

**CONSTRUCTION ADDENDUM TO CONTRACT FOR PRIVATE DEVELOPMENT  
(DOMINIUM WORKFORCE HOUSING DEVELOPMENT)**

This Construction Addendum, made as of the \_\_\_\_ day of September, 2018 (the “Construction Addendum”), is between the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”), the CITY OF MINNETONKA, MINNESOTA, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota (the “City”), and MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP, a Minnesota limited liability limited partnership (the “Developer”) and supplements Sections 4.8, 4.9, and 4.10 of the Contract for Private Development, dated September \_\_\_\_, 2018 (the “Development Contract”), between the City, the Authority, and the Developer.

**Section 1. Improvements; Engineering Services**

1.1. The Developer must provide the necessary engineering services for the completion of the Workforce Housing Project, including: construction supervision, construction staking and surveying, and on-site inspection of grading, streets, and utilities, as applicable. The Developer’s engineer will be the official representative of the Developer for all engineering and construction matters.

1.2. The City Engineer or a designated representative will make periodic inspection of work and may require certain tests be made, which in the judgment of the City Engineer or the designated representative are necessary to ensure compliance with City standards and the approved plans and specifications. However, the City will not exercise any direct supervision or inspection of work during construction operations. If any material or labor supplied is rejected by the City Engineer or designated representative as defective or unsuitable, the Developer must remove such rejected material and replace it with approved material to the satisfaction and approval of the City Engineer or designated representative, at the sole cost and expense of the Developer.

**Section 2. Performance, including timelines.**

2.1. **Erosion Control.** Prior to commencement of any site work, including demolition or tree removal, the erosion control plan, herein attached as Attachment 3, must be implemented, inspected, and approved by the City. All aspects of the erosion control plan must be maintained throughout the course of development and construction on the Development Property. In addition, the Developer is responsible for keeping streets adjoining the Development Property swept clean of dirt and debris resulting from construction on the Development Property. No construction will be allowed, and no building permits will be issued, unless the Development Property is in full compliance with erosion control plan and street sweeping requirements.

The parties to this Construction Addendum recognize that time is critical in controlling erosion. If Developer does not comply with the erosion control plan and schedule, or supplementary instructions received from the City, the City may take such action as it deems appropriate to control erosion. The City will attempt to notify the Developer in advance of any proposed action, but failure of the City to do so will not affect the Developer’s or City’s rights or obligations hereunder. If the Developer does not reimburse the City for any costs the City incurred for such work within thirty (30) days, the City may draw upon the financial securities as required under Section 7 of this Construction Addendum.

2.2. **Grading.** A grading permit is required. All grading must be completed by the Developer at its cost and as approved under the grading permit. Grading activity must be coordinated with installation of utilities. If installation of utilities is occurring simultaneously with the grading, the utility contractor will

have preference over grading activities. No substantial grading activities can be completed over installed utilities unless otherwise protected.

### 2.3. Utilities.

- a) All utilities must be installed by the Developer at its cost, constructed in accordance with city standards and specifications, and as approved under the grading permit.
- b) Private utilities must be entirely accommodated underground.
- c) The Developer may connect the building to the utilities upon acceptance by the City of the sewer and water utilities.

### 2.4. Streets.

- a) **On-Site.** The Developer must submit a geotechnical report prepared by a licensed geotechnical engineer. The report must include a recommendation for a pavement section and drain tile, if applicable, for the proposed public street(s). In no case will a pavement section less than a minimum 5-inch bituminous and 6-inch Class 5 aggregate be approved by the City Engineer. The pavement section must show drain tile to be installed per the City Engineer's direction, if required.

After the street subgrade has been properly prepared, the Developer must conduct a roll test of the subgrade under the observation by the Developer's engineer, the geotechnical engineer, and the City Engineer or designated representative. The roll test must be performed per current Minnesota Department of Transportation specifications. The Developer must correct any deficiencies in subgrade to the reasonable satisfaction of the City Engineer or designated representative prior to the installation of the base course of bituminous.

- b) **Off-Site.** The City Engineer or designated representative will evaluate the conditions of the publically maintained portion of Bren Road East prior to commencement of any site work to determine pre-development conditions. Following construction of the streets and utilities within the Workforce Housing Project, the City Engineer or designated representative will re-evaluate the condition of the publically maintained portion of Bren Road East. The Developer is responsible for any repairs necessary to bring the roadway back to, at a minimum, pre-development conditions.

