



GRAND RAPIDS ECONOMIC DEVELOPMENT AUTHORITY MEETING AGENDA

Thursday, April 27, 2023
4:00 PM

NOTICE IS HEREBY GIVEN, that a regular meeting of the Grand Rapids Economic Development Authority will be held in the City Council Chambers in the Grand Rapids City Hall, 420 North Pokegama Avenue, in Grand Rapids, Minnesota on Thursday, April 27th, 2023 immediately following the closed meeting.

CALL TO ORDER

CALL OF ROLL

SETTING OF THE REGULAR AGENDA - *This is an opportunity to approve the regular agenda as presented, or to add/delete an agenda item by a majority vote of the Commissioners present .*

APPROVE MINUTES

1. Consider approval of the April 13th, 2023 regular meeting minutes.

APPROVE CLAIMS

2. Consider approval of claims in the amount of \$26,250.30

BUSINESS

3. Consider approval of a Downtown Entertainment Loan to KAXE Northern Community Radio for the 2023 Riverfest.
4. Consider approval of a lease with Kim Erickson dba Growing Harmony Within for Suite 109 of Central School
5. Review and consider approval of the policy and application form for the newly established Downtown Mandated Building Improvement Loan Program.
6. Consider approval of an Acquisition Services Agreement with Wellson Group, Inc.
7. Consider approval of an Agreement for Professional Services with Short Elliot Hendrickson (SEH).

UPDATES

ADJOURN

MEMBERS & TERMS

Tom Sutherland - 12/31/2023 Council Representative

Tasha Connolly - 12/31/2023 Council Representative

Mike Korte - 3/1/24
Wayne Bruns - 3/1/25
Sholom Blake - 3/1/25
Al Hodnik - 3/1/27



GRAND RAPIDS ECONOMIC DEVELOPMENT AUTHORITY MEETING MINUTES

**Thursday, April 13, 2023
4:00 PM**

NOTICE IS HEREBY GIVEN, that a regular meeting of the Grand Rapids Economic Development Authority will be held in the City Council Chambers in the Grand Rapids City Hall, 420 North Pokegama Avenue, in Grand Rapids, Minnesota on Thursday, April 13, 2023 at 4:00 PM.

CALL TO ORDER

CALL OF ROLL

PRESENT

Commissioner Mike Korte
President Sholom Blake
Commissioner Tasha Connelly
Commissioner Wayne Bruns

ABSENT

Commissioner Al Hodnik
Commissioner Tom Sutherland

SETTING OF THE REGULAR AGENDA - *This is an opportunity to approve the regular agenda as presented, or to add/delete an agenda item by a majority vote of the Commissioners present .*

APPROVE MINUTES

1. Consider approval of the March 23rd, 2023 regular meeting minutes.

Motion by Commissioner Connelly, second by Commissioner Korte to approve the minutes from the March 9, 2023 regular meeting. The following voted in favor thereof: Bruns, Connelly, Blake, Korte. Opposed: None, motion passed unanimously.

APPROVE CLAIMS

2. Consider approval of claims in the amount of \$21,754.07.

Motion by Commissioner Bruns, second by Commissioner Connelly to approve the claims in the amount of \$21,754.07. The following voted in favor thereof: Korte, Blake, Connelly, Bruns. Opposed: None, motion passed unanimously.

BUSINESS

3. Consider adopting a resolution accepting a grant from the Blandin Foundation for the establishment of the Downtown Mandated Building Improvement Loan Program.

The Blandin Foundation Board recently approved the \$350,000 grant request to be used by GREDA to establish a loan fund for building improvements in the downtown mandated by the State Building Code. The loans would be 10 year forgivable terms up to \$50,000.

Motion by Commissioner Connelly, second by Commissioner Bruns to adopt a resolution accepting a grant from the Blandin Foundation for the establishment of the Downtown Mandated Building Improvement Loan Program. The following voted in favor thereof: Bruns, Connelly, Korte. Opposed: None, Blake abstained, motion passed.

4. Consider approval of a proposal from LHB for TIF analysis of the building at 316 N. Pokegama Avenue

A prospective investor is interested in a project that would involve significant renovation of the building located at 316 N Pokegama Avenue. Staff has presented the developer with information on the use of a TIF Redevelopment District and other programs available. In order for TIF to be an option it must be determined if the building meets the minimum statutory standards. LHB has submitted a proposal for this process, the first phase involves an inspection not to exceed \$3,200 if the project does not meet standards they will not proceed with the full scope of services. If the building meets they will proceed with a report for a total fee not to exceed \$5,200.

Motion by Commissioner Connelly, second by Commissioner Korte to approve a proposal from LHB for TIF analysis of the building at 316 N Pokegama Avenue not to exceed \$5,200. The following voted in favor thereof: Korte, Blake, Connelly, Bruns. Opposed: None, motion passed unanimously.

UPDATES

Oppidan- There is a large funding gap on the the apartment project they were looking at doing that can't be filled with TIF or Tax Abatement.

ADJOURN

There being no further business the meeting adjourned at 4:18 p.m.

MEMBERS & TERMS

Tom Sutherland - 12/31/2023 Council Representative

Tasha Connelly - 12/31/2023 Council Representative

Mike Korte - 3/1/24

Wayne Bruns - 3/1/25

Sholom Blake - 3/1/25

Al Hodnik - 3/1/27

DATE: 04/20/2023
 TIME: 15:25:30
 ID: AP443GR0.WOW

CITY OF GRAND RAPIDS
 DEPARTMENT SUMMARY REPORT

PAGE: 1

INVOICES DUE ON/BEFORE 04/27/2023

VENDOR #	NAME	AMOUNT DUE

EDA - CAPITAL PROJECTS		
MISCELLANEOUS PROJECT		
0718010	CITY OF GRAND RAPIDS	20,000.00
TOTAL MISCELLANEOUS PROJECT		20,000.00
AIRPORT SOUTH INDUSTRIAL PARKS		
0718010	CITY OF GRAND RAPIDS	367.50
1415511	NORTHERN STAR COOPERATIVE SERV	428.64
TOTAL AIRPORT SOUTH INDUSTRIAL PARKS		796.14
DWNTOWN PLAN PJT-BLANDIN GRNT		
1900650	SRF CONSULTING GROUP INC	5,189.67
TOTAL DWNTOWN PLAN PJT-BLANDIN GRNT		5,189.67
TOTAL UNPAID TO BE APPROVED IN THE SUM OF:		\$25,985.81
CHECKS ISSUED-PRIOR APPROVAL		
PRIOR APPROVAL		
0920055	ITASCA COUNTY RECORDER	23.00
1621130	P.U.C.	241.49
TOTAL PRIOR APPROVAL ALLOWED IN THE SUM OF:		\$264.49
TOTAL ALL DEPARTMENTS		\$26,250.30



REQUEST FOR GRAND RAPIDS EDA ACTION

AGENDA DATE: April 27, 2023

STATEMENT OF ISSUE: Consider approval of a Downtown Entertainment Loan to KAXE Northern Community Radio for the 2023 Riverfest.

PREPARED BY: Rob Mattei, Executive Director

BACKGROUND:

KAXE Northern Community Radio submitted an application requesting a \$75,000 Downtown Entertainment Loan for the 2023 Riverfest to be held on September 9, 2023. The total budget for this entertainment festival, held on the north side of the Grand Rapids Area Library, is approximately a half a million dollars.

Contracts with the performers are executed and the lineup was publicly announced on April 17th. Tickets for the event will go on sale April 28. Other partners in this festival include: United Way of 1000 Lakes, the Grand Rapids Police Department, Grand Rapids Public Works Department, the Library and the Library Foundation, the Rotary Club, Visit Grand Rapids and Glorvigen, Tierney & Co. A sponsorship agreement with Grand Rapids State Bank for the headline act of Jason Isbell and the 400 Club has also been executed.

Commissioners Korte and Blake have reviewed the application and all the required submittals with Staff and forward a recommendation for approval.

GREDA's attorney is drafting the Master Loan Agreement to be used for this new program.

RECOMMENDATION:

REQUIRED ACTION: Make a motion to approve a \$75,000 Downtown Entertainment Loan to KAXE Northern Community Radio for the 2023 Riverfest and authorize the President to execute the necessary agreement(s).



Downtown Entertainment Loan Application

Grand Rapids Economic Development Authority
c/o Community Development Department
420 North Pokegama Ave.
Grand Rapids, MN 55744
Tel. (218) 326-7601 Fax (218) 326-7621
www.grandrapidseda.com

Community Development Office Use Only

Date Received _____
GREDA Review Date _____
GREDA Approval _____

Item 3.

