

AGREEMENT FOR ARCHITECTURAL SERVICES

LHB, INC.
&
CITY OF DULUTH

THIS AGREEMENT, effective as of the date of attestation by the City Clerk (the “Effective Date”), by and between the CITY OF DULUTH, hereinafter referred to as City, and LHB, Inc. located at 21 W. Superior, Street, Suite 500, Duluth, MN 55802, hereinafter referred to as Architect for the purpose of rendering services to the City.

RECITALS

WHEREAS, subject to necessary agreements and approvals as hereinafter set forth, it is the intention of the City to undertake replacement of the Chester Bowl Chalet (the “Project”), located at 1801 E. Skyline Parkway, Duluth, MN 55812, the scope and character of the Project is described as identified in the Request for Proposals RFP titled Chester Bowl Chalet – Request for Proposal Architectural/Engineering Services; and

WHEREAS, the City desires to engage the Architect to render those architectural services in connection with the Project as are hereinafter specified below to be included in this Agreement; and

WHEREAS, Architect has represented that it is qualified and willing to perform the services.

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto do mutually agree as follows:

The Architect shall perform and provide those architectural services specified below regarding the Project as directed by the City’s Property & Facilities Manager or designee, hereinafter referred to as the City’s representative. Subject to the terms and conditions of this Agreement, the specific services are further described in Architect’s Proposal entitled “Chalet Renovations – Chester Bowl – Proposal for Services – Draft #2,” submitted by Architect, dated October 15, 2015, and attached hereto as Exhibit A, which is made a part hereof, provided that in the event of a conflict between the Proposal and any of the terms and Conditions of this Agreement, the terms and conditions of this Agreement shall govern.

ARTICLE 1

Architect's Services

BASIC SERVICES

1.1 The Architect's Basic Services consist of up to seven phases described below as Phases A through G; the specific services included in this Agreement are checked below and include normal structural, mechanical, electrical, and civil engineering services and any other services except "Additional Services" as defined in Section 1.2 below.

1.1.1 A more particular description of each phase is contained in this Article I, "Basic Services", of the Agreement:

<u>Phase</u>	<u>Description</u>
☐ A.	Study and Report Phase/Pre-Design Phase
☐ B.	Schematic Design Phase (Previously performed under the AIA contract)
☒ C.	Design Development Phase
☒ D.	Construction Document Phase
☒ E.	Bidding Phase
☒ F.	Construction Phase
☒ G.	Post Construction Phase

1.1.2 The Architect's services consist of those services performed by the Architect, Architect's employees, and Architect's consultants as enumerated in this Agreement and any other services included in Section 1.2.

1.1.3 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the construction work related to the Project, hereinafter referred to as the "Work."

1.1.4 Upon request of City or its representative and as soon as practicable after the date of this Agreement, the Architect shall submit for City's or its representative's approval a schedule for the performance of the Architect's services which may be adjusted as the Project proceeds and shall include allowances for periods of time required for City or its representative's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established

by this schedule approved by City or its representative shall be adhered to by the Architect.

1.1.5 The services covered by this Agreement are subject to the time limitations contained in this Agreement or attachments made a part hereof. The deadline for Project completion is December 31, 2027.

1.1.6 Phase A. Study and Report Phase/Pre-Design Phase

☐ Included in this Agreement

☒ Not included in this Agreement.

1.1.6.1 The Architect shall review the program requirements furnished by the City to ascertain the requirements of the Project and shall present such requirements to the City for approval. The Architect shall notify the City of (1) any inconsistencies discovered in the information and (2) other information or consulting services that may be reasonably needed for the Project.

1.1.6.2 The Architect shall advise the City as to the necessity of the City providing or obtaining from others data or services of the types described in Section 1.2. in order to evaluate or complete the Project and, if directed by the City's representative, act on behalf of the City in obtaining such other data or services.

1.1.6.3 The Architect shall provide analysis of the City's needs, planning surveys, site evaluations, and comparative studies of prospective sites and solutions.

