



***Park & Recreation Committee Meeting Agenda
Monday, September 25, 2023, 5:30 p.m.
Fillmore Conference Room – Thurber Building***

- A. Ventrac Mower Acquisition
- B. Pool – Slushy Machine
- C. Grooming ballparks at Mill Creek Park

The Park & Recreation committee met on Monday, July 24, 2023.

Members Present: Councilors Josh Broadwater and Dave Frank.

Members Absent: None.

Others Present: Brian Burkholder & Joel Young

Wide Area Mower: Burkholder reported that the John Deere mower that had been previously approved has not yet been ordered, as the dealers are not able place orders at this time. He said that he and Dan Funk have identified another brand that could be a good alternative, which is a Ventrac tractor with attachments. This unit would be available from MTI or from Grand Meadow (Midwest Machinery). The MTI proposal would be a net cost of \$34,000 after considering the trade-in value of the existing mower. J&S Outdoors offered a price of \$31,000+. Burkholder described a number of alternatives in regard to attachments that may or may not be needed. On an apples to apples basis, Burkholder said that MTI would be approximately \$5,000 less. The committee noted that the Grand Meadow dealer might be able to provide service quicker when that is necessary. Regardless of where the unit might be purchased from, Councilor Broadwater spoke in support of the Ventrac brand as he has had great success with this brand in the past. The committee supported the proposal but Burkholder will bring this back to the next committee meeting for final approval.

Ballpark Groomer: The school district has asked if the City could groom the ballfields in Mill Creek Park because they have not been able to find someone to do the work. The total cost would be approximately \$7,800.

INTEROFFICE MEMORANDUM

TO: Park & Recreation Committee
FROM: Brian Burkholder, SCS
SUBJECT: Ventrac tractor/attachments
DATE: 9/15/2023

Action Requested: To consider and approve the replacement of our current John Deere WAM mower for a Ventrac tractor, Tough cut mower, wide area mower, sweeper, and accessories stated on the quote. Including approval to sell our current WAM Mower on Public Surplus this fall.

Background: Council did approve the trade and purchase of our 1600 John Deere WAM mower up to \$36,000 with trade. This would allow us to get on the order list in May or June to be delivered and purchased in 2024. Currently, they are still not yet taking orders for new builds for 2024.

Dan has looked at another alternative. He demoed a couple Ventrac tractors with attachments that would benefit the Public Works Dept to be used for other tasks besides just finish mowing. Examples: Roughs mower for waterways, retention ponds, cab w/heat for winter sidewalk sweeping.

Since the last committee meeting, J & S Outdoors reduced their price by \$5,000 and increased their trade-in offer to \$31,250. If we were to sell our John Deere mower on Public Surplus for \$34,000 the total would be MTI- \$27,791 and J & S- \$28,240. Difference of \$449. Our current Capital Plan shows \$32,888 for 2024 making \$28,240 would work in the budget for replacement.

I would like to recommend the purchase a new Ventrac through J & S Outdoors including attachments and accessories as stated on the quote and selling our John Deere WAM mower on Public Surplus with a minimum bid of \$32,250. Either outcome, we would be under the Capital Plan budget. We would plan to make the purchase in 2024.

Side note: We have been having emissions issues for the last 3-4 weeks and now a hydraulic motor on the front deck is leaking with the John Deere so I believe it is even more crucial to make the purchase.

Thank you for your time,
Dan Funk

Ventrac Tractor and Equipment Notes:

MTI Quote- \$67,790 Eliminate Snow Blower \$5,704 and Kit, 12V Actuator \$294.40 = \$61,791.80

Less- \$34,000 (sale Public Surplus) (offered trade discount \$15,000)

Total= \$27,791

J & S Outdoors Quote- \$67,240

Less- \$34,000 (sale Public Surplus) (offered trade discount-\$31,250)

Less- \$5,000 reduced

Total= \$28,240

***Difference of \$449.00**

Ballfield Groomer attachment: J & S- \$7,788.55



Pricing Quote

Quote #: 80074-1005

Date Quoted: July 21, 2023
Quote Expires: August 21, 2023

Prepared For:

Dan Funk
City of Chatfield
19 2nd St SW
Chatfield, MN 55923
507-421-7231
dfunk@ci.chatfield.mn.us

Prepared By:

J & S Outdoors
Jim Gansen
204 4th Ave NE
Grand Meadow, MN 55936
Phone: 5077544900

Thank you for the opportunity to quote the following Ventrac product(s) for your review. I have added the items that we feel would best serve your needs. Please feel free to contact me with any questions.