The Grand Rapids Economic Development Authority (GREDA), in partnership with the Blandin Foundation, recognizes that creative placemaking, arts and culture strengthens our economy by providing engagement opportunities for our residents and tourists, creating places and spaces where people want to live, work and visit. Creative placemaking can preserve and grow existing community assets, such as our downtown central business district. The Downtown Entertainment Loan Program supports creative placement events and the positive economic impact they provide to our community. A Promissory Note will secure all loans. All loans made under the Downtown Entertainment Loan Program will be subject to the terms and conditions of this application and GREDA's Downtown Entertainment Loan Policy, which is accessible at www.grandrapidseda.com

Applicant Information:

The undersigned do hereby respectfully request the Grand Rapids Economic Development Authority's consideration of an Emergency Working Capital Loan:

KAXE Northern Community Radio

Name of Applicant (*print*)

260 NE 2nd Street

Address

Grand Rapids, MN 55744

City

State

Zip

(218)326-1234 / khedlund@kaxe.org

Telephone/ E-Mail

Name of Co-Applicant (*print*)

Address

City

State

Zip

(218)326-1234 / sbignall@kaxe.org

Telephone/E-Mail

Requested Loan Amount: \$ 75,000

Event Information:

Event Name: Grand Rapids Riverfest Event Date: Saturday, September 9, 2023

Event Description: A festival in downtown Grand Rapids along the Mississippi River featuring top quality
national acts that will attract a mix of local citizens and tourists to the area.

Event Location: Grand Rapids Library Amphitheater Planned/Anticipated Attendance: 3,000

List partners and their involvement in the proposed event: City of Grand Rapids - full partner in Riverfest

Grand Rapids Police Department (security and all other needed detail to make this a safe event for all),

Grand Rapids Public Works Department (ensuring venue is set and ready and streets are prepared,

Grand Rapids Area Library (usage of space for green room, Grand Rapids Area Library Foundation (assisting

in finding volunteers), Rotary Club (volunteers), Visit Grand Rapids (marketing collaboration efforts, assisting

hotel accommodations), Glorvigen, Tierney & Co (use of space and parking lot for fencing and more), Rick

Harding (use of property line for fencing), United Way of 1000 Lakes (helping with volunteer portal)

Required Submittals with Application:

- ☒ Application Fee - \$0.00
- ☒ Event Marketing Plan
- ☒ Copies of Form 990 (most recent 2 years)
- ☒ Statement – How will this event achieve the loan program policy goals?
- ☒ Detailed Event Budget/Cash Flow Projection
- ☒ Statement – Describe your capacity to implement this Event.
- ☒ Description of required contracts for the Event and their status.
- ☒ Description of all other funding sources for the Event and their status.

If Loan is Approved, Additional Submittals Required Prior to Disbursement of Funds:

- ☐ Security in the form of a Promissory Note (*form provided by GREDA*)

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

More information may be requested by the Grand Rapid Economic Development Authority, if deemed necessary, to properly evaluate your request.

I certify that, to the best of my knowledge, information, and belief, all of the information presented by me in this application is true, accurate and complete and includes all required information and submittals.

<u>SarahMBignall</u> Signature(s) of Applicant(s)	<u>03/31/2023</u> Date
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REQUEST FOR GRAND RAPIDS EDA ACTION

AGENDA DATE: April 27, 2023

STATEMENT OF ISSUE: Consider approval of a lease with Kim Erickson dba Growing Harmony Within for Suite 109 of Central School

PREPARED BY: Rob Mattei, Executive Director

BACKGROUND:

Kim Erickson dba Growing Harmony within is interested in a lease for Suite 109 located on the northwest corner of the 1st floor of Central School. Growing Harmony Within provides services to the community concerning holistic approaches to emotional, physical, and mental health. Services are provided through classes, group work and individual coaching.

All aspects of this proposed lease are consistent with the standard lease used by GREDA, including the rental rates for 2nd floor spaces. This lease will commence on May 1, 2023 and will conclude at the end of 2023 with all other leases.

RECOMMENDATION:

REQUIRED ACTION: Make a motion to approve a lease with Kim Erickson dba Growing Harmony Within for Suite 109 of Central School.

LEASE AGREEMENT

This Lease Agreement, by and between the City of Grand Rapids, Minnesota, through its agent the Grand Rapids Economic Development Authority, hereinafter referred to as "Lessor" and **Kimberly Erickson doing business as Growing Harmony Within**, hereinafter referred to as "Lessee", entered into this **27th day of April 2023**.

ARTICLE 1 - LEASED PREMISES

1.1 In consideration of and subject to the mutual covenants, condition and obligations of this Lease Agreement to be kept and performed, the Lessor does hereby lease and demise to Lessee the premises identified in Exhibit "A" attached hereto, comprising approximately 831 square feet together with the right to use in common with other lessees of the Central School their invitees, customer and employees, the elevators, stairways, halls, toilets and sanitary facilities, and all other general common facilities contained in the Central School, as well as the sidewalks, delivery areas, and appurtenances thereto, to be used by Lessee for the purposes generally described in Exhibit "B" attached hereto, in the Central School, Grand Rapids, Minnesota.

This Lease Agreement will also include one parking pass for the Lessee's use in the Central School lot at no additional cost to the Lessee. The Lessee will be provided one parking pass that must be displayed conspicuously by the Lessee. The Lessee will be able to park in any location within the parking lot of Central School. There will not be a designated parking spot. If the lot is full, the Lessee will utilize off street parking. This pass only applies to the Central School lot. If the pass is lost, stolen or needs to be replaced for any reason, there will be a \$25 plus tax replacement fee.

ARTICLE 2 - TERM

2.1 The Term of this Lease Agreement shall commence on **May 1, 2023**, and shall continue through **December 31, 2023** unless earlier terminated in accordance with the provisions of this Lease Agreement.

ARTICLE 3 -RENT

3.1 Lessee shall pay to Lessor as rent for the leased premises the sums hereinafter provided in this Article 3.

The term "operating costs for the Central School Building" as used in this Article 3 shall exclude all costs related to the exterior grounds except signs promoting tenants but shall otherwise include all those direct costs of operation and maintenance to be incurred by Lessor, including by way of illustration but not limitation, (1) all utility charges (sewer, water, electricity, heat, garbage collection, elevator service) except telephone and other communications equipment; (2) maintenance, insurance, repairs, parts and supplies, equipment and tools, and electrical maps, tubes, starters and ballasts; (3) the annual costs for a custodian and/or manager; and (4) promotion costs; and (5) a capital reserve equal to 5% of the total projected operation costs, excluding the capital reserve. The term "operating costs for the Central School Building" shall not include the original capital investment or associated debt service.

The term "rented square footage in the Central School Building" as used in the Article 3 shall exclude common areas, exterior grounds and space not rented.

3.2 Calendar year **2023** base rent shall be in the amount of **\$12.31** per square foot annually, payable in equal monthly installments beginning on the **1ST** day of **May 2023** and continuing on the first day of each month thereafter through **December 31, 2023**. Additionally, tenant is solely responsible for paying any, and all, property taxes associated with the rental space.

3.3 Lessee shall pay as additional rent a late charge in the amount of 1.5% of the monthly rental payment in the event that the monthly rental payment is received after the fifth day of the month due. This late charge shall be exclusive of any other remedy which Lessor may have for Lessee's failure to timely pay rent.

3.4 At the commencement of the term of this Lease Agreement, Lessee shall furnish to Lessor a surety bond, letter of credit or cash deposit in an amount equivalent to one month's rent, to assure compliance with the provisions of this Lease Agreement. If Lessee fails to comply with the provisions of this Lease Agreement, Lessor shall be entitled, without further notice to Lessee, to call upon said surety bond, letter of credit or cash deposit to satisfy Lessee's obligation hereunder. Lessor's right to call upon the surety bond, letter of credit or cash deposit shall be exclusive of any other remedy which Lessor may have for Lessee's failure to comply with the provisions of this Lease Agreement. The surety bond or letter of credit furnished by Lessee shall be maintained in effect for the term of this Lease Agreement and during any period of holding over. If Lessee furnishes a cash

deposit pursuant to this Paragraph, said cash deposit shall be held by Lessor for the term of this Lease Agreement unless earlier called upon by Lessor to satisfy Lessee's obligations hereunder. Said cash deposit shall be invested by Lessor and any interest earned shall be paid annually to Lessee.

3.5 Rental payments shall be made to the order of the City of Grand Rapids and mailed or delivered to: **City Finance Director, 420 N. Pokegama Avenue, Grand Rapids, MN 55744.**

3.6 Lessee shall timely pay when due any personal property or real property tax on the leasehold estate.

ARTICLE 4 - IMPROVEMENTS

4.1 In taking possession of the leased premises, Lessee acknowledges that same were on the date of occupancy in good, clean and tenable condition, subject only to the repairs or improvements which Lessor has agreed to make at Lessor's expense and which are set forth on Exhibit "C" attached hereto, if there are any.

4.2 Lessee agrees to make at its own expense all alterations and improvements to the leased premises except as otherwise indicated to be the obligation of Lessor under this Lease Agreement. All such improvements and alterations made by Lessee shall be undertaken only upon advance approval of Lessor, shall be made under the supervision, direction and control of Lessor's architect, shall be made in good and workmanlike manner according to the terms, conditions and requirements set by Lessor and its architect, and shall be in keeping with the historical character of the building. All alterations and improvements performed on the leased premises by Lessee shall be performed by competent contractors and subcontractors approved by Lessor, which approval shall not unreasonably be withheld. Lessee shall pay for all architectural, engineering and other services and all costs incurred by Lessor in connection with Lessee's improvement or alteration of the leased premises, including the work, if any, of Lessor's engineer, architect and other agents connected therewith. Prior to undertaking any alterations or improvements to the leased premises, Lessee shall obtain and deliver to Lessor a valid waiver and release of mechanic's liens by each party who will furnish labor, materials or services to the lease premises.