1.1.6.4 The Architect shall provide a general economic analysis of various alternatives based on economic parameters and assumptions provided by the City.

1.1.6.5 The Architect shall prepare a report containing conceptual renderings and design criteria with appropriate exhibits to indicate clearly the considerations involved and the alternative solutions available to the City and setting forth the Architect's findings and recommendations with opinions of probable total costs for the Project, including construction cost, contingencies, allowances for charges of all professionals and consultants, allowances for the cost of land and rights-of-way, compensation for or damages to properties and interest and financing charges (all of which are hereinafter called "Project Costs").

1.1.6.6 The Architect shall furnish an electronic copy and one hard copy of the report and present and review the report in person with the City as the City representative shall direct. The cost of report reproduction shall be considered a reimbursable expense and paid in accordance with 4.4 of this Agreement.

1.1.6.7 The duties and responsibilities of Architect during the Study and Report Phase shall also include any additional duties and responsibilities to be provided pursuant to the Architect's Proposal attached as Exhibit A.

1.1.6.8 The Study and Report Phase shall be completed and report submitted by N/A.

1.1.7 Phase B. Schematic Design Phase

☐ Included in this Agreement

☒ Not included in this Agreement. (Previously performed)

1.1.7.1 Based on the mutually agreed upon program, the Architect shall prepare, for approval by City, Schematic Design Studies consisting of drawings and other documents illustrating the scale and relationship of Project components, including a site plan, if appropriate and preliminary plans, sections, evaluations; and may include some combination of study models, perspective sketches, or digital modeling.

1.1.7.2 The Architect shall submit to the City a Statement of Probable Construction Cost based on current area, volume or other unit costs.

1.1.7.3 The Schematic Design Phase shall be completed by N/A.

1.1.8 Phase C. Design Development Phase

☒ Included in this Agreement

☐ Not included in this Agreement.

1.1.8.1 The Architect shall prepare, from the approved Schematic Design Studies, the Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the entire Project as to structural, mechanical, electrical and any other appropriate systems, and materials and such other essentials as may be appropriate. The Architect shall submit such Design Development Documents to the City for

approval and shall not commence work on the Construction Documents until such time as the City shall direct.

1.1.8.2 The Architect shall submit to the City an updated Statement of Probable Construction Cost. Statements of Probable Construction Cost and Detailed Cost Estimates prepared by the Architect represent the Architect's best judgment as a design professional familiar with the construction industry.

1.1.8.3 The duties and responsibilities of Architect during the Design Development Phase shall also include any additional duties and responsibilities to be provided pursuant to the Architect's Proposal attached as Exhibit A.

1.1.8.4 The Design Development Phase shall be completed by December 5, 2025.

1.1.9 Phase D. Construction Documents Phase

☒ Included in this Agreement

☐ Not included in this Agreement.

1.1.9.1 The Architect shall prepare, from the approved Design Development Documents and any changes in the scope of the Project then authorized by the City, Drawings and Specifications setting forth in detail the requirements for the construction of the entire Project, including the necessary bidding information, and shall assist in the preparation of bidding forms, the General Conditions and Special Conditions of the Contract or Contracts, and the form of the Agreement between the City and the Contractor, as requested by the City, hereinafter referred collectively to as the "Contract Documents." The Architect shall prepare necessary specifications and related bidding documents in final form. The Architect shall submit such Construction Documents to the City for approval and shall not commence to advertise for bids or prepare for construction of the Project until such time as the City shall direct.

1.1.9.2 The Architect shall submit to the City an updated Statements of Probable Construction Cost, including any adjustments indicated by changes in requirements, scope of the Project, or general market conditions.

1.1.9.3 The Architect shall be responsible for filing the required documents for the

approval of governmental authorities having jurisdiction over the project.

1.1.9.4 The duties and responsibilities of Architect during the Construction Documents Phase shall also include any additional duties and responsibilities to be provided pursuant to the Architect's Proposal attached as Exhibit A.

1.1.9.5 The Construction Documents Phase shall be completed by February 6, 2026.

1.1.10 Phase E. Bidding Phase

☒ Included in this Agreement

☐ Not included in this Agreement.