2.5. **Landscaping.** All landscaping must be installed by the Developer at its cost, and in accordance with the requirements of City Code §300.27 Subdivision 15.

## Section 3. Underpass/Bridge and Dynamic Prediction Crossing Site Improvements.

3.1 **Design and Construction.** The Developer agrees to cause contracts to be entered into related to the design and construction work relating to a pedestrian underpass beneath Bren Road East and related fencing (the "Underpass/Bridge Site Improvements") and a dynamic predication crossing safety improvements on the east side of the Development Property and adjacent to Bren Road East and related fencing (the "Dynamic Predication Crossing Site Improvements"). The additional obligations of the Developer with respect to the Underpass/Bridge Site Improvements and the Dynamic Predication Crossing Site Improvements are set forth in more detail on Exhibit D attached hereto.

## Section 4 City Acceptance.

4.1. **Acceptance.** After completion of required street and utility work, the City Engineer or designated representative, a City Public Works Department representative, a representative of the contractor, and a representative of the Developer's engineer, will make a final inspection of the Workforce Housing Project. The Developer's engineer must submit a written statement attesting that all required work has been satisfactorily completed in accordance with the approved plans and specifications. When both the City Engineer, or designated representative, and Public Works Department representative are satisfied with the written statement, they will acknowledge acceptance of the work in writing in the form attached as Exhibit C. Acceptance of the work must be provided in writing.

4.2. **Ownership.** Upon completion, City acceptance of the work and construction required by this Construction Addendum, and release of financial securities, the Improvements lying within public rights-of-way and easements will become City property without further notice or action, except the following improvements which are specifically identified herein as private infrastructure:

- North south watermain;
- Underground stormwater facilities, including storm sewer; and
- Fire hydrants.

4.3. **Warranty.** The Developer warrants all work required to be performed against poor material and faulty workmanship for a period of two years after its completion and acceptance by the City or such longer period as is specified in the plans and specifications.

## **Section 5 Timelines**

5.1. The Developer must obtain written approval and authorization to proceed from the City Engineer or designated representative prior to each of the following construction operations:

- Rough grading;
- Geotechnical testing for design and during construction;
- Construction of sanitary sewer mains, sewer services, water mains, water services, stormwater facilities, and all necessary appurtenances thereto;
- Construction of streets, curb and gutter, and driveway aprons; and
- Turf establishment and landscaping.

5.2. All underground utilities, stormwater facilities, and streets, including concrete curb and gutter and bituminous base course, must be completed by December 31, 2021. The bituminous wear course must not be placed prior to completion of the heavy civil construction of the light rail transit line to the east of the Development Property and must be in place by December 31, 2021, or as otherwise approved by the City Engineer.

5.3. The Developer must install all required improvements enumerated in Section 2 of this Construction Addendum by December 31, 2021, subject to delay due to inclement weather, labor strikes, material shortages or other circumstance not within the Developer's reasonable control. The developer may, however, request an extension of time from the City. If an extension is granted, it will be conditions upon updating security posted by the Developer to reflect cost increases and the extended completion date.

**Section 6. Securities, Costs, Fees, Charges, and Assessments.**

6.1. **Security to be Provided.** To guarantee compliance with the terms of this Construction Addendum and obligations hereunder, the Developer must furnish the City with a cash deposit or irrevocable letter of credit (“Security”) in the amount of \$[TOTAL OF AMOUNTS BELOW]. This amount was calculated as follows:

	AMOUNT
Erosion Control	[125% of bid]
Removal of Erosion Control	[125% of bid]
Grading	\$294,375
Wetland and/or Buffer Restoration	[125% of bid]
Wetland Monitoring	n/a
Landscaping	\$132,500
Surface Improvements (Streets, Sidewalks, Trails)	\$43,750
Water Main Improvements	\$117,500
Sanitary Sewer Improvements	\$88,750
Storm Sewer Improvements	[125% of bid]
<b>TOTAL</b>	
Refer to Exhibit B for an explanation of each item	

A letter of credit must be a standby, not commercial, letter of credit issued by a financial institution that is insured by the FDIC and must provide for disbursement of funds from an office in the Twin Cities seven-county metropolitan area. The letter of credit must be automatically renewable until the City release the Developer from responsibility. In the event of default under this Construction Addendum by the Developer, the City will furnish the Developer with written notice by certified mail of Developer’s default(s) under the terms of this Construction Addendum. If the Developer does not correct said default(s) within one (1) month of receiving notice, the City may draw upon the cash escrow or may draw on the letter of credit and take such steps as its deems reasonably necessary to remedy the default.