QTY	Model #	Description	Unit Price	Total
1	4520N (39.51225)	Ventrac Tractor: KN, 4520N Kubota WG972 EFI <i>Included Standard: Weight Transfer, SDLA Hand Controls, 4 Rear Weights, Front Fenders, Foot Pegs</i>	33,700.00	33,700.00
1	70.4161	Accessory: 12V FRONT Kit, 12V Front 4520/4500	385.00	385.00
1	70.4067	Accessory: DUAL WHEEL KIT Kit, Duals Field Trax Black	1,610.00	1,610.00
1	70.4140	Accessory: DIGITAL SLOPE GAUGE Kit, Slope Indicator	435.00	435.00
1	KW452 (70.2014)	Accessory: CAB Cab, KW452 for 4500/4520	8,525.00	8,525.00
1	70.2006-4	Accessory: Kit, Mirror	155.00	155.00
1	70.8162	Accessory: Kit, Cab Hazard Lights	515.00	515.00
1	70.8161	Accessory: Kit, Cab Strobe Light	390.00	390.00
1	70.8148	Accessory: Kit, Cab Windshield Washer	255.00	255.00
1	70.2006-6	Accessory: Kit, Defrost Fan	275.00	275.00
1	70.2014-51	Accessory: CAB HEATER KIT 4500/4520 Y&Z Kit, KW452 Heatr Install 4500/4520 Y&Z	360.00	360.00
1	HQ682 (39.55118)	Attachment: MOWERS - TOUGH CUT HQ, HQ682 Mower, Tough Cut	5,075.00	5,075.00
1	70.8226	Accessory: Kit, Hydraulic Flip Up HQ682	550.00	550.00
1	MK960 (39.55155)	Attachment: MOWERS - WIDE AREA MK, MK960 Wide Area Mower	7,850.00	7,850.00
1	70.8203	Accessory: Kit, Hydraulic Flip Up MK	550.00	550.00
1	KJ520 (39.55401)	Attachment: BROOM KJ, KJ520 Broom	6,200.00	6,200.00
1	70.8211	Accessory: Kit, 12V Actuator KJ	410.00	410.00
			Subtotal	67,240.00

DISCOUNTS

Promotion	-5,000.00
Trade In Value	-31,250.00
TOTAL USD \$	30,990.00

Notes:

Trade unit John Deere 1600 III WAM Mower
Serial # 1TC600TVLH650021



MEMORANDUM

TO: CHATFIELD PARK AND REC COMMITTEE
FROM: RYAN PRIEBE, WATER SUPERINTENDENT
SUBJECT: SLUSHY MACHINE
DATE: 9/15/23

Action Requested- To determine next steps on slushy machine for the pool.

Background- Not sure if we need to replace with a one station slushy machine or just no longer have it any longer. 2 of the 3 bays on the slushy machine keep having trouble with the clutch that spins slush when it freezes. We cannot seem to fix for some reason. Every spring it costs us around \$300 dollars to have all the gaskets and plungers replaced. They must take apart to clean it constantly which is not bad, but they don't always put back to together correctly.

Southeast Mechanical Inc.
 25 SW 3rd Street
 Chatfield, MN 55923
 (507)867-1604
 semechanical507@gmail.com

Invoice

Date	Invoice #
7/24/2023	32869

Bill To
City of Chatfield 21 SE 2 St. Chatfield, MN 55923

P.O. No.	Terms	Project
	Net 30	

Quantity	Description	Rate	Amount
1	<p>SERVICE REQUEST 32869 - POOL: SLUSHEE MACHINE IS CRACKED/BROKEN</p> <p>Jul 18, 2023: Labor Hours Billed by Kyle - Put the slushee machine back together and filled the 2 outer barrels with water, nothing leaked out. Added mix to right barrel, still no leaking. Unit was working correctly. *Not sure if they had parts put on wrong, or if a gasket wasn't sealing, but unit isn't broke, no leaking and worked for me*</p> <p>Service Call - Waived</p> <p>Thank you for your business!</p> <p>Credit card payments will have 3.5% fee added</p>	105.00	105.00
<p>TERMS: All invoices are due and payable upon completion of work, unless previous arrangements have been made. Invoices approved for net terms are due within 30 days. A finance charge of 2%, per month, will be charged to unpaid balances. 30 day labor warranty.</p>		Total	\$105.00

Southeast Mechanical Inc.
 25 SW 3rd Street
 Chatfield, MN 55923
 (507)867-1604
 semechanical507@gmail.com

Invoice

Date	Invoice #
7/13/2023	32677

Bill To
City of Chatfield 21 SE 2 St. Chatfield, MN 55923

P.O. No.	Terms	Project
	Net 30	

Quantity	Description	Rate	Amount
	SERVICE REQUEST 32677 - POOL: MAINTENANCE ON SLUSHEE MACHINES		
0.5	Jun 27, 2023: Labor hours billed by Larry - Lubed points of machine on the two left vats. The right side had product in it at that time. Customer should be using lube on parts whenever they empty and clean units.	105.00	52.50
1.5	Jun 19, 2023: Labor hours billed by Larry - Cleaned up machine, cleaned air filter and blew out coils. Need lube for parts.	105.00	157.50
1	Service Call-Commercial	99.00	99.00
	Thank you for your business!		
	Credit card payments will have 3.5% fee added		
TERMS: All invoices are due and payable upon completion of work, unless previous arrangements have been made. Invoices approved for net terms are due within 30 days. A finance charge of 2%, per month, will be charged to unpaid balances. 30 day labor warranty.		Total	\$309.00



