



207 Lafayette Street
P.O. Box 378
Winona, MN 55987-0378
(507) 457-8250
www.portofwinona.com

Mile 725 Upper Mississippi

AGENDA

DATE: February 13, 2020

TIME: 4:00 P.M.

PLACE: Council Chambers, City Hall

1. **CALL TO ORDER - APPROVAL OF MINUTES**

Approval of the minutes from the January 9, 2020 Meeting

2. **REMARKS BY PRESIDENT**

3. **OLD BUSINESS**

A. CHS Contract Amendment

Port Leases that receive funding from Port Development Assistance are reviewed by the State Office of Management and Budget (MMB). MMB has required a Third Amendment to the lease between the Port Authority and CHS be executed prior to their approval. Staff recommends authorizing the President and Executive Secretary to execute the Amendment.

B. Contract for Services Main Street

Port Authority Commissioners approved the 2020 Budget at their August meeting and included funding for Winona Main Street. A Contract for Services is attached for the Port Commissioners review and consideration.

4. **NEW BUSINESS**

A. General Fund/Commercial Harbor Fund

The Port Authority undertakes improvement at the Commercial Harbor and utilizes Minnesota Port Assistance Funding which is on a reimbursement basis. Staff recommends the Commissioners consider a motion to loan funds from Fund 911 to Fund 945 to cover monthly cash shortfalls until reimbursement occurs.

B. Main Square Development – Clean-Up

The Purchase Agreement with Main Square LLC and the Hiawatha Education Foundation was subject to an Escrow Agreement to assure clean-up was complete at the site. The MPCA has issued a "No Further Action Letter". Commissioners are asked to review a Resolution authorizing the release of remaining funds that are in escrow.

C. Engineering Service Mississippi Riverfront Path

Attached for Commissioners consideration is a proposal from Barr Engineering to continue work on the Mississippi Riverfront Path. They completed preliminary engineering on Phase I in 2019. Phase II of the Mississippi Riverfront Path would continue on from Lions Park and extend over Gilmore Creek and the railroad tracks.

Attached for your consideration is a proposal from Barr Engineering to provide services for Phase II of the Riverfront Path. Funds are budgeted for this.

If Commissioners concur, a motion to authorize the President and Executive Secretary to enter into a Contract for Services would be appropriate.

5. FINANCIAL REPORTS

6. ADJOURNMENT

PORT AUTHORITY AGENDA ITEM

AGENDA ITEM: 1. Approval of Minutes

DATE: February 13, 2020

Following are the minutes from the January 9, 2020 meeting for Commission's review and approval.

PORT AUTHORITY OF WINONA MINUTES

DATE: January 9, 2020

PRESENT: Commissioners: Cichanowski, Johnson, Thurley, Borzyskowski, Gorman, Lucas, Hansen and Executive Secretary Sarvi

ABSENT: None

STAFF PRESENT: Director of Community Development Lucy McMartin, Finance Director Mary Burchichter, Housing Specialist Nick Larson, and Development Coordinator Myron White

1. CALL TO ORDER – APPROVAL OF MINUTES

The meeting was called to order at 4:00 PM by President Cichanowski. A motion was made by Commissioner Borzyskowski and seconded by Commissioner Thurley to approve the December 12, 2019 minutes. The motion carried with all Commissioners present voting aye.

2. REMARKS BY PRESIDENT

President Cichanowski had no remarks.

3. NEW BUSINESS

A. *Habitat for Humanity Property*

Director of Community Development McMartin outlined the possibility of acquiring a property suitable for a Habitat for Humanity Project at 863 East Broadway. Housing Specialist Larson assured the lot was buildable and the plan would be to construct a home that would fit well in the neighborhood.

Clarification was made that the 863 East Broadway proposal with Habitat for Humanity is in addition to the proposal approved by the Port Authority at the November 21, 2019 meeting. That property is located at 169 North Baker and has a house on the lot.

A motion was made by Commissioner Borzyskowski and seconded by Commissioner Thurley to direct staff to develop a plan to move forward with the acquisition at 863 East Broadway with the understanding a Purchase Agreement would be brought to the Port Authority for review and approval.

B. *Port Dock Tonnage 2019*

Development Coordinator White provided the Commission with an overview of tonnage at the Port Docks in 2019. He noted that river conditions and the challenging export market were factors explaining the dip in tonnage. Mr.

White also noted the unloading of windmill blades helped to supplement the decrease in commodity shipments.

C. Downtown Strategic Plan Review and Comment

Director of Community Development McMartin provided a draft of the Downtown Strategic Plan and outlined strategies to garner public input. She indicated the Port Authority would host an open house as well as sponsor an online survey and request comments. After feedback, the plan would undergo final editing prior to coming back to the Port Authority for final approval.

4. FINANCIAL REPORT

Finance Director Burrichter indicated the finances were preliminary end of year and subject to final adjustments.

5. ADJOURNMENT

Prior to adjournment Director of Community Development McMartin noted that a letter of "No Further Action" was received from the MPCA for the three parcels at Main Square Development and this would be addressed at the next Port Authority Meeting.

A motion was made and seconded to adjourn the meeting. The meeting was adjourned at 4:25 pm.

Myron White
Development Coordinator

Mike Cichanowski
President

PORT AUTHORITY AGENDA ITEM

AGENDA ITEM: 3. A. CHS Contract Amendment

DATE: February 13, 2020

ATTACHMENT: Third Amendment to Lease Agreement

As part of the Port Development Assistance process, all Port lease contracts for properties that receive grant funding are reviewed for compliance by the State of Minnesota Office of Management and Budget (MMB). MnDOT has awarded the Port Authority a grant (\$487,500) for the rehabilitation of the west dock wall at 998 Riverview Drive (the old dock). The lease agreement between the Port Authority and CHS for that property has been reviewed by MMB and, prior to final approval, MMB has required the attached amendment to the lease agreement be executed.

The Third Amendment to the lease is attached for your review. The specific language is highlighted in red. The agreement has been forwarded to CHS for their review.

If Commissioners concur, a motion to authorize execution of the lease amendment by President Cichanowski and Executive Secretary Sarvi would be appropriate.

**THIRD AMENDMENT TO
LEASE AGREEMENT DATED
MARCH 15, 2013**

THIS AGREEMENT is made this ____ day of _____, 2020, by and between the Port Authority of Winona, a body politic and corporate under the laws of the State of Minnesota, (hereinafter the “Lessor” or “Authority”), and CHS Inc., a Minnesota corporation (hereinafter “Lessee”); (collectively Lessor and Lessee are referred to herein as the “parties”).

WITNESSETH:

WHEREAS, on March 15, 2013, Lessor and Lessee entered into a Lease Agreement dated March 15, 2013 (the “Lease Agreement”), which Lease Agreement is incorporated herein by reference; and

WHEREAS, on April 21, 2015, Lessor and Lessee entered into a First Amendment to the Lease Agreement (the “First Amendment”), which First Amendment is incorporated herein by reference; and

WHEREAS, on December 13, 2018, Lessor and Lessee entered into a Second Amendment to the Lease Agreement (the “Second Amendment”), which Second Amendment is incorporated herein by reference; and

WHEREAS, Minnesota Department of Management and Budget (“MMB”) is the state agency responsible for compliance of commercially leased public facilities that are bond financed with the Internal Revenue Code and Minn. Stat. Sec. 16A.695; and

WHEREAS, the Lease Agreement involves commercially leased public facilities that have been bond financed and are subject to the regulatory authority of MMB and compliance with the Internal Revenue Code and Minn. Stat. Sec. 16A.695; and

WHEREAS, MMB is now requiring certain amendments be made to the Lease Agreement to include a reference to the statutory authority for the government program underlying the Lease Agreement, as amended; and

WHEREAS, the parties now accordingly desire to amend the Lease Agreement as provided herein.