1.1.10.1 The Architect, following the City's approval of the Construction Documents and of the latest Statement of Probable Construction Cost, shall assist the City in obtaining bids or negotiated proposals, and shall assist in awarding and preparing contracts for construction. The Architect shall assist in preparing responses to questions from prospective bidders and provide clarifications and interpretations of bidding documents.

1.1.10.2 The Bidding Phase shall be completed by February 28, 2026.

1.1.11 Phase F. Construction Phase

☒ Included in this Agreement

☐ Not included in this Agreement.

1.1.11.1 The Construction Phase will commence with the award of the Construction Contract or Contracts and will terminate when the final payment is issued to the Contractor or Contractors by the City.

1.1.11.2 During the Construction Phase, the Architect shall advise and consult with the City concerning the Contractor's or Contractors' compliance with the Drawings and Specifications setting forth the requirements for the construction of the entire Project.

1.1.11.3 To the extent set out in this Agreement, the Architect shall have authority to act on behalf of the City during or in connection with the Architect's visits to the site of the Work. The Architect shall have a duty to protect the interests of the City, or to observe conformance with Contract Documents.

1.1.11.4 The Architect shall at all times have access to the site of the Work wherever it is in preparation or progress.

1.1.11.5 The Architect shall visit the site of the Work at intervals appropriate to the stage of construction in order to become familiar with the progress and quality of the Work and to determine if the Work is proceeding in general in accordance with the Contract Documents. The Architect shall not be required to make exhaustive or continuous on-site inspections to examine the quality or quantity of the Work. Based on on-site inspections, Architect shall advise City of the progress and quality of the Work. The Architect shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and the Architect shall not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. Architect will as an additional service cooperate with the Contractor in value engineering changes to the project.

1.1.11.6 The Architect shall determine the amounts owing to the Contractor based on observations at the site and on evaluations of the Contractor's Applications for Payment, and shall issue Certificates for Payment in such amounts, as provided in the Contract Documents.

1.1.11.7 The issuance of a Certificate for Payment shall constitute a representation by the Architect to the City, based on the Architect's observations at the site of the Work, and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated; that, to the Architect's knowledge, information, and belief, the quality of the Work is in general accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion of the Work, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Certificate for Payment); and that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the Architect has made any examination to ascertain how and for what purpose the Contractor has used the monies paid on account of the Contract Sum of the Construction

Contract.

1.1.11.8 The Architect shall be the interpreter of the requirements of the Contract Documents and the judge of the performance thereunder by the Contractor. The Architect shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the City or the Contractor, and shall render written interpretations, within a reasonable time, on all claims, disputes, and other matters in question between the City and the Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents.

1.1.11.9 Interpretations of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in written or graphic form. In the capacity of interpreter, the Architect shall endeavor to secure faithful performance by the Contractor.

1.1.11.10 The Architect shall have authority to reject Work which does not conform to the Contract Documents. Whenever, in the Architect's reasonable opinion, it is necessary or advisable for the implementation of the intent of the Contract Documents, the Architect will have authority to require special inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work be then fabricated, installed, or completed.

1.1.11.11 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 conformance with the design concept of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

1.1.11.12 The Architect shall prepare change orders for the City's approval and execution in accordance with the Contract Documents, and shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which changes are not inconsistent with the intent of the Contract Documents.

1.1.11.13 The Architect shall conduct inspections to determine the dates of substantial completion and final completion, shall receive and forward to the City for the City's review written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment.

1.1.11.14 The duties and responsibilities of Architect during the Construction Phase shall also include any additional duties and responsibilities to be provided pursuant to the Architect's Proposal attached as Exhibit A.

1.1.11.15 The extent of the duties, responsibilities, and limitations of authority of the Architect as the City's representative during the Construction Phase shall not be modified or extended without written consent of the City and the Architect.

1.1.11.16 The Construction Phase shall be completed by December 31, 2026.

1.1.12 Phase G. Post Construction Phase

 X Included in this Agreement

 Not included in this Agreement.

