAID ABOVE DESCRIBED PARCEL

TOGETHER WITH THE RIGHT TO USE THE ROAD RIGHT-OF-WAY ALONG THE EASTERLY SIDE OF THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY RIGHT-OF-WAY FROM THE NORTH LINE OF THE SOUTH 258.00 FEET OF SAID GOVERNMENT LOT 4 TO THE SOUTH LINE OF SAID GOVERNMENT LOT 4. SECTION 26 TOWNSHIP 029 RANGE 020

and setting a public hearing to consider the vacation of such easement; and

**WHEREAS**, a public hearing to consider the vacation of such street was held on the 17<sup>th</sup> day of May, 2016, before the City Council in the City Hall located at 690 Quinnell Ave No at 6 pm after due published and posted notice had been given, as well as personal mailed notice to all affected property owners by the City Clerk on the 26<sup>th</sup> day of April 2016 and all interested and affected persons were given an opportunity to voice their concerns and be heard; and

**WHEREAS**, any person, corporation or public body owning or controlling easements contained upon the property vacated, reserves the right to continue maintaining the same or to enter upon such way or portion thereof vacated to maintain, repair, replace or otherwise attend thereto; and

**WHEREAS**, the Council in its discretion has determined that the vacation will benefit the public interest because a portion of the easement does not contain the actual road and utilities for which the easement was created; and

**WHEREAS**, the council in its discretion has determined that the vacation will benefit the public interest because the easement is being relocated to encompass the roadway and utilities that were originally intended to be maintained with the current easement; and

**WHEREAS**, four-fifths of all members of the City Council concur in this resolution;

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF LAKELAND, COUNTY OF WASHINGTON MINNESOTA**, that such petition for vacation is hereby granted and the easement located on the property at 1067 Quixote described as follows is hereby vacated:

THE NORTH 80.00 FEET OF THE SOUTH 398.00 FEET OF GOVERNMENT LOT 4, SECTION 26, TOWNSHIP 29 NORTH, RANGE 20 WEST, LYING EASTERLY OF THE EASTERLY BOUNDARY LINE OF LOTS 4 AND 5, BLOCK 1, RIVER CREST ESTATES, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER, WASHINGTON COUNTY, MINNESOTA, BEING A STRIP OF LAND 80.00 FEET WIDE, NORTH AND SOUTH, AND EXTENDING EASTERLY FROM THE EASTERLY BOUNDARY LINE OF SAID LOTS 4 AND 5, TO LAKE ST. CROIX. THE WEST BOUNDARY OF THIS PARCEL IS ALSO THE CENTERLINE OF THE FORMER CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY RIGHT-OF-WAY.

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TOGETHER WITH THE RIGHT TO USE THE ROAD RIGHT-OF-WAY ALONG THE EASTERLY SIDE OF THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY RIGHT-OF-WAY FROM THE NORTH LINE OF THE SOUTH 258.00 FEET OF SAID GOVERNMENT LOT 4 TO THE SOUTH LINE OF SAID GOVERNMENT LOT 4. SECTION 26 TOWNSHIP 029 RANGE 020

**BE IT FURTHER RESOLVED**, that the Mayor and City Clerk are hereby authorized to sign all documents necessary to effectuate the intent of this resolution.

Adopted by the Council this 17<sup>th</sup> day of May 2016.

EFFECTIVE DATE: May 17<sup>th</sup>, 2016

Approved:

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Amy Williams, Mayor

Attested by:

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Sandie Thone, City Administrator/Clerk

8E



TO: Mayor and City Council  
FROM: Matt Kline | Director of Public Works  
RE: Ordinance 7554 Amending City Code Chapter 52 Water Regulations  
DATE: May 17, 2016

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### BACKGROUND

At the November 2015 City Council meeting the council approved moving from a monthly utility billing system to a quarterly utility billing system for the Lakeland Water Utility and ratified that decision at the December 15, 2015 council meeting by adopting Ordinance 7549 per City Code, Chapter 52 requirements. In relationship to that code change, city staff reviewed other procedures within water billing, specifically how past due balances are collected.

### DISCUSSION

The current collection of past due balances involves a process that ends with the water utility shutting off water to a customer due to non-payment of the water bill. The process includes sending multiple letters that inform the customers of the situation and the subsequent end result. If payments are not made, water utility staff turns the water off at the curb stop to the property. Water utility staff has never experienced an antagonistic resident during a water shutoff but the situation can be untenable due to the need to have a payment made in full as required by the city ordinance. The new ordinance language would eliminate the need to physically shut water off to any premises by allowing the past due balance to be assessed to the property taxes. The new language does not eliminate the ability for the water utility to still have the shut off ability should that need arise.