NOW, THEREFORE, for valuable consideration, the Lease Agreement and First Amendment are hereby amended as follows (new language is underlined; deleted language is lined out; sections which are not proposed to be amended are omitted):

1. That a new Recital H be added to the Lease Agreement, as amended, to read as follows:

H. The Lease Agreement, as amended, was executed, and this Third Amendment is being executed to carry out the governmental program of providing or promoting

adequate docks, railroad and terminal facilities open to all on reasonable and equal terms for the handling, storage, care, and shipment of freight and passengers to, from, and through the port in accordance with Minn. Stat. § 469.055.

2. The recitals hereto are made a part hereof.
3. Except as amended herein, all provisions of the Lease Agreement, First Amendment and Second Amendment are ratified and confirmed by all parties.

[Remainder of page left intentionally blank]

IN WITNESS WHEREOF, the parties have executed this agreement on the date and year first above written.

PORT AUTHORITY OF WINONA, LESSOR

By: _____
Michael Cichanowski
Its: President

By: _____
Stephen T. Sarvi
Its: Executive Secretary

CHS, INC., LESSEE

By: _____
Its: _____ (TITLE)

APPROVAL BY COMMISSIONER:

MINNESOTA DEPARTMENT OF
MANAGEMENT AND BUDGET

By: _____

Its: Commissioner

PORT AUTHORITY AGENDA ITEM

AGENDA ITEM: 3. B. Agreement for Services – Winona Main Street

DATE: February 13, 2020

ATTACHMENT: Service Contract

As part of the budgeting process for 2020, the Port Authority approved funding for Winona Main Street in the amount of \$30,000. The attached Service Agreement includes a term of one-year for services provided. There are no changes to the Agreement except for the dates.

If Commissioners concur, a motion to authorize the President and Executive Secretary to execute the Agreement, would be appropriate.

Service Contract

This Contract ("Contract"), made this _____ day of _____, _____, by and between the Port Authority of Winona, a body politic and corporate under the laws of the State of Minnesota ("Port") and the Winona Area Chamber of Commerce, a nonprofit corporation organized under the laws of the State of Minnesota ("Chamber").

WHEREAS, the PORT requires certain professional services to assist the PORT in completing its economic development initiatives in the CITY's Downtown Business District (the "Project"); and

WHEREAS, the CHAMBER agrees to furnish the various professional services required by the PORT.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

SECTION I – CHAMBER SERVICES AND RESPONSIBILITIES

A. Scope of Services. CHAMBER agrees to perform various Project services as detailed in Exhibit 1, Scope of Services, attached hereto and incorporated herein by reference.

1. The CHAMBER agrees to maintain, at its expense, statutory worker's compensation coverage.
2. The CHAMBER agrees to maintain, at its expense, general liability insurance coverage insuring CHAMBER against claims for bodily injury, death or property damage arising out of its general business activities (including automobile use). The PORT shall be an additional named insured on the Chamber's CGL insurance policy. The liability insurance policy shall provide coverage for each occurrence in the minimum amount of \$1,000,000.00.
3. True, accurate and current certificates of insurance, showing evidence of the required insurance coverages, are hereby provided to the PORT and are attached hereto as Exhibit 2.
4. The Winona Area Chamber of Commerce will manage a Winona Main Street Program for the benefit of Winona for 2020. The Chamber will continue to have on staff a full time Main Street Program Coordinator whose activities will be overseen by the Winona Chamber President.

SECTION II – THE PORT’S RESPONSIBILITIES

- A. The PORT shall promptly compensate the CHAMBER for services rendered to PORT as part of the Project in Semi-Annual Payments of \$15,000 each on January 15, 2020 and July 15, 2020
- B. The PORT requests that any requests for extension of this Contract for 2021 or beyond be made to PORT by June 15, 2020 to be reviewed for recommendation for the Port Authority annual budget. Requests should be directed in writing to the Community Development Department; City Hall; P.O. Box 378; Winona, Minnesota. 55987.

SECTION III – TERMS AND CODITIONS

- A. **Term.** This Contract shall commence January 1, 2020 and be in effect until December 31, 2020.
- B. **Default.** If CHAMBER fails to perform any of the provisions of this Contract or so fails to administer the services detailed in Exhibit 1, attached hereto, in such a manner as to endanger the performance of the Contract, this shall constitute default. Unless CHAMBER’s default is excused by the PORT, the PORT may, upon written notice, immediately cancel this Contract or exercise any other rights or remedies available to the PORT under this Contract or law.
- C. **Liability.** The PORT shall have no duty or obligation hereunder other than to take such specific actions as are required of it from time to time by the provisions of this Contract and it shall incur no liability hereunder or in connection herewith for anything whatsoever other than any liability resulting from its own gross negligence or willful misconduct or unlawful acts or omissions. The only duties and responsibilities of the PORT shall be the duties and obligations specifically set forth in this Contract.
- D. **Indemnification.** CHAMBER shall indemnify, hold harmless and defend the PORT from and against any and all losses, claims, liabilities, and reasonable expenses, including the reasonable fees of its counsel, specifically including in-house counsel fees, which it may suffer or incur in connection with the performance of any duties and obligations under this Contract, except for those losses, claims, liabilities and expenses resulting solely and directly from the PORT’S own negligence, willful misconduct, or unlawful act or omission. All indemnification obligations shall survive termination, expiration or cancellation of this Contract.

PORT shall indemnify, hold harmless and defend the CHAMBER from and against any and all losses, claims, liabilities, and reasonable expenses, including the reasonable fees of its counsel, specifically including in-house counsel fees, which it may suffer or incur in connection with the performance of any duties and obligations under this Contract, except for those losses, claims, liabilities and expenses

resulting solely and directly from the CHAMBER'S own gross negligence, willful misconduct, or unlawful act or omission. All indemnification obligations shall survive termination, expiration or cancellation of this Contract.

- E. Contingencies.** This Contract is expressly contingent upon the PORT approving a budget allocating the funds specified herein for the purpose stated herein. In the event, for any reason, funds are not included in the approved PORT budget and available for expenditure for this Contract, then this Contract shall be null and void without any obligation by the PORT or CHAMBER.
- F. Voluntary and Knowing Action.** The PARTIES, by executing this Contract, state that they have carefully read this Contract and understand fully the contents thereof; that in executing this Contract they voluntarily accept all terms described in this Contract without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.
- G. Authorized Signatories.** The PARTIES each represent and warrant to the other that (1) the persons signing this Contract are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Contract against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
- H. Notices.** The PARTIES' representatives for notification for all purposes are:

THE CITY:

[Name] Lucy McMartin
[Position] Director of Community Development
[Address] City of Winona
P.O. Box 378
Winona MN 55987
Phone: 507-457-8250
Email: lmcmartin@ci.winona.mn.us

CHAMBER:

[Name] Christie Ransom
[Position] President/CEO
[Address] Winona Area Chamber of Commerce
902 E. 2nd Street
Winona MN 55987
Phone: 507-452-2272
Email: cransom@winonachamber.com

Any notice provided for or permitted under this Contract, unless otherwise provided herein, will be treated as having been received (a) when delivered personally, (b) when sent by confirmed facsimile or (c) three (3) days following when sent by certified mail, to the party to be notified, at the address set forth below, or at such

other place of which the other party has been notified in accordance with the provisions of this paragraph. Such notice will be treated as having been received upon actual receipt if actual receipt occurs earlier than as provided in clauses (a) through (c) hereof.