City of Chatfield

Thurber Community Center • Chatfield Municipal Building
21 Second Street Southeast • Chatfield, Minnesota 55923 • 507-867-3810
www.ci.chatfield.mn.us

MEMORANDUM

TO: PARKS AND RECREATION
FROM: CRAIG BRITTON
SUBJECT: GROEN PARK PEDESTRIAN BRIDGE UPDATE
DATE: SEPTEMBER 20, 2023
CC: CITY ADMINISTRATOR, MICHELE PETERSON
SUPERINTENDENT OF CITY SERVICES, BRIAN BURKHOLDER

Action Requested: This is an update on the schedule of the installation of the pedestrian bridge. Also included in this report is a proposal, for your consideration, to complete the hydraulic analysis, provide permitting assistance and prepare foundation plans for the pedestrian bridge.

Background: The City received a grant for the installation of the pedestrian bridge in Groen Park. Contech, the bridge manufacturer, indicated that the bridge delivery date could be out approximately one year and may be delivered in the spring of 2024. In recent discussions with them, they indicated that the bridge could possibly be delivered in November of this year. In reviewing the information provided by them it was determined that a hydraulic analysis and foundation design has not been completed. Therefore, we are proposing to completed that work which is required for the DNR permit and for construction. Included in the memo is our proposal for that work, which is estimated at \$19,240. We have been in contact with the DNR about permitting and understand what permit applications are required to obtain the permit.

The goal is to get contractor quotes and to have the foundation in place prior to the arrival of the bridge. However, in the event the bridge is ready for delivery prior to being able to be placed, the bridge can be placed on higher ground in Groen Park following the delivery and set in place once the foundation has been constructed. Grading work and restoration may need to be completed in the spring of 2024. Per the grant requirements the project is required to be completed by June 30, 2024.

Sincerely,

Craig Britton

September 20, 2023

WIDSETH

City of Chatfield
Attn: Michele Peterson
21 Second Street SE
Chatfield, MN 55923
507-867-1518
mpeterson@ci.chatfield.mn.us

Rochester
3777 40th Avenue NW
Suite 200
Rochester MN 55901
507.292.8743
Rochester@Widseth.com
Widseth.com

**RE: Confirmation of Request for Engineering Services
Hydraulic Analysis and Foundation Design
Groen Park Pedestrian Bridge**

Dear Michele:

Widseth is pleased to submit a proposal to complete a hydraulic analysis of Mill Creek in the vicinity of the proposed pedestrian bridge in Groen Park along with preparing the foundation plans (abutments) for the bridge. The hydraulic analysis is required as part of the DNR permit application and will be submitted for their review and approval. The foundation system for the bridge will consist of two abutments on each side of Mill Creek and will be designed based on the loading information provided by Contech, the bridge manufacturer.

Based upon our understanding of the project, our proposed scope of services is as follows:

Hydraulic Analysis:

WIDSETH proposes to perform a hydraulic analysis of the Mill Creek corridor in the vicinity of the proposed pedestrian bridge. Items included with the proposal are:

- Perform a hydraulic model in the existing and proposed conditions to show a no rise impact of Mill Creek.
- Prepare permit documents for submittal to the DNR for review and approval.

Foundation Design / Construction Documentation:

WIDSETH proposes to perform final design services for the foundation required for the proposed pedestrian bridge. Items included with the proposal are:

- Review pedestrian bridge loading information provided by Contech.
- Preparation of Construction Documents including:
 - Foundation Design
 - Construction Details
- Preparation of technical specifications to be included on the project construction plans.

WIDSETH proposes to perform the services described above on an hourly basis, in accordance with the applicable attached fee schedule, for the estimated amount of \$19,240.

If you are in agreement with our proposed scope of services, please sign and return one copy of this letter to us as our authorization to proceed.

We realize this is an important project for the City of Chatfield, and for that reason, we welcome the opportunity to sit down with you and your staff to go over this proposal and review the approach and work tasks we have listed. If necessary, we will revise the proposal to better conform to the needs of the City for this project.

We thank you for giving us the opportunity to submit this proposal and look forward to working with City staff to make this proposed project a reality.

Sincerely,



Craig Britton, PE

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Accepted by the City of Chatfield: The above proposal and attached General Provisions of Professional Services Agreement are satisfactory and WIDSETH is authorized to do the work as specified. Payment will be made monthly in accordance with the terms on the fee schedule.

By: _____

Date: _____

General Provisions of Professional Services Agreement

These General Provisions are intended to be used in conjunction with a letter-type Agreement or a Request for Services between Widseth Smith Nolting & Assoc., Inc., a Minnesota Corporation, hereinafter referred to as WIDSETH, and a CLIENT, wherein the CLIENT engages WIDSETH to provide certain Architectural, and/or Engineering services on a Project.

