

**FORM OF AGREEMENT
BETWEEN CITY OF CHANHASSEN AND CONTRACTOR
FOR
Lakeridge Road Storm Pond Repair**

THIS AGREEMENT, made this 9th day of November, 2020, by and between the CITY OF CHANHASSEN, a Minnesota municipal corporation (“Owner”) and Kusske Construction Company, LLC (“Contractor”). Owner and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

1. CONTRACT DOCUMENTS. The following documents shall be referred to as the “Contract Documents”, all of which shall be taken together as a whole as the contract between the parties as if they were set verbatim and in full herein:

- A. This Agreement;
- B. City of Chanhassen General Conditions of the Construction Contract;
- C. Current edition of City of Chanhassen Standard Specifications & Detail Plates.
- D. Quote/Bid dated October 15, 2020, attached hereto.

In the event of a conflict among the provisions of the Contract Documents, the order in which they are listed above shall control in resolving any such conflicts with Contract Document “A” having the first priority and Contract Document “D” having the last priority.

2. OBLIGATIONS OF THE CONTRACTOR. The contractor shall provide the goods, services, and perform the work in accordance with the Contract Documents.

3. CONTRACT PRICE. Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents a Not-To-Exceed amount of Forty One Thousand Three Hundred Fifty Five and 00/100 dollars (**\$41,355.00**).

4. PAYMENT PROCEDURES.

- A. Contractor shall submit Applications for Payment. Applications for Payment will be processed by Engineer as provided in the General Conditions.
- B. Progress Payments; Retainage. Owner shall make 95% progress payments on account of the Contract Price on the basis of Contractor’s Applications for Payment during performance of the Work.
- C. Payments to Subcontractor.

- (1) Prompt Payment to Subcontractors. Pursuant to Minn. Stat. § 471.25, Subd. 4a, the Contractor must pay any subcontractor within ten (10) days of the Contractor's receipt of payment from the City for undisputed services provided by the subcontractor. The Contractor must pay interest of 1 ½ percent per month or any part of a month to the Subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, the Contractor shall pay the actual penalty due to the subcontractor.
- (2) Form IC-134 (attached) required from general contractor. Minn. Stat. § 290.92 requires that the City of Chanhassen obtain a Withholding Affidavit for Contractors, Form IC-134, before making final payments to Contractors. This form needs to be submitted by the Contractor to the Minnesota Department of Revenue for approval.

The form is used to receive certification from the state that the vendor has complied with the requirement to withhold and remit state withholding taxes for employee salaries paid.

- D. Final Payment. Upon final completion of the Work, Owner shall pay the remainder of the Contract Price as recommended by Engineer.

5. COMPLETION DATE/LIQUIDATED DAMAGES.

- A. The Work must be completed within Thirty (30) days after the date the Contract Times commence to run, and completed and ready for final payment in accordance with the General Conditions by December 9, 2020.
- B. Contract and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 5.A. above, plus any extensions thereof allowed. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$125 for each calendar day that expires after the time specified in Paragraph 5.A. for Completion until the Work is complete.

Daily costs are based on MnDOT Table 1807-1, "Schedule of Liquidated Damages as follows:

TABLE 1807-1 SCHEDULE OF LIQUIDATED DAMAGES		
Original Contract Amount		Charge Per Cal.
From More Than (\$)	To and Including (\$)	Day (\$)
0	25,000	75
25,000	50,000	125
50,000	100,000	250
100,000	500,000	500
500,000	1,000,000	750
1,000,000	2,000,000	1,250
2,000,000	5,000,000	1,750
5,000,000	10,000,000	2,500
10,000,000	----	3,000

6. CONTRACTOR’S REPRESENTATIONS.

- A. Contractor has examined and carefully studied the Contract Documents and other related data identified in the Contract Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the site.
- E. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction

expressly required by the Bidding Documents, and safety precautions and programs incident thereto.