1.1.12.1 The Architect shall assist in project orientation of City and users and shall conduct warranty inspections.

1.1.12.2 The Architect as an additional service shall prepare a set of reproducible record prints of drawings showing significant changes in the Work made during the construction process, based on marked-up prints, drawings and other data furnished by the Contractor to the Architect.

1.1.12.3 The duties and responsibilities of Architect during the Post Construction Phase shall also include any additional duties and responsibilities to be provided pursuant to the Architect's Proposal attached as Exhibit A.

1.1.12.4 The Post Construction Phase shall be completed by December 31, 2027.

ADDITIONAL SERVICES

1.2 An Additional Service is one that is not described in Article I of this Agreement or documents referred to therein. The Architect shall advise the City when any service is considered

additional, and the method and/or amount of compensation shall be determined prior to any Additional Services being undertaken. Any Additional Service performed without prior approval of the City, in writing, shall be done at no additional charge to the City. Accurate records of all expenses attributed to Additional Services shall be maintained by the Architect. The following Additional Services shall be provided when authorized in writing by the City representative:

- 1.2.1 Providing analyses of the City's needs and programming the requirements of the Project.
- 1.2.2 Providing financial feasibility or other special studies other than construction cost.
- 1.2.3 Providing planning surveys, site evaluations, environmental studies or comparative studies of prospective sites in addition to those set out in the construction documents or this Agreement.
- 1.2.4 Providing design services relative to future facilities, systems and equipment which are not intended to be constructed as part of the Project.
- 1.2.5 Providing services to investigate existing conditions or facilities, or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by the City.
- 1.2.6 Preparing documents for alternate bids or out-of-sequence services requested by the City.
- 1.2.7 Providing detailed quantity surveys or inventories of material, equipment and labor.
- 1.2.8 Providing interior design and other services required for or in connection with the selection of furniture and furnishings.
- 1.2.9 Providing services for planning tenant or rental spaces.
- 1.2.10 Making revisions in Drawings, Specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given and are due to causes beyond the control of the Architect including enactment or revision of codes, laws or regulations, or official interpretations or delays of the Owner.
- 1.2.11 Preparing supporting data and other services in connection with change orders, provided the change orders are due to causes beyond the control of the Architect and require architectural services beyond the preparation and distribution of the change order

documents.

1.2.12 Making investigations involving detailed appraisals and valuations of existing facilities, and surveys or inventories required in connection with construction performed by the City.

1.2.13 Providing consultation concerning replacement of any Work damaged by fire or other cause during construction and furnishing professional services of the type set forth in Section 1.1 as may be required in connection with the replacement of such Work.

1.2.14 Providing professional services made necessary by the default of the Contractor or by major defects in the Work of the Contractor in the performance of the Construction Contract.

1.2.15 Providing extensive assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

1.2.16 Evaluation of substitutions and revision of the Drawings to incorporate accepted value engineering and substitutions.

1.2.17 Any services listed in 4.2 of the AIA Agreement listed as being provided by Owner.

1.2.18 Preparation for, and attendance at, a public presentation, meeting or hearing beyond those necessary to obtain the permit variance needed for this Project.

1.2.19 Preparation for and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is a party thereto.

1.2.20 Evaluation of the qualifications of bidder or persons providing proposals;

1.2.21 Manufacturer's notification after the issuance of drawings that the materials selected are no longer available.

1.2.22 Preparation of marketing materials, models, and presentation sketches.

1.2.23 Preparation of Documents for alternate, separate, or sequential bids or the provision of bidding or negotiation services or consultation prior to the completion of the Construction Documents.

1.2.24 Documentation of Work where modifications have been made through direct

communication between the Owner and the Contractor.

1.2.25 Providing services after issuance to the City of the final Certificate for Payment, except as delineated in Paragraph 1.1.11.7.

1.2.26 Preparing to serve or serving as an expert witness in connection with any public hearing, arbitration proceeding or legal proceeding.