As used herein, the term "this Agreement" refers to (1) the WIDSETH Proposal Letter which becomes the Letter Agreement upon its acceptance by the Client, (2) these General Provisions and (3) any attached Exhibits, as if they were part of one and the same document. With respect to the order of precedence, any attached Exhibits shall govern over these General Provisions, and the Letter Agreement shall govern over any attached Exhibits and these General Provisions. These documents supersede all prior communications and constitute the entire Agreement between the parties. Amendments to this Agreement must be in writing and signed by both CLIENT and WIDSETH.

ARTICLE 1. PERIOD OF SERVICE

The term of this Agreement for the performance of services hereunder shall be as set forth in the Letter Agreement. In this regard, any lump sum or estimated maximum payment amounts set forth in the Letter Agreement have been established in anticipation of an orderly and continuous progress of the Project in accordance with the schedule set forth in the Letter Agreement or any Exhibits attached thereto. WIDSETH shall be entitled to an equitable adjustment to its fee should there be an interruption of services, or amendment to the schedule.

ARTICLE 2. SCOPE OF SERVICES

The scope of services covered by this Agreement shall be as set forth in the Letter Agreement or a Request for Services. Such scope of services shall be adequately described in order that both the CLIENT and WIDSETH have an understanding of the expected work to be performed.

If WIDSETH is of the opinion that any work they have been directed to perform is beyond the Scope of this Agreement, or that the level of effort required significantly exceeds that estimated due to changed conditions and thereby constitutes extra work, they shall notify the CLIENT of that fact. Extra work, additional compensation for same, and extension of time for completion shall be covered by a revision to the Letter Agreement or Request for Services and entered into by both parties.

ARTICLE 3. COMPENSATION TO WIDSETH

A. Compensation to WIDSETH for services described in this Agreement shall be on a Lump Sum basis, Percentage of Construction, and/or Hourly Rate basis as designated in the Letter Agreement and as hereinafter described.

1. A Lump Sum method of payment for WIDSETH's services shall apply to all or parts of a work scope where WIDSETH's tasks can be readily defined and/or where the level of effort required to accomplish such tasks can be estimated with a reasonable degree of accuracy. The CLIENT shall make monthly payments to WIDSETH within 30 days of date of invoice based on an estimated percentage of completion of WIDSETH's services.
2. A Percentage of Construction or an Hourly Rate method of payment of WIDSETH's services shall apply to all or parts of a work scope where WIDSETH's tasks cannot be readily defined and/or where the level of effort required to accomplish such tasks cannot be estimated with any reasonable degree of accuracy. Under an Hourly Rate method of payment, WIDSETH shall be paid for the actual hours worked on the Project by WIDSETH technical personnel times an hourly billing rate established for each employee. Hourly billing rates shall include compensation for all salary costs, payroll burden, general, and administrative overhead and professional fee. In a Percentage of Construction method of payment, final compensation will be based on actual bids if the project is bid and WIDSETH's estimate to the CLIENT if the project is not bid. A rate schedule shall be furnished by WIDSETH to CLIENT upon which to base periodic payments to WIDSETH.
3. In addition to the foregoing, WIDSETH shall be reimbursed for items and services as set forth in the Letter Agreement or Fee Schedule and the following Direct Expenses when incurred in the performance of the work:
 - (a) Travel and subsistence.
 - (b) Specialized computer services or programs.
 - (c) Outside professional and technical services with cost defined as the amount billed WIDSETH.
 - (d) Identifiable reproduction and reprographic costs.
 - (e) Other expenses for items such as permit application fees, license fees, or other additional items and services whether or not specifically identified in the Letter Agreement or Fee Schedule.
4. The CLIENT shall make monthly payments to WIDSETH within 30 days of date of invoice based on computations made in accordance with the above charges for services provided and expenses incurred to date, accompanied by supporting evidence as available.

B. The CLIENT will pay the balance stated on the invoice unless CLIENT notifies WIDSETH in writing of the particular item that is alleged to be incorrect within 15 days from the date of invoice, in which case, only the disputed item will remain undue until resolved by the parties. All accounts unpaid after 30 days from the date of original invoice shall be subject to a service charge of 1 % per month, or the maximum amount authorized by law, whichever is less. WIDSETH shall be entitled to recover all reasonable costs and disbursements, including reasonable attorneys fees, incurred in connection with collecting amount owed by CLIENT. In addition, WIDSETH may, after giving seven days written notice to the CLIENT, suspend services and withhold deliverables under this Agreement until WIDSETH has been paid in full for all amounts then due for services, expenses and charges. CLIENT agrees that WIDSETH shall not be responsible for any claim for delay or other consequential damages arising from suspension of services hereunder. Upon payment in full by Client and WIDSETH's resumption of services, the time for performance of WIDSETH's services shall be equitably adjusted to account for the period of suspension and other reasonable time necessary to resume performance.