A majority of the new ordinance language was taken directly from the League of MN Cities sample ordinance regarding delinquent accounts and from reviewing similar city ordinances throughout Minnesota.

Please find Ordinance 7554 attached and a summary publication attached.

## RECOMMENDATION

Motion 1) Staff is respectfully requesting the City Council approve Ordinance 7554 Amending City Code Chapter 52 Water Regulations; Motion, Second and Majority vote of all members required.

Motion 2) Staff is respectfully requesting the City Council approve the attached Summary Publication of Ordinance 7554 Amending City Code Chapter 52 Water Regulations; as to text, Simple Majority vote required; Summary Publication approval - Four-fifths vote required.

CITY OF LAKELAND  
WASHINGTON COUNTY, MINNESOTA

ORDINANCE 7554  
AMENDING LAKELAND CITY CODE  
CHAPTER 52: WATER REGULATIONS

THE CITY COUNCIL FOR THE CITY OF LAKELAND DOES ORDAIN:

**Section 1: Amendment.** Chapter 52 of the Code of Ordinances is hereby amended as follows:

**Section 52.49 ~~COLLECTION REMEDIES.~~**

~~—In the event a water bill is unpaid after the due date as established by resolution, the bill shall be considered delinquent and the service may be discontinued as provided in § 52.10 and the City Council may cause the charges noted in the billing to become a lien against the property served by certifying to the County Auditor the amount of the delinquent bill in accordance with the law. Such action is optional and may be subsequent to taking legal action to collect delinquent accounts.~~

~~(Prior Code, § 1705.050) (Ord. 7460, passed 12-18-1990)~~

**Section 52.49 DELINQUENT ACCOUNTS**

(A) Penalties. A late payment fee of (see Fee Schedule) percent shall be assessed on the unpaid portion(s) on all accounts with a past due balance. The fee shall be set forth in the fee schedule which is duly adopted by Resolution. The unpaid portions and late payment penalty shall be due immediately.

(B) Shut-off for nonpayment. In the event a water bill is unpaid after the due date as established by resolution, the bill shall be considered delinquent and the service may be discontinued as provided in §52.10.

(C) Certification for collection with taxes. Unpaid charges on water accounts shall not be certified to the county auditor until notice and an opportunity for a hearing have been provided to the owner of the premises involved. The notice shall be sent by first class mail and shall state that if payment is not made before the date for certification, the entire amount unpaid plus penalties and/or fees will be certified to the county auditor for collection as other taxes are collected. The notice shall also state that the occupant may, before such certification date, attend or schedule a hearing on the matter to object to certification of unpaid utility charges. There shall be an administrative charge due upon the mailing or electronic transmittal of the notice of the proposed assessment. The administrative charge shall be set forth in the fee schedule which is duly adopted by Resolution.

In addition to any penalties provided for in this ordinance if any person, firm or corporation fails to comply with any provision of this ordinance, the City Council or any city official designated by it may institute appropriate proceedings at law or at equity to procure payment.

1. The owner of the property shall have the option of paying the balance due on the account until the date the notice of the certification hearing is mailed. After the date the notice of certification hearing is mailed, payments will still be accepted but will include unpaid penalties and/or fees.
2. A hearing shall be held on the matter by the City Council. Property owners with unpaid utility charges shall have the opportunity to object to the certification of unpaid charges to be collected as taxes are collected. If, after the hearing, the City Council finds that the amounts claimed as delinquent are actually due and unpaid and that there is no legal reason why the unpaid charges should not be certified for collection with taxes in accordance with this ordinance, the City may certify the unpaid charges to the county auditor for collection as other taxes are collected
3. For each certification sustained, the property owner shall have the following options after the hearing,
  - a. To pay the delinquent amount listed on the preliminary roll, but without additional interest after the hearing, within ten days of the hearing date.
  - b. To pay the certified charges as billed to them by Washington County on their property tax statement with a collection term of one year.
4. After the hearing, the certified roll, minus any payments, shall be delivered to Washington County.

(Prior Code, § 1705.050) (Ord. 7460, passed 12-18-1990)

**Section 2. Effective Date.** This Ordinance shall be in full force and effect from and after its adoption and publication according to law. Passed and adopted by the City Council for the City of Lakeland this 17th day of May 2016.