1.2.27 Providing services of professional consultants for other than the normal structural, mechanical, electrical, and civil engineering services for the Project.

1.2.28 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.

1.2.29 when services exceed the limits below

.1 Two (2) reviews of each shop drawings, project data item, sample and similar submittal of the Contractor;

.2 Twenty (20) visits to the site by Architect over the duration of the Project during construction

.3 One (1) inspection for any portion of the work to determine final completion.

ARTICLE 2

The City's Responsibilities

2.1 The City shall provide full information regarding City's requirements for the Project, including a complete program setting forth the City's objectives, criteria, objectives and constraints.

2.2 The City shall designate, when necessary, a representative authorized to act on the City's behalf with respect to the Project. The City shall examine documents submitted by the Architect and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Architect's services.

2.3 The City shall furnish a certified land survey of the site giving, as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and complete data pertaining to existing buildings, other improvements and trees; and full information concerning available service and utility lines both public and private, above and below grade, including inverts and depths.

2.4 The City shall furnish the services of a soils engineer or other consultant when such services are deemed necessary by the Architect, including reports, test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests and other necessary operations for determining subsoil, air and water conditions, with appropriate professional recommendations.

2.5 The City shall furnish structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the Contract Documents.

2.6 The City shall furnish such legal, accounting, and insurance counseling services as may be necessary for the Project and such auditing services as the City may require to ascertain how or for what purposes the Contractor has used the monies paid to the Contractor under the Construction Contract.

2.7 The services, information, surveys and reports required by Paragraphs 2.3 through 2.6 inclusive shall be furnished at the City's expense, and the Architect shall be entitled to reasonably rely upon the accuracy and completeness thereof.

2.8 If the City becomes aware of any fault or defect in the Project or non-conformance with the Contract Documents, the City shall give prompt written notice thereof to the Architect.

2.9 The City shall furnish required information as expeditiously as necessary for the orderly progress of the Work.

2.10 Architect shall be entitled to rely upon the accuracy and completeness of the information, surveys and reports furnished by the Owner or the previous owner.

ARTICLE 3

Construction Cost

3.1 A fixed limit of **Construction Cost of Three Million, One Hundred Thousand and 00/100 Dollars (\$3,100,000.00)** which includes a bidding contingency of 10%, is hereby established as a condition of this Agreement, and it shall be the Architect's responsibility to endeavor to maintain the cost of construction within that amount, unless another amount is agreed upon in writing. The Construction Cost is the total cost to the City of all Work designed or specified by the Architect and shall be determined as follows:

3.1.1 The lowest bona fide bid received from a qualified bidder for any or all of such work,

including the contractors' general conditions costs, overhead, profit, and contingencies.

3.1.2 Construction Cost does not include the compensation of the Architect or the Architect's consultants, the cost of land, right-of-way, or other costs which are the responsibility of the City as provided in Paragraph 2.3 through 2.6 inclusive.

3.1.3 If the Bidding Phase has not commenced within six (6) months after the Architect submits the Construction Documents to the City, any fixed limit of Construction Cost established as a condition of this Agreement shall be adjusted to reflect any change in the general level of prices which may have occurred in the construction industry for the area in which the Project is located. The adjustment shall reflect changes between the date of submission of the Construction Documents to the City and the date on which proposals are sought.

3.1.4 If the fixed limit of Construction Costs, including the bidding contingency (adjusted as provided in Paragraph 3.1.3, if applicable) is exceeded by the lowest bona fide bid, the City shall cooperate in revising the Project scope and quality as required to reduce the Probable Construction Cost. The Architect, without additional charge, shall modify the Drawings and Specifications and assist in rebidding the Project as necessary to bring the Construction Cost within the fixed limit.⁵

ARTICLE 4

Compensation

4.1 It is expressly agreed and understood that in no event shall the total amount to be paid by the City to the Architect under this Agreement exceed One Hundred Ninety-Seven Thousand, Six Hundred Twenty-Five and 00/100 Dollars (\$197,625.00) for full and complete satisfactory performance, unless specified by means of written amendments to this Agreement as provided for herein.