ARTICLE 4. ABANDONMENT, CHANGE OF PLAN AND TERMINATION

Either Party has the right to terminate this Agreement upon seven days written notice. In addition, the CLIENT may at any time, reduce the scope of this Agreement. Such reduction in scope shall be set forth in a written notice from the CLIENT to WIDSETH. In the event of unresolved dispute over change in scope or changed conditions, this Agreement may also be terminated upon seven days written notice as provided above.

In the event of termination, and upon payment in full for all work performed and expenses incurred to the date of termination, documents that are identified as deliverables under the Letter Agreement whether finished or unfinished shall be made available by WIDSETH to the CLIENT pursuant to Article 5, and there shall be no further payment obligation of the CLIENT to WIDSETH under this Agreement except for payment of an amount for WIDSETH's anticipated profit on the value of the services not performed by WIDSETH and computed in accordance with the provisions of Article 3 and the Letter Agreement.

In the event of a reduction in scope of the Project work, WIDSETH shall be paid for the work performed and expenses incurred on the Project work thus reduced and for any completed and abandoned work, for which payment has not been made, computed in accordance with the provisions of Article 3 and the Letter Agreement.

ARTICLE 5. DISPOSITION OF PLANS, REPORTS AND OTHER DATA

All reports, plans, specifications, field data and notes and other documents, including all documents on electronic media, prepared by WIDSETH or its consultants are Instruments of Service and shall remain the property of WIDSETH or its consultants, respectively. WIDSETH and its subconsultants retain all common law, statutory and other reserved rights, including, without limitation, copyright. WIDSETH and its subconsultants maintain the right to determine if production will be made, and allowable format for production, of any electronic media or data to CLIENT or any third-party. Upon payment in full of monies due pursuant to the Agreement, WIDSETH shall make hard copies available to the CLIENT, of all documents that are identified as deliverables under the Letter Agreement. If the documents have not been finished (including, but not limited to, completion of final quality control), then WIDSETH shall have no liability for any claims expenses or damages that may arise out of items that could have been corrected during completion/quality control. Any Instruments of Service provided are not intended or represented to be suitable for reuse by the CLIENT or others on extensions of the Project or any other project. Any modification or reuse without written verification or adaptation by WIDSETH for the specific purpose intended will be at CLIENT's sole risk and without liability or legal exposure to WIDSETH. CLIENT shall indemnify, defend and hold harmless WIDSETH from any and all suits or claims of third parties arising out of use of unfinished documents, or modification or reuse of finished documents, which is not specifically verified, adapted, or authorized in writing by WIDSETH. This indemnity shall survive the termination of this Agreement.

Should WIDSETH choose to deliver to CLIENT documents in electronic form, CLIENT acknowledges that differences may exist between any electronic files delivered and the printed hard-copy. Copies of documents that may be relied upon by CLIENT are limited to the printed hard-copies that are signed and/or sealed by WIDSETH. Files in electronic form are only for convenience of CLIENT. Any conclusion or information obtained or derived from such electronic documents will be at user's sole risk. CLIENT acknowledges that the useful life of some forms of electronic media may be limited because of deterioration of the media or obsolescence of the computer hardware and/or software systems. Therefore, WIDSETH makes no representation that such media will be fully usable beyond 30 days from date of delivery to CLIENT.

ARTICLE 6. CLIENT'S ACCEPTANCE BY PURCHASE ORDER OR OTHER MEANS

In lieu of or in addition to signing the acceptance blank on the Letter Agreement, the CLIENT may accept this Agreement by permitting WIDSETH to commence work on the project or by issuing a purchase order signed by a duly authorized representative. Such purchase order shall incorporate by reference the terms and conditions of this Agreement. In the event of a conflict between the terms and conditions of this Agreement and those contained in the CLIENT's purchase order, the terms and conditions of this Agreement shall govern. Notwithstanding any purchase order provisions to the contrary, no warranties, express or implied, are made by WIDSETH.

WIDSETH

ARCHITECTS ■ ENGINEERS
SCIENTISTS ■ SURVEYORS

ARTICLE 7. CLIENT'S RESPONSIBILITIES

A. To permit WIDSETH to perform the services required hereunder, the CLIENT shall supply, in proper time and sequence, the following at no expense to WIDSETH:

1. Provide all program, budget, or other necessary information regarding its requirements as necessary for orderly progress of the work.
2. Designate in writing, a person to act as CLIENT's representative with respect to the services to be rendered under this Agreement. Such person shall have authority to transmit instructions, receive instructions, receive information, interpret and define CLIENT's policies with respect to WIDSETH's services.
3. Furnish, as required for performance of WIDSETH's services (except to the extent provided otherwise in the Letter Agreement or any Exhibits attached hereto), data prepared by or services of others, including without limitation, core borings, probes and subsurface explorations, hydrographic and geohydrologic surveys, laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; property, boundary easement, right-of-way, topographic and utility surveys; property descriptions; zoning, deed and other land use restriction; and other special data not covered in the Letter Agreement or any Exhibits attached hereto.
4. Provide access to and make all provisions for WIDSETH to enter upon publicly or privately owned property as required to perform the work.
5. Act as liaison with other agencies or involved parties to carry out necessary coordination and negotiations; furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
6. Examine all reports, sketches, drawings, specifications and other documents prepared and presented by WIDSETH, obtain advice of an attorney, insurance counselor or others as CLIENT deems necessary for such examination and render in writing, decisions pertaining thereto within a reasonable time so as not to delay the services of WIDSETH.
7. Give prompt written notice to WIDSETH whenever CLIENT observes or otherwise becomes aware of any development that affects the scope of timing of WIDSETH's services or any defect in the work of Construction Contractor(s), Consultants or WIDSETH.
8. Initiate action, where appropriate, to identify and investigate the nature and extent of asbestos and/or pollution in the Project and to abate and/or remove the same as may be required by federal, state or local statute, ordinance, code, rule, or regulation now existing or hereinafter enacted or amended. For purposes of this Agreement, "pollution" and "pollutant" shall mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, alkalis, chemicals and hazardous or toxic waste. Hazardous or toxic waste means any substance, waste pollutant or contaminant now or hereafter included within such terms under any federal, state or local statute, ordinance, code, rule or regulation now existing or hereinafter enacted or amended. Waste further includes materials to be recycled, reconditioned or reclaimed.

If WIDSETH encounters, or reasonably suspects that it has encountered, asbestos or pollution in the Project, WIDSETH shall cease activity on the Project and promptly notify the CLIENT, who shall proceed as set forth above. Unless otherwise specifically provided in the Letter Agreement, the services to be provided by WIDSETH do not include identification of asbestos or pollution, and WIDSETH has no duty to identify or attempt to identify the same within the area of the Project.

With respect to the foregoing, CLIENT acknowledges and agrees that WIDSETH is not a user, handler, generator, operator, treater, storer, transporter or disposer of asbestos or pollution which may be encountered by WIDSETH on the Project. It is further understood and agreed that services WIDSETH will undertake for CLIENT may be uninsurable obligations involving the presence or potential presence of asbestos or pollution. Therefore, CLIENT agrees, except (1) such liability as may arise out of WIDSETH's sole negligence in the performance of services under this Agreement or (2) to the extent of insurance coverage available for the claim, to hold harmless, indemnify and defend WIDSETH and WIDSETH's officers, subcontractor(s), employees and agents from and against any and all claims, lawsuits, damages, liability and costs, including, but not limited to, costs of defense, arising out of or in any way connected with the presence, discharge, release, or escape of asbestos or pollution. This indemnification is intended to apply only to existing conditions and not to conditions caused or created by WIDSETH. This indemnification shall survive the termination of this Agreement.

9. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as CLIENT may require or WIDSETH may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as CLIENT may require to ascertain how or for what purpose any Contractor has used the moneys paid under the construction contract, and such inspection services as CLIENT may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.

10. Provide "record" drawings and specifications for all existing physical features, structures, equipment, utilities, or facilities which are pertinent to the Project, to the extent available.
11. Provide other services, materials, or data as may be set forth in the Letter Agreement or any Exhibits attached hereto.

B. WIDSETH may use any CLIENT provided information in performing its services. WIDSETH shall be entitled to rely on the accuracy and completeness of information furnished by the CLIENT. If WIDSETH finds that any information furnished by the CLIENT is in error or is inadequate for its purpose, WIDSETH shall endeavor to notify the CLIENT. However, WIDSETH shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by CLIENT.

ARTICLE 8. OPINIONS OF COST

Opinions of probable project cost, construction cost, financial evaluations, feasibility studies, economic analyses of alternate solutions and utilitarian considerations of operations and maintenance costs provided for in the Letter Agreement or any Exhibits attached hereto, are to be made on the basis of WIDSETH's experience and qualifications and represent WIDSETH's judgment as an experienced design professional. It is recognized, however, that WIDSETH does not have control over the cost of labor, material, equipment or services furnished by others or over market conditions or contractors' methods of determining their prices, and that any evaluation of any facility to be constructed, or acquired, or work to be performed on the basis of WIDSETH's cost opinions must, of necessity, be speculative until completion of construction or acquisition. Accordingly, WIDSETH does not guarantee that proposals, bids or actual costs will not substantially vary from opinions, evaluations or studies submitted by WIDSETH to CLIENT hereunder.