- I. **Independent Contractor Status.** CHAMBER at all times and for all purposes hereunder, shall be an independent contractor and is not an employee of the CITY or PORT for any purpose. The PORT acknowledges that no withholding or deduction for State or Federal income taxes, FICA, FUTA, or otherwise, will be made from the payments due CHAMBER, and that it is CHAMBER's sole obligation to comply with the applicable provisions of all Federal and State tax laws. CHAMBER shall at all times be free to exercise initiative, judgment and discretion as to how to best perform or provide services identified herein. CHAMBER is responsible for hiring sufficient workers to perform the services/duties required by this Contract, withholding their taxes and paying all other employment tax obligations on their behalf.
- H. **Subcontracting.** CHAMBER shall not enter into any subcontract for performance of any services contemplated under this Contract without the prior written approval of the PORT. CHAMBER shall be responsible for the performance of all subcontractors and/or sub-consultants.
- I. **Assignment.** This Contract may not be assigned by either Party without the written consent of the other Party.
- J. **Modifications/Amendment.** Any alterations, variations, modifications, amendments or waivers of the provisions of this Contract shall only be valid when they have been reduced to writing, and signed by authorized representative of the PORT and CHAMBER.
- K. **Records—Availability and Retention.** Pursuant to Minn. Stat. § 16C.05, subd. 5, CHAMBER agrees that the PORT, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of CHAMBER and involve transactions relating to this Contract. CHAMBER agrees to maintain these records for a period of six years from the date of termination of this Contract.
- L. **Force Majeure.** The PARTIES shall each be excused from performance under this Contract while and to the extent that either of them are unable to perform, for any cause beyond its reasonable control. Such causes shall include, but not be restricted to fire, storm, flood, earthquake, explosion, war, total or partial failure of transportation or delivery facilities, raw materials or supplies, interruption of utilities or power, and any act of government or military authority. In the event either party is rendered unable wholly or in part by force majeure to carry out its obligations under

this Contract then the party affected by force majeure shall give written notice with explanation to the other party immediately.

- M. Compliance with Laws.** CHAMBER shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Contract or to the facilities, programs and staff for which CHAMBER is responsible.
- N. Covenant Against Contingent Fee.** CHAMBER warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CHAMBER to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from award or making of this Contract.
- O. Covenant Against Vendor Interest.** CHAMBER warrants that it is not employed by any vendor of equipment or service provider that could result in a commission, percentage, brokerage, or contingent fee as a result of CHAMBER association with the PORT.
- P. Non-Discrimination.** The provisions of any applicable law or ordinance relating to civil rights and discrimination shall be considered part of this Contract as if fully set forth herein.
- Q. Interest by PORT or City Officials.** No elected official, officer, or employee of the CITY or PORT shall during his or her tenure or employment and for one year thereafter, have any interest, direct or indirect, in this Contract or the proceeds thereof.
- R. Governing Law.** This Contract shall be deemed to have been made and accepted in Winona County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of the Contract without regard to its choice of law or conflict of laws principles.
- S. No Partnership, Joint Venture, or Fiduciary Relationship.** Nothing contained in this Contract shall be interpreted as creating a partnership, joint venture, or relationship of principal and agent between the PORT and CHAMBER.
- T. Data Practices.** The PARTIES acknowledge that this Contract is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 *et seq.*
- U. No Waiver.** Any Party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Contract or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that Party's right to assert or rely upon the terms and conditions of this Contract. Any express waiver of a term of this Contract shall not be binding and

effective unless made in writing and properly executed by the waiving Party.

- V. **Severability.** The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Contract to the extent of its invalidity or unenforceability, and this Contract shall be construed and enforced as if the Contract did not contain that particular provision to the extent of its invalidity or unenforceability.
- W. **Entire Contract.** These terms and conditions constitute the entire Contract between the PARTIES regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Contract.
- X. **Headings and Captions.** Headings and captions contained in this Contract are for convenience only and are not intended to alter any of the provisions of this Contract and shall not be used for the interpretation of the validity of the Contract or any provision hereof.
- Y. **Survivability.** All covenants, indemnities, guarantees, releases, representations and warranties by any Party or PARTIES, and any undischarged obligations of the PORT and CHAMBER arising prior to the expiration of this Contract (whether by completion or earlier termination), shall survive such expiration.

Remainder of page intentionally left blank.

SECTION VII –SIGNATURES

IN WITNESS WHEREOF, the PARTIES have hereunto executed this document the day and year first above written.

Winona Area Chamber of Commerce as provider of Services:

By: _____
(Signature)

Date: _____

Title: _____

Print Name: _____

By: _____
(Signature)

Date: _____

Title: _____

Print Name: _____

Port Authority of Winona

By: _____
Mike Cichanowski, President

Date: _____

By: _____
Stephen T. Sarvi, Executive Secretary

Date: _____

EXHIBIT 1

SCOPE OF SERVICES

Subject to the terms of this Contract, CHAMBER shall perform the following services as its contractual obligation to the PORT:

1. CHAMBER will continue to maintain a nine-member Steering Committee as well as additional sub-committees as recommended by the Main Street 4-point approach. The nine-member advisory Steering Committee will include two members from the City, including a City Staff member from Community Development Office and one City, Port, or Council member.
2. CHAMBER will organizationally house and manage the Winona Main Street program. It will manage all personnel and financial activity of the program.
3. CHAMBER will maintain a second part-time satellite location in the downtown area to assure that the Main Street Program Coordinator has easy access to downtown stake-holders.
4. CHAMBER will publish an Annual Report in January of each year that will be distributed to the Winona Area Chamber of Commerce Board of Directors, the Winona Port Authority, the Main Street Steering Committee and to the Friends of Main Street.
5. Winona Main Street annual program budget and scope of work will be submitted by the Main Street Program Coordinator and Chamber President to the Chamber Board of Directors in accordance with all Chamber policies and procedures that govern the entire Chamber organization. A copy of the annual program budget and scope of work will be submitted to the Port Authority of Winona for their review.

EXHIBIT 2

CERTIFICATES OF REQUIRED INSURANCE COVERAGES

[Certificates of Insurance attached hereto]



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
08/07/2019

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 West Bend Mutual Insurance Company 1900 South 18th Avenue West Bend WI 53095	CONTACT NAME: Rep	FAX (A/C, No): (262) 365-2200
	PHONE (A/C, No, Ext): (866) 926-4244	
	E-MAIL ADDRESS: customercare@wbmi.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : West Bend Mutual Insurance Company	15350
INSURED Winona Area Chamber of Commerce PO BOX 870 Winona MN 55987	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** CL198738690 **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 type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:			1103820	08/13/2019	08/13/2020	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 - COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			1103820	08/13/2019	08/13/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 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 <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ Waived			1103820	08/13/2019	08/13/2020	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Winona Port Authority is listed as additional insured regarding General Liability per form CG2026.

CERTIFICATE HOLDER Winona Port Authority PO Box 378 Winona MN 55987	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 

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PORT AUTHORITY AGENDA ITEM

AGENDA ITEM: 4. A. General Fund/Commercial Harbor Fund

DATE: February 13, 2020

The Port Authority undertakes improvement at the Commercial Harbor and utilizes Minnesota Port Assistance Funding. The grant operates on a reimbursement basis. Staff recommends the Commissioners consider a motion to loan funds from Fund 911 to Fund 945 to cover monthly cash shortfalls until reimbursement occurs. If Commissioners concur, a motion to that effect would be appropriate.

PORT AUTHORITY AGENDA ITEM

AGENDA ITEM: 4. B. Main Square Development – Escrow

DATE: February 13, 2020

**ATTACHMENT: MPCA No Further Action Determination Letter-1/3/2020
Resolution to Release Remaining Balance in the Escrow
Account**

The Port Authority of Winona assembled land at Fifth and Main Streets and sold it to the Hiawatha Education Foundation and Main Square Development LLC. A portion of the sale proceeds were placed in an Escrow Fund per an Escrow Agreement. The purpose of the fund was to cover any environmental clean-up costs not covered through the DEED Clean-up Grant.

The steps for clean-up at the site have been implemented and MPCA provided a No Further Action letter which is attached for your review and reference.

The final invoices are being processed. If Commissioners concur, a motion to approve the attached resolution authorizing signatures related to the previously approved Escrow Agreement would be appropriate.



520 Lafayette Road North | St. Paul, Minnesota 55155-4194 | 651-296-6300

800-657-3864 | Use your preferred relay service | info.pca@state.mn.us | Equal Opportunity Employer

January 3, 2020

Lucy McMartin
City of Winona
207 Lafayette St Rm 210
PO Box 378
Winona MN 55987-3533

RE: No Further Action Determination for Soil and Soil Vapor
Main Square Community, 201 Main St, 128 5th St W, & 127 4th St W, Winona
MPCA Site ID: BF0000670
Billing ID: 40095
PINs: 320002600, 320002610, and 320002620

Dear Lucy McMartin:

The Minnesota Pollution Control Agency (MPCA) staff in the Voluntary Investigation and Cleanup (VIC) Program has been requested to provide a No Further Action Determination for releases identified at the Main Square Community site, located at the address referenced above (the Site).