4.2 Compensation to be paid by the City to the Architect for the Architect's Basic Services for each of the Phases specified above shall in no event exceed the following amounts:

Phase A: \$ _____

Phase B. \$ _____

Phase C: \$58,125.00

Phase D: \$74,400.00
Phase E: \$6,975.00
Phase F: \$57,000.00
Phase G: \$1,125.00

4.3 For Additional Services, as described in Paragraphs 1.2.1 through 1.2.20 above, if such services are authorized and if funds are provided therefore in Paragraph 4.5 below, compensation up to the authorized amount shall be computed as follows, unless a fee proposal is included in the Exhibit A attached hereto which supersedes the following:

4.3.1 Principal's time at the fixed rate of \$280 per hour. For the purpose of this Agreement, the Principal(s) is LHB, Inc.

4.3.2 Employees' time (other than Principals) at a multiple of one and nine-tenths (1.9) times the employees' Direct Personnel Expense. (Direct Personnel Expense is defined as the salaries of professional, technical and clerical employees engaged on the project by the Architect, and the prorated cost of their mandatory and customary benefits such as statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar benefits.)

4.3.3 Services of professional consultants at a multiple of one and one-quarter (1.25) times the amount billed to the Architect for such services.

4.4 Reimbursable Expenses, if such expenses are authorized and if funds are provided therefore in Paragraph 4.5 below, are in addition to the Compensation for Basic and Additional Services and include actual expenditures made by the Architect, the Architect's employees or the Architect's professional consultants in accordance with the provisions of any written amendments to this Agreement, for the expenses listed in the following Subparagraphs:

4.4.1 Expense of transportation and living when traveling in connection with the Project (does not include travel from Architect's office to Duluth if Architect's business is not located in the Duluth metro area); and fees paid for securing approval of authorities having jurisdiction over the Project.

4.4.2 Expense of Bid Document reproductions in the number of sets as requested by City.

4.4.3 If authorized in advance by the City, expense of overtime work requiring higher than regular rates and expense of renderings or models for the City's use.

4.5 It is agreed and understood that Additional Services and Reimbursable Expenses shall be compensated by the City only up to the following amounts:

4.5.1 Additional Services \$0.00.

4.5.2 Reimbursable Expenses \$1500.00.

ARTICLE 5

Payments

5.1 The City shall make payments under this Agreement charging such amounts to fund 205-130-1220-5520-CM205-CHSTER-MMPIMP.

5.1.1 Payments to the Architect for the services specified herein shall be made monthly or upon completion of each phase, upon presentation of an approved invoice for payment.

5.1.2 If the Contract Time initially established in the Construction Contract is exceeded by more than 30 days (to be included via amendment) through no fault of the Architect, compensation for Basic Services performed by Principals, employees and professional consultants required to complete the administration of the Construction Contract beyond said period shall be computed as set forth in Section 4.3.

5.1.3 Payments for Additional Services of the Architect as defined in Paragraphs 1.2.1 through 1.2.20 and for Reimbursable Expenses as defined in Section 4.4, shall be made monthly upon presentation of the Architect's statement of services rendered.

5.1.4 No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages, or other sums withheld from payments to contractors.

5.1.5 If the Project is suspended for more than three (3) months or abandoned in whole or in part, the Architect shall be paid compensation for services performed prior to receipt of written notice from the City of such suspension or abandonment, together with Reimbursable Expenses then due. If the Project is resumed after being suspended for more than three (3) months, the Architect's compensation shall be subject to renegotiation. Provided that, if after completion of the Work covered by the original form of this Agreement, the Agreement is amended to include any additional work, each such amendment shall not constitute a suspension and resumption event, and the provisions of this Paragraph shall apply only to the work covered by each such amendment.

ARTICLE 6

Architect's Accounting Records

6.1 Records of Reimbursable Expenses and expenses pertaining to Additional Services on the Project and for services performed on the basis of multiple employees' Direct Personnel Expenses shall be kept on a generally recognized accounting basis and shall be available to the City or the City's authorized representative at reasonable times.