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Amy Williams, Mayor

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Sandie Thone, City Administrator/Clerk

**CITY OF LAKELAND  
WASHINGTON COUNTY, MINNESOTA**

**ORDINANCE 7554  
AMENDING LAKELAND CITY CODE  
CHAPTER 52: WATER REGULATIONS**

**THE CITY COUNCIL FOR THE CITY OF LAKELAND DOES ORDAIN:**

**Section 1: Amendment.** Chapter 52 of the Code of Ordinances is hereby amended as follows:

**Section 52.49 DELINQUENT ACCOUNTS**

(A) **Penalties.** A late payment fee of (see Fee Schedule) percent shall be assessed on the unpaid portion(s) on all accounts with a past due balance. The fee shall be set forth in the fee schedule which is duly adopted by Resolution. The unpaid portions and late payment penalty shall be due immediately.

(B) **Shut-off for nonpayment.** In the event a water bill is unpaid after the due date as established by resolution, the bill shall be considered delinquent and the service may be discontinued as provided in §52.10.

(C) **Certification for collection with taxes.** Unpaid charges on water accounts shall not be certified to the county auditor until notice and an opportunity for a hearing have been provided to the owner of the premises involved. The notice shall be sent by first class mail and shall state that if payment is not made before the date for certification, the entire amount unpaid plus penalties and/or fees will be certified to the county auditor for collection as other taxes are collected. The notice shall also state that the occupant may, before such certification date, attend or schedule a hearing on the matter to object to certification of unpaid utility charges. There shall be an administrative charge due upon the mailing or electronic transmittal of the notice of the proposed assessment. The administrative charge shall be set forth in the fee schedule which is duly adopted by Resolution.

In addition to any penalties provided for in this ordinance if any person, firm or corporation fails to comply with any provision of this ordinance, the City Council or any city official designated by it may institute appropriate proceedings at law or at equity to procure payment.

1. The owner of the property shall have the option of paying the balance due on the account until the date the notice of the certification hearing is mailed. After the date the notice of certification hearing is mailed, payments will still be accepted but will include unpaid penalties and/or fees.
2. A hearing shall be held on the matter by the City Council. Property owners with unpaid utility charges shall have the opportunity to object to the certification of unpaid

charges to be collected as taxes are collected. If, after the hearing, the City Council finds that the amounts claimed as delinquent are actually due and unpaid and that there is no legal reason why the unpaid charges should not be certified for collection with taxes in accordance with this ordinance, the City may certify the unpaid charges to the county auditor for collection as other taxes are collected

3. For each certification sustained, the property owner shall have the following options after the hearing,
  - a. To pay the delinquent amount listed on the preliminary roll, but without additional interest after the hearing, within ten days of the hearing date.
  - b. To pay the certified charges as billed to them by Washington County on their property tax statement with a collection term of one year.
4. After the hearing, the certified roll, minus any payments, shall be delivered to Washington County.

(Prior Code, § 1705.050) (Ord. 7460, passed 12-18-1990)

**Section 2. Effective Date.** This Ordinance shall be in full force and effect from and after its adoption and publication according to law. Passed and adopted by the City Council for the City of Lakeland this 17th day of May 2016.

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Amy Williams, Mayor

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Sandie Thone, City Administrator/Clerk

**CITY OF LAKELAND  
WASHINGTON COUNTY, MINNESOTA**

**ORDINANCE 7554  
SUMMARY PUBLICATION  
AMENDING LAKELAND CITY CODE  
CHAPTER 52: WATER REGULATIONS**

**THE CITY COUNCIL FOR THE CITY OF LAKELAND DOES ORDAIN:**

**Section 1: Amendment.** Chapter 52 of the Code of Ordinances is hereby amended as follows: The following section pertaining to delinquent accounts in relation to penalties, shut-off, and certification to taxes is altered to reflect changes in procedure. Section 52.49 Collection Remedies.

**Section 2. Effective Date.** This Ordinance shall be in full force and effect from and after its adoption and publication according to law. The full ordinance may be inspected at city offices or on the official city website. Passed and adopted by the City Council for the City of Lakeland on the 17th day of May 2016.

S/S

Sandie Thone, City Administrator/Clerk

8F

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Date: May 17, 2016  
To: Mayor and City Council  
From: Sandie Thone, City Administrator/Clerk  
Re: Old City Hall Discussion

***DISCUSSION***

Staff is respectfully requesting direction from the city council regarding the Old City Hall.