The MPCA staff has reviewed the information submitted for the Site. The Site is a two-acre parcel that was originally developed prior to 1884 for residential and commercial use. In addition to residences, the Site has been occupied by stables, a blacksmith shop, a wood shop, an automobile sales and repair shop, a gasoline filling station, a paint shop, a cabinet repair shop, a church, and a bicycle repair shop. Prior to redevelopment in 2018, the Site consisted of a vacant commercial restaurant building and a paved parking lot. Main Square Development LLC has redeveloped the Site with a mixed use building with one level of underground parking. The building includes street level commercial space with residential apartments above. In addition, the Hiawatha Education Foundation has constructed a separate slab-on-grade building in the northwest portion of the Site for use as a preschool.

A sub-surface investigation was conducted at the Site in January 2018. Soil samples were collected and analyzed for diesel range organics (DRO), gasoline range organics (GRO), Resource Conservation and Recovery Act (RCRA) metals, volatile organic compounds (VOCs) and polynuclear aromatic hydrocarbons (PAHs). Arsenic and lead were detected in one soil sample at concentrations greater than the MPCA's industrial soil reference values (SRVs). Mercury was detected in three shallow soil samples at concentrations greater than the MPCA's residential SRV. PAHs, expressed as the benzo(a)pyrene equivalent, were detected in three soil samples, one of which was greater than the industrial SRV. Four groundwater samples were collected and analyzed for VOCs, DRO and GRO. There were no detections of VOCs, DRO, or GRO in the groundwater samples. Four soil vapor samples were collected and analyzed for VOCs. Tetrachloroethene (PCE) was detected in one soil vapor sample below the location of a proposed underground parking garage at a concentration slightly greater than the MPCA's action level of thirty-three times (33X) the MPCA's residential intrusion screening value (ISV). Additional soil vapor sampling was completed in May 2018; no VOCs were detected at concentrations greater than the action level during the May 2018 event. For the purposes of this

Lucy McMartin
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January 3, 2020

letter, the Identified Release consists of arsenic, lead, mercury and PAHs in soil and PCE and other non-petroleum VOCs in soil vapor (the Identified Release).

Soil response actions are documented in the Response Action Implementation Report prepared by Landmark and dated August 2019. A total of 4,925 tons of impacted soil was excavated and disposed of at the SKB Lansing Landfill Waste Facility in Austin, Minnesota during redevelopment activities at the Site.

Based on a review of the information provided to the MPCA, the MPCA staff will not request any further investigation or remediation of the Identified Release at the Site. Furthermore, the MPCA is issuing a determination to take no action under Minn. Stat. §§ 115B.01-115B.18, with respect to the Identified Release. The MPCA staff will not refer the Identified Release to the U.S. Environmental Protection Agency for inclusion on the Superfund Enterprise Management System list; to the State Site Assessment staff for preparation of a Hazard Ranking System score; or to the MPCA Commissioner for the placement of the Site on the Permanent List of Priorities.

Please be advised that the determination made in this letter is subject to the disclaimers found in Attachment A. If you have any questions about the contents of this letter, please contact Andrew Nichols, Project Manager, at 651-757-2612 or by email at andrew.nichols@state.mn.us.

Sincerely,

Amy K. Hadjaris

This document has been electronically signed.

Amy K. Hadjaris, P.G.
Supervisor
Redevelopment Unit
Remediation Division

AKH/AN:je

Attachment

cc: Ross Dunsmoor, Winona County (electronic)
Jerry Mullin, Landmark Environmental (electronic)

Disclaimers

Main Square Community

MPCA Site ID: BF0000670

1. Reservation of authorities

The Minnesota Pollution Control Agency (MPCA) Commissioner reserves the authority to take any appropriate actions with respect to any release, threatened release, or other conditions at the Site. The MPCA Commissioner also reserves the authority to take such actions if the voluntary party does not proceed in the manner described in this letter or if actions taken or omitted by the voluntary party with respect to the Site contribute to any release or threatened release, or create an imminent and substantial danger to public health and welfare.

2. No MPCA assumption of liability

The MPCA, its Commissioner and staff do not assume any liability for any release, threatened release or other conditions at the Site or for any actions taken or omitted by the voluntary party with regard to the release, threatened release, or other conditions at the Site, whether the actions taken or omitted are in accordance with this letter or otherwise.

3. Letter based on current information

All statements, conclusions and representations in this letter are based upon information known to the MPCA Commissioner and staff at the time this letter was issued. The MPCA Commissioner and staff reserve the authority to modify or rescind any such statement, conclusion or representation and to take any appropriate action under his authority if the MPCA Commissioner or staff acquires information after issuance of this letter that provides a basis for such modification or action.

4. Disclaimer regarding use or development of the property

The MPCA, its Commissioner and staff do not warrant that the Site is suitable or appropriate for any particular use.

5. Disclaimer regarding investigative or response action at the property

Nothing in this letter is intended to authorize any response action under Minn. Stat. § 115B.17, subd. 12.

6. This approval does not supplant any applicable state or local stormwater permits, ordinances, or other regulatory documents.

RESOLUTION # 753

WHEREAS, The Port Authority of Winona (seller) entered into an Escrow Agreement on July 27, 2018; with Main Square Development LLC, (buyer) a Minnesota limited liability company; and

WHEREAS, the Seller and the Buyer entered into a Purchase Agreement on May 17, 2018 pertaining to the sale and purchase of certain Real Property in Winona, Minnesota; and

WHEREAS, Section 5 of the Purchase Agreement required an escrow amount of \$800,000.00 of the purchase price be deposited with the Escrow Agent to be held in escrow by the Escrow Agent; and

WHEREAS, the Escrowed Funds were to pay for completing the Response Action Plan if grant funds were not received or if the amount of the grant was less than the remediation costs; and

WHEREAS, terms and conditions of the Escrow Agreement dated July 27, 2018 are met including; submittal of itemized invoices, and grant dollars are fully utilized; and

WHEREAS, the Port Authority of Winona approved Resolution # 748 on January 17, 2019 to release up to \$210,000 in escrow funds and an Authorization to Release was executed by Main Square Development LLC and the Port Authority of Winona and funds were released in the amount of \$210,000 on March 29, 2019; and

WHEREAS, the MPCA issued a letter of "No Further Action" dated January 3, 2020 which states no further investigation or remediation will be requested under Minn. Stat. 115B.01-115B.18 with respect to the identified release.

NOW THEREFORE BE IT, resolved that the Port Authority of Winona authorizes the necessary signatures and release of the remaining balance in the Escrow Account.

Dated this 13th day of February, 2020.

Mike Cichanowski
President

Attest:

Stephen T. Sarvi
Executive Secretary

PORT AUTHORITY AGENDA ITEM

AGENDA ITEM: 4. C. Engineering Services – Mississippi Riverfront Path

DATE: February 13, 2020

ATTACHMENT: Barr Engineering – Proposal Phase II of the Riverfront Trail

Staff began undertaking the initial steps for preliminary lay-out and engineering for the Mississippi Riverfront Path from Levee Park to Lions Park, referred to as Phase I in 2019. There are alternate paths outlined along with cross-sections and high level cost estimates. Barr Engineering provided services for Phase I of the Mississippi Riverfront Path.

Phase II of the Mississippi Riverfront Path would continue on from Lions Park and extend over Gilmore Creek and the railroad tracks. This corridor involves a number of businesses and again we are looking to provide alignment drawings, and high level cost estimates for this corridor.

There are funds budgeted to cover the Engineering Services for \$23,500. Attached for your consideration is a proposal from Barr Engineering to provide services for Phase II of the Riverfront Path and a Contract for Services.

If Commissioners concur, a motion to authorize the President and Executive Secretary to enter into a Contract for Services would be appropriate.