4.3 At the expiration or termination of the term of this Lease Agreement, all improvements and alterations made to the leased premises by Lessee shall remain with the leased premises and shall be the property of Lessor. Lessee shall, at its expense, remove Lessee's goods and effects, including trade fixtures, machinery, and equipment, and quit and deliver up the leased premises to Lessor, peaceably and quietly in as good order and condition as same were in on the original date of occupancy, reasonable wear and tear excepted. Any property left in the leased premises at the expiration or termination of this term of this lease shall be deemed to have been abandoned and shall become the property of Lessor to be disposed of as Lessor deems expedient, with all costs of cleanup and disposal of goods abandoned at the leased premises to be paid by Lessee. Lessee shall not permit any mechanic's or materialmen's liens to stand against the leased premises or against the Central School and Lessor may require appropriate assurances by way of bond, deposit or other reasonable procedure to protect against such liens and may, should such liens arise out of Lessee's acts hereunder, pay and discharge same and such amounts shall become due and payable to Lessor from Lessee with interest at the rate of eight percent (8%), or such greater amount as shall then be permitted by law, per annum.

ARTICLE 5 - MAINTENANCE, REPAIRS

5.1 Lessee shall at all times be responsible for maintaining at its own expense the leased premises in a clean, orderly and safety condition, except as hereinafter provided. Lessee shall be responsible, at its own expense, to clean and maintain all trade fixtures, machinery and equipment furnished by Lessee within the leased premises. Lessee shall be responsible to deposit normal office waste and rubbish at a location at the Central School as designated by Lessor.

5.2 Lessee shall be responsible to perform all repairs the need for which is caused by Lessee's use of the premises except that Lessor shall be responsible to perform major repairs of a structural nature. Lessor shall be responsible to arrange for removal of waste and rubbish from the location designated as the deposit location for lessees. All costs incurred by Lessor pursuant to the obligations of this Paragraph shall be included within "operating costs".

5.3 Lessor shall provide custodian services for the common areas of Central School. Costs incurred by Lessor in providing such custodian services shall be included within "operating costs".

ARTICLE 6 - UTILITIES

6.1 Lessor shall furnish such heat, water, sewer, electricity, elevator services, central air conditioning and garbage removal in and about the leased premises as shall be necessary, in Lessor's judgment, for comfortable occupancy of the leased premises, under normal business conditions. Lessor's obligation to provide electricity to the leased premises shall include only electricity for standard building lighting and office use. Any electricity supplied to the leased premises for extraordinary purposes, such as kitchen equipment, refrigeration equipment and air conditioning units, shall be paid by the Lessee upon Lessor's billing of same.

It is understood and agreed that Lessee shall be responsible to pay to Lessor, as additional rent, the cost of separately-metered-electricity supplied to the leased premises. Lessee shall also be responsible for the construction of insulation of a separate electrical meter when required.

6.2 Lessee shall conserve heat, water and electricity and shall not neglect or misuse water, fixtures, electrical lights, or other equipment or facilities furnished in conjunction with Lessor's provisions of utilities pursuant to this Article.

6.3 In the event energy use restrictions are established by Federal or State authorities or that an energy supply emergency is declared by Federal or State authorities, Lessor may reduce the quantity or quality of any utilities or other services to be provided under this Article as may be necessary to comply with directives and regulations promulgated by said authorities.

6.4 Lessor shall be responsible to provide light, heat and other utility services to the common areas of the Central School as, in Lessor's discretion, is appropriate. The cost of providing such heat, lighting and other utilities shall be included within "operating costs".

ARTICLE 7 - BUILDING USE, REGULATIONS, SECURITY

7.1 Lessee shall use the leased premises only for the purpose of purposes generally described in Exhibit "B". Lessee shall keep the leased premises in a clean, orderly and safe condition and shall not permit any hazardous or dangerous activity thereon or any activity which will increase insurance risks or premiums on the leased premises. Lessee shall at all times comply with all statutes, ordinances, codes, and regulations of any governmental authority concerning the use and maintenance of the leased premises and the Central School. Lessee shall not overload the floors in the leased premises.

7.2 Lessee shall use the leased premises and the common areas of the Central School in accordance with such reasonable rules and regulations as may from time to time be promulgated by Lessor for the general safety, comfort and convenience of Lessor and Lessees of the Central School and their invitees and Lessee shall cause its clients, employees and invitees to abide by such rules and regulations. The Lessor will allow the Lessee to utilize up to 12 square feet of floor space in the common areas adjacent to the Lessee's business for display purposes only. Storage of equipment, recycling, or anything deemed not to be display items, is prohibited. The items placed in this space must not be affixed permanently to the floor or wall in any way. The usage of a table, shelf, or rack is acceptable. The Lessee will adhere to all fire and building access codes.

If the Lessee wishes to use more than 12 square feet of floor space, a written letter to the Lessor with the Lessee's intent is required. The Lessee cannot proceed with their plans until the Lessor has granted the request in writing.

The Lessee is required to supply the Lessor with documentation from the Lessee's insurance company that the Lessee's property is covered while in the common areas of Central School.

7.3 Lessee shall keep the leased premises open to the public during such days and hours of operation of the Central School as may from time to time be determined by Lessor.

7.4 Lessee shall be responsible for securing the leased premises by locking doors and windows providing direct access to the leased premises. Lessor covenants that other Lessees within the Central School will have similar responsibilities to those required of Lessee under this Paragraph.

7.5 Lessee shall pay to Lessor on demand for any damage done to the Central School or the leased premises, including broke glass, caused by Lessee, Lessee's agents or employees, or Lessee's invitees.

7.6 Lessee shall not conduct or permit to be conducted on the leased premises any business or permit any act which is contrary to or in violation of the laws, ordinances or regulations of any governmental unit, federal, state or local.

ARTICLE 8 - COMMON AREAS, EXTERNAL GROUNDS

8.1 Lessee's use of the common areas and external grounds of Central School shall be in compliance with rules and regulations which may be promulgated from time by Lessor.

8.2 Lessee shall place nothing in the common areas of the Central School, including displays, advertising, merchandise, or other items of any sort whatsoever, without the advance written approval of the Grand Rapids Economic Development Authority.

8.3 Lessee shall place no signs which will be visible outside the leased premises, including no signs which may be visible through a window and no signs which may be visible within the common areas of the Central School or from the external grounds of the Central School or beyond, without the advance written approval of Lessor. Lessor shall provide signs, of a number, style and quality as deemed appropriate in Lessor's exclusive judgment, to be placed on the external grounds of the Central School, which signs will identify the lessees within Central School. Cost incurred by Lessor in providing said signs shall be included within "operating costs". Signs within the interior common areas of Central School shall be approved in advance by Lessor and, if provided by Lessor, the expense thereof shall be included within "operating costs".

ARTICLE 9 - INSURANCE

9.1 Lessor shall maintain general liability, fire and extended coverage insurance on the Central School, including common areas and exterior grounds, and Lessor's fixtures and equipment and Lessor shall cause Lessee to be named as an additional insured. Lessee shall insure its own personal property on the premises as it sees fit. All personal property placed upon or in the leased

premises or common areas or external grounds shall be at the risk of Lessee or the owner of the personal property and Lessor shall not be liable to Lessee or any other party for any damage or destruction of said personal property arising from any cause whatsoever. Lessee shall maintain at its own cost and expenses general liability insurance required herein. All insurance coverage is subject to approval of the City of Grand Rapids and shall be maintained by Lessee at all times this Agreement is in effect. Lessee further agrees that to protect themselves as well as the City of Grand Rapids under the indemnity Contract set forth above, the Lessee shall at all times during the term of the Agreement have and keep in force insurance protection as specified by Minn. Stat. Cpt. 466.04, subd. 1 as may be modified from time to time by the State Legislature and Lessee shall name Lessor as an additional insured on said policy. Throughout the term of this Lease Agreement, Lessee shall provide Lessor with evidence that Lessee has obtained the insurance required by this Article and that Lessor is an additional insured under said policies of insurance. All costs incurred by Lessor in maintaining insurance coverage pursuant to this Article shall be included within "operating costs".

9.2 Notwithstanding anything in this Lease Agreement to the contrary, Lessor shall not be liable to Lessee and Lessee shall not be liable to Lessor for any damage to or destruction of the Central School Building by fire or other perils or for any claim or cause of action arising out of any death, injury or damage to property in, on or about the leased premises or the common areas or exterior grounds of Central School. Lessor and Lessee shall furnish to each other appropriate written consents from their respective insurers to this waiver of liability provision.