6.2. **Release of Security.** Requests for reduction or release of a cash deposit or letter of credit must be made in writing. Requests for reduction and release will only be accepted during the construction season, generally March to November, and only as follows:

	Reduction	Release*
Erosion Control	n/a	Project Completion
Removal of Erosion Control	n/a	Upon removal

Grading	75% upon completion of retaining walls and approved reduction of surface improvements	Project Completion
Wetland and/or Buffer Restoration	n/a	Restoration Completion
Wetland Monitoring	1/5 <sup>th</sup> reduction of total upon submission of annual monitoring reports	After 5 years
Landscaping	50% reduction at full installation	One full growing season following installation
Surface Improvements (Streets, Sidewalks, Trails)	First lift of bituminous laid and all curbing installed and backfilled.	Upon acceptance
Water Main Improvements	n/a	Upon testing, inspection, and acceptance
Sanitary Improvements	n/a	Upon testing, inspection, and acceptance
Storm Sewer Improvements	n/a	Upon inspection and acceptance
Stormwater Management Facilities	n/a	Upon full functionality
* In the case of grading, surface improvement, watermain, sanitary and storm sewers, and stormwater management, submission of as-built surveys or record drawings is also required prior to release.		

**6.3. Responsibility for Costs.**

- a) Except as otherwise specified herein, the Developer must pay all costs incurred by it or the City in conjunction with development of the Development Property and all costs incurred by the City in monitoring and inspecting development of the Development Property.
- b) The Developer agrees to hold the City and its officers and employees harmless from claims made by itself and third parties for damages sustained or costs incurred resulting from development of the Development Property, except for any costs or expenses arising from the negligence or other wrongful acts or omission of the City, its agents, employees or contractors. The Developer agrees to indemnify the City and its officers and employees for all costs, damages, or expenses the City may incur in consequence of such claims, including attorney's fees.
- c) The Developer will pay in full all bills submitted to the City of obligations incurred under this Construction Addendum within thirty (30) days after receipt. If the bills are not paid on time, the City may halt work and construction including, but not limited to, the issuance of building permits for lots that the Developer may or may not have sold, until the bills are paid in full. Bills not paid within thirty (30) days will accrue interest at a rate of ten percent (10%) per year.

**6.4. Fees and Charges.**

- a) The Developer agrees to pay fees, charges, and assessments set forth in this section as follows upon recording the final plat:

Fee/Charge	Amount*
Park Dedication Fee	\$1,100,000
Outstanding Assessments	\$0.00
Outstanding Utility Bills	
* Depending on the date of release of the plat, amounts may differ. Refer to Exhibit B.	

b) The Developer agrees to pay fees and charges set forth in this section as follows prior to release of the grading permit:

Fee/Charge	Amount*
Engineering Inspection Fee	\$8,366
Street Sign Fee	\$0.00
* Depending on the date of release of the permit, amounts may differ. Refer to Exhibit B.	

c) The Developer understands that builders will be required to pay for Development Property fees and charges in effect at the time of issuance of building permits. The rates for these items will be set according to the current rate structure at the time the building permit application is received. The fees and charges in effect as of the date of this Construction Addendum are:

Fee/Charge	Amount
Sanitary Sewer Availability Charge (SAC)	\$2,485 per SAC unit
Residential Equivalency Charge (REC)	\$2,769.06 per SAC unit

**Section 7. Default.**

7.1. In the event of default by the Developer as to any of the work to be performed by it hereunder, the City may, at its option perform the work and the Developer must promptly reimburse the City for any expense incurred by the City, provided the Developer is first given notice of the default, not less than 48 hours in advance. This Construction Addendum is a license for the City to act, and it is not necessary for the City to seek a court order for permission to enter onto the Development Property. When the City does any such work, the City may, in addition to its other remedies, draw on the cash deposit or letter of credit, or levy the cost in whole or in part as a special assessment against the Development Property. Developer waives its right to notice of hearings and hearing on such assessment and its right to appeal such assessments pursuant to Minnesota State Statutes, Section 429.081, up to an assessment amount of the remaining securities describe in Section 6.1.

**Section 8. Miscellaneous.**

8.1 Third parties have no recourse against the City under this Construction Addendum.

8.2 Breach of terms of this Construction Addendum are grounds for denial of building permits, including permits on lots sold to third parties.