January 27, 2020

Lucy McMartin
City of Winona
City Hall, Room 105
207 Lafayette St
Winona, MN 55987

Re: Proposal for Riverfront Trail Phase II Concept Feasibility

Dear Ms. McMartin:

This letter comprises a proposal to develop conceptual corridor plans for Phase II of the Riverfront Trail. Phase II spans the corridor from Lions Park to the west side of Gilmore Creek. The final deliverable will be a concise memo describing the nature of the project, including a proposed and alternative trail corridor alignment drawings, illustrative graphics at key points along the trail, and associated high-level cost estimates.

SCOPE OF WORK

Barr will complete the following tasks:

- Meet with City staff at the site to examine existing conditions and discuss the goals of the project and potential alignments of the trail.
- Create a base map from electronic information obtained from the City of Winona.
- Develop a corridor map showing the route along the riverfront with an alternative routing for each of the constrained areas.
- Develop conceptual cross-sectional drawings of typical trail design at key locations.
- Develop conceptual sketches for proposed built structures at the levee as part of the alignment design, including a bridge over the railroad and Gilmore Creek.
- Present trail alignment alternatives for discussion at a staff meeting at the City offices.
- Incorporate staff comments into trail alignment drawings.
- Develop an Engineer's Cost Estimate of probable cost for the proposed corridor design, and for the alternatives.
- Develop a memorandum discussing proposed trail alignments.

DELIVERABLES

Barr will prepare and issue the following deliverables in digital format as part of this Scope of Work:

- One draft illustrative trail corridor map noting constrained areas and alternative alignments if feasible.
- One final illustrative trail corridor map noting constrained areas and alternative alignments, if feasible.
- Rendered typical cross-sections at key locations (up to 5) depicting conceptual design of the proposed trail and potential structures, as required for stakeholder understanding.
- Conceptual sketches of built structures (up to 4).
- An Engineer's Cost Estimates of probable costs for the corridor alignments.
- Memorandum.

SCHEDULE

Work on this project will begin upon receipt of a signed copy of an agreement authorizing completion of this work scope. This project shall be completed in May of 2020, or by the end of June 2020, if weather-related project delays occur.

BUDGET

The proposed cost of these services would be billed on a Time plus Expenses basis not to exceed \$23,500 without prior approval by you. We are happy to revisit this scope of this project as needed to best meet your needs, should you wish.

If you have any questions or comments about this proposal please contact me at 952.832-2733 or fjr@barr.com. We are excited to be working with you on this project!

BARR ENGINEERING CO.

Sincerely,



Fred Rozumalski, RLA
Landscape Architect



Henry M. (Hal) Runke, PhD
Vice President
Principal in Charge

CONSULTANT SERVICE CONTRACT

This Contract is made this ____ day of _____, 2020, by and between the PORT AUTHORITY OF WINONA, a body politic and corporate under the laws of the State of Minnesota, 207 Lafayette Street, Winona, MN 55987 ("PORT"), and BARR ENGINEERING CO., a corporation under the laws of the State of Minnesota, 4300 Market Pointe Drive, Suite 200, Minneapolis, MN 55435 ("CONSULTANT"); (collectively the "PARTIES").

WHEREAS, PORT requires professional services to develop a concept (e.g. corridor alignment drawings, illustrative graphics, and high-level cost estimates) to be utilized for a path from Lions Park to the west side of Gilmore Creek (the "Project"); and

WHEREAS, CONSULTANT agrees to furnish the various professional services required by PORT.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the PARTIES agree as follows:

SECTION I – CONSULTANT'S SERVICES AND RESPONSIBILITIES

- A. **Scope of Services.** CONSULTANT agrees to perform various Project services as detailed in Exhibit 1, Scope of Services, attached hereto and incorporated herein by reference.
- B. **Changes to Scope of Services/Additional Services.** Upon mutual agreement of the PARTIES hereto pursuant to Section VI, Paragraph J of this Contract, a change to the scope of services detailed in Exhibit 1, attached hereto, may be authorized. In the event that such a change to the scope of services detailed in Exhibit 1, attached hereto, requires additional services by CONSULTANT, CONSULTANT shall be entitled to additional compensation consistent with Section III of this Contract. CONSULTANT shall give notice to PORT of any additional services prior to furnishing such additional services. PORT may request an estimate of additional cost from CONSULTANT, and upon receipt of the request, CONSULTANT shall furnish such cost estimate, prior to PORT's authorization of the changed scope of services.
- C. **Changed Conditions.** If CONSULTANT determines that any services it has been directed or requested to perform by PORT are beyond the scope of services detailed in Exhibit 1, attached hereto, 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 Contract exceeds the estimate which formed the basis for CONSULTANT's compensation, CONSULTANT shall promptly notify PORT of that fact. Upon mutual agreement of the parties hereto pursuant to Section VI, Paragraph J of this Contract, additional compensation for such services, and/or an extension of time for completion thereof, may be authorized. In the absence of such a mutual agreement, amounts of compensation and time for completion shall be equitably adjusted, provided that CONSULTANT first provides notice to PORT as required by this Paragraph and

PORT has not terminated this Contract pursuant to Section IV, Paragraph B.

D. **Standard of Care.** Services provided by CONSULTANT or its subcontractors and/or sub-consultants under this Contract will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of CONSULTANT's profession or industry. CONSULTANT shall be liable to the fullest extent permitted under applicable law, for any injuries, loss, or damages proximately caused by CONSULTANT's breach of this standard of care. CONSULTANT shall put forth reasonable efforts to complete its duties in a timely manner. CONSULTANT shall not be responsible for delays caused by factors beyond its control or that could not be reasonably foreseen at the time of execution of this Contract. CONSULTANT shall be responsible for costs, delays or damages arising from unreasonable delays in the performance of its duties.

E. **Insurance.** CONSULTANT shall not commence work under this Contract until CONSULTANT has obtained all insurance required herein and such insurance has been approved by PORT, nor shall CONSULTANT allow any subcontractor to commence work on any subcontract until such subcontractor has obtained like insurance covering as to worker's compensation, liability, and automobile insurance. All this insurance coverage shall be maintained throughout the life of this Contract.

1. CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, statutory Workers' Compensation coverage. Except as provided below, CONSULTANT must provide Workers' Compensation insurance for all its employees. If Minnesota Statutes, section 176.041 exempts CONSULTANT from Workers' Compensation insurance or if CONSULTANT has no employees in the City, CONSULTANT must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes CONSULTANT from the Minnesota Workers' Compensation requirements. If during the course of the Contract CONSULTANT becomes eligible for Workers' Compensation, CONSULTANT must comply with the Workers' Compensation insurance requirements herein and provide PORT with a certificate of insurance.

2. CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, Commercial General Liability ("CGL") and business automobile liability insurance coverages insuring CONSULTANT against claims for bodily injury or death, or for damage to property, including loss of use, which may arise out of operations by CONSULTANT or by any subcontractor or by anyone employed by any of them or by anyone for whose acts any of them may be liable (including automobile use). The following coverages shall, at a minimum, be included in the CGL insurance: Premises and Operations Bodily Injury and Property Damage, Personal and Advertising Injury, Blanket Contractual Liability, and Products and Ongoing and Completed Operations Liability. The required automobile liability coverage must include coverage for "any auto" which extends coverage to owned autos, non-owned autos, and hired autos. Such insurance shall include, but not be limited to, minimum coverages and limits of liability specified in this Paragraph,

or required by law. PORT shall have additional insured status under an endorsement attached to such policy(ies) for the services provided under this Contract and shall provide that CONSULTANT's coverage shall be primary and noncontributory in the event of a loss.

3. CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, the following insurance policies, including the minimum coverages and limits of liability specified below, or as specified in the applicable insurance certificate(s), or as required by law, whichever is greater:

Worker's Compensation	Statutory Limits
Employer's Liability	\$500,000 bodily injury by accident \$500,000 bodily injury by disease aggregate \$500,000 bodily injury by disease per employee
Commercial General Liability	\$2,000,000 property damage and bodily injury per occurrence \$4,000,000 annual aggregate \$2,000,000 annual aggregate Products – Completed Operations
Automobile Liability	\$1,000,000 per occurrence combined single limit for Bodily Injury and Property Damage (shall include coverage for all owned, hired and non-owned vehicles)
Umbrella or Excess Liability	\$1,000,000

4. Professional/Technical (Errors and Omissions) Liability Insurance. CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, Professional/Technical (Errors and Omissions) Liability Insurance. The required policy will provide coverage for all claims CONSULTANT may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to CONSULTANT's professional services required under the contract. CONSULTANT is required to carry the following minimum limits: \$2,000,000 – per wrongful act or occurrence; \$4,000,000 – annual aggregate; or as specified in the applicable insurance certificate(s), or as required by law, whichever is greater. Any deductible will be the sole responsibility of CONSULTANT and may not exceed \$100,000 without the written approval of PORT. The retroactive or prior acts date of such coverage shall not be after the effective date of this contract and CONSULTANT shall maintain such insurance for a period of at least three (3) years, following completion of the work. If such

insurance is discontinued, extended reporting period coverage must be obtained by CONSULTANT to fulfill this requirement.

5. Technology Errors and Omissions Insurance. CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, Technology Errors and Omissions Insurance. The required policy will provide coverage for all claims CONSULTANT may become legally obligated to pay, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, cloud computing, extortion and network security. CONSULTANT is required to carry the following minimum limits: \$1,000,000 – per occurrence; \$1,000,000 – annual aggregate; or as specified in the applicable insurance certificate(s), or as required by law, whichever is greater.
6. True, accurate and current certificates of insurance, showing evidence of the required insurance coverages, are hereby provided to PORT by CONSULTANT and are attached hereto as Exhibit 2.
7. Any insurance limits in excess of the minimum limits specified herein above shall be available to PORT. CONSULTANT may satisfy the minimum limits specified herein by a combination of primary and umbrella or excess policies.
8. CONSULTANT's insurance policies and certificate(s) shall not be cancelled without at least thirty (30) days' advance written notice to PORT, or Ten (10) days' prior written notice to PORT for nonpayment of premium.
9. CONSULTANT's policies shall be primary insurance and noncontributory to any other valid and collectible insurance available to PORT with respect to any claim arising out of CONSULTANT's performance under this Contract.
10. CONSULTANT is responsible for payment of Contract related insurance premiums and deductibles. If CONSULTANT is self-insured, a Certificate of Self-Insurance must be attached.
11. CONSULTANT shall ensure that all subcontractors comply with the insurance provisions contained in this Contract and such insurance is maintained as specified.
12. CONSULTANT's policies shall include legal defense fees in addition to its liability policy limits, with the exception of the professional liability insurance and Technology Errors and Omissions Liability insurance, if applicable.
13. All policies listed above, except professional liability insurance (or other coverage not reasonably available on an occurrence basis), shall be written on a per "occurrence" basis ("claims made" and "modified occurrence" forms are not

acceptable) and shall apply on a "per project" basis.

14. CONSULTANT shall obtain insurance policies from insurance companies having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota, or as approved by PORT.
15. Effect of Failure to Provide Insurance. If CONSULTANT fails to provide the specified insurance, then CONSULTANT will defend, indemnify and hold harmless PORT and PORT's officials, agents and employees from any loss, claim, liability and expense (including reasonable attorney's fees and expenses of litigation) to the extent necessary to afford the same protection as would have been provided by the specified insurance. CONSULTANT agrees that this indemnity shall be construed and applied in favor of indemnification. CONSULTANT also agrees that if applicable law limits or precludes any aspect of this indemnity, then the indemnity will be considered limited only to the extent necessary to comply with that applicable law. The stated indemnity continues until all applicable statutes of limitation have run.

If a claim arises within the scope of the stated indemnity, PORT may require CONSULTANT to:

- a. Furnish and pay for a surety bond, satisfactory to PORT, guaranteeing performance of the indemnity obligation; or
- b. Furnish a written acceptance of tender of defense and indemnity from CONSULTANT's insurance company.

CONSULTANT will take the action required by PORT within Fifteen (15) days of receiving notice from PORT.

16. Notwithstanding the foregoing, PORT reserves the right to immediately terminate this Contract if CONSULTANT is not in compliance with the insurance requirements contained herein and retains all rights to pursue any legal remedies against CONSULTANT.
17. Notwithstanding any other provision herein, CONSULTANT's liability hereunder, including its indemnity obligations, shall not exceed the amount of its available and collectible insurance.

SECTION II – PORT'S RESPONSIBILITIES

- A. PORT shall promptly compensate CONSULTANT as services are performed to the satisfaction of the Director of Economic Development for the City of Winona, Minnesota, in accordance with Section III of this Contract.

- B. PORT shall provide access to any and all previously acquired information relevant to the scope of services detailed in Exhibit 1, attached hereto, in its custody or the custody of the PORT to CONSULTANT for its use, at CONSULTANT's request.
- C. PORT will, to the fullest extent possible, grant access to and make all provisions for entry upon both public and private property as necessary for CONSULTANT's performance of the services detailed in Exhibit 1, attached hereto.
- D. Lucy McMartin, City of Winona's Director of Community Development, shall serve as the liaison person to act as PORT's representative with respect to services to be rendered under this Contract. Said representative shall have the authority to transmit instructions, receive instructions, receive information, interpret and define PORT'S policies with respect to the Project and CONSULTANT's services. Such person shall be the primary contact person between PORT and CONSULTANT with respect to the services from CONSULTANT under this Contract. PORT reserves the right to substitute the authorized contact person at any time and shall notify CONSULTANT thereof.

SECTION III – CONSIDERATION

- A. **Fees.** PORT will compensate CONSULTANT as detailed in Exhibit 3, Compensation, which is attached hereto and incorporated herein by reference, for CONSULTANT's performance of services under this Contract.
- B. If PORT fails to make any payment due CONSULTANT for services performed to the satisfaction of the Director of Economic Development and expenses within thirty days after the date of CONSULTANT's invoice, CONSULTANT may, after giving seven days written notice to PORT, and without waiving any claim or right against PORT and without incurring liability whatsoever to PORT, suspend services and withhold project deliverables due under this Contract until CONSULTANT has been paid in full all amounts due for services, expenses and charges.

SECTION IV – TERM AND TERMINATION

- A. **Term.** This Contract shall be in effect until such time as the Project is completed, June 30, 2020, or as otherwise provided in this Contract, whichever comes first.
- B. **Termination.** This Contract may be terminated by either PARTY for any reason or for convenience by either PARTY upon seven (7) days written notice. In the event of termination, PORT shall be obligated to CONSULTANT for payment of amounts due and owing including payment for services performed or furnished to the date and time of termination, computed in accordance with Section III of this Contract.
- C. **Default.** If CONSULTANT fails to satisfy any of the provisions of this Contract, or so fails to perform and/or administer the services detailed in Exhibit 1, attached hereto, pursuant to the requirements of Section I of this Contract, in such a manner as to endanger the performance of the Contract or the services provided hereunder, this shall

constitute default. Unless CONSULTANT's default is excused by PORT, PORT may, upon written notice, immediately cancel this Contract or exercise any other rights or remedies available to PORT under this Contract or law. In the event of CONSULTANT's default, CONSULTANT shall be liable to PORT for any and all costs, disbursements, attorneys and consultant fees reasonably incurred by PORT in enforcing this Contract.

- D. **Suspension of Work.** If any work performed by CONSULTANT is abandoned or suspended in whole or in part by PORT, CONSULTANT shall be paid for any services performed to the satisfaction of the Director of Economic Development prior to CONSULTANT's receipt of written notice from PORT of such abandonment or suspension, but in no event shall the total of PORT's payments to CONSULTANT under this Contract be required to exceed a percentage of the total contract price (calculated by either the Contract price or the maximum price set forth in Exhibit 3, attached hereto) equivalent to the percentage of the scope of services completed by CONSULTANT to the satisfaction of the Director of Economic Development as determined by PORT.