ARTICLE 7

Termination of Agreement

7.1 This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligation under this Agreement through no fault of the terminating party; provided that no such termination may be affected unless the other party is given not less than seven (7) calendar days' prior written notice (delivered personally, by email or by U.S. mail) of intent to terminate.

7.2 This Agreement may be terminated in whole or in part in writing by the City for its convenience; provided that the Architect is given (1) not less than seven (7) calendar days' prior written notice (delivered personally, by email or by U.S. mail) of intent to terminate, and (2) an opportunity for consultation with the City prior to termination.

7.3 Upon receipt of a notice of intent to terminate from the City pursuant to this Agreement, the Architect shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) make available to the City at any reasonable time at a location specified by the City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have accumulated by the Architect in performing this Agreement, whether completed or in process.

7.4 Upon termination pursuant to this Agreement, the City may take over the work and prosecute the same to completion by agreement with another party or otherwise.

7.5 In the event of termination by City pursuant to Paragraph 7.2 above, the Architect shall be paid compensation for services performed to termination date, including reimbursable expenses then due.

ARTICLE 8

Ownership of Documents and Expression

8.1 All drawings, specifications, reports, records, rights to copyright, and other work product developed by the Architect in connection with this Project shall remain the property of the City whether the Project is completed or not. Reuse of any of the work product of the Architect by the City on extensions of this Project or any other Project without written permission of the Architect shall be at the City's risk and the City agrees to defend, indemnify and hold harmless the Architect from all damages and costs including attorney fees to Architect arising out of any claim of a third party against Architect which claim arises out of such reuse by the City or others acting through the City and which damage is directly caused by such use.

ARTICLE 9

Successors and Assigns

9.1 The City and the Architect each binds their respective partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators, and assigns of such other party, in respect to all covenants of this agreement; the Architect shall not assign, sublet, or transfer their respective interests in this Agreement without the written consent of the City. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the City and the Architect.

ARTICLE 10

Extent of Agreement

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

ARTICLE 11

Governing Law

11.1 Unless otherwise specified, this Agreement shall be governed by the applicable laws of the City of Duluth and State of Minnesota.

ARTICLE 12

Changes

12.1 The City or the Architect may, from time to time, request changes in the scope of the services to be performed hereunder. To be in force, such changes, including the increase or decrease in the amount of the Architect's compensation, which are mutually agreed upon by and between the City and the Architect, shall be incorporated in written amendments to this Agreement. The Architect shall maintain records relative to changes in the scope of the service and the Work.

ARTICLE 13

Hold Harmless and Insurance

13.1 To the fullest extent permitted by law, Architect agrees that it shall indemnify and hold harmless the City, its officers, employees, and agents, past or present, from and against any and all claims including but not limited to claims for contribution or indemnity, demands, suits, judgments, costs, and expenses (including attorneys' fees) asserted by itself or any person or persons including agents or employees of the City of Duluth or Architect by reason of death or injury to person or persons or the loss or damage to property arising out of, or by reason of, any act, omission, operation or work of Architect or its employees while engaged in the execution or performance of services under this Agreement. Said obligations to indemnify and hold harmless shall include, but not be limited to the obligation to indemnify and hold harmless the City in all matters where claims of liability against the City arise out of, relate to, are attributable to, are passive or derivative of, or vicarious to the negligent, intentional, or wrongful acts or omissions of Architect, including but not limited to the failure to supervise, breach of warranty, the failure to warn, the failure to prevent such act or omission by Architect, its employees, or its agents, and any other source of liability. Architect shall not be required to indemnify City for amounts found by a fact finder to have arisen out of the sole negligent or intentional acts or omission of the City unless Architect should fail to comply with its insurance obligations in this contract to the detriment of City, in which case Architect shall indemnify and hold harmless the City for any and all amounts except amounts attributed to intentional, willful or wanton acts of the City.