- F. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- I. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- K. Subcontracts:
 - (1) Unless otherwise specified in the Contract Documents, the Contractor shall, upon receipt of the executed Contract Documents, submit in writing to the Owner the names of the Subcontractors proposed for the work. Subcontractors may not be changed except at the request or with the consent of the Owner.
 - (2) The Contractor is responsible to the Owner for the acts and omissions of the Contractor's subcontractors, and of their direct and indirect employees, to the same extent as the Contractor is responsible for the acts and omissions of the Contractor's employees.
 - (3) The Contract Documents shall not be construed as creating any contractual relation between the Owner, the Engineer, and any Subcontractor.

(4) The Contractor shall bind every Subcontractor by the terms of the Contract Documents.

7. WORKER'S COMPENSATION. The Contractor shall obtain and maintain for the duration of this Contract, statutory Worker's Compensation Insurance and Employer's Liability Insurance as required under the laws of the State of Minnesota.

8. COMPREHENSIVE GENERAL LIABILITY. Contractor shall obtain the following minimum insurance coverage and maintain it at all times throughout the life of the Contract, with the City included as an additional name insured on a primary and non-contributory basis. The Contractor shall furnish the City a certificate of insurance satisfactory to the City evidencing the required coverage:

Bodily Injury: \$2,000,000 each occurrence
\$2,000,000 aggregate products and completed operations

Property Damage: \$2,000,000 each occurrence
\$2,000,000 aggregate

Contractual Liability (identifying the contract):

Bodily Injury: \$2,000,000 each occurrence

Property Damage: \$2,000,000 each occurrence
\$2,000,000 aggregate

Personal Injury, with Employment Exclusion deleted:
\$2,000,000 aggregate

Comprehensive Automobile Liability (owned, non-owned, hired):

Bodily Injury: \$2,000,000 each occurrence
\$2,000,000 each accident

Property Damage: \$2,000,000 each occurrence

9. WARRANTY. The Contractor guarantees that all new equipment warranties as specified within the quote shall be in full force and transferred to the City upon payment by the City. The Contractor shall be held responsible for any and all defects in workmanship, materials, and equipment which may develop in any part of the contracted service, and upon proper notification by the City shall immediately replace, without cost to the City, any such faulty part or parts and damage done by reason of the same in accordance with the bid specifications.

10. INDEMNITY. The Contractor agrees to indemnify and hold the City harmless from any claim made by third parties as a result of the services performed by it. In addition, the

Contractor shall reimburse the City for any cost of reasonable attorney's fees it may incur as a result of any such claims.

11. MISCELLANEOUS.

- A. Terms used in this Agreement have the meanings stated in the General Conditions.
- B. Owner and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.
- C. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provisions.
- D. Data Practices/Records.
 - (1) All data created, collected, received, maintained or disseminated for any purpose in the course of this Contract is governed by the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, any other applicable state statute, or any state rules adopted to implement the act, as well as federal regulations on data privacy.
 - (2) All books, records, documents and accounting procedures and practices to the Contractor and its subcontractors, if any, relative to this Contract are subject to examination by the City.
- E. Software License. If the equipment provided by the Contractor pursuant to this Contract contains software, including that which the manufacturer may have embedded into the hardware as an integral part of the equipment, the Contractor shall pay all software licensing fees. The Contractor shall also pay for all software updating fees for a period of one year following cutover. The Contractor shall have no obligation to pay for such fees thereafter. Nothing in the software license or licensing agreement shall obligate the City to pay any additional fees as a condition for continuing to use the software.
- F. Patented devices, materials and processes. If the Contract requires, or the Contractor desires, the use of any design, devise, material or process covered by letters, patent or copyright, trademark or trade name, the

Contractor shall provide for such use by suitable legal agreement with the patentee or owner and a copy of said agreement shall be filed with the Owner. If no such agreement is made or filed as noted, the Contractor shall indemnify and hold harmless the Owner 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 Project agreed to be performed under the Contract, and shall indemnify and defend the Owner for any costs, liability, expenses and attorney's fees that result from any such infringement