SECTION V – INDEMNIFICATION

- A. CONSULTANT shall indemnify, protect, save, and hold harmless PORT, and its respective officers, directors, employees and members and agents, from and against any claims, liability, damages, costs, judgments, or expenses, including reasonable attorney's fees, to the extent attributable or caused by the negligent or otherwise wrongful act or omission, including breach of a specific contractual duty, of CONSULTANT or CONSULTANT's independent contractors, subcontractors, agents, employees, vendors or delegates with respect to this Contract or the Project. CONSULTANT shall defend PORT against the foregoing, or litigation in connection with the foregoing, at CONSULTANT's expense, with counsel reasonably acceptable to PORT, except that for professional liability claims, CONSULTANT shall have no upfront duty to defend PORT, but shall reimburse defense costs to PORT to the same extent of CONSULTANT'S indemnity obligation herein. PORT, at its expense, shall have the right to participate in the defense of any claims or litigation and shall have the right to approve any settlement, which approval shall not be unreasonably withheld. The indemnification provision of this Section shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of PORT. All indemnification obligations shall survive termination, expiration or cancellation of this Contract. CONSULTANT agrees, that in order to protect itself and PORT under the indemnity provisions set forth above, it will at all times during the term of this Contract keep in force policies of insurances required in the Paragraph entitled, "Insurance." Nothing in this Contract shall be construed to waive any immunities or limitations to which PORT is entitled under Minn. Stat. Chapter 466 or otherwise.
- B. PORT shall indemnify protect, save, hold harmless and insure CONSULTANT, and its respective officers, directors, employees and members and agents, from and against any claims, liability, damages, costs, judgments, or expenses, including reasonable attorney's fees, to the extent attributable or caused by the negligent or otherwise wrongful act or

omission of PORT or its agents, employees, contractors or subcontractors with respect to PORT's performance of its obligations under this Contract. PORT shall defend CONSULTANT against the foregoing, or litigation in connection with the foregoing, at PORT's expense. CONSULTANT, at its expense, shall have the right to participate in the defense of any claims or litigation. The indemnification provision of this Section shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of CONSULTANT. All indemnification obligations shall survive termination, expiration or cancellation of this Contract.

- C. Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against PORT or CONSULTANT. CONSULTANT's services under this Contract are being performed solely for PORT's benefit, and no other entity shall have any claim against CONSULTANT because of this Contract or the performance or nonperformance of services provided hereunder.

SECTION VI – GENERAL TERMS

- A. **Voluntary and Knowing Action.** The PARTIES, by executing this Contract, state that they have carefully read this Contract and understand fully the contents hereof; that in executing this Contract they voluntarily accept all terms described in this Contract without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound hereby.
- B. **Authorized Signatories.** The PARTIES each represent and warrant to the other that (1) the persons signing this Contract are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Contract against it; each PARTY indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
- C. **Notices.** The PARTIES' representatives for notification for all purposes are:

PORT:

Lucy McMartin
Director of Community Development
207 Lafayette Street
Winona MN 55987
Phone: 507-457-8244
Email: lmcmartin@ci.winona.mn.us

CONSULTANT:

Fred Rozumalski
Landscape Architect
4300 Market Pointe Drive, Suite 200
Minneapolis MN 55435
Phone: 952-832-2733
Email: fjr@barr.com

- D. **Dispute Resolution.** The PARTIES agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice of dispute prior to proceeding to formal dispute resolution or exercising their rights under law.
- E. **Electronic/Digital Data.** Because of the potential instability of electronic/digital data and susceptibility to unauthorized changes, copies of documents that may be relied upon by PORT are limited to the printed copies (also known as hard copies) that are signed or sealed by CONSULTANT. Except for electronic/digital data which is specifically identified as a project deliverable by this Contract or except as otherwise explicitly provided in this Contract, all electronic/digital data developed by CONSULTANT as part of the project is acknowledged to be an internal working document for CONSULTANT's purposes solely and any such information provided to PORT shall be on an "as is" basis strictly for the convenience of PORT without any warranties of any kind. In the event of any conflict between a hard copy document and the electronic/digital data, the hard copy document governs. The electronic/digital data shall be prepared in the current software in use by CONSULTANT and is not warranted to be compatible with other systems or software.
- F. **Opinions or Estimates of Construction Cost.** Where provided by CONSULTANT as part of Exhibit 1 or otherwise, opinions or estimates of construction cost will generally be based upon public construction cost information. Since CONSULTANT has no control over the cost of labor, materials, competitive bidding process, weather conditions and other factors affecting the cost of construction, all cost estimates are opinions for general information of PORT and CONSULTANT does not warrant or guarantee the accuracy of construction cost opinions or estimates. PORT acknowledges that costs for Project financing should be based upon contracted construction costs with appropriate contingencies.
- G. **Independent Contractor Status.** CONSULTANT, at all times and for all purposes hereunder, shall be an independent contractor and is not an employee of PORT for any purpose. No statement contained in this Contract shall be construed so as to find CONSULTANT to be an employee of PORT, and CONSULTANT shall not be entitled to any of the rights, privileges, or benefits of employees of PORT, including but not limited to, workers' compensation, health/death benefits, and indemnification for third-party personal injury/property damage claims. CONSULTANT acknowledges that no withholding or deduction for State or Federal income taxes, FICA, FUTA, or otherwise, will be made from the payments due CONSULTANT, and that it is CONSULTANT's sole obligation to comply with the applicable provisions of all Federal and State tax laws. CONSULTANT shall at all times be free to exercise initiative, judgment and discretion as to how to best perform or provide services identified herein. CONSULTANT is responsible for hiring sufficient workers to perform the services/duties required by this Contract, withholding their taxes and paying all other employment tax obligations on their behalf.

- H. **Subcontracting.** CONSULTANT shall not enter into any subcontract for performance of any services contemplated under this Contract without the prior written approval of PORT. CONSULTANT shall be responsible for the performance of all subcontractors and/or sub-consultants. As required by Minn. Stat. § 471.425, CONSULTANT must pay all subcontractors, less any retainage, within 10 calendar days of CONSULTANT's receipt of payment from PORT for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).
- I. **Assignment.** This Contract may not be assigned by either PARTY without the written consent of the other PARTY.
- J. **Modifications/Amendment.** Any alterations, variations, modifications, amendments or waivers of the provisions of this Contract shall only be valid when they have been reduced to writing, and signed by authorized representative of PORT and CONSULTANT.
- K. **Records—Availability and Retention.** Pursuant to Minn. Stat. § 16C.05, subd. 5, CONSULTANT agrees that PORT, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of CONSULTANT and involve transactions relating to this Contract. CONSULTANT agrees to maintain these records for a period of six years from the date of termination of this Contract.
- L. **Force Majeure.** The PARTIES shall each be excused from performance under this Contract while and to the extent that either of them is unable to perform, for any cause beyond its reasonable control. Such causes shall include, but not be restricted to fire, storm, flood, earthquake, explosion, war, total or partial failure of transportation or delivery facilities, raw materials or supplies, interruption of utilities or power, and any act of government or military authority. In the event either PARTY is rendered unable wholly or in part by force majeure to carry out its obligations under this Contract then the PARTY affected by force majeure shall give written notice with explanation to the other PARTY immediately.
- M. **Compliance with Laws.** CONSULTANT shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Contract or to the facilities, programs and staff for which CONSULTANT is responsible.
- N. **Covenant Against Contingent Fee.** CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission,

percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from award or making of this Contract.