8.3 If any portion, section, subsection, sentence, clause, paragraph or phrase of this Construction Addendum is for any reason held invalid, such decision does not affect the validity of the remaining portions of this Construction Addendum.

8.4 If building permits are issued prior to completion and acceptance of Improvements, the Developer assumes all liability and costs resulting from delays in completion of Improvements and damage to Improvements caused by the City, unless such damages arise from the negligence or other wrongful acts or omission of the City, its agents, employees or contractors.

8.5 The action or inaction of the City does not constitute a waiver or amendment to the provisions of this Construction Addendum. To be binding, amendments or waivers must be in writing and signed by the parties. The City's failure to take legal action to enforce this Construction Addendum is not waiver or release.

8.6 This Construction Addendum will run with the Development Property and may be recorded against its title. The Developer must take such steps, including execution of amendments to this Construction Addendum, as necessary to effect the recording thereof. After the Developer has completed the work required of it under this Construction Addendum, at the Developer's request, the City will execute and deliver to the Developer a release.

8.7 Each right, power, or remedy herein conferred upon the City is cumulative and in addition to every other right, power, or remedy, express or implied, now or hereafter arising, available to the City, at law or in equity, or under any other agreement, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the City and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy.

**Section 9. Notices.**

9.1 Required notices to the Developer must be in writing, and be either hand delivered to the Developer, its employees or agents, or mailed to the Developer by registered or certified mail at the following address:

Minnetonka Leased Housing Associates II, LLLP  
2905 Northwest Blvd.  
Suite 150  
Plymouth, MN 55441-2644  
Attn: Mark S. Moorhouse and Ryan J. Lunderby

with a copy to:

John Stern  
Winthrop & Weinstine, P.A.  
Capella Tower, Suite 3500  
225 South Sixth Street  
Minneapolis, MN 55402-4629

CITIBANK, N.A.  
390 Greenwich Street, Second Floor  
New York, NY 10013  
Attn: Mark Sherman, Director

Email: mark.sherman@citi.com

CITIBANK, N.A.  
388 Greenwich Street, Eighth Floor  
New York, NY 10013  
Attn: Mark Sherman  
Email: mark.sherman@citi.com

NIXON PEABODY LLP  
799 Ninth Street NW, Suite 500  
Washington, DC 20001-4501  
Attn: Matthew W. Mullen, Esq.  
Email: mmullen@nixonpeabody.com

TCAM  
186 Lincoln Street  
Boston, MA 02111-2408  
Attn: Jenny Netzer

9.2 Notices to the City must be in writing and be either hand delivered to the City Planner, or mailed to the City by registered or certified mail in care of the City Planner at the following address:

City Planner  
City of Minnetonka  
14600 Minnetonka Boulevard  
Minnetonka, Minnesota 55369

**Section 10. Adjacent Development.**

An affiliate of the Developer (Minnetonka Leased Housing Associates III, LLLP) is developing a workforce housing development adjacent to the Workforce Housing Project and it will enter into a construction addendum similar to this Construction Addendum requiring the construction of the same public infrastructure that is required by this Construction Addendum. If Minnetonka Leased Housing Associates III, LLLP causes the construction of any or all of the public infrastructure required by this Construction Addendum, the Developer's obligations hereunder with respect to the design and construction of such public infrastructure shall be satisfied.

**IN WITNESS WHEREOF**, the parties hereto have set their hands the day and year first written above.  
15947106v2

*[signature pages follow]*



**Authority Signature Page**

**ECONOMIC DEVELOPMENT AUTHORITY IN  
AND FOR THE CITY OF MINNETONKA,  
MINNESOTA**

By \_\_\_\_\_  
Brad Wiersum  
Its President

By \_\_\_\_\_  
Geraldyn Barone  
Its Executive Director

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 2018, by Brad Wiersum, the President of the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

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

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 2018, by Geraldyn Barone, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

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



**Developer Signature Page**

**MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP**, a Minnesota limited liability limited partnership

By: Minnetonka Leased Housing Associates SPE II, LLC, a Delaware limited liability company  
Its: General Partner

By: \_\_\_\_\_  
Name: Ryan J. Lunderby  
Its: Vice President

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 2018, by Ryan J. Lunderby, the Vice President of Minnetonka Leased Housing Associates SPE II, LLC, a Delaware limited liability company, the general partner of Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership, on behalf of the Developer.