This Section, in its entirety, shall survive the termination of this Agreement if any amount of work has been performed by Architect. Nothing in this provision shall affect the limitations of

liability of the City as set forth in Minnesota Statutes Chapter 466. Nothing in this provision shall be interpreted to require the Architect to indemnify or hold the City harmless in excess of the limitations under Minnesota Statutes section 604.21.

Architect understands this provision may affect its rights and may shift liability.

Architect shall defend and hold and save the City, its officers, employees, representatives and agents, and the Architect, harmless from liability of any nature or kind, including costs and expenses, for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by the City, unless otherwise specifically stipulated in the Technical Specifications.

13.2 The Architect shall obtain the following minimum amounts of insurance from insurance companies authorized to do business in the State of Minnesota

- a. Worker's Compensation Insurance in accordance with the laws of the State of Minnesota.
- b. Commercial General and Automobile Liability Insurance with limits not less than **\$1,500,000** Single Limit shall be in a company approved by the city of Duluth; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability. Umbrella coverage with a "form following" provision may make up the difference between the commercial general and auto liability coverage amounts and the required minimum amount stated above.
- c. Professional Liability Insurance in an amount not less than **\$1,500,000** Single Limit; provided further that in the event the professional liability insurance is in the form of "claims made," insurance, Architect hereby commits to provide at least 60 days' notice prior to any change to the Professional Liability Insurance policy or coverage ; and in event of any change, Architect agrees to provide the City with either evidence of new insurance coverage conforming to the provisions of this Paragraph which will provide unbroken protection to the City, or, in the alternative, to purchase at its cost, extended coverage under the old policy for the period the state of repose runs; the protection to be provided by said "claims made" insurance shall remain in place until the running of the statute of repose for claims related to this Agreement.

d. **City of Duluth shall be named as Additional Insured** under the Commercial General and Automobile Liability policies. Architect shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance. Architect to provide Certificate of Insurance evidencing such coverage with notice to City of cancellation in accordance with the provisions of the underlying insurance policy included. The City of Duluth does not represent or guarantee that these types of limits of coverage are adequate to protect the Architect's interests and liabilities.

13.3 Certificates showing that the Architect is carrying the above-described insurance in the specified amounts shall be furnished to the City prior to the execution of this Agreement and a certificate showing continued maintenance of such insurance shall be filed with the City during the term of this Agreement.

13.4 The City shall be named as an additional insured on each liability policy other than the Professional Liability and Worker's Compensation policies of Architect.

13.5 The certificates shall provide that the policies shall not be changed or canceled during the life of the Agreement without advanced notice being given to the City at least equal to that provided for in the underlying policy of insurance. For the purposes of this Paragraph 13.5 of this Agreement, the term "change," shall include cancellation of a policy of insurance provided hereunder and any modification of such policy which reduces the amount of any coverage provided thereunder below the amounts required to be provided hereunder or otherwise reduces the protections provided under such policy to City.

ARTICLE 14

General Conditions

14.1 This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in "portable document format" (".pdf"), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

14.2 This Agreement is subject to and incorporates the "City of Duluth Supplementary Provisions for State and/or Federally Assisted Activities" (latest edition), which is incorporated by reference.

ARTICLE 15

Miscellaneous

15.1 Exhibit "A," Architect's technical proposal titled "Chalet Renovations – Chester Bowl – Proposal for Services – Draft #2", dated October 15, 2017, is hereby incorporated into this Agreement.

15.2 Exhibit "B", Architect's fee proposal titled "Fee Proposal for Professional Design Services – Chalet Renovation/Addition", dated February 10, 2017, is hereby incorporated into this Agreement.

15.3 Exhibit "C", AIA Document G802-2017 titled "Amendment to the Professional Services Agreement", dated April 20, 2017, is hereby incorporated into this Agreement.

[Remainder of page intentionally left blank. Signature page to follow.]

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date of attestation shown below.

CITY OF DULUTH

By: _____
Mayor

Attest:

By: _____
City Clerk

Date: _____

Countersigned:

City Auditor

Approved as to Form:

City Attorney

LHB, INC.

By: _____

Its: _____
Title of Representative

Date: _____