ARTICLE 10 - LESSOR ACCESS

10.1 Lessor, its agents and employees shall have the right to enter the leased premises upon reasonable advance notice for the purpose of inspection, cleaning, repairing, altering or improving the premises, or to exhibit the premises to prospective tenants. Lessor's reserved rights hereunder shall include, without limitation, free, unhampered and unobstructed access to the airways, equipment ducts, stairways, access panels and all utilities and services to the Central School. There shall be no diminution of rent and no liability on the part of Lessor by reason of any inconvenience, annoyance or injury to business caused by Lessor's reasonable exercise of rights reserved by Lessor in this Article.

ARTICLE 11 - FIRE OR OTHER CASUALTY: CONDEMNATION

11.1 If during the term of this Lease the leased premises shall be damaged or destroyed by fire or other casualties so that the premises shall thereby be rendered unfit for use or occupation, Lessor shall have the option to either (a) repair such damage with all reasonable diligence and restore the premises to substantially the condition immediately prior to such event, and until such premises have been duly repaired and restored the rent herein reserved, or a just and proportionate part thereof according to the nature and extent of the injury which has been sustained shall be abated, or (b) Lessor may terminate this lease and end the term hereof, and in case of such termination and cancellation the rent shall be paid to the date of such fire or other casualty and all other further obligations on the part of either party hereto shall cease. Lessor is required to notify Lessee of whether it will repair or terminate within thirty (30) days of the date of such damage or destruction. Provided, however, that in the event the premises are not so restored within one hundred eighty (180) days after the occurrence, Lessee may, at its option, terminate this lease.

11.2 Lessee shall be entitled in any full or partial taking by eminent domain to take that portion of the net award representing payment for Lessee's leasehold interest, trade fixtures, moving expenses or business interruption. All amounts paid pursuant to an agreement with a condemning authority in connection with any taking shall be deemed to constitute an award on account of such taking. Lessee agrees that this Lease shall control rights of Lessor and Lessee in any such award, and any contrary provision of any present or future law is hereby waived. If any taking shall result in Lessee being deprived of space in excess of 5 percent of the space then leased to Lessee, Lessee shall have the right on thirty (30) days advance written notice, to terminate the obligations hereunder effective as of such taking. If Lessee continues occupancy following a partial taking, rent will be adjusted on a pro-rata basis for the remainder of the lease term.

ARTICLE 12 - QUIET POSSESSION

12.1 Lessor hereby warrants and covenants that it has full authority to execute this Lease Agreement and further agrees that Lessee, upon paying rent and performing the covenants and conditions of this Lease Agreement, shall quietly have, hold and enjoy the leased premises during the term hereof.

ARTICLE 13 - NOTICE

13.1 Any notice, demand, request or other communication which may or shall be given or served by Lessor or Lessee pursuant to this Lease Agreement shall be deemed to have been given or served on the date the same is deposited in the United States mail, registered or certified, postage prepaid and addressed as follows:

To Lessee:

Kimberly Erickson
Growing Harmony Within
10 NW 5th St., Suite 109
Grand Rapids MN 55744

To: Lessor

GREDA Executive Director
City Hall
420 N. Pokegama Avenue
Grand Rapids, MN 55744

ARTICLE 14 - ASSIGNMENT, SUBLETTING

14.1 Lessee agrees that neither the leased premises nor any part thereof shall be sublet nor shall this Lease Agreement be assigned by Lessee without prior written consent of Lessor, which consent shall not be unreasonably withheld. If Lessor does give consent, such consent shall not release Lessee from its obligation hereunder, unless a release is specifically given by Lessor.

ARTICLE 15 - NO PARTNERSHIP

15.1 Nothing contained in this Lease Agreement shall be deemed or construed to create a partnership or joint venture of or between Lessor and Lessee or to create any other relationship between the parties hereto other than that of Lessor and Lessee.

ARTICLE 16 - DEFAULT BY LESSEE

16.1 Lessor and Lessee agree that this Lease Agreement is made upon the condition that if the Lessee shall neglect or fail to keep, observe and perform any of the covenants and agreements contained in this Lease Agreement which are to be kept, observed or performed by Lessee, so as to be in default, or if the leasehold interest of Lessee shall be taken by execution or other legal process of law, or if Lessee shall petition to be or be declared to be bankrupt or insolvent according to law, or if Lessee shall vacate said premises or abandon the same for a period of 45 days during the term

of this Lease Agreement, then and in any of said cases the Lessor may, at its option, immediately or at any time thereafter without further notice or demand, enter into and upon the leased premises, or any part thereof, in the name of the whole, and take absolute possession of the same without such re-entry working a forfeiture of the rents to be paid and the covenants to be performed by Lessee for the full term of this Lease Agreement, and may, at Lessor's election, lease or sublet the leased premises, or any part thereof, on such terms and conditions and for such rents and for such time as the Lessor may elect, and after crediting the rent actually collected by Lessor from such reletting, collect the balance of rent owed pursuant to this Lease Agreement from Lessee, charging Lessee such reasonable expenses as the Lessor may expand in putting the premises in tenable condition and collecting said rentals from Lessee, including reasonable attorney's fees.

Alternatively, Lessor may at its election and upon written notice to Lessee declare this Lease Agreement forfeited and void under the condition set forth above, and Lessor may re-enter and take full and absolute possession of said premises as the owner thereof, free from any right or claim of Lessee or any person or persons claiming through or under Lessee, and such election and re-entry shall be and constitute an absolute bar to any right to enter by Lessee. The commencement by Lessor of any action to recover possession of the leased premises or any part thereof shall not be deemed an election by Lessor to treat this Lease Agreement as void and terminated, without the written notice above specified.

In the event of termination or re-entry by Lessor for default by Lessee, Lessor shall make every reasonable effort to re-rent, lease or sublet the premises. Lessor, at its option, may make such alterations, repairs, replacements and/or decorations to the leased premises as Lessor, in its sole judgment, considers advisable and necessary for the purpose of reletting the premises; and the making of such alterations, repairs, replacements and/or decorations shall not operate to be construed to release Lessee for liability hereunder as aforesaid.

ARTICLE 17 - DEFAULT BY LESSOR, LESSEE

17.1 Lessor shall not be deemed to be in default under this Lease Agreement until Lessee shall have given Lessor written notice specifying the nature of the default and Lessor shall have not cured such default within ten (10) days after receipt of such notice, or within such reasonable time thereafter as may be necessary to cure such default where such default is of a character as to reasonably require more than ten (10) days to cure.

17.2 Except with respect to the payment of rent, for which no notice of default shall be necessary, Lessee shall not be deemed to be in default under this Lease Agreement until Lessor shall have given Lessee written notice specifying the nature of default and Lessee shall have not cured such default within ten (10) days after receipt of such notice or within such reasonable time thereafter as may be necessary to cure such default where such default is of a character as to reasonably require more than ten (10) days to cure.

ARTICLE 18 - WAIVER, MODIFICATION, ENTIRE AGREEMENT

18.1 No waiver of any condition, covenant, right of option of this Lease Agreement by the Lessor shall be deemed to imply or constitute a further waiver of any like condition or covenant of said Lease Agreement.

18.2 No amendment or modification of this Lease Agreement shall be valid or binding unless expressed in writing and executed by duly authorized representatives of the parties hereto in the same manner as the execution of this Lease Agreement. The Grand Rapids Economic Development Authority shall consider the recommendation of all interested parties in determining whether to approve any amendment or modification of this Lease Agreement.

18.3 Neither Lessor nor any agent or employee of Lessor has made any representations or promises with respect to the leased premises or the Central School except as herein expressly set forth, and no rights, privileges, easements or licenses are acquired by Lessee except as herein expressly set forth.

ARTICLE 19 - WINDOW TREATMENT

19.1 Lessee, at its expense, may install shades, drapes or window coverings and, if installed, Lessee shall maintain said window coverings in an attractive and safe condition, provided however, in the sole judgment of Lessor said window coverings are in harmony with the exterior and interior appearance of Central School and will create no safety or fire hazard.

ARTICLE 20 - PARKING

20.1 Lessor has established public parking facilities on the grounds of Central School. Lessee warrants that it will enforce regulations providing that its employees will not park their private vehicles in said public parking area during time when said employees are working at the leased premises (except on a short-term basis for emergencies or for deliveries).

DISCRIMINATION PROHIBITED: The Landlord shall not discriminate based upon race, color, creed, religion, national origin, sex, marital status, age, handicap, or disability, familial status or recipients of public assistance; and shall comply with all nondiscrimination requirements of Federal, State and local law.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date first written above.

LESSOR:

GREDA President

GREDA Executive Director

Date: _____

LESSEE:

Growing Harmony Within

BY: _____
Kimberly Erickson

BY: _____

Its _____
Owner

Date: _____

Exhibit A – Location in the Building

Growing Harmony Within is located on the First Level Northwest Corner in Suite 109, consisting of 831 square feet.

Exhibit B – Use of Space

Growing Harmony Within provides services to the community concerning holistic approaches to emotional, physical and mental health. Services are provided through classes, group work and individual coaching.

Exhibit C – Improvements

None



REQUEST FOR GRAND RAPIDS EDA ACTION

AGENDA DATE: April 27, 2023

STATEMENT OF ISSUE: Review and consider approval of the policy and application form for the newly established Downtown Mandated Building Improvement Loan Program.