ARTICLE 9. CONSTRUCTION PHASE SERVICES

CLIENT acknowledges that it is customary for the architect or engineer who is responsible for the preparation and furnishing of Drawings and Specifications and other construction-related documents to be employed to provide professional services during the Bidding and Construction Phases of the Project, (1) to interpret and clarify the documentation so furnished and to modify the same as circumstances revealed during bidding and construction may dictate, (2) in connection with acceptance of substitute or equal items of materials and equipment proposed by bidders and Contractor(s), (3) in connection with approval of shop drawings and sample submittals, and (4) as a result of and in response to WIDSETH's detecting in advance of performance of affected work inconsistencies or irregularities in such documentation. CLIENT agrees that if WIDSETH is not employed to provide such professional services during the Bidding (if the work is put out for bids) and the Construction Phases of the Project, WIDSETH will not be responsible for, and CLIENT shall indemnify and hold WIDSETH, its officers, consultant(s), subcontractor(s), employees and agents harmless from, all claims, damages, losses and expenses including attorneys' fees arising out of, or resulting from, any interpretation, clarification, substitution acceptance, shop drawing or sample approval or modification of such documentation issued or carried out by CLIENT or others. Nothing contained in this paragraph shall be construed to release WIDSETH, its officers, consultant(s), subcontractor(s), employees and agents from liability for failure to perform in accordance with professional standards any duty or responsibility which WIDSETH has undertaken or assumed under this Agreement.

ARTICLE 10. REVIEW OF SHOP DRAWINGS AND SUBMITTALS

WIDSETH may review and approve or take other appropriate action on the contractor's submittals or shop drawings for the limited purpose of checking for general conformance with information given and design concept expressed in the Contract Documents. Review and/or approval of submittals is not conducted for the purpose of determining accuracy and completeness of other details or for substantiating instructions for installation or performance of equipment or systems, all of which remain the exclusive responsibility of the contractor. WIDSETH's review and/or approval shall not constitute approval of safety precautions, or any construction means, methods, techniques, sequences or procedures. WIDSETH's approval of a specific item shall not indicate approval of an assembly of which the item is a component. WIDSETH's review and/or approval shall not relieve contractor for any deviations from the requirements of the contract documents nor from the responsibility for errors or omissions on items such as sizes, dimensions, quantities, colors, or locations. Contractor shall remain solely responsible for compliance with any manufacturer requirements and recommendations.

ARTICLE 11. REVIEW OF PAY APPLICATIONS

If included in the scope of services, any review or certification of any pay applications, or certificates of completion shall be based upon WIDSETH's observation of the Work and on the data comprising the contractor's application for payment, and shall indicate that to the best of WIDSETH's knowledge, information and belief, the quantity and quality of the Work is in general conformance with the Contract Documents. The issuance of a certificate for payment or substantial completion is not a representation that WIDSETH has made exhaustive or continuous inspections, reviewed construction means and methods, verified any back-up data provided by the contractor, or ascertained how or for what purpose the contractor has used money previously paid by CLIENT.

ARTICLE 12. REQUESTS FOR INFORMATION (RFI)

If included in the scope of services, WIDSETH will provide, with reasonable promptness, written responses to requests from any contractor for clarification, interpretation or information on the requirements of the Contract Documents. If Contractor's RFI's are, in WIDSETH's professional opinion, for information readily apparent from reasonable observation of field conditions or review of the Contract Documents, or are reasonably inferable therefrom, WIDSETH shall be entitled to compensation for Additional Services for WIDSETH's time in responding to such requests. CLIENT may wish to make the Contractor responsible to the CLIENT for all such charges for additional services as described in this article.

ARTICLE 13. CONSTRUCTION OBSERVATION

If included in the scope of services, WIDSETH will make site visits as specified in the scope of services in order to observe the progress of the Work completed. Such site visits and observations are not intended to be an exhaustive check or detailed inspection, but rather are to allow WIDSETH to become generally familiar with the Work. WIDSETH shall keep CLIENT informed about the progress of the Work and shall advise the CLIENT about observed deficiencies in the Work. WIDSETH shall not supervise, direct or have control over any Contractor's work, nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the Contractor nor for the Contractor's safety precautions or programs in connection with the Work. These rights and responsibilities are solely those of the Contractor. WIDSETH shall not be responsible for any acts or omissions of any Contractor and shall not be responsible for any Contractor's failure to perform the Work in accordance with the Contract Documents or any applicable laws, codes, regulations, or industry standards.

If construction observation services are not included in the scope of services, CLIENT assumes all responsibility for interpretation of the Contract Documents and for construction observation and the CLIENT waives any claims against WIDSETH that are connected with the performance of such services.

ARTICLE 14. BETTERMENT

If, due to WIDSETH's negligence, a required item or component of the Project is omitted from the construction documents, WIDSETH shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. In no event, will WIDSETH be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project.

ARTICLE 15. CERTIFICATIONS, GUARANTEES AND WARRANTIES

WIDSETH shall not be required to sign any documents, no matter by whom requested, that would result in WIDSETH having to certify, guarantee or warrant the existence of conditions whose existence WIDSETH cannot ascertain. CLIENT agrees not to make resolution of any dispute with WIDSETH or payment of any amount due to WIDSETH in any way contingent upon WIDSETH signing such certification.