- O. **Covenant Against Vendor Interest.** CONSULTANT warrants that it is not employed by any vendor of equipment or service provider that could result in a commission, percentage, brokerage, or contingent fee as a result of CONSULTANT's association with PORT.
- P. **Non-Discrimination.** The provisions of any applicable law or ordinance relating to civil rights and discrimination shall be considered part of this Contract as if fully set forth herein.
- Q. **Interest by Port Officials.** No elected official, officer, or employee of PORT shall during his or her tenure or employment and for one year thereafter, have any interest, direct or indirect, in this Contract or the proceeds thereof.
- R. **Work Product.** All materials such as reports, exhibits, models, graphics, computer files, maps, charts, and supporting documentation produced under work authorized by this Contract ("Materials") shall become the property of PORT upon completion of the work. PORT may use the information for the Project for which they were prepared. Such use by PORT shall not relieve any liability on the part of CONSULTANT. Notwithstanding any of the foregoing to the contrary; (a) CONSULTANT may reuse standard details of its Materials in the normal course of its business; and (b) PORT understands that the Materials have been prepared for a specific project, and are not intended to be reused for other purposes. If PORT reuses the Materials for any other purpose, PORT waives any claims against CONSULTANT arising from such reuse and agrees to defend and indemnify CONSULTANT from any claims arising from such reuse.
- S. **Governing Law.** This Contract shall be deemed to have been made and accepted in Winona County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of the Contract without regard to its choice of law or conflict of laws principles.
- T. **Data Practices.** The PARTIES acknowledge that this Contract is subject to the requirements of Minnesota's Government Data Practices Act (Act), Minnesota Statutes, Section 13.01 *et seq.* CONSULTANT agrees to abide by the applicable provisions of the Act, HIPAA requirements and all other applicable state or federal rules, regulations or orders pertaining to privacy or confidentiality. CONSULTANT understands that all of the data created, collected, received, stored, used, maintained or disseminated by CONSULTANT in performing those functions that the PORT would perform is subject to the requirements of the Act, and CONSULTANT must comply with those requirements as if it were a government entity. This does not create a duty on the part of CONSULTANT to provide the public with access to public data if the public data is available from the PORT, except as required by the terms of this Contract.
- U. **No Waiver.** Any PARTY's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Contract or to exercise any right

herein conferred shall not be construed as a waiver or relinquishment of that right or of that PARTY's right to assert or rely upon the terms and conditions of this Contract. Any express waiver of a term of this Contract shall not be binding and effective unless made in writing and properly executed by the waiving PARTY.

- V. **Data Disclosure.** Under Minn. Stat. § 270C.65, Subd. 3 and other applicable law, CONSULTANT consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to PORT, to federal and state agencies and state personnel involved in the payment of PORT obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring CONSULTANT to file state tax returns, pay delinquent state tax liabilities, if any, or pay other PORT liabilities.
- W. **Patented Devices, Materials and Processes.** If this Contract requires, or CONSULTANT desires, the use of any design, device, material or process covered by letters, patent or copyright, trademark or trade name, CONSULTANT shall provide for such use by suitable legal agreement with the patentee or owner and a copy of said agreement shall be filed with PORT. If no such agreement is made or filed as noted, CONSULTANT shall indemnify and hold harmless PORT from any and all claims for infringement by reason of the use of any such patented designed, device, material or process, or any trademark or trade name or copyright in connection with the services agreed to be performed under the Contract, and shall indemnify and defend PORT for any costs, liability, expenses and attorney's fees that result from any such infringement.
- X. **Mechanic's Liens.** CONSULTANT hereby covenants and agrees that CONSULTANT will not permit or allow any mechanic's or materialman's liens to be placed on PORT's interest in the Property that is the subject of the Project during the term hereof. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed on PORT's interest, CONSULTANT shall take all steps necessary to see that it is removed within thirty (30) days of its being filed; provided, however, that CONSULTANT may contest any such lien provided CONSULTANT first posts a surety bond, in favor of and insuring PORT, in an amount equal to 125% of the amount of any such lien.
- Y. **Construction Observation.** CONSULTANT shall visit the project at appropriate intervals during construction to become familiar with the progress and quality of the contractors' work and to determine if the work is proceeding in general accordance with the Project plans and specifications, and shall be responsible for notifying PORT of any errors or omissions in contractor's work or any deviations in the contractor's work from the Project plans and specifications developed by CONSULTANT.
- Z. **Severability.** The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Contract to the extent of its invalidity or unenforceability, and this Contract shall be construed and enforced as if the Contract did not contain that particular provision to the extent of its invalidity or

unenforceability.

- AA. **Entire Contract.** These terms and conditions constitute the entire Contract between the PARTIES regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Contract.
- BB. **Headings and Captions.** Headings and captions contained in this Contract are for convenience only and are not intended to alter any of the provisions of this Contract and shall not be used for the interpretation of the validity of the Contract or any provision hereof.
- CC. **Survivability.** All covenants, indemnities, guarantees, releases, representations and warranties by any PARTY or PARTIES, and any undischarged obligations of PORT and CONSULTANT arising prior to the expiration of this Contract (whether by completion or earlier termination), shall survive such expiration.
- DD. **Execution.** This Contract may be executed simultaneously in two or more counterparts that, when taken together, shall be deemed an original and constitute one and the same document. The signature of any PARTY to the counterpart shall be deemed a signature to the Contract, and may be appended to, any other counterpart. Facsimile and email transmissions of executed signature pages shall be deemed as originals and sufficient to bind the executing PARTY.

Remainder of page intentionally left blank.

SECTION VII –SIGNATURES

IN WITNESS WHEREOF, the PARTIES have hereunto executed this document the day and year first above written.

CONSULTANT: BARR ENGINEERING CO.

By: _____
(Signature)

Date: _____

Title: _____

Print Name: _____

By: _____
(Signature)

Date: _____

Title: _____

Print Name: _____

PORT AUTHORITY OF WINONA:

By: _____
Michael Cichanowski, Its President

Date: _____

By: _____
Stephen T. Sarvi, Its Executive Secretary

Date: _____

EXHIBIT 1

SCOPE OF SERVICES

Subject to the terms of this Contract, CONSULTANT shall perform the following services:

SCOPE OF WORK

CONSULTANT will complete the following tasks:

- Meet with PORT staff at the site to examine existing conditions and discuss the goals of the project and potential alignments of the trail.
- Create a base map from electronic information obtained from the Port Authority of Winona.
- Develop a corridor map showing the route along the riverfront with an alternative routing for each of the constrained areas.
- Develop conceptual cross-sectional drawings of typical trail design at key locations.
- Develop conceptual sketches for proposed built structures at the levee as part of the alignment design, including a bridge over the railroad and Gilmore Creek.
- Present trail alignment alternatives for discussion at a staff meeting at the Port offices.
- Incorporate staff comments into trail alignment drawings.
- Develop an Engineer's Cost Estimate of probable costs for the proposed corridor design, and for the alternatives.
- Develop a memorandum discussing proposed trail alignments.

DELIVERABLES

CONSULTANT will prepare and issue the following deliverables, in digital format as part of this Scope of Work:

- One draft illustrative trail corridor map noting constrained areas and alternative alignments if feasible.
- One final illustrative trail corridor map noting constrained areas and alternative alignments, if feasible.
- Rendered typical cross-sections at key locations (up to 5) depicting conceptual design of the proposed trail and potential structures, as required for stakeholder understanding.
- Conceptual sketches of built structures (up to 3).
- An Engineer's Cost Estimates of probable costs for the corridor alignments.
- Memorandum.

SCHEDULE

Work on this project will begin upon receipt of a signed copy of an agreement authorizing completion of this work scope. This project shall be completed in May of 2020, or by the end of June 2020, if weather-related project delays occur.

EXHIBIT 2

CERTIFICATES OF REQUIRED INSURANCE COVERAGES

[Certificates of Insurance attached hereto]

EXHIBIT 3

COMPENSATION

Subject to the limitations set forth in this Exhibit, PORT will pay CONSULTANT for services rendered on a Time plus Expenses basis not to exceed \$23,500.00.

PORT will make periodic payment to CONSULTANT upon billing at intervals not more often than monthly at the rates specified in the CONSULTANT's schedule of fees, provided that no bill submitted to PORT shall exceed a percentage of the Contract price equivalent to the percentage of the scope of services completed by CONSULTANT to the satisfaction of the Director of Economic Development for the City of Winona, Minnesota.

PORT shall be entitled to withhold five percent (5%) of the Contract price until such time as CONSULTANT has fully performed the scope of services detailed in Exhibit 1 to the satisfaction of the Director of Economic Development of the City of Winona, Minnesota.