PREPARED BY: Rob Mattei, Executive Director

BACKGROUND:

GREDA was recently awarded a \$350,000 grant from the Blandin Foundation to establish a loan program with forgivable terms to finance State Building Code mandated building improvements.

As we've discussed, a change of Occupancy Classification, as defined within the Code for a proposed new use within an existing building or an extensive renovation, most often triggers the need for upgrades to the building that are not anticipated nor budgeted for by the buyer/entrepreneur. These Code mandated building upgrades typically come in the form of establishing compliant handicapped accessibility routes to a building and within, fire protection and fire resistance, improved means of safe egress and bathroom/plumbing additions and remodeling.

Staff has developed a draft policy for the program and an application form that is in keeping with the application to the Blandin Foundation. Please review and be ready to discuss any suggested changes or additions.

RECOMMENDATION:

REQUIRED ACTION: Review and consider a motion to approve the policy and application form for the newly established Downtown Mandated Building Improvement Loan Program.



Grand Rapids Economic Development Authority Downtown Mandated Building Improvements Loan Program Policy

The Grand Rapids Economic Development Authority (GREDA) recognizes that investment in existing building infrastructure will substantially reverse the negative effects of blight. GREDA also recognizes that a diverse and concentrated business mix in the Downtown drives additional customer traffic which benefits all businesses.

The age of buildings in the Downtown, which were developed prior to the establishment of building codes, can present additional challenges for those interested in establishing a new business. The State Building Code, when a change in use for a building, a substantial renovation or both is proposed, will most often mandate that certain improvements are made to bring the building into code compliance. These Code mandated building upgrades typically come in the form of establishing compliant handicapped accessibility routes to a building and within, fire protection and fire resistance, improved means of safe egress and bathroom/plumbing additions and remodeling.

Because these improvements are often unanticipated by the entrepreneur, the additional expense can significantly impact and sometimes halt plans for the business. GREDA's understanding of this and their mission to advance measures that support and grow the Grand Rapids economy, has caused GREDA to take action to establish a Downtown Mandated Building Improvements Loan Program to support projects that must make these improvements and support our desired Downtown business area.

1. Goals and Objectives

- Establish and administer a loan program with forgivable terms to provide financing for Code mandated building improvements to buildings in Downtown Grand Rapids, as it is geographically defined in the *Grand Rapids Downtown Plan*.
- Allocate \$350,000 in GREDA resources available through a grant received from the Blandin Foundation for this purpose.
- Encourage investments in Downtown buildings, which improve their safety and accessibility and broaden their potential for new business uses.
- Encourage projects that leverage GREDA funds with private capital to improve the value, look and functionality of Downtown buildings.
- Encourage projects that achieve the objectives stated within the *Grand Rapids Downtown Plan*.

2. Eligible Applicants

- Building owners in the Downtown.
- Lease holders within Downtown buildings, with consent and participation of the owner.
- Individuals or companies purchasing a Downtown building through a contract for deed, with consent and participation of the contract holder.

3. Eligible Loan Activities

- Loans are to be used to fund only those project expenses attributed to State Building Code mandated improvements to a Downtown building, due to a change in use under the Code or through extensive remodeling.

4. Other Considerations

- Compliance with all government regulations.
- Downtown Mandated Building Improvement Loan funds will be available for as long as the original allocation of funds or some portion thereof exists.

5. Conflict of Interest

- Any GREDA Commissioner that may indirectly or directly gain financially from loan transactions shall immediately inform the Board of any potential conflict of interest.
- If a potential conflict of interest exists, all necessary steps will be taken to ensure that the loan application is processed in full accordance with GREDA policies, and local and state regulations.

6. Loan Conditions

- The maximum loan amount is \$50,000.00.
- The loan interest rate will be set at one percent (2%) annually, with interest prorated as of the transfer of title, in the event of a conveyance prior to the end of the term.
- Loans will have a term of 10 years.
- Repayment of principal and interest on the loans will be deferred during the 10-year term. Furthermore, 10% of the principal balance of the loan will be forgiven each year the owner maintains his or her ownership of the building during the term.
- In the event the owner sells, transfers, or otherwise conveys the property during the term, the remaining balance and accumulated interest will be paid back to GREDA prior to transfer. An exception to this will be if a contract for deed, which existed at the time of the loan, is satisfied/completed during the term. GREDA will then deposit those funds into the program for their continued use.
- Loans will be serviced by the City of Grand Rapids Finance Department.

7. Application Requirements

- Completed "Downtown Mandated Building Improvement Loan" application and its required submittals.
- Applications will be reviewed by a minimum of two GREDA Commissioners and the Executive Director and will be acted upon by the full Board of GREDA Commissioners.
- Applications will be evaluated in terms of the following:
 - Program Requirements – the extent to which the proposed project is consistent with the objectives of this program.
 - Project Impact – The extent to which the proposed project achieves the objectives stated within the Grand Rapids Downtown Plan.
 - Financial Feasibility - Availability and commitment of other funds, cost effectiveness, project budget, the degree these program funds are leveraged by additional private investment and the proposed business plan.

8. Collateral

- Loans will be secured with a Recorded Lien Agreement or Mortgage and Promissory Note, the forms of which will be provided by GREDA.

9. Reporting

- Following the completion of the project, recipients will be required to submit a breakdown of the final total development cost.



Downtown Mandated Building Improvement Loan Application

Grand Rapids Economic Development Authority
 c/o Community Development Department
 420 North Pokegama Ave.
 Grand Rapids, MN 55744
 Tel. (218) 326-7601 Fax (218) 326-7621
www.cityofgrandrapidsmn.com

Community Development

Office Use Only

Date Received _____

GREDA Review Date _____

GREDA Approval _____

Applicant Information:

The undersigned do hereby respectfully request the Grand Rapids Economic Development Authority's consideration of a Downtown Mandated Building Improvement Loan: *(If the applicant is not the property owner, the property owner must, also, sign the application.)*

 Name of Applicant *(print)*

 Name of Owner *(print)*

 Address

 Address

 City State Zip

 City State Zip

 Telephone/ E-Mail

 Telephone/E-Mail

 Doing business as:

What is your interest in the building/property? *(check one)*

☐ Own the Business

☐ Lease the building

☐ Purchasing the building on contract for deed

☐ Other: _____

Project Information:

Tax Parcel # _____

Existing Zoning: _____

Existing Use: _____

Proposed Use: _____

Property Address / Location: _____

Legal Description: _____
(attach additional sheet if necessary)

Description of your proposed commercial building improvement project: _____

(attach additional sheet and plans if necessary)

Are you coordinating your project with any neighboring businesses? ☐ Yes ☐ No

If yes, please provide their name(s) and the nature of their project(s): _____

Does this project involve a change in use, as determined by the State Building Code? ☐ Yes ☐ No

When would you like to begin your project? _____

How much time will be needed to complete the project? _____

Please explain how the project furthers the objectives stated within the *Grand Rapids Downtown Plan*.

(attach additional sheet if necessary)

Project Cost/Financing:

The GREDA Downtown Mandated Building Improvement Loan Program may finance up to \$50,000 of eligible project costs

Item 5.

Please provide a breakdown of this estimated cost by construction category. **In addition, attach a detailed breakdown of the mandated code improvement cost.** (attach copies of quotes)

Construction Item/Category	Estimated Cost (Quote)
Mandated Code Improvements	
Total Estimated Cost:	

(attach additional sheet if necessary)

Please provide a list of proposed/secured financing sources:

Source	Secured (yes/no)	Amount
GREDA Downtown Mandated Building Improvement Loan (requested amount)		
Bank		
Cash		
Other (specify)		
Other (specify)		
Total \$		

(attach additional sheet if necessary)

Required Submittals with Application:

- ☐ Application Fee - \$0.00 ☐ Breakdown of debt to be assigned to the property ☐ Concept Plan
☐ Copies of Tax Returns (past 3 years) ☐ Cash Flow Projections (3 years)* ☐ Estim. Income Statements (3 years)*
☐ Business Plan ☐ Letters of Commitment ☐ Credit Report ☐ Appraisal-Post Development
☐ Evidence of ownership in the form of title insurance, title opinion, or copy of deed ☐ Marketing Information

* MN Small Business Development Center at Itasca Economic Development Corp. can assist with this, free of charge.

If Loan is Approved, Additional Submittals Required Prior to Disbursement of Funds:

- ☐ Verification that building is insured at a level equal to its value, with the GREDA listed as an additional insured.
☐ Copies of receipts for project expenses.
☐ Verification from the City Building Official that the project is complete.
☐ Security: Personal guarantee in the form of a Promissory Note and a lien agreement or mortgage. (forms provided by GREDA)

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

More information may be requested by the Grand Rapid Economic Development Authority, if deemed necessary, to properly evaluate your request.

I certify that, to the best of my knowledge, information, and belief, all of the information presented by me in this application is accurate and complete and includes all required information and submittals, and that I consent to entry upon the subject property by public officers, employees, and agents of the City of Grand Rapids or GREDA wishing to view the site for purposes of processing, evaluating, and deciding upon this application. Further, I have read and fully understand the Downtown Mandated Building Improvements Loan Policy.