ARTICLE 16. CONTINGENCY FUND

CLIENT and WIDSETH agree that certain increased costs and changes may be required because of possible omissions, ambiguities or inconsistencies in the plans and specifications prepared by WIDSETH, and therefore, that the final construction cost of the Project may exceed the bids, contract amount or estimated construction cost. CLIENT agrees to set aside a reserve in the amount of 5% of the Project construct costs as a contingency to be used, as required, to pay for any such increased costs and changes. CLIENT further agrees to make no claim by way of direct or third-party action against WIDSETH with respect to any increased costs within the contingency because of such changes or because of any claims made by any Contractor relating to such changes.

ARTICLE 17. INSURANCE

WIDSETH shall procure and maintain insurance for protection from claims against it under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims against it for damages because of injury to or destruction of property including loss of use resulting therefrom.

Also, WIDSETH shall procure and maintain professional liability insurance for protection from claims arising out of performance of professional services caused by any negligent act, error, or omission for which WIDSETH is legally liable.

Certificates of insurance will be provided to the CLIENT upon request.

ARTICLE 18. ASSIGNMENT

Neither Party to this Agreement shall transfer, sublet or assign any rights or duties under or interest in this Agreement, including but not limited to monies that are due or monies that may be due, without the prior written consent of the other party. Subcontracting to subconsultants, normally contemplated by WIDSETH as a generally accepted business practice, shall not be considered an assignment for purposes of this Agreement.

ARTICLE 19. NO THIRD-PARTY BENEFICIARIES

Nothing contained in this Agreement shall create a contractual relationship or a cause of action by a third-party against either WIDSETH or CLIENT. WIDSETH's services pursuant to this Agreement are being performed solely for the CLIENT's benefit, and no other party or entity shall have any claim against WIDSETH because of this Agreement.

ARTICLE 20. CORPORATE PROTECTION

It is intended by the parties to this Agreement that WIDSETH's services in connection with the Project shall not subject WIDSETH's individual employees, officers or directors to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary, CLIENT agrees that as the CLIENT's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against WIDSETH, a Minnesota corporation, and not against any of WIDSETH's individual employees, officers or directors.

ARTICLE 21. CONTROLLING LAW

This Agreement is to be governed by the laws of the State of Minnesota.

ARTICLE 22. ASSIGNMENT OF RISK

In recognition of the relative risks and benefits of the project to both the CLIENT and WIDSETH, the risks have been allocated such that the CLIENT agrees, to the fullest extent permitted by law, to limit the liability of WIDSETH, employees of WIDSETH and sub-consultants, to the CLIENT and to all construction contractors, subcontractors, agents and assigns on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that total aggregate liability of WIDSETH, employees of WIDSETH and sub-consultants, to all those named shall not exceed \$10,000 or WIDSETH's total fee received for services rendered on this project, whichever is greater. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contract or warranty.

ARTICLE 23. NON-DISCRIMINATION

WIDSETH will comply with the provisions of applicable federal, state and local statutes, ordinances and regulations pertaining to human rights and non-discrimination.

ARTICLE 24. SEVERABILITY

Any provision or portion thereof in this Agreement which is held to be void or unenforceable under any law shall be deemed stricken and all remaining provisions shall continue to be valid and binding between CLIENT and WIDSETH. All limits of liability and indemnities contained in the Agreement shall survive the completion or termination of the Agreement.

ARTICLE 25. PRE-LIEN NOTICE PURSUANT TO THE AGREEMENT WIDSETH WILL BE PERFORMING SERVICES IN CONNECTION WITH IMPROVEMENTS OF REAL PROPERTY AND MAY CONTRACT WITH SUBCONSULTANTS OR SUBCONTRACTORS AS APPROPRIATE TO FURNISH LABOR, SKILL AND/OR MATERIALS IN THE PERFORMANCE OF THE WORK. ACCORDINGLY, CLIENT IS ENTITLED UNDER MINNESOTA LAW TO THE FOLLOWING NOTICE:

- (a) ANY PERSON OR COMPANY SUPPLYING LABOR OR MATERIALS FOR THIS IMPROVEMENT TO YOUR PROPERTY MAY FILE A LIEN AGAINST YOUR PROPERTY IF THAT PERSON OR COMPANY IS NOT PAID FOR ITS CONTRIBUTIONS.**
- (b) UNDER MINNESOTA LAW, YOU HAVE THE RIGHT TO PAY PERSONS WHO SUPPLIED LABOR OR MATERIALS FOR THIS IMPROVEMENT DIRECTLY AND DEDUCT THIS AMOUNT FROM OUR CONTRACT PRICE, OR WITHHOLD THE AMOUNTS DUE FROM US UNTIL 120 DAYS AFTER COMPLETION OF THE IMPROVEMENT UNLESS WE GIVE YOU A LIEN WAIVER SIGNED BY PERSONS WHO SUPPLIED ANY LABOR OR MATERIALS FOR THE IMPROVEMENT AND WHO GAVE YOU TIMELY NOTICE.**