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

THIS INSTRUMENT DRAFTED BY:  
City of Minnetonka  
Community Development  
14600 Minnetonka Blvd.  
Minnetonka, MN 55345  
952-939-8200

**EXHIBIT A**

**Legal Description**

Lot 2, Block 1, DOMINIUM 2ND ADDITION, Hennepin County, Minnesota

## **EXHIBIT B**

The following clarifies the items guaranteed by required cash deposit or letter of credit for Developer Improvements as outlined in this Construction Addendum.

**Erosion Control:** An amount equal to 125% of a bid, or 150% of an estimate, of the cost of materials and labor to install a rock driveway and silt fence or equivalent sediment control measures as per the approved grading permit.

**Erosion Control Removal:** An amount equal to 125% of a bid, or 150% of an estimate, estimated cost to remove erosion control measures.

**Grading:** An amount equal to 125% of a bid, or 150% of an estimate, of the cost to restore and stabilize the Development Property.

**Wetland and/or Buffer Restoration:** An amount equal to 125% of a bid, or 150% of an estimate, of the cost of materials and labor to restore the wetland and/or buffer as per the approved restoration plan.

**Wetland Monitoring:** \$1,500 per year for each of the required five years of monitoring, for a total of \$7,500.

**Landscaping:** An amount equal to 125% of the cost to complete minimum required landscaping.

**Surface Improvements:** An amount equal to 125% of a bid, or 150% of an estimate, of the cost of materials and labor to install streets, parking lots, sidewalks, and trails.

**Water Main Improvements:** An amount equal to 125% of the cost of materials and labor to install water main.

**Sanitary Sewer Improvements:** An amount equal to 125% of the cost of materials and labor to install sanitary sewer.

**Storm Sewer Improvements:** An amount equal to 125% of the cost of materials and labor to install storm sewer.

**Stormwater Management:** An amount equal to 125% of the cost of materials and labor in install all non-storm sewer stormwater management facilities and best management practices including, but not limited to infiltration basins, French drains, and soil decompaction.

**EXHIBIT B – continued**

**Developer Improvements**

No.	Item	Cost	% required	Guarantee Amount
1	Erosion Control		125-150	
2	Removal of Erosion Control		125-150	
3	Grading		125-150	
4	Wetland and/or Buffer Restoration		125-150	
5	Wetland Monitoring	\$1500 per year for 5 years		\$7500
6	Landscaping		125-150	
7	Surface Improvements		125-150	
8	Street Improvements		125-150	
9	Water Main Improvements		125-150	
10	Sanitary Sewer Improvements		125-150	
11	Storm Sewer Improvements		125-150	
12	Stormwater Improvements		125-150	
	<b>TOTAL</b>			\$ -

**City Fees (due with signed Construction Addendum)**

No.	Item	Infrastructure Value	Fee Calculation	Total Fee
1	Engineering Inspection Fee	\$1–\$150,000	\$4,000	
		\$150,001–\$300,000	\$4,000 for first \$150,000 plus 1.5% of each additional \$1	
		Over \$300,000	\$6,250 for first \$300,000 plus 0.5% of each additional dollar	
2	Street Signs	street name signs	\$130	
		all other signs	\$120	
	<b>TOTAL</b>			

**Development Fees (due upon recording the plat)**

No.	Item	Cost	Due
1	Park Dedication Fee		upon recording of plat
2	Outstanding Assessments		
3	Outstanding Utility Bills		
	<b>TOTAL</b>	\$ -	

**General Construction Fees (due at release of building permit)**

No.	Item	Cost
1	Sanitary Sewer Availability Charge	\$2,485 per SAC unit as determined by Met Council
2	Residential Equivalency Charge	\$2,769 per SAC unit as determined by Met Council

**Exhibit C**



14600 Minnetonka Boulevard  
Minnetonka, MN 55345  
Telephone: (952) 939-8292  
Fax: (952) 939-8244

**DATE:**

**SUBJECT:**

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This memorandum serves as acknowledgment that:

1. Street and utility work required under the \_\_\_\_\_ Construction Addendum dated \_\_\_\_\_, between the City of Minnetonka and \_\_\_\_\_, has been satisfactorily completed in accordance with approved plans and specifications; and
2. Said streets and utilities are accepted by the City of Minnetonka.

\_\_\_\_\_  
City of Minnetonka Engineering Department

\_\_\_\_\_  
Date

\_\_\_\_\_  
City of Minnetonka Public Works Department

\_\_\_\_\_  
Date

## **Exhibit D**

### **Developer Obligations With Respect To The Underpass/Bridge Site Improvements and The Dynamic Predication Crossing Site Improvements.**

**1. Design and Construction.** The Developer, or an affiliate thereof (“Developer Affiliate”), will enter into contracts related to the design and construction of the Underpass/Bridge Site Improvements and the design and installation of the Dynamic Predication Crossing Site Improvements. The Developer shall cause design contracts to be entered into with WSB & Associates, Inc.

**2. City to Determine to Proceed with Underpass/Bridge.** Notwithstanding Section 1 above, the City and the Developer will work together to obtain preliminary engineering design and construction cost estimates from WSB for the Underpass/Bridge Site Improvements. Based on the estimated costs, the City will determine if the Underpass/Bridge Site Improvements should be constructed. The City will notify the Developer as to whether it should cause contracts to be entered related to the design and construction of the Underpass/Bridge Site Improvements on or before October 15, 2018. It is intended by the parties to the Construction Addendum, unless otherwise agreed, the design and construction of the Underpass/Bridge Site Improvements is contingent on the estimated costs for such project not exceeding \$2,410,000. Except as otherwise provided for herein, the Dynamic Predication Crossing Site Improvements (including associated fencing adjacent to Bren Road East) is required, regardless of whether the Underpass/Bridge Site Improvements are constructed.

**3. Easements.** The City will work with all adjacent property owners and interest holders, including, but, not limited to Eagle Ridge Academy and the Metropolitan Council, to obtain the necessary easements to build the Underpass/Bridge Site Improvements and Dynamic Predication Crossing Site Improvements.

**4. Reimbursement Process.** All costs and expenses relating to the design and construction of the Underpass/Bridge Site Improvements and the Dynamic Predication Crossing Site Improvements shall be reimbursed by the City. The Developer must provide the City with the final invoices for the work as the work is completed. The City will reimburse the Developer within 30 days of receipt of a final invoice unless the City objects to the items set forth in the final invoice, and if the City has objections, it will notify the Developer of such objections within 30 days of receipt of a final invoice. The City shall not reimburse the Developer for any costs associated with building redesign, north trail redesign, or other costs that are unrelated to the Underpass/Bridge Site Improvements and the Dynamic Predication Crossing Site Improvements.

**5. Completion.** The Underpass/Bridge Site Improvements must be completed prior to the issuance of a final certificate of occupancy for the last building to be completed pursuant to the Development Contract executed by the Developer and that certain Contract for Private Development, dated \_\_\_\_\_, 2018, between the City, the Authority, and Minnetonka Leased Housing Associates III, LLLP. The foregoing condition shall not apply if any of the following circumstances occur: (a) the City is in default of any of its material obligations under this Construction Addendum; or (b) the City has caused material delays in the design or construction of the Underpass/Bridge Site Improvements. No certificates of occupancy shall be contingent upon the completion of the Dynamic Predication Crossing Site Improvements, which is intended to be completed on or after the completion of the heavy civil construction of the light rail transit line to the east of the Development Property.

**6. Park Dedication Fees Credit.** The parties hereto agree that the proceeds of the park dedication fees paid by the Developer with respect to the Senior Housing Project and the park dedication fees paid by Minnetonka Leased Housing Associates II, LLLP with respect to the adjacent workforce housing



project and will be used to offset the costs of the design, construction, and other costs (*e.g.* engineering costs, surveying costs, and soil remediation) related to the Underpass/Bridge Site Improvements and Dynamic Predication Crossing Site Improvements. In the event the costs of the Underpass/Bridge Site Improvements and Dynamic Predication Crossing Site Improvements exceed the amount of the park dedication fees paid by the Developer, the City shall pay the remaining costs of the Underpass/Bridge and Dynamic Predication Crossing Site Improvements with other available funds.

**7. Maintenance.** Following the completion of the Underpass/Bridge Site Improvements and Dynamic Predication Crossing Site Improvements, the City agrees to own and maintain the Underpass/Bridge Site Improvements and Dynamic Predication Crossing Site Improvements, the trail along the north side of the Development Property, and fencing related to the dynamic predication crossing.

**8. Third-Party Beneficiary.** Any and all rights of the Developer under this Exhibit D, including, but not limited to requesting reimbursement of costs, may be exercised by an affiliate of the Developer as if such affiliate of Developer was the "Developer" hereunder.

**9. Standards for Design and Construction.** The requirements of the Construction Addendum (except for Section 5) apply to the design and construction of the Underpass/Bridge Site Improvements and Dynamic Predication Crossing Site Improvements.