Signature(s) of Applicant(s)

Date

Grand Rapids Economic Development Authority Commercial Building Improvement Loan Application

TENESSEN WARNING: DATA PRIVACY STATEMENT

The information provided in the application materials or to be obtained separately as a part of the application process will be used by the lender to determine whether you qualify as a prospective borrower for the Grand Rapids Economic Development Authority (GREDA) Commercial Building Improvement Loan program. The information provided in the application and information authorized above for assistance will become a matter of public record with the exception of those items protected under Minnesota Statutes Chapter 13, *Minnesota Government Data Practices Act*.

The groups or individuals with whom this private data information may be shared includes:

1. The GREDA Loan Review Committee and GREDA; and
2. Staff who are involved in program administration; and
3. Auditors who perform required audits of the program; and
4. Authorized personnel from other County, State, Federal or Regional Agencies providing funding assistance to you; and
5. Those other persons who you authorize to see the information; and
6. Law Enforcement personnel in the case of suspected fraud

Unless otherwise authorized by MN Statutes or Federal Law, other government agencies using the private data must also handle the data as private. You may wish to exercise your rights as contained in the MN Government Data Practices Act. Those rights include:

1. The right to see and obtain copies of the data maintained on you; and
2. Be told the contents and meaning of the data; and
3. Challenge the accuracy and completeness of the data

To exercise these rights, contact the Grand Rapids Economic Development Authority Director at (218) 326.7622 or 420 Pokegama Avenue North, Grand Rapids, MN 55744.



REQUEST FOR GRAND RAPIDS EDA ACTION

AGENDA DATE: April 27, 2023

STATEMENT OF ISSUE: Consider approval of an Acquisition Services Agreement with Wellson Group, Inc.

PREPARED BY: Rob Mattei, Executive Director

BACKGROUND:

The attached professional services agreement with Wellson Group, Inc., who GREDA has used for negotiations on past potential acquisitions, is this time for GREDA to consider the possible purchase of industrial property on the east side of 7th Ave. SE at the intersection of 29th Street SE.

RECOMMENDATION:

REQUIRED ACTION: Make a motion to approve an Acquisition Services Agreement with Wellson Group, Inc.

ACQUISITION OF SERVICES AGREEMENT
29th STREET SE INDUSTRIAL PARK PROJECT

THIS AGREEMENT, is made and entered into by and between the **Grand Rapids Economic Development Authority (GREDA)**, and **Wellson Group, Inc.** ("Wellson") as of the 27th day of April, 2023.

RECITALS

A. GREDA desires to obtain the services of Wellson to provide services as described in Section 2.1 below:

B. Wellson is willing to provide said services under certain terms and conditions.

AGREEMENT

Article 1 - Mutual Consideration

1.1 Consideration Given. The Parties agree that the terms and conditions of this Agreement constitute valid and binding mutual covenants and agreements.

Article 2 - Purchased Services

2.1 Services To Be Purchased. Wellson shall provide acquisition services as to three separate parcels of land the GREDA or Assigns desires to acquire. These parcels of land are identified as parcel #'s 91-033-4120, 91-033-1430 and 91-033-1410 located along Airport Road in Grand Rapids, MN. Wellson will use its reasonable efforts and professional knowledge and skill to assist the City of Grand Rapids (GREDA) in negotiation and purchasing the desired parcels of property as well as separately obtaining a right of entry to the parcels to investigate soil and environmental conditions and to prepare a survey. Wellson will, if requested by the GREDA, provide to the GREDA all information about the identified properties, including information relating to the site selection due diligence, present all offers and counteroffers in a timely manner, work with the GREDA and appropriate attorneys in preparation of letters of intent, purchase agreements and other purchase documents, and will assist the GREDA in completing transactions related to the properties.

2.2 Wellson Discretion. It is understood that Wellson, as an independent contractor and not an employee of the GREDA, shall use its best judgment and discretion in providing purchased services hereunder.

Article 3 - Fee for Services, Payment

3.1 Fee for Services. Wellson shall be paid a fee for services as follows:

- a) GREDA will pay to Wellson a retainer fee of \$0.00, to be applied fees earned as described below.

- b) GREDA will pay to Wellson \$150.00 per hour, to be billed on a monthly basis, which hourly amount shall include incidental out-of-pocket expenses including telephone and mailing costs, ordinary copy costs, travel and lodging expenses, but which will be exclusive of fees paid to attorneys or other professionals, costs of title insurance or title work and any closing costs. Monthly billings shall include a description of services performed.
- c) Fees to be paid to Wellson shall not exceed 4% of the total combined purchase price for all parcels unless by separate written agreement between the parties.

3.2 Fringe Benefits, Expenses. There are no fringe benefits payable to Wellson under this Agreement, and any obligations of GREDA to Wellson to provide other consideration pursuant to this Agreement shall not be deemed employee fringe benefits. Wellson shall be responsible for payment of all income taxes, social security taxes, liability insurance, unemployment insurance and worker's compensation insurance for Wellson and any employees of Wellson.

3.3 Overtime. Wellson is not entitled to compensation in addition to that set forth in Paragraph 3.1 above for overtime, insofar as Wellson is not an employee of the GREDA, and Wellson's duties qualify for the professional exemption under the Fair Labor Standards Act.

Article 4 - Term, Cancellation

4.1 Term. The term of this Agreement shall be from April 27, 2023, through December 31, 2024. The parties, by simple writing such as a letter agreement, renew and continue the terms of this Agreement.

4.2 Cancellation. This Agreement may be canceled by GREDA or Wellson without cause upon 60 days written notice to the other.

Article 5 - Subcontracting, Assignment

5.1 Subcontracting, Assignment. Wellson shall not subcontract or assign any portion of its obligations under this Agreement without the prior written consent of GREDA. In the event GREDA approves any such subcontract or assignment, Wellson shall remain fully responsible for all obligations under this Agreement. No such subcontract or assignment shall result in GREDA incurring any obligation to any party other than Contract. Wellson shall make all conditions of this Agreement known to all parties to such subcontracts or assignments as a condition of the GREDA approval to subcontract or assign.

Article 6 - License

6.1 License. Wellson at all time shall be qualified, professionally competent and duly licensed for any obligation under this contract requiring any license.

Article 7 - Miscellaneous Provisions

7.1 Insurance. Wellson shall at all times during the term of this Agreement carry real estate professional liability insurance in at least the sum of \$1,000,000 and general commercial liability insurance in at least the sum of \$2,000,000, and shall, upon the request of the GREDA, provide certificates of insurance to the GREDA verifying the existence of such insurance coverage.

7.2 Independent Contractor. In the performance of the work, duties and obligations devolving upon Wellson under this Agreement, it is understood and agreed that Wellson is at all times acting and performing as an independent contractor. GREDA shall not have nor exercise any control or direction over the methods by which Wellson shall perform its work and functions. The sole interest and responsibility of GREDA is to ensure that the services offered pursuant to this Agreement shall be performed and rendered in a competent, efficient and satisfactory manner. The provisions of Sections 2 and 3 of this Agreement shall not be interpreted to conflict with the intent of the parties and the legal status of Wellson shall at all times be that of an independent contractor.

7.2 No Co-Partnership. Nothing contained herein is intended nor shall be construed as in any manner creating or establishing a relationship or co-partners between the parties, or as constituting Wellson as the agent, representative or employee of the GREDA in any manner, whatsoever.

7.3 Construction. This Agreement shall be construed in accordance with the laws of the State of Minnesota.

7.4 Modification Amendment. Any alterations, amendments, deletions or waivers of the provisions of this Agreement shall be valid only when expressed in writing and duly executed by authorized representatives of the parties.

7.5 Entire Agreement. This Agreement constitutes the entire agreement between parties hereto and supersedes any prior agreements, representations or understandings between the parties hereto relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Grand Rapids Economic Development Authority WELLSON GROUP, INC.

BY: _____
AL HODNIK, Vice President

BY: _____
STEPHEN R. WELLIVER, President

Insurance Certificate



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
04/19/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Christensen Group 9855 West 78th Street, Ste 100 Eden Prairie MN 55344		CONTACT NAME: Michelle Leonard PHONE (A/C, No, Ext): (952) 653-1000 FAX (A/C, No): (952) 653-1100 E-MAIL ADDRESS: mleonard@christensengroup.com	
INSURED Wellson Group, Inc 215 NW 1st Ave Grand Rapids MN 55744		INSURER(S) AFFORDING COVERAGE INSURER A: Citizen Ins. Co. of America INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	NAIC # 31534

COVERAGES

CERTIFICATE NUMBER: 23-24 Liability

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			OHXH510494	02/17/2023	02/17/2024	EACH OCCURRENCE \$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000
							MED EXP (Any one person) \$ 10,000
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 2,000,000
							PRODUCTS - COMPIOP AGG \$ 2,000,000
							\$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			OHXH510494	02/17/2023	02/17/2024	COMBINED SINGLE LIMIT (Ea accident) \$ Included
							BODILY INJURY (Per person) \$
							BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
							\$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED \$ RETENTION \$			OHXH510494	02/17/2023	02/17/2024	EACH OCCURRENCE \$ 1,000,000
							AGGREGATE \$ 1,000,000
							\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y <input checked="" type="checkbox"/> N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	OHXH510494	02/17/2023	02/17/2024	PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/>
							E.L. EACH ACCIDENT \$
							E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$
A	Real Estate Agent E&O			OHXH510494	02/17/2023	02/17/2024	Aggregate \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

City of Grand Rapids, Grand Rapids Economic Development Authority
 420 N. Pokegama Ave
 Grand Rapids MN 55744

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Bob Kelly

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ACORD 25 (2016/03)

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REQUEST FOR GRAND RAPIDS EDA ACTION

AGENDA DATE: April 27, 2023

STATEMENT OF ISSUE: Consider approval of an Agreement for Professional Services with Short Elliot Hendrickson (SEH).

PREPARED BY: Rob Mattei, Executive Director

BACKGROUND:

The attached Agreement for Professional Services with SEH is for performing as needed miscellaneous engineering support to GREDA in the examination of three parcels east of the intersection of 29th Street SE and 7th Avenue as a potential site for industrial development.

This work may include activities such preparing drawings and exhibits, topographic surveys, preliminary site design and meeting with GREDA staff. This agreement references the hourly rates for the City of Grand Rapids contract with SEH.

RECOMMENDATION:

REQUIRED ACTION: Make a motion to approve an Agreement for Professional Services with Short Elliot Hendrickson (SEH).

Agreement for Professional Services

This Agreement is effective as of April 17, 2023, between Grand Rapids Economic Development Authority (Client) and Short Elliott Hendrickson Inc. (Consultant).

This Agreement authorizes and describes the scope, schedule, and payment conditions for Consultant's work on the Project described as: **29th Street Industrial Development Site Miscellaneous Services.**

Client's Authorized Representative: Rob Mattei
Address: 420 North Pokegama Avenue, Grand Rapids, Minnesota, 55744, United States
Telephone: 218.326.7622 **email:** rmattei@grandrapidsmn.gov

Project Manager: Sara Christenson
Address: 1200 SE 4th Avenue, Suite 200, Grand Rapids, Minnesota 55744
Telephone: 218.322.4513 **email:** schristenson@sehinc.com

Scope: The Basic Services to be provided by Consultant as set forth herein are provided subject to the attached General Conditions of the Agreement for Professional Services (General Conditions Rev. 05.15.22), which is incorporated by reference herein and subject to Exhibits attached to this Agreement.

Task 1: Miscellaneous Services as requested by the Client for the 29th Street Industrial Development. Task may include drawing of existing easements, creating exhibits, topographic survey, meetings, and preliminary site designs.

Payment: The fee is hourly subject to a not-to-exceed amount of \$10,000 including expenses and equipment.

The payment method, basis, frequency and other special conditions are set forth in attached Exhibit A1.

This Agreement for Professional Services, attached General Conditions, Exhibits and any Attachments (collectively referred to as the "Agreement") supersedes all prior contemporaneous oral or written agreements and represents the entire understanding between Client and Consultant with respect to the services to be provided by Consultant hereunder. In the event of a conflict between the documents, this document and the attached General Conditions shall take precedence over all other Exhibits unless noted below under "Other Terms and Conditions". The Agreement for Professional Services and the General Conditions (including scope, schedule, fee and signatures) shall take precedence over attached Exhibits. This Agreement may not be amended except by written agreement signed by the authorized representatives of each party.

Other Terms and Conditions: Other or additional terms contrary to the General Conditions that apply solely to this project as specifically agreed to by signature of the Parties and set forth herein: None.

Short Elliott Hendrickson Inc.

Grand Rapids Economic Development Authority

By: 
 Full Name: Sara Christenson
 Title: Client Service Manager

By: _____
 Full Name: Rob Mattei
 Title: Executive Director

Exhibit A-1
to Agreement for Professional Services
Between Grand Rapids Economic Development Authority (Client)
and
Short Elliott Hendrickson Inc. (Consultant)
Dated April 17, 2023

Payments to Consultant for Services and Expenses
Using the Hourly Basis Option

The Agreement for Professional Services is amended and supplemented to include the following agreement of the parties:

A. Hourly Basis Option

The Client and Consultant select the hourly basis for payment for services provided by Consultant. Consultant shall be compensated monthly. Monthly charges for services shall be based on Consultant's current billing rates for applicable employees plus charges for expenses and equipment.

Consultant will provide an estimate of the costs for services in this Agreement. It is agreed that after 90% of the estimated compensation has been earned and if it appears that completion of the services cannot be accomplished within the remaining 10% of the estimated compensation, Consultant will notify the Client and confer with representatives of the Client to determine the basis for completing the work.

Compensation to Consultant based on the rates is conditioned on completion of the work within the effective period of the rates. Should the time required to complete the work be extended beyond this period, the rates shall be appropriately adjusted.

B. Expenses

The following items involve expenditures made by Consultant employees or professional consultants on behalf of the Client. Their costs are not included in the hourly charges made for services but instead are reimbursable expenses required in addition to hourly charges for services and shall be paid for as described in this Agreement:

1. Transportation and travel expenses.
2. Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets.
3. Lodging and meal expense connected with the Project.
4. Fees paid, in the name of the Client, for securing approval of authorities having jurisdiction over the Project.
5. Plots, Reports, plan and specification reproduction expenses.
6. Postage, handling and delivery.
7. Expense of overtime work requiring higher than regular rates, if authorized in advance by the Client.
8. Renderings, models, mock-ups, professional photography, and presentation materials requested by the Client.
9. All taxes levied on professional services and on reimbursable expenses.
10. Other special expenses required in connection with the Project.
11. The cost of special consultants or technical services as required. The cost of subconsultant services shall include actual expenditure plus 10% markup for the cost of administration and insurance.

The Client shall pay Consultant monthly for expenses.

C. Equipment Utilization

The utilization of specialized equipment, including automation equipment, is recognized as benefiting the Client. The Client, therefore, agrees to pay the cost for the use of such specialized equipment on the project. Consultant invoices to the Client will contain detailed information regarding the use of specialized equipment on the project and charges will be based on the standard rates for the equipment published by Consultant.

The Client shall pay Consultant monthly for equipment utilization.

General Conditions of the Agreement for Professional Services

Item 7.

SECTION I – SERVICES OF CONSULTANT

A. General

1. Consultant agrees to perform professional services as set forth in the Agreement for Professional Services or Supplemental Letter Agreement ("Services"). 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 Client or the Consultant. The Consultant's services under this Agreement are being performed solely for the Client's benefit, and no other party or entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder.

B. Schedule

1. Unless specific periods of time or dates for providing services are specified, Consultant's obligation to render Services hereunder will be for a period which may reasonably be required for the completion of said Services.
2. If Client has requested changes in the scope, extent, or character of the Project or the Services to be provided by Consultant, the time of performance and compensation for the Services shall be adjusted equitably. The Client agrees that Consultant is not responsible for damages arising directly or indirectly from delays beyond Consultant's control. If the delays resulting from such causes increase the cost or the time required by Consultant to perform the Services in accordance with professional skill and care, then Consultant shall be entitled to a equitable adjustment in schedule and compensation.

C. Additional Services

1. If Consultant determines that any services it has been directed or requested to perform are beyond the scope as set forth in the Agreement or that, due to changed conditions or changes in the method or manner of administration of the Project, Consultant's effort required to perform its services under this Agreement exceeds the stated fee for the Services, then Consultant shall promptly notify the Client regarding the need for additional Services. Upon notification and in the absence of a written objection, Consultant shall be entitled to additional compensation for the additional Services and to an extension of time for completion of additional Services absent written objection by Client.
2. Additional Services, including delivery of documents, CAD files, or information not expressly included as deliverables, shall be billed in accord with agreed upon rates, or if not addressed, then at Consultant's standard rates.

D. Suspension and Termination

1. If Consultant's services are delayed or suspended in whole or in part by Client, or if Consultant's services are delayed by actions or inactions of others for more than 60 days through no fault of Consultant, then Consultant shall be entitled to either terminate its agreement upon seven days written notice or, at its option, accept an equitable adjustment of compensation provided for elsewhere in this Agreement to reflect costs incurred by Consultant.
2. This Agreement may be terminated by either party upon seven days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.
3. This Agreement may be terminated by either party upon thirty days' written notice without cause. All provisions of this Agreement allocating responsibility or liability between the Client and Consultant shall survive the completion of the Services hereunder and/or the termination of this Agreement.
4. In the event of termination, Consultant shall be compensated for Services performed prior to termination date, including charges for expenses and equipment costs then due and all termination expenses.

SECTION II – CLIENT RESPONSIBILITIES

A. General

1. The Client shall, in proper time and sequence and where appropriate to the Project, at no expense to Consultant, provide full information as to Client's requirements for the Services provided by Consultant and access to all public and private lands required for Consultant to perform its Services.

2. The Consultant is not a municipal advisor and therefore Client shall provide its own legal, accounting, financial and insurance counseling, and other special services as may be required for the Project. Client shall provide to Consultant all data (and professional interpretations thereof) prepared by or services performed by others pertinent to Consultant's Services, such as previous reports; sub-surface explorations; laboratory tests and inspection of samples; environmental assessment and impact statements, surveys, property descriptions; zoning; deed; and other land use restrictions; as-built drawings; and electronic data base and maps. The costs associated with correcting, creating or recreating any data that is provided by the Client that contains inaccurate or unusable information shall be the responsibility of the Client.
3. Client shall provide prompt written notice to Consultant whenever the Client observes or otherwise becomes aware of any changes in the Project or any defect in Consultant's Services. Client shall promptly examine all studies, reports, sketches, opinions of construction costs, specifications, drawings, proposals, change orders, supplemental agreements, and other documents presented by Consultant and render the necessary decisions and instructions so that Consultant may provide Services in a timely manner.
4. Client shall require all utilities with facilities within the Project site to locate and mark said utilities upon request, relocate and/or protect said utilities to accommodate work of the Project, submit a schedule of the necessary relocation/protection activities to the Client for review, and comply with agreed upon schedule. Consultant shall not be liable for damages which arise out of Consultant's reasonable reliance on the information or services furnished by utilities to Client or others hired by Client.
5. Consultant shall be entitled to rely on the accuracy and completeness of information or services furnished by the Client or others employed by the Client and shall not be liable for damages arising from reasonable reliance on such materials. Consultant shall promptly notify the Client if Consultant discovers that any information or services furnished by the Client is in error or is inadequate for its purpose.
6. Client agrees to reasonably cooperate, when requested, to assist Consultant with the investigation and addressing of any complaints made by Consultant's employees related to inappropriate or unwelcomed actions by Client or Client's employees or agents. This shall include, but not be limited to, providing access to Client's employees for Consultant's investigation, attendance at hearings, responding to inquiries and providing full access to Client files and information related to Consultant's employees, if any. Client agrees that Consultant retains the absolute right to remove any of its employees from Client's facilities if Consultant, in its sole discretion, determines such removal is advisable. Consultant, likewise, agrees to reasonably cooperate with Client with respect to the foregoing in connection with any complaints made by Client's employees.
7. Client acknowledges that Consultant has expended significant effort and expense in training and developing Consultant's employees. Therefore, during the term of this Agreement and for a period of two years after the termination of this Agreement or the completion of the Services under this Agreement, whichever is longer, Client shall not directly or indirectly: (1) hire, solicit or encourage any employee of Consultant to leave the employ of Consultant; (2) hire, solicit or encourage any consultant or independent contractor to cease work with Consultant; or (3) circumvent Consultant by conducting business directly with its employees. The two-year period set forth in this section shall be extended commensurately with any amount of time during which Client has violated its terms.

SECTION III – PAYMENTS

A. Invoices

1. Undisputed portions of invoices are due and payable within 30 days. Client must notify Consultant in writing of any disputed items within 15 days from receipt of invoice. Amounts due Consultant will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) for invoices 30 days past due. Consultant reserves the right to retain Services or deliverables until all invoices are paid in full. Consultant will not be liable for any claims of loss, delay, or damage by Client for reason of withholding Services, deliverables, or Instruments of Service until all invoices are paid in full. Consultant shall be entitled to recover all reasonable

- costs and disbursements, including reasonable attorney's fees, incurred in connection with collecting amounts owed by Client.
2. Should taxes, fees or costs be imposed, they shall be in addition to Consultant's agreed upon compensation.
 3. Notwithstanding anything to the contrary herein, Consultant may pursue collection of past due invoices without the necessity of any mediation proceedings.

SECTION IV – GENERAL CONSIDERATIONS

A. Standards of Performance

1. The standard of care for all professional engineering and related services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily exercised by members of Consultant's profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with its Services.
2. Consultant neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the work in accordance with its construction contract or the construction documents prepared by Consultant. Client acknowledges Consultant will not direct, supervise or control the work of construction contractors or their subcontractors at the site or otherwise. Consultant shall have no authority over or responsibility for the contractor's acts or omissions, nor for its means, methods, or procedures of construction. Consultant's Services do not include review or evaluation of the Client's, contractor's or subcontractor's safety measures, or job site safety or furnishing or performing any of the Contractor's work.
3. Consultant's Opinions of Probable Construction Cost are provided if agreed upon in writing and made on the basis of Consultant's experience and qualifications. Consultant has no control over the cost of labor, materials, equipment or service furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions. Consultant cannot and does not guarantee that proposals, bids or actual construction cost will not vary from Opinions of Probable Construction Cost prepared by Consultant. If Client wishes greater assurance as to construction costs, Client shall employ an independent cost estimator.

B. Indemnity for Environmental Issues

1. Consultant is not a user, generator, handler, operator, arranger, storer, transporter, or disposer of hazardous or toxic substances. Therefore the Client agrees to hold harmless, indemnify, and defend Consultant and Consultant's officers, directors, subconsultant(s), employees and agents from and against any and all claims; losses; 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 hazardous or toxic substances, pollutants or contaminants of any kind at the site.

C. Limitations on Liability

1. The Client hereby agrees that to the fullest extent permitted by law, Consultant's total liability to the Client for all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to the Project or this Agreement from any cause or causes including, but not limited to, Consultant's negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not exceed five hundred thousand dollars (\$500,000). In the event Client desires limits of liability in excess of those provided in this paragraph, Client shall advise Consultant in writing and agree that Consultant's fee shall increase by 1% for each additional five hundred thousand dollars of liability limits, up to a maximum limit of liability of five million dollars (\$5,000,000).
2. Neither Party shall be liable to the other for consequential damages, including without limitation lost rentals; increased rental expenses; loss of use; loss of income; lost profit, financing, business, or reputation; and loss of management or employee productivity, incurred by one another or their subsidiaries or successors, regardless of whether such damages are foreseeable and are caused by breach of contract, willful misconduct, negligent act or omission, or other wrongful act of either of them. Consultant expressly disclaims any duty to defend Client for any alleged actions or damages.
3. It is intended by the parties to this Agreement that Consultant's Services shall not subject Consultant's employees, officers or directors to any personal legal exposure for the risks associated with this Agreement. The Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or

asserted only against Consultant, and not against any of Consultant individual employees, officers or directors, and Client knowingly waives all such claims against Consultant individual employees, officers or directors.

4. Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued, and the applicable statutes of limitations shall commence to run, not later than either the date of Substantial Completion for acts or failures to act occurring prior to substantial completion or the date of issuance of the final invoice for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when the Services are substantially completed.

D. Assignment

1. Neither party to this Agreement shall transfer, sublet or assign any rights under, or interests in, this Agreement or claims based on this Agreement without the prior written consent of the other party. Any assignment in violation of this subsection shall be null and void.

E. Dispute Resolution

1. Any dispute between Client and Consultant arising out of or relating to this Agreement or the Services (except for unpaid invoices which are governed by Section III) shall be submitted to mediation as a precondition to litigation unless the parties mutually agree otherwise. Mediation shall occur within 60 days of a written demand for mediation unless Consultant and Client mutually agree otherwise.
2. Any dispute not settled through mediation shall be settled through litigation in the state and county where the Project at issue is located.

SECTION V – INTELLECTUAL PROPERTY

A. Proprietary Information

1. All documents, including reports, drawings, calculations, specifications, CADD materials, computers software or hardware or other work product prepared by Consultant pursuant to this Agreement are Consultant's Instruments of Service ("Instruments of Service"). Consultant retains all ownership interests in Instruments of Service, including all available copyrights.
2. Notwithstanding anything to the contrary, Consultant shall retain all of its rights in its proprietary information including without limitation its methodologies and methods of analysis, ideas, concepts, expressions, inventions, know how, methods, techniques, skills, knowledge, and experience possessed by Consultant prior to, or acquired by Consultant during, the performance of this Agreement and the same shall not be deemed to be work product or work for hire and Consultant shall not be restricted in any way with respect thereto. Consultant shall retain full rights to electronic data and the drawings, specifications, including those in electronic form, prepared by Consultant and its subconsultants and the right to reuse component information contained in them in the normal course of Consultant's professional activities.

B. Client Use of Instruments of Service

1. Provided that Consultant has been paid in full for its Services, Client shall have the right in the form of a nonexclusive license to use Instruments of Service delivered to Client exclusively for purposes of constructing, using, maintaining, altering and adding to the Project. Consultant shall be deemed to be the author of such Instruments of Service, electronic data or documents, and shall be given appropriate credit in any public display of such Instruments of Service.
2. Records requests or requests for additional copies of Instruments of Services outside of the scope of Services, including subpoenas directed from or on behalf of Client are available to Client subject to Consultant's current rate schedule. Consultant shall not be required to provide CAD files or documents unless specifically agreed to in writing as part of this Agreement.

C. Reuse of Documents

1. All Instruments of Service prepared by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by the Client or others on extensions of the Project or on any other Project. Any reuse of the Instruments of Service without written consent or adaptation by Consultant for the specific purpose intended will be at the Client's sole risk and without liability or legal exposure to Consultant; and the Client shall release Consultant from all claims arising from such use. Client shall also defend, indemnify, and hold harmless Consultant from all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting from reuse of Consultant documents without written consent.