- G. Assignment. Neither party may assign, sublet, or transfer any interest or obligation in this Contract without the prior written consent of the other party, and then only upon such terms and conditions as both parties may agree to and set forth in writing.
- H. Waiver. In the particular event that either party shall at any time or times waive any breach of this Contract by the other, such waiver shall not constitute a waiver of any other or any succeeding breach of this Contract by either party, whether of the same or any other covenant, condition or obligation.
- I. Governing Law/Venue. The laws of the State of Minnesota govern the interpretation of this Contract. In the event of litigation, the exclusive venue shall be in the District Court of the State of Minnesota for Carver County.
- J. Severability. If any provision, term or condition of this Contract is found to be or become unenforceable or invalid, it shall not affect the remaining provisions, terms and conditions of this Contract, unless such invalid or unenforceable provision, term or condition renders this Contract impossible to perform. Such remaining terms and conditions of the Contract shall continue in full force and effect and shall continue to operate as the parties' entire contract.
- K. Entire Agreement. This Contract represents the entire agreement of the parties and is a final, complete and all inclusive statement of the terms thereof, and supersedes and terminates any prior agreement(s), understandings or written or verbal representations made between the parties with respect thereto.
- L. Permits and Licenses; Rights-of-Way and Easements. The Contractor shall procure all permits and licenses, pay all charges and fees therefore, and give all notices necessary and incidental to the construction and completion of the Project. The City will obtain all necessary rights-of-way and easements. The Contractor shall not be entitled to any additional

compensation for any construction delay resulting from the City's not timely obtaining rights-of-way or easements.

- M. If the work is delayed or the sequencing of work is altered because of the action or inaction of the Owner, the Contractor shall be allowed a time extension to complete the work but shall not be entitled to any other compensation.

CITY OF CHANHASSEN

CONTRACTOR:

BY: _____
Elise Ryan, Mayor

BY: _____
Its _____

BY: _____
Heather Johnston, Interim City Manager



582 Bavaria Lane
Chaska, MN 55318

Office: 952-448-3321
Fax: 952-448-3774

October 15, 2020

City of Chanhassen
7700 Market Blvd
P.O. Box 147
Chanhassen, MN 55317

Attention: Charlie

Regarding: 4150 Lakeridge Drive Option # 1

Dear Sir:

Our proposal would include the equipment, labor and material necessary to do the following:

- Install mats to walk into site
- Remove trees and brush as needed
- Remove and replace 4' diameter manhole
- Remove and reinstall 24" pipe and apron with rip rap
- Remove and replace 16' of 15" RCP
- Seed and blanket disturbed areas
- Haul out 36 yards excess material in pond

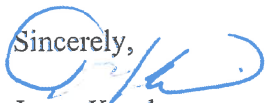
Our price would be\$ 24,480.00

(Twenty Four Thousand Four Hundred Eighty Dollars and No Cents) + 16,875.00 + 405.4

\$41,355 TOTAL

The following would not be included:

- Tree replacement
- Silt fence
- Sprinkler repair

Sincerely,

Jason Kusske
President



582 Bavaria Lane
Chaska, MN 55318

Office: 952-448-3321
Fax: 952-448-3774

October 15, 2020

City of Chanhassen
7700 Market Blvd
P.O. Box 147
Chanhassen, MN 55317

Attention: Charlie

Regarding: 4150 Lakeridge Drive Option # 4

Dear Sir:

Our proposal would include the equipment, labor and material necessary to do the following:

- Install mats to walk into site
- Remove trees and brush as needed
- Remove and reinstall existing outlet control structure
- Remove 24' of 12" RCP and Apron
- Install 24' of new 12" RCP storm sewer with apron and rip rap
- Seed and blanket disturbed areas

Our price would be\$ 16,875.00
(Sixteen Thousand Eight Hundred Seventy Five Dollars and No Cents)

The following would not be included:

- Tree replacement
- Sprinkler repair
- Silt fence

Sincerely,

Jason